

The Texas Education Agency (TEA) proposes an amendment to §61.1037, concerning the science laboratory grant program. The proposed amendment would update a reference to statute that was recodified by House Bill (HB) 3, 86th Texas Legislature, 2019, and update references to administrative rules on school facilities standards in order to be more encompassing.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 61.1037 establishes procedures and guidelines for the administration of the Science Laboratory Grant Program authorized under Texas Education Code (TEC), §7.062. School districts and open-enrollment charter schools are eligible for program grants when available. However, the program is not currently funded and will only be funded if surplus funds become available.

The proposed amendment to §61.1037 would update a statutory reference from TEC, §42.005, to TEC, §48.005, to reflect the recodification of statute by HB 3, 86th Texas Legislature, 2019. In addition, the proposed amendment would modify references to rules concerning school facilities standards to encompass the currently adopted standards as well as standards that may be adopted in the future.

**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 beyond what the authorizing statute requires.

**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, the rule would expand an existing regulation by applying current and future school facilities standards to the rule.

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:** 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 reflecting a correct statutory reference and providing clarification to the applicability of definitions found in facilities standards rules. 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 new data or 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 March 26, 2021, and ends April 26, 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 March 26, 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), §7.062, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which provides for the establishment and funding of the Science Laboratory Grant Program that provides competitive grants to school districts for the construction and renovation of high school science laboratories. The section also provides that the commissioner of education adopt rules necessary to implement the program; and TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.062 and §48.004.

<rule>

#### **§61.1037. Science Laboratory Grant Program.**

- (a) Definitions. The following words and terms, when used in this section, have the following meaning, unless the context clearly indicates otherwise.
- (1) Average daily attendance--The definition of this term is assigned in the Texas Education Code (TEC), §48.005 ~~§42.005(a)~~.
  - (2) Construction project--A project consisting of the construction of a new free-standing building or the construction of a new addition to an existing building.
  - (3) Renovation project--A project consisting of the renovation of space that is not currently used as a science laboratory within an existing building that does not include the addition of any new space.
  - (4) High school campus--A campus that houses Grades 9-12. For purposes of this grant program, a school district that has a separate Grade 9 campus and a separate Grades 10-12 campus, or some similar division, must combine the campuses on the application and submit as one campus. For purposes of this grant program, a school district that has a campus that serves Grades 6-12, Kindergarten-Grade 12, or some similar range, must identify only the number of students enrolled in Grades 9-12 on the application.
  - (5) Science laboratories--Rooms identified as combination science laboratories/classrooms ~~[per §61.1036(d)(5)(C)(iii) of this title (relating to School Facilities Standards for Construction on or after January 1, 2004),]~~ or identified as laboratories under the applicable school facilities standards adopted under this subchapter [per §61.1036(d)(5)(C)(iv) of this title]. To provide clarity in the exercise of the grant program governed by this section, rooms identified as laboratories under the applicable school facilities standards adopted under this subchapter [per §61.1036(d)(5)(C)(iv) of this title] are referred to as "stand-alone laboratories" within this section and within the grant application.
  - (6) Enrollment--The actual high school campus enrollment for the school year before the year in which a school district submits an application for the science laboratory grant program.
  - (7) Support areas--For a construction project, support areas are limited to prep rooms, storage areas, and corridor access space. For a renovation project, support areas are limited to prep rooms and storage areas.
  - (8) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

- (b) Application process. A school district must complete an application to request funding under the science laboratory grant program. The application must contain at a minimum the following:
- (1) a description of each individual high school campus for which funds are being requested;
  - (2) the enrollment on each high school campus;
  - (3) the number of existing science laboratories on each high school campus;
  - (4) a certification that the existing school district science laboratories are insufficient in number to comply with the curriculum requirements imposed for the recommended and advanced high school programs under the TEC, §28.025(b-1)(1);
  - (5) the number of science laboratories to be constructed or renovated; and
  - (6) a timeline for each construction or renovation project proposed by the high school campus.
- (c) Prioritization and notice of award. Upon close of the application cycle, all eligible applications will be ranked in order of the school district's property wealth per student in average daily attendance. For purposes of ranking within this grant program, a charter school's property wealth is defined as being equal to the property wealth of the school district from which the highest percentage of the charter school's students are drawn. Grants will be awarded beginning with the school district with the lowest property wealth and continue until all available funds have been used. The commissioner of education will award the full amount of the grant to which a school district is entitled under this section, except that the commissioner may award less than the full amount to the last school district for which any funds are available. By posting on the Texas Education Agency (TEA) website, the commissioner will notify each school district of the amount of grant awarded and its position in the rank order for the application cycle.
- (d) Data sources.
- (1) For purposes of determining prioritization, the projected average daily attendance as adopted by the legislature for appropriations purposes will be used.
  - (2) For purposes of prioritization, the final property values certified by the comptroller of public accounts for the tax year preceding the year in which assistance is to begin will be used. If final property values are unavailable, the most recent projection of property values will be used.
  - (3) For purposes of prioritization, the commissioner may consider, before the deadline for receipt of applications for that fiscal year, adjustments to data values determined to be erroneous.
- (e) Payments, determination of need, and eligible projects.
- (1) Payment of the grant will be made as soon as practicable after June 1 of each year. No payments will be made until all initial submissions required by the application have been received and approved by the TEA division responsible for state funding.
  - (2) For a construction project, the grant amount is limited to not more than \$200 per square foot of the science laboratory to be constructed.
    - (A) For science laboratories identified as combination science laboratories/classrooms, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 2,050 square feet for each science laboratory/classroom.
    - (B) For science laboratories identified as stand-alone laboratories, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,550 square feet for each stand-alone science laboratory.
  - (3) For a renovation project, the grant amount is limited to not more than \$100 per square foot of the science laboratory to be renovated.
    - (A) For science laboratories identified as combination science laboratories/classrooms, the grant amount will be paid on the actual square footage plus reasonable support areas

identified on the application not to exceed 1,640 square feet for each science laboratory/classroom.

- (B) For science laboratories identified as stand-alone laboratories, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,240 square feet for each stand-alone science laboratory.
- (4) The maximum number of science laboratories/classrooms eligible for funding for each campus under this grant program is determined by subtracting the number of existing laboratories/classrooms on the campus from the number of laboratories/classrooms needed. The number of laboratories/classrooms needed on a campus is calculated using the formula "E x LC" where:
  - (A) "E" is the campus enrollment;
  - (B) "LC" is the laboratories/classrooms calculation factor, which is equal to 0.007353; and
  - (C) any resulting fractional number of laboratories/classrooms needed is rounded up to the next whole number.
- (5) The maximum number of science stand-alone laboratories eligible for funding for each campus under this grant program is determined by subtracting the number of existing stand-alone laboratories on the campus from the number of stand-alone laboratories needed. The number of stand-alone laboratories needed on a campus is calculated using the formula "E x SAL" where:
  - (A) "E" is the campus enrollment;
  - (B) "SAL" is the stand-alone laboratories calculation factor, which is equal to 0.003676; and
  - (C) any resulting fractional number of stand-alone laboratories needed is rounded up to the next whole number.
- (6) The following additional limitations and requirements apply to the science laboratory grant program.
  - (A) For a project to be eligible for the grant program, a contract for construction or renovation cannot have been entered into by a school district at the time of the application deadline.
  - (B) Renovations to existing science laboratories/classrooms or to existing science stand-alone laboratories are not eligible for this grant program.
  - (C) Eligibility is limited to construction or renovation projects at high school campuses.
  - (D) A school district that received funds under this grant program for a campus in a prior application cycle is not eligible to apply for additional funds under this grant program for that same campus until three subsequent cycles have passed.
  - (E) All projects must comply with the applicable school facilities standards adopted under this subchapter [§61.1036 of this title] .
- (f) Deadlines and accountability.
  - (1) The commissioner will conduct an annual application cycle with a deadline of April 15 or the next business day after April 15 every year. A school district may file an amendment to its initial application before the deadline; any amendment received after the deadline will not be considered.
  - (2) When all funds within an application cycle have been awarded, the remaining unfunded applications will carry forward and be considered valid applications for the two application cycles immediately following the initial application except for those applications withdrawn by the submitting school districts before the end of the two following cycles. A school district that subsequently proceeds with its construction or renovations projects in the absence of grant funds will not have its application invalidated. An application that remains unfunded after three application cycles will expire and will not be eligible for consideration in future cycles.

- (3) If no excess funds are available, the commissioner will not make awards, and all applications received on or before the April 15 deadline will be considered valid applications for the following cycle except for those applications withdrawn by the submitting school districts before the end of the following application cycle. A school district that subsequently proceeds with its construction or renovation projects in the absence of grant funds will not have its application invalidated.
  - (4) An application received after the deadline will be considered a valid application for the following cycle unless withdrawn by the submitting school district before the end of the following application cycle.
  - (5) Within one year of award of grant, the school district must submit evidence in a form acceptable to the commissioner that a contract has been awarded for the construction or renovation projects identified in the application. Within two years of award of grant, the school district must submit evidence in a form acceptable to the commissioner that all work has been completed for the construction or renovation projects identified in the application, with a final accounting of the costs incurred by the school district for the projects. Failure to provide satisfactory evidence by any of the deadlines specified in this paragraph could be cause for the commissioner to cancel the school district's grant and to recover the grant amount from other scheduled Foundation School Program payments due to the school district.
- (g) Reports required. The commissioner will require such information and reports as are necessary to assure compliance with applicable laws.