

The Texas Education Agency (TEA) proposes amendments to §62.1001 and §62.1072, concerning options for local revenue levels in excess of entitlement. The proposed amendment to §62.1001 would remove language that prohibits a school district's board of trustees from delegating certain authority. The proposed amendment to §62.1072 would adopt as a part of the Texas Administrative Code (TAC) the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2021-2022 School Year* and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2022-2023 School Year*. The manuals contain the processes and procedures that TEA will use in the administration of the provisions of Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to TEC, Chapter 49, must meet.

BACKGROUND INFORMATION AND JUSTIFICATION: The following changes would be made to Chapter 62.

*§62.1001, Authority of Trustees; Duration of Agreements*

The agreement for purchase of attendance credit authorized under TEC, Chapter 49, is an electronic document accessible via the Excess Local Revenue subsystem of the online Foundation School Program (FSP) System. Each year, a school district's board of trustees must delegate authority to obligate the district under TEC, Chapter 49, to the superintendent to facilitate the submission of the agreement through the Excess Local Revenue subsystem. The proposed amendment to §62.1001(a) would align with TEA's automated process for districts submitting this agreement by removing language that prohibits a school district's board of trustees from delegating authority to enter into agreements necessary to achieve the purposes of TEC, Chapter 49.

*§62.1072, Options and Procedures for Local Revenue in Excess of Entitlement, 2019-2020 and 2020-2021 School Years*

The procedures contained in each yearly manual for districts determined to have local revenue in excess of entitlement are adopted as part of the TAC. The intent is to biennially update §62.1072 to refer to the most recently published manuals. Manuals adopted for previous school years will remain in effect with respect to those school years.

The proposed amendment to §62.1072 would adopt in rule the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2021-2022 School Year* as Figure: 19 TAC §62.1072(a) and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2022-2023 School Year* as Figure: 19 TAC §62.1072(b). The section title would be updated to reflect the manuals adopted in the rule.

Each school year's options and procedures for districts determined to have local revenue in excess of entitlement explain how districts subject to excess local revenue are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The options and procedures also provide information on using the online FSP System to fulfill certain requirements.

The following significant changes are addressed in the updated publications pursuant to TEC, Chapter 49, as amended by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

*Netting Provision*

Provisions in TEC, §48.257(c), were amended to allow districts to offset the reduction of excess local revenue against TEC, Chapter 48, funds. All districts will have the option to use state aid calculated under TEC, Chapter 48, that is not described by TEC, §48.266(a)(3), as an offset to their attendance credit for purposes of reducing their local revenue level. Districts using this option are required to submit the district intent/choice selection form and complete an Option 3 netting agreement.

*Local Revenue in Excess of Entitlement After Review Notification*

If the commissioner determines that a district has a local revenue level in excess of entitlement after the date of notification for the current school year under TEC, §49.004, the amount of the district's local revenue level that

exceeds the level established under TEC, §48.257, for that school year will be included in the annual review for the following school year of the district's local revenue levels under TEC, §49.004(a).

**FISCAL IMPACT:** Leo Lopez, associate commissioner for school finance, 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 limit an existing regulation in §62.1001(a) by removing language that prohibits a school district's board of trustees from delegating authority to enter into agreements necessary to achieve the purposes of TEC, Chapter 49. This change is necessary to align with TEA's automated process for districts submitting an agreement for purchase of attendance credit through the Excess Local Revenue subsystem of the online FSP System. The proposed rulemaking would also expand an existing regulation in §62.1072 by specifying that if the commissioner determines that a district has a local revenue level in excess of entitlement after the date of notification for the current school year under TEC, §49.004, the amount of the district's local revenue level that exceeds the level established under the TEC, §48.257, for that school year will be included in the annual review for the following school year of the district's local revenue levels under the TEC, §49.004(a).

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 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:** Mr. Lopez 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 continuing to inform the public of the existence of annual publications specifying the specific processes, procedures, and requirements used in the manuals for districts with local revenue in excess of entitlement that are established biennially by the commissioner of education and communicated to all school districts. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would place the specific procedures contained in the publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2021-2022 School Year* and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2022-2023 School Year* in the TAC. TEA administers the options for local revenue in excess of entitlement of the TEC, Chapter 49, according to the procedures specified in each yearly manual for districts with excess local revenue. Data reporting requirements are addressed primarily through the online FSP System.

**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 October 8, 2021, and ends November 8, 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 October 8, 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 amendments are proposed under Texas Education Code (TEC), §49.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §49.006.

<rule>

**§62.1001. Authority of Trustees; Duration of Agreements.**

- (a) Trustees of independent school districts may not ~~[delegate their authority to enter into agreements necessary to achieve the purposes of the Texas Education Code, Chapter 49. Nor may the trustees]~~ authorize any exclusive franchises on the right to negotiate on behalf of the district.
- (b) Consolidations under the Texas Education Code, Chapter 49, Subchapter B; detachments and annexations under Subchapter C; and tax base consolidations under Subchapter F are permanent in duration and districts may not enter into agreements that purport to limit the duration of the agreement. Nor may the parties create by agreement any right to cancel the agreement.

**§62.1072. Options and Procedures for Local Revenue in Excess of Entitlement, 2021-2022 and 2022-2023 ~~[2019-2020 and 2020-2021]~~ School Years.**

- (a) For the 2021-2022 ~~[2019-2020]~~ school year, the processes and procedures that the Texas Education Agency (TEA) will use in the administration of the provisions of the Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, must meet are described in the official TEA publication *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2021-2022* ~~[2019-2020]~~ School Year, provided in this subsection.  
Figure: 19 TAC §62.1072(a) ~~[Figure: 19 TAC §62.1072(a)]~~
- (b) For the 2022-2023 ~~[2020-2021]~~ school year, the processes and procedures that the TEA will use in the administration of the provisions of the TEC, Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 49, must meet are described in the official TEA publication *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2022-2023* ~~[2020-2021]~~ School Year, provided in this subsection.  
Figure: 19 TAC §62.1072(b) ~~[Figure: 19 TAC §62.1072(b)]~~
- (c) The specific processes, procedures, and requirements used in the manuals for districts with local revenue in excess of entitlement ~~[subject to wealth equalization]~~ are established biennially by the commissioner of education and communicated to all school districts.
- (d) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts with local revenue in excess of entitlement ~~[subject to wealth equalization]~~ with respect to those years.