

The Texas Education Agency (TEA) proposes an amendment to §100.1067, concerning possession and control of the public property of a former charter holder. The proposed amendment would implement Senate Bill (SB) 1454, 86th Texas Legislature, 2019, which established state oversight of related-party and other transactions conducted by charter schools and described how closed charter school funds and property are to be handled.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1067 describes the commissioner's authority to take control of and dispose of public property held by a former charter holder.

SB 1454, 86th Texas Legislature, 2019, amended Texas Education Code (TEC), Chapters 12 and 39A. The bill established state oversight of related-party and other transactions conducted by charter schools and provided for the management of assets of an open-enrollment charter school that ceases to operate. Prior to the enactment of SB 1454, the TEC did not expressly address provisions for property disposition of former charter holders or closed open-enrollment charter schools.

SB 1454 pertains to the control and disposition of real property purchased with public funds upon a charter holder's ceasing operations. The proposed changes would outline two general actions TEA may direct the former charter holder to take -- retain or sell the property or transfer the property -- and details the procedures associated with each.

The proposed amendment to §100.1067(a) would clarify the commissioner's authority to direct disposition of the charter holder's property.

The proposed amendment to §100.1067(b) would align the language with SB 1454 and clarify the commissioner's authority to cure defective audits submitted by charter schools.

Proposed new §100.1067(c)(1) would describe the commissioner's authority to direct the method of disposition of real property when the charter holder has purchased the property with state funds.

Proposed new §100.1067(c)(2) would describe the commissioner's authority to direct the method of distribution of personal property when the charter holder has purchased the property with state funds.

Proposed new §100.1067(c)(3) would describe the commissioner's authority to direct the method of distribution of property when the charter holder has leased the property with state funds.

Proposed new §100.1067(d) would describe the authority of the commissioner with regard to expenditures for maintenance of the property.

Proposed new §100.1067(e) would describe the actions the charter holder shall take upon the termination of operations of the open-enrollment charter school.

Proposed new §100.1067(g) would specify that the commissioner has discretion to direct disposition of the property in the best interest of Texas students.

FISCAL IMPACT: Kelvey Oeser, deputy commissioner for educator support, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by clarifying the commissioner's authority to take control and direct disposition of former charter holder property purchased and leased with public money. The proposed amendment would revise the rule to be consistent with SB 1454, 86th Texas Legislature, 2019.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Oeser has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be implementing legislation and ensuring that rule language is based on current law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins June 18, 2021, and ends July 19, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on June 18, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §12.106, as amended by Senate Bill (SB) 1454, 86th Texas Legislature, 2019, which describes the nature of state funding that a charter holder is entitled to receive and details disposition of state funds after a charter school ceases to operate; TEC, §12.128, as amended by SB 1454, 86th Texas Legislature, 2019, which outlines how charter schools may use and dispose of property purchased with public funds; TEC, §12.1281, as added by SB 1454, 86th Texas Legislature, 2019, which describes how a former charter holder may dispose of its property purchased with state funds after the charter school ceases to operate; TEC, §12.1282, as added by SB 1454, 86th Texas Legislature, 2019, which details how a former charter holder may be permitted to transfer property purchased with state funds; TEC, §12.1283, as added by SB 1454, 86th Texas Legislature, 2019, which details how the agency may sell property from a former charter holder, originally purchased with state funds; TEC, §12.1284, as added by SB 1454, 86th Texas Legislature, 2019, which describes generally final disposition of funds by Texas Education Agency after closure of charter school operations; and TEC, §39A.256, as amended by SB 1454, 86th Texas Legislature, 2019, which describes generally how a board of managers may be appointed to a closing charter school by the commissioner and details the authority such a board of managers would have with regard to a school's final closure.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.106 and §12.128, as amended by Senate Bill (SB) 1454, 86th Texas Legislature, 2019; §§12.1281, 12.1282, 12.1283, and 12.1284, as added by SB 1454, 86th Texas Legislature, 2019; and 39A.256, as amended by SB 1454, 86th Texas Legislature, 2019.

<rule>

§100.1067. Possession and Control of the Public Property of a Former Charter Holder.

- (a) Disposition of audited property. The ~~[If the exhibits to the annual audit reports filed by a former charter holder are in substantial compliance with §100.1063(f) of this title (relating to Use of Public Property by a Charter Holder), the]~~ commissioner of education shall take possession, assume control, and supervise the disposition of the public property disclosed by the annual audit report as filed with the Texas Education Agency (TEA) or as revised pursuant to subsection (b) of this section. At any time, the commissioner may appoint a board of managers to transfer the property or may direct the governing board of the charter holder to transfer the property. The commissioner may transfer or direct the transfer of property to any public school if the commissioner determines that the transfer is in the best interest of students. For purposes of this section, references to a charter holder refers to both an organization that currently holds a charter contract and an organization that formerly held a charter contract ~~[those exhibits as provided by subsection (e) of this section]~~ .
- (b) Disposition of property--defective audit. If the ~~[exhibits to the]~~ annual audit reports filed by a former charter holder are not in substantial compliance with §100.1063(f) of this title (relating to Use of Public Property by a Charter Holder) , the commissioner shall use such legal process as may be available under Texas law to take possession and assume control of all property of the former charter holder and, using such legal process, supervise the disposition of such property in accordance with law. The commissioner may transfer or direct the transfer of property to any public school if the commissioner determines that the transfer is in the best interest of students.
- (1) At any time ~~[prior to taking possession and assuming control of the affected property]~~ , the commissioner may determine whether the ~~[exhibits to the]~~ annual audit reports filed by a former charter holder substantially comply with §100.1063(f) of this title.
- (2) At the commissioner's sole discretion, the commissioner may cure any defects in the annual audit reports by reviewing the audit reports and reclassifying the transactions and restating the financial statements or ~~[filed exhibits]~~ by securing, at the former charter holder's expense, such professional services as may be required to create and/or audit the necessary exhibits to the annual audit reports.
- (3) The ~~[If successful in curing all defects in such exhibits, the]~~ commissioner may, at the commissioner's sole discretion, take possession, assume control, and supervise the disposition of the public property disclosed by the annual audit reports and any revisions made under this subsection ~~[those exhibits as provided by subsection (e) of this section]~~ .
- (c) Method of disposition of property. The commissioner may take possession, assume control, and supervise the disposition of property by taking one or more of the following actions.
- (1) For real property purchased with funds received under the Texas Education Code (TEC), §12.106, the commissioner shall direct the charter holder to dispose of the property through one of the following methods.
- (A) The charter holder may retain or sell the property and provide reimbursement to the state. The following provisions apply to a charter holder that retains or sells the property.
- (i) The charter holder must notify the commissioner more than 30 calendar days prior to the last day of instruction that the charter holder intends to reimburse the state for its interest in the property and specify whether the charter holder intends to retain or sell the real property.
- (ii) The charter holder must provide the commissioner a written assurance that the charter holder will comply with the requirements of TEC, §12.1284.
- (iii) The charter holder must obtain the written consent of the commissioner.
- (iv) The charter holder must file an affidavit in the real property records of the county in which the real property is located disclosing the state interest in the property at least 30 calendar days prior to the last day of instruction.

- (v) Not later than 30 calendar days after the charter school's last day of operation, the charter holder must deposit with the Texas Comptroller of Public Accounts an amount equal to 110% of the estimated state reimbursement for the property as directed by the commissioner, which TEA will calculate by taking the fair-market value of the property as determined by an appraisal approved by the commissioner, subtracting the principal amount of any debt described by TEC, §12.128(e), and multiplying that result by the percentage of funds received under TEC, §12.106, used to purchase the property as disclosed in the most recent audit under TEC, §44.008.
- (vi) The charter holder must prepare and submit a final audit under TEC, §44.008. This audit must be filed by the deadline specified in TEC, §44.008, and must disclose:
 - (I) the total amount of funds received under TEC, §12.106, that were used to purchase each separate item of real property to be retained or sold by the charter holder;
 - (II) the total amount of federal funds that were used to purchase each separate item of real property to be retained or sold by the former charter holder; and
 - (III) the total amount of funds that were used to purchase the property to be retained or sold by the former charter holder.
- (vii) The charter holder shall timely make all required payments relating to the property, including note payments; shall maintain the premises; and shall maintain full insurance coverage as determined by the commissioner until the state has received its full reimbursement and released its claim to the property.
- (viii) The following provisions apply if the charter holder elects to retain the property.
 - (I) After the final annual audit report is filed, TEA will calculate the final state reimbursement amount, which is calculated by taking the fair-market value of the property as determined by the commissioner less the final principal amount of any debt described by TEC, §12.128(e), that was incurred prior to the charter school's cessation of operations and multiplying that amount by the percent of funds received under TEC, §12.106, used to purchase the property as disclosed in the final audit report filed under TEC, §44.008, or as modified pursuant to this section.
 - (II) If the final state reimbursement amount is greater than the deposit made with the comptroller under this section, the former charter holder must make the additional deposit to the comptroller within 30 calendar days of TEA's determination of the final state reimbursement amount or as otherwise ordered by the commissioner.
 - (III) Once the charter holder has filed its final audit report under TEC, §44.008, and sufficient funds are on deposit with the comptroller to pay the final reimbursement amount, the commissioner may request the comptroller to distribute the deposit as directed by TEA and release any state claim on the property. Any remaining funds on deposit with the comptroller may be returned to the former charter holder once the state has received the full final reimbursement amount.
 - (IV) If the charter holder fails to complete its final financial audit under TEC, §44.008, or fails to make an additional payment to the comptroller as required, the charter holder shall forfeit the amount deposited with the comptroller and shall dispose of the property as ordered by the commissioner.

- (ix) The following provisions apply if the charter holder sells the property.
- (I) The property must be sold for at least fair-market value, as determined under this section.
 - (II) The property must be sold no later than one year after the last day of instruction.
 - (III) If the property is sold prior to the completion of the final audit report under TEC, §44.008, for an amount greater than the fair-market value used to determine the estimated state reimbursement amount, the charter holder shall deposit with the comptroller an amount equal to the difference between the estimated fair-market value and the sales price multiplied by the percentage of state funds used to purchase the property based on the most recent audit pursuant to TEC, §44.008.
 - (IV) After the property has been sold and the final audit report, pursuant to TEC, §44.008, has been filed, TEA shall calculate the final state reimbursement amount.
 - (V) The final state reimbursement amount is calculated by taking the final gross sales price of the property less the remaining principal amount of any debt described by TEC, §12.128(e), that was incurred prior to the charter school's cessation of operations and multiplying that amount by the percent of funds received under TEC, §12.106, used to purchase the property as disclosed in the final audit report under TEC, §44.008, or as revised pursuant to this section.
 - (VI) If the final state reimbursement amount is greater than the total deposit made with the comptroller, the former charter holder must make the additional deposit to the comptroller within 30 calendar days or as otherwise ordered by the commissioner.
 - (VII) Once the former charter holder has filed its final audit report under TEC, §44.008, and sold the property, and once sufficient funds are on deposit with the state comptroller's office to pay the final reimbursement amount, the commissioner may request the comptroller to distribute the deposit and release any state claim on the property. Any funds on deposit with the comptroller may be returned to the former charter holder once the state has received the full final reimbursement amount.
 - (VIII) The release of claims may be made in a closing where an independent third party is responsible for distributing the funds necessary to supplement the escrow account with the comptroller's office. If the property is sold before the final audit has been submitted to TEA, TEA may elect to release its claim on the property based on the most recent audit report.
 - (IX) If the charter holder fails to complete its final financial audit under TEC, §44.008, fails to sell the property within one year after the last day of instruction, or fails to make an additional payment to the comptroller as required, the charter holder shall forfeit the amount deposited with the state comptroller and shall dispose of the property as ordered by the commissioner.
- (x) For purposes of determining the fair-market value of the real property, the charter holder shall provide an appraisal from a certified appraiser approved by the commissioner not less than 30 calendar days after the final order of revocation, non-renewal, surrender, or return of the charter, or as otherwise directed by the commissioner.

- (xi) The commissioner may direct the charter holder to contract with a specified, certified appraiser or require the charter holder to obtain additional appraisals and may then choose which appraisal will be used to calculate fair-market value.
- (xii) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), if the commissioner determines a former charter holder failed to comply with this section or TEC, §12.1282, on request of TEA, the attorney general shall take any appropriate legal action to compel the former charter holder to convey title to TEA or other governmental entity authorized by TEA to maintain or dispose of the property.
- (xiii) All payments made by the charter holder to retain real property must be made with non-state funds. Lease payments received for state property are state property.
- (xiv) A decision by the commissioner under this section is final and may not be appealed.

(B) The charter holder may transfer the property using one of the following methods.

- (i) Transfer to TEA.
 - (I) Subject to the satisfaction of any security interest or lien, the former charter holder shall transfer the property, including a conveyance of title, to TEA no later than two weeks after the last day of instruction.
 - (II) The following provisions apply to the sale of public real property by TEA.
 - (-a-) After TEA receives title to real property described by TEC, §12.128, TEA may sell the property at any price acceptable to TEA.
 - (-b-) On request of TEA, the General Land Office shall enter into a memorandum of understanding to sell real property for TEA as required by TEC, §12.1283. The memorandum of understanding may allow the General Land Office to recover from the sale proceeds any cost incurred by the office or commission in the sale of the property.
 - (-c-) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), proceeds from the sale of property under this section shall be deposited in the charter school liquidation fund.
- (ii) Transfer to a school district or open-enrollment charter school under TEC, §12.1282.
 - (I) The following order of priority shall be used when transferring to a school district or open-enrollment charter school under this clause:
 - (-a-) a charter school with the highest or second-highest accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose approved geographic boundary encompasses the property to be transferred;
 - (-b-) a school district that has the highest or second-highest accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose geographic boundary includes the property to be transferred;

(f) ~~(d)~~ Use of legal process. Notwithstanding subsection (c) of this section, the commissioner may use such legal process as may be available under Texas law to take possession and assume control over the public property disclosed by the annual audit reports and, using such legal process, supervise the disposition of such property in accordance with law.

(g) Commissioner authority. The commissioner has discretion to direct disposition of the property in the best interest of Texas students.