

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

##### 19 TAC §§229.1, 229.3, 229.4, 229.6, 229.7

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §229.1(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 18, 2023, issue of the Texas Register.)*

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§229.1, 229.3, 229.4, 229.6, and 229.7, concerning the performance standards and procedures for educator preparation program (EPP) accountability. The proposed amendments would provide for adjustments to the 2022-2023 Accountability System for Educator Preparation (ASEP) Manual, would clarify the system for accreditation assignments, would clarify provisions for continuing approval reviews, and would include technical updates.

**BACKGROUND INFORMATION AND JUSTIFICATION:** EPPs are entrusted to prepare educators for success in the classroom. Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. TEC, §21.045, also requires SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs to comply with these provisions of the TEC and to ensure the highest level of educator preparation, which is codified in the SBEC Mission Statement.

Following is a description of the topics for the SBEC's consideration for proposed amendments to 19 TAC Chapter 229.

*§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

Update of ASEP Manual:

The proposed amendment to Figure: 19 TAC §229.1(c) would update the ASEP manual as follows:

Updates to the title would update the appropriate date to the 2022-2023 academic year.

Technical edits to the table of contents would update the title of Chapter 7 to match the corresponding change in the manual and capitalize the title of Chapter 5 to apply style standards for capitalization.

Updates to Chapter 1 would update the appropriate date to the 2022-2023 academic year.

Updates to Chapter 2 would update the small group aggregation to align with proposed 19 TAC §229.4(c)(4) that would provide that an EPP with a three-year cumulated group that is fewer than ten individuals, the group would be measured against the performance standard of the current year or an alternative performance standard of up to one candidate failing to meet the requirement, whichever is more favorable to the EPP. This would allow an EPP to miss the standard by one candidate without failing the performance standard for accountability purposes. The update would also include a diagram to provide a demonstration of the small group aggregation to provide transparency to the field.

Updates to Chapter 3 would update the appropriate dates to the 2022-2023 academic year. Additionally, an unnecessary year designation would be removed to simplify the annual update process.

Updates to Chapter 4 would provide a technical edit to correct the cross-reference to 19 TAC §229.2(19), regarding the definition of first-year teacher. Updates would also clarify that only teachers on standard, intern, and probationary certificates are included in the population of individuals that principals will complete surveys regarding preparation. This provides additional transparency to the field.

Updates to Chapter 5 would provide a technical edit to correct the worked example.

Updates to Chapter 6 would replace the term "license" with the term "certificate" to clarify that individuals apply for a teaching certificate, not license. This would provide consistency of language. Updates would also clarify that surveys related to Indicator 4b are only associated with individuals in the academic year in which they have been issued a certificate. This would provide clarity to the field that although candidates submit a survey when they apply for their certificate, the survey is not used for accountability purposes until the academic year in which they are issued that certificate.

Updates to Chapter 7 would add "Evaluation of Educator Preparation Programs by Teachers" to "New Teacher Satisfaction" in the title and the summary paragraph. This update was recommended by stakeholders to communicate the importance of the instrument for the purpose of increasing response rates. It also aligns with how the instrument is described to teachers. Updates would also clarify that beginning in the 2023-2024 aca-

demographic year, the population included in new teachers submitting a survey will align with the same population as the principal survey. This was recommended by stakeholders and would ensure consistency in which individuals are included in surveys related to EPP accountability.

Updates to Chapter 8 would provide a technical edit to replace the term "petition" with the term "application" to align with the term regarding EPP commendation, Innovative Educator Preparation.

Updates to Chapter 9 would shift language about the applicability of the Index system from an option for status determination to the way that the status determination is made. This aligns with the contents of updated 19 TAC §229.4(b).

### §229.3. *Required Submissions of Information, Surveys, and Other Data.*

The proposed amendment to §229.3(f) would strike §229.3(f)(3) as it was never utilized to measure Indicator 3 in ASEP. This would provide clarity as to which data submissions are used for accountability. The subsequent provisions would be renumbered accordingly.

### §229.4. *Determination of Accreditation Status.*

The proposed amendment to §229.4(a)(4)(A) would prescribe that EPPs that do not meet the performance standard for the frequency, duration, and documentation of field supervision due to only one candidate failing to receive the minimum number of observations will still meet that standard for accountability purposes. This would prevent a program from failing this standard due to not having documentation for field supervision for only one candidate. This is responsive to stakeholder input about flexibility in the standards for small programs.

The proposed amendment to §229.4(b) would clarify that ASEP accreditation statuses are assigned to EPPs based on the Index system prescribed in the manual. The proposed amendment would also remove outdated language which allowed EPPs to receive the better of the two systems for the 2021-2022 academic year. This would provide clarity to the field as to the assignment of ASEP statuses and remove outdated language.

The proposed amendment to §229.4(b)(1) would remove language regarding the ASEP system used for accountability that began in the 2021-2022 academic year as one of the two systems as options, as all programs will now be assigned statuses based on the Index system. The subsequent provisions would be renumbered or relettered accordingly.

The proposed amendment to §229.4(b)(2) would remove outdated language regarding the ASEP system that was in place through the 2021-2022 academic year. This would provide transparency to the field as to how EPPs are assigned ASEP accreditation statuses. The subsequent provisions would be renumbered accordingly.

The proposed amendment to §229.4(b)(4) would remove outdated language regarding the ASEP status of Not Rated: Declared State of Disaster. This would provide clarity to the field by removing language that is no longer operable.

The proposed amendment to §229.4(c)(4) would prescribe that when there is a small group with fewer than 10 individuals in a cumulative three-year period for that group, the candidate group will either be measured against the performance standard of the current year, or a performance standard where up to one candidate can fail to meet the requirement, whichever one is more

favorable to the EPP. This would allow for standards that are not 100% to not function as though they are 100% for small groups.

The proposed amendment to §229.4(c)(5) would clarify that if an EPP is assigned Accredited-Probation due to carry over status, the status will not be counted against the program as a consecutively measured year for purposes of revocation. This would ensure that a program is not revoked due to a carryover status.

### §229.6. *Continuing Approval.*

The proposed amendment to §229.6(b) would prescribe that an EPP has up to four months to comply with SBEC rules and or TEC, Chapter 21, following a continuing approval review, or the Texas Education Agency (TEA) staff will recommend the EPP be sanctioned. This would ensure transparency and consistency in the field regarding how long an EPP has to get into compliance after a continuing approval review.

### §229.7. *Informal Review of Texas Education Agency Recommendations.*

A technical edit is proposed in §229.7(a) and (b) to update a cross reference to §229.5.

**FISCAL IMPACT:** Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that for the first five years there is no additional fiscal impact on state and local governments and that there are no additional costs to entities 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 (TGC), §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 TGC, §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 TGC, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §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 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 expand 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. Garcia has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be an accountability system that informs the public of the quality of educator preparation provided by each SBEC-approved EPP. The TEA staff has determined there is no antic-

ipated cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposed amendment would have no additional data and reporting impact and would strike the data requirement in §229.3(f)(3) as it was never utilized to measure Indicator 3 in ASEP.

**ENVIRONMENTAL IMPACT STATEMENT:** The proposal does not require an environmental impact analysis because the amendments are not major environmental rules under TGC, §2001.0225.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA staff 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 August 18, 2023, and ends September 18, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the September 29, 2023 meeting in accordance with the SBEC board operating policies and procedures.

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; §21.043(b) and (c), which requires SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; §21.0441(c) and (d), which requires the SBEC to adopt rules setting certain admission requirements for EPPs; §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the

SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

*§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

(a) The State Board for Educator Certification (SBEC) is responsible for establishing standards to govern the continuing accountability of all educator preparation programs (EPPs). The rules adopted by the SBEC in this chapter govern the accreditation of each EPP that prepares individuals for educator certification. No candidate shall be recommended for any Texas educator certification class or category except by an EPP that has been approved by the SBEC pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs) and is accredited as required by this chapter.

(b) The purpose of the accountability system for educator preparation is to assure that each EPP is held accountable for the readiness for certification of candidates completing the programs.

(c) The relevant criteria, formulas, calculations, and performance standards relevant to subsection (d) of this section and §229.4 of this title (relating to Determination of Accreditation Status) are prescribed in the *Texas Accountability System for Educator Preparation (ASEP) Manual* provided as a figure in this subsection.

Figure: 19 TAC §229.1(c)

[Figure: 19 TAC §229.1(c)]

(d) An accredited EPP that is not under an active SBEC order or otherwise sanctioned by the SBEC may receive commendations for success in the following four dimensions identified by the SBEC and prescribed in the figure in subsection (c) of this section:

- (1) Rigorous and Robust Preparation;
- (2) Preparing the Educators Texas Needs;
- (3) Preparing Educators for Long-Term Success; and
- (4) Innovative Educator Preparation.

*§229.3. Required Submissions of Information, Surveys, and Other Data.*

(a) Educator preparation programs (EPPs), EPP candidates, first-year teachers, new teachers, beginning teachers, field supervisors, administrators, mentors, site supervisors, and cooperating teachers shall provide to the Texas Education Agency (TEA) staff all data and information required by this chapter, as set forth in subsections (e) and (f) of this section.

(b) Any individual holding a Texas-issued educator certificate who fails to provide information required by this chapter and the Texas Education Code (TEC), §21.045 and §21.0452, as set forth in subsection (e) of this section, may be subject to sanction of his or her certificate, including the placement of restrictions, inscribed or non-inscribed reprimand, suspension, or revocation.

(c) Any Texas public school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions upon its accreditation status be imposed for failure to comply with this section and the TEC, §21.0452.

(d) Any open-enrollment charter school that fails to provide information required by this chapter and the TEC, §21.045 and

§21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions be imposed for failure to comply with this section and the TEC, §21.0452.

(e) All required EPP data for an academic year shall be submitted to the TEA staff annually by September 15 following the end of that academic year. All surveys and information required to be submitted pursuant to this chapter by principals shall be submitted by June 15 of any academic year in which an administrator has had experience with a first-year teacher who was a participant in an EPP. All surveys and information required to be submitted pursuant to this chapter by new teachers shall be submitted by June 15 of the first full academic year after the teacher completed the requirements of an EPP. All surveys and information required to be submitted pursuant to this chapter by EPP candidates shall be submitted by August 31 of the academic year in which the candidate completed the requirements of an EPP.

(f) The following apply to data submissions required by this chapter.

(1) EPPs shall provide data for all candidates as specified in the figure provided in this paragraph.  
Figure: 19 TAC §229.3(f)(1) (No change.)

(2) Candidates in an EPP shall complete a survey, in a form approved by the State Board for Educator Certification (SBEC), evaluating the preparation he or she received in the EPP. Completion and submission to the TEA of the survey is a requirement for completion of an EPP.

~~[(3) Administrators in Texas public schools and open-enrollment charter schools shall complete individual teacher performance surveys, in a form to be approved by the SBEC, for each beginning teacher.]~~

~~(3) [(4)] Administrators in Texas public schools and open-enrollment charter schools shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success based on experience with first-year teachers who were participants in an EPP.~~

~~(4) [(5)] New teachers in a Texas public school, including an open-enrollment charter school, shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success.~~

#### §229.4. Determination of Accreditation Status.

(a) Accountability performance indicators. The State Board for Educator Certification (SBEC) shall determine the accreditation status of an educator preparation program (EPP) at least annually, based on the following accountability performance indicators, disaggregated by demographic group and other requirements of this chapter and determined with the formulas and calculations included in the figure provided in §229.1(c) of this title (relating to General Provisions and Purpose of Accountability System for Educator Preparation Programs). Data will be used only if the following indicators were included in the accountability system for that academic year. Except for the 2019-2020 and 2020-2021 academic years, when the data described in paragraphs (1)-(5) of this subsection will be reported to EPPs and will not be used to determine accreditation statuses, EPP accreditation statuses shall be based on:

(1) the EPP candidates' performance on pedagogy tests and content pedagogy tests. The EPP candidates' performance on pedagogy tests and content pedagogy tests shall provide separate accountability performance indicators for EPPs;

(A) For both pedagogy tests and content pedagogy tests, the performance standard shall be the percent of individuals admitted after December 26, 2016, who passed an examination within the first two attempts, including those examinations attempted after the individual has completed the EPP or when the EPP has not recommended the individual for a standard certificate. The pass rate is based solely on the examinations approved by the EPP. Examinations taken before admission to the EPP or specific examinations taken for pilot purposes are not included in the pass rate.

(B) For the 2021-2022 and 2022-2023 academic years, the Performance Assessment for School Leaders (PASL) shall be treated as a content pedagogy test.

(C) For pedagogy tests, the performance standard shall be a pass rate of 85%.

(D) For content pedagogy tests, the performance standard shall be a pass rate of 75%.

(2) the results of appraisals of first-year teachers by administrators, based on a survey in a form to be approved by the SBEC. The performance standard shall be 70% of first-year teachers from the EPP who are appraised as "sufficiently prepared" or "well prepared";

(3) the growth of students taught by beginning teachers as indicated by the STAAR Progress Measure, determined at the student level as described in Figure: 19 TAC §97.1001(b) of Part II of this title (relating to Accountability Rating System), and aggregated at the teacher level as described in Figure: 19 TAC §229.1(c) of this title. The performance standard shall be 70% of beginning teachers from the EPP reaching the individual performance threshold. The first two academic years for which the Texas Education Agency (TEA) has data necessary to calculate this performance standard following the 2019-2020 academic year will be reporting years only and will not be used to determine accreditation status;

(4) the results of data collections establishing EPP compliance with SBEC requirements specified in §228.35(g) of this title (relating to Preparation Program Coursework and/or Training), regarding the frequency, duration, and quality of field supervision to candidates completing clinical teaching or an internship. The frequency and duration of field supervision shall provide one accountability performance indicator, and the quality of field supervision shall provide a separate accountability performance indicator;

(A) The performance standard as to the frequency, duration, and required documentation of field supervision shall be that the EPP meets the requirements of documentation of §228.35(g) of this title for 95% of the EPP's candidates. EPPs who do not meet the standard of 95% for the aggregated group or for any disaggregated demographic group but have only one candidate not meet the requirement in the aggregated or any disaggregated group has met the standard for that group.

(B) The performance standard for quality shall be 90% of candidates rating the field supervision as "frequently" or "always or almost always" providing the components of structural guidance and ongoing support; and

(5) the results from a teacher satisfaction survey, in a form approved by the SBEC, of new teachers administered at the end of the first year of teaching under a standard certificate. The performance standard shall be 70% of teachers responding that they were "sufficiently prepared" or "well prepared" by their EPP.

(b) Accreditation status assignment. All approved EPPs may be assigned an accreditation status based on their performance in the Accountability System for Educator Preparation Programs (ASEP) In-

dex system, as described in Figure: 19 TAC §229.1(c) of this title. [For the 2021–2022 academic year, the assigned accreditation status shall be the better result for the EPP from the system described in paragraph (1) of this subsection and paragraph (2) of this subsection.]

~~[(1) Beginning in the 2021–2022 academic year, all approved EPPs may be assigned an accreditation status based on their performance in the Accountability System for Educator Preparation Programs (ASEP) Index system, as described in Figure: 19 TAC §229.1(c) of this title.]~~

~~(1) [(A)] Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the standard of 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title and has been approved by the SBEC to prepare, train, and recommend candidates for certification.~~

~~(2) [(B)] Accredited-Not Rated status. An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.~~

~~(3) [(C)] Accredited-Warning status.~~

~~(A) [(i)] An EPP shall be assigned Accredited-Warning status if the EPP accumulates 80% or greater but less than 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.~~

~~(B) [(ii)] An EPP may be assigned Accredited-Warning status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or Texas Education Code (TEC), Chapter 21.~~

~~(4) [(D)] Accredited-Probation status.~~

~~(A) [(i)] An EPP shall be assigned Accredited-Probation status if the EPP accumulates less than 80% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.~~

~~(B) [(ii)] An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.~~

~~[(2) Through the 2021–2022 academic year, all approved EPPs may be assigned an accreditation status as follows.]~~

~~[(A) Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the accountability performance standards described in subsection (a) of this section and has been approved by the SBEC to prepare, train, and recommend candidates for certification.]~~

~~[(B) Accredited-Not Rated status. An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the performance standards described in subsection (a) of this section. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.]~~

~~[(C) Accredited-Warning Status.]~~

~~[(i) An EPP shall be assigned Accredited-Warning status if the EPP:]~~

~~[(i) fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the indicators set forth in subsection (a) of this section in any one year;]~~

~~[(ii) fails to meet the performance standards in two demographic groups on an indicator set forth in subsection (a) of this section in any one year; or]~~

~~[(iii) fails to meet the performance standards for a demographic group on any of the indicators set forth in subsection (a) of this section for two consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.]~~

~~[(ii) An EPP may be assigned Accredited-Warning status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.]~~

~~[(D) Accredited-Probation status.]~~

~~[(i) An EPP shall be assigned Accredited-Probation status if the EPP:]~~

~~[(i) fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the indicators set forth in subsection (a) of this section for two consecutively measured years;]~~

~~[(ii) fails to meet the performance standards in three demographic groups on an indicator set forth in subsection (a) of this section in any one year; or]~~

~~[(iii) fails to meet the performance standards for a demographic group on any of the indicators set forth in subsection (a) of this section for three consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.]~~

~~[(ii) An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.]~~

~~(5) [(3)] Not Accredited-Revoked status.~~

~~(A) An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured years.~~

~~(B) An EPP may be assigned Not Accredited-Revoked status if the EPP has been on Accredited-Probation status for one year, and the SBEC determines that revoking the EPP's approval is reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.~~

~~(C) An EPP may be assigned Not Accredited-Revoked status if the EPP fails to pay the required ASEP technology fee by the deadline set by TEA as prescribed in §229.9(7) of this title (relating to Fees for Educator Preparation Program Approval and Accountability).~~

~~(D) An EPP may be assigned Not Accredited-Revoked status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.~~

~~(E) An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.~~

~~(F) A revocation of an EPP approval shall be effective for a period of two years, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).~~

~~(G) Upon revocation of EPP approval, the EPP may not admit new candidates for educator certification but may complete the training of candidates already admitted by the EPP and recommend them for certification. If necessary, TEA staff and other EPPs shall~~

cooperate to assist the previously admitted candidates of the revoked EPP to complete their training.

[(4) Not Rated: Declared State of Disaster status.]

[(A) Due to the governor's declaration of disaster on March 13, 2020, in accordance with Texas Government Code, §418.014, all EPPs shall be assigned a status of Not Rated: Declared State of Disaster for the 2019-2020 and 2020-2021 academic years.]

[(B) The assignment of Not Rated: Declared State of Disaster shall not interrupt consecutively measured years or next most recent prior years as prescribed in this chapter. The assignment of Not Rated: Declared State of Disaster shall not be included in any count of years prescribed in this chapter.]

[(C) For the purposes of §228.10 of this title (relating to Approval Process), §228.17(e) of this title (relating to Change of Ownership and Name Change), and §228.20 of this title (relating to Governance of Educator Preparation Programs), the status the SBEC assigned an EPP for the 2018-2019 academic year shall be the operative accreditation status.]

[(D) For EPPs with an assigned status other than Accredited for the 2018-2019 academic year that meet the requirements for a status of Accredited as described in subsection (b)(1)(A) or (b)(2)(A) of this section based on their 2020-2021 data:]

[(i) the 2020-2021 academic year shall represent a break in consecutively measured years or next most recent prior years as prescribed in subsection (b)(1)-(3) of this section; and]

[(ii) the EPP shall be eligible for commendations as described in §229.1(d) of this title for the 2020-2021 academic year.]

(c) Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated by demographic group, shall be measured against performance standards described in this chapter in any one year in which the number of individuals in the group exceeds 10. The small group exception does not apply to compliance with the frequency and duration of field supervisor observations.

(2) For an EPP candidate group, aggregated or disaggregated by demographic group, where the group contains 10 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(3) If the current year's EPP candidate group, aggregated or disaggregated by demographic group, contained between one and 10 individuals, that group performance shall be combined with the group performance from the next most recent prior year subsequent to the 2020-2021 academic year for which there was at least one individual, and if the two-year cumulated group contains more than 10 individuals, then the two-year cumulated group performance must be measured against the standards in the current year. The two-year cumulated group shall not include group performance from years prior to the 2021-2022 academic year.

(4) If the two-year cumulated EPP candidate group described in subsection (c)(3) of this section, aggregated or disaggregated by demographic group, contains between one and 10 individuals, then the two-year cumulated group performance shall be combined with the next most recent group performance subsequent to the 2020-2021 academic year for which there was at least one individual. The three-year cumulated group performance must be measured against the standards in the current year, regardless of how small the cumulated

number of group members may be. When evaluating a three-year cumulated group of fewer than 10 individuals, the candidate group will be measured against the performance standard of the current year, or a performance standard of up to one candidate failing to meet the requirement, whichever is more favorable. The three-year cumulated group performance shall not include group performance from years prior to the 2021-2022 academic year.

(5) In any reporting year in which the EPP candidate group, aggregated or disaggregated by demographic group, does not meet the necessary number of individuals needed to measure against performance standards for that year, for all indicators, the accreditation status will continue from the prior year. Any sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. If an EPP has a status of Accredited-Probation carried over as a result of this subsection, the year in which the EPP has the carried over status will not count as a consecutively measured year for the purpose of subsection (b)(5)(A) of this section. The SBEC may modify the sanction as the SBEC deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.

§229.6. *Continuing Approval.*

(a) The continuing approval of an educator preparation program (EPP) to recommend candidates for educator certification, which shall be reviewed pursuant to §228.10(b) of this title (relating to Approval Process), will be based upon the EPP's accreditation status and compliance with the State Board for Educator Certification (SBEC) rules regarding program-approval components specified in §228.10(a) of this title (relating to Approval Process).

(b) After a continuing approval review pursuant to §228.10(b) of this title, if the Texas Education Agency (TEA) staff finds that an EPP is in compliance with SBEC rules and/or Texas Education Code (TEC), Chapter 21, the TEA staff shall issue a proposed recommendation for SBEC to approve the renewal of an EPP. After a continuing approval review pursuant to §228.10(b) of this title or a complaint investigation pursuant to §228.70 of this title (relating to Complaints and Investigations Procedures), if the TEA staff finds that an EPP has failed to comply with SBEC rules and/or the TEC, Chapter 21, and the EPP does not obtain compliance within four months, [the timelines established by TEA staff,] the TEA staff shall recommend that the SBEC sanction the EPP. The TEA staff may recommend that the SBEC action include, but is not limited to, public reprimand, revocation of program approval, or the imposition of conditions upon continuing program approval.

(c) TEA staff shall provide notice of the proposed recommendation for SBEC action relating to the EPP's continuing approval to recommend candidates for educator certification in the manner provided by §229.7 of this title (relating to Informal Review of Texas Education Agency Recommendations), and an EPP shall be entitled to an informal review of the proposed recommendation, under the conditions and procedures set out in §229.7 of this title, prior to the submission of the recommendation for action to either the SBEC or the State Office of Administrative Hearings (SOAH). If the EPP fails to request an informal review in a timely manner, the proposed recommendation will become a final recommendation.

(d) Following the informal review, a final recommendation will be issued by the TEA staff. The final recommendation may include changes or additions to the proposed recommendation and such modifications are not subject to another informal review procedure.

(e) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, within 14 calendar days of receipt of the final recommendation, the EPP may agree in writing to accept the final revocation without further proceedings or may request that TEA staff schedule the matter for a hearing before an administrative law judge at the SOAH, as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(f) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration and entry of a final order.

*§229.7. Informal Review of Texas Education Agency Recommendations.*

(a) Applicability. This section applies only to a notice required under §229.5(d) [§229.5(f)] of this title (relating to Accreditation Sanctions and Procedures) or under §229.6(c) of this title (relating to Continuing Approval) proposing to:

(1) require an educator preparation program (EPP) or a particular class or category of certification offered by an EPP to obtain technical assistance as provided by the Texas Education Code (TEC), §21.0451(a)(2)(A);

(2) require an EPP or a particular class or category of certification offered by an EPP to obtain professional services as provided by the TEC, §21.0451(a)(2)(B);

(3) appoint a monitor for an EPP or a particular class or category of certification offered by an EPP as provided by the TEC, §21.0451(a)(2)(C);

(4) assign a change in accreditation status of Accredited-Warning, Accredited-Probation, or Not Accredited-Revoked, as specified in §229.4 of this title (relating to Determination of Accreditation Status);

(5) issue a public reprimand or impose conditions on the continuing approval of an EPP to recommend candidates for certification pursuant to §229.6(b) of this title;

(6) revoke the approval of an EPP to recommend candidates for certification in a particular class or category of certification; or

(7) revoke the approval of an EPP to recommend candidates for certification.

(b) Notice. Notice of a proposed recommendation for an order or change in accreditation status, subject to this section, shall be made as provided by §229.5(d) [§229.5(f)] and §229.6(c) of this title, and this section.

(1) The notice shall attach or make reference to all information on which the proposed recommendation is based.

(A) Information maintained on the Texas Education Agency (TEA) and State Board for Educator Certification (SBEC) websites may be referenced by providing a general citation to the information.

(B) The TEA and SBEC reports previously sent to the EPP may be referenced by providing the title and date of the report.

(C) On request, the TEA shall provide copies of, or reasonable access to, information referenced in the notice.

(2) The notice shall state the procedures for requesting an informal review of the proposed recommendation or change in accreditation status under this section, including the name and department of

the TEA staff to whom a request for an informal review may be addressed.

(3) The notice shall set a deadline for requesting an informal review, which shall not be less than 14 calendar days from the date of receipt of the notice. The notice may be delivered by mail, personal delivery, facsimile, or email.

(c) Request. The chief operating officer or designee of the EPP may request, in writing, an informal review under this section.

(1) The request must be properly addressed to the member of the TEA staff identified in the notice under subsection (b)(2) of this section and must be received by TEA staff on or before the deadline specified in subsection (b)(3) of this section.

(2) The request must set out the reasons the EPP believes the proposed recommendation or change in accreditation status is incorrect, with citations to include supporting evidence. The EPP may submit any written information to TEA as evidence to support its request, without regard to admissibility under the Texas Rules of Evidence. The request for review shall concisely state, in numbered paragraphs:

(A) if alleging the proposed recommendation would violate a statutory provision, the statutory provision violated and the specific facts supporting a conclusion that the statute was violated by the proposed recommendation;

(B) if alleging the proposed recommendation would be in excess of the SBEC's statutory authority, the SBEC's statutory authority and the specific facts supporting a conclusion that the proposed recommendation would be in excess of this authority;

(C) if alleging the proposed recommendation was made through unlawful procedure, the lawful procedure and the specific facts supporting a conclusion that the proposed recommendation was made through unlawful procedure;

(D) if alleging the proposed recommendation is affected by other error of law, the law violated and the specific facts supporting a conclusion that the proposed recommendation violated that law;

(E) if alleging the proposed recommendation is not reasonably supported by a preponderance of the evidence, each finding, inference, or conclusion of the proposed recommendation that is unsupported by a preponderance of the evidence, and the evidence that creates a preponderance against the specific finding, inference, or conclusion at issue;

(F) if alleging the proposed recommendation is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, each finding, inference, conclusion, or proposed recommendation affected and the specific facts supporting a conclusion that each is so affected;

(G) for each violation, error, or defect alleged under subparagraphs (A)-(F) of this paragraph, the substantial rights of the EPP that are prejudiced by such violation, error, or defect;

(H) a concise statement of the relief sought by the EPP (petitioner); and

(I) the name, mailing address, telephone number, facsimile number, and email address of the petitioner's representative.

(3) Failure to comply with the requirements of this subsection may result in dismissal of the request for informal review.

(d) No review requested. If the TEA staff does not receive the EPP's request for an informal review by the deadline set in accordance

with subsection (b)(3) of this section, the proposed recommendation will become a final recommendation and will proceed in accordance with subsection (f) of this section.

(e) Informal review. In response to a request under subsection (c) of this section, TEA staff will review the materials and documents provided by the EPP and issue a final recommendation. The final recommendation may include changes or additions to the proposed recommendation and such modifications are not subject to another informal review.

(f) Final recommendation.

(1) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, Within 14 calendar days of receipt of the final recommendation, the EPP may agree in writing to accept the final revocation without further proceedings or may request that TEA staff schedule the matter for a hearing before an administrative law judge at the State Office of Administrative Hearings (SOAH), as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(2) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration of a final order.

(g) Other law. Texas Government Code, Chapter 2001, and the TEC, §7.057, do not apply to an informal review under this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2023.

TRD-202302785

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 17, 2023

For further information, please call: (512) 475-1497



## TITLE 34. PUBLIC FINANCE

### PART 9. TEXAS BOND REVIEW BOARD

#### CHAPTER 181. BOND REVIEW BOARD

##### SUBCHAPTER A. BOND REVIEW RULES

###### 34 TAC §181.11

The Texas Bond Review Board (BRB) proposes a new rule to Texas Administrative Code (TAC) Title 34, Part 9, Chapter 181, Subchapter A, adding §181.11. Report on State Lending and Credit Support Programs.

Background and Justification:

The BRB proposes a new rule within Texas Administrative Code, Title 34, Part 9, Chapter 181 based on the passage of House Bill (HB) 1038 by the 88th Legislature (2023 Regular Session). HB 1038 amends Chapter 1231 of the Texas Government Code by adding Section 1231.064 related to a biennial report on state lending and credit support programs.

This proposed new rule facilitates the gathering of relevant information from state agencies or political subdivisions regarding lending and credit support programs within the state to enable the BRB to prepare a biennial report due by December 31 of each even-numbered year as mandated by Section 1231.064 of the Texas Government Code.

New rule §181.11, as proposed, requires as follows: For each state lending and credit support program, a state agency or political subdivision shall provide a description of the program, the total amount of state money lent through or debt supported by the program, a citation to the law authorizing each program, a reasonable estimate of the cost of default associated with each program computed in accordance with private-sector accounting standards for credit or other losses, and policies and procedures in place for each program to mitigate the risk of future default in the programs.

Fiscal Impact on State and Local Government:

Robert Latsha, Executive Director for the BRB, has determined that for the first five-year period the proposed new rule is in effect, there should only be minimal administrative costs for the state or local government to provide the financial information required to comply with the rule because this financial information should be and likely is already available.

Public Benefit:

Mr. Latsha also has determined that for each year of the first five years the proposed new rule is in effect, the public benefit of the new rule will be to increase transparency on state lending and credit support programs. Texas has a strong reputation for fiscal transparency. This new rule furthers that reputation by ensuring that the BRB receives sufficient information for BRB to track and accurately report, for each lending program and for each credit support program, the total amount of state money (taxpayer dollars) lent through and debt supported by that program.

Impact on Local Employment or Economy:

There is no effect on local economy for the first five years that the proposed new rule is in effect because the rule merely facilitates the gathering of relevant information from state agencies or political subdivisions in order for the BRB to provide the report required by HB 1038. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§ 2001.022 or 2001.024(a)(6).

Government Growth Impact Statement:

The BRB provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new rule.

For each year of the first five years the proposed new rule is in effect, Mr. Latsha has determined:

- 1) The proposed new rule does not create or eliminate a government program.
- 2) Implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions.
- 3) Implementation of the proposed new rule does not require an increase or decrease in future legislative appropriations to the BRB.

4) The proposed new rule does not require an increase or decrease in fees paid to the BRB.

5) The proposed new rule creates a new regulation in order to obtain the necessary information required by the BRB to provide a new biennial report required by HB 1038.

6) The proposed new rule does not expand, limit, or repeal an existing BRB rule.

7) The proposed new rule does not increase or decrease the number of individuals subject to the rule's applicability.

8) The proposed new rule does not positively or adversely affect the state's economy.

Fiscal Impact on Small and Microbusinesses and Rural Communities:

The proposed new rule will have no adverse economic effect on micro-businesses, small businesses, or rural communities because the new rule only increases transparency regarding state lending and credit support programs. The proposed new rule does not affect operations of any small or micro-business, and the proposed new rule should not have an adverse impact on rural communities because the rule only requires more detailed reporting of information that each rural community that participates in the programs should and likely does already possess. The proposed new rule does not affect any local economy within the state.

One-for-One Rule Analysis:

The proposed new rule is not subject to Texas Government Code § 2001.0045, concerning increasing costs to regulated persons, and is exempt from that statute because pursuant to the exception contained in section 2001.0045(c)(9), the rule is necessary to implement section 1231.064 of the Government Code, as added by House Bill 1038. Subsection (c) of section 1231.064 provides that a state agency or political subdivision of this state shall provide to the board in the manner provided by board rule any information necessary for the board to prepare the report required by section 1231.064.

Takings-Impact Assessment:

The proposed new rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

Environmental Rule Analysis:

BRB has determined that this proposal is not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure. Thus, the proposed rule is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the preparation of an environmental impact analysis is not required.

Public Comment:

Comments on the proposed rule may be submitted in writing to Robert Latsha, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to [rob.latsha@brb.texas.gov](mailto:rob.latsha@brb.texas.gov) or faxed to (512) 475-4802. The deadline for providing comments is thirty days after publication in the *Texas Register*.

Statutory Authority:

The new rule is proposed under Texas Government Code §1231.064(c) authorizing the BRB to adopt rules relating to a biennial report on state lending and credit support programs.

No other statute, articles, or codes are affected by the proposed new rule.

§181.11. Report on State Lending and Credit Support Programs.

(a) A state agency or political subdivision of this state must file a report on state lending and credit support programs in electronic format, and in a manner directed by the Board, with the bond finance office. Reports shall be submitted in electronic format no later than September 15 of each even-numbered year for the prior two fiscal year periods ending August 31.

(b) For each lending program, the report shall include but is not limited to:

(1) Program name;

(2) Detailed description of the program;

(3) Number of loans outstanding separated by program;

(4) Policies and guidelines for all lending programs including policies and procedures in place for each program to mitigate the risk of future default in the program;

(5) Citation to the law authorizing the program;

(6) Total amount of state money lent through the lending program;

(7) Total amount of debt supported by the lending program;

(8) Total dollar amount of outstanding loans separated by program;

(9) Reasonable estimate of the costs of default associated with the program, computed in accordance with private-sector accounting standards for credit or other losses. The estimate shall include all assumptions, factors, formulas, and analysis used to calculate the cost of default;

(10) Current default rate of program;

(11) Highest default rate experienced in program;

(12) Total amount of principal and interest payments received from borrowers;

(13) Total amount of principal and interest payments in default;

(14) Assets, if any, pledged as collateral to secure existing loans;

(15) For each of the items described in paragraphs (6) through (14) of this subsection provide total amount broken down by each entity in the lending structure, if the public or private entity receiving funds also lends the money to another public entity or private entity. Provide the total amounts for each entity; and

(16) Any additional information required by the Board.

(c) For each credit support program, the report shall include but is not limited to:

(1) Program name;

(2) Detailed description of the program;

(3) Policies and guidelines for all credit support programs including policies and procedures in place for each program to mitigate the risk of future default in the programs;

(4) Citation to the law authorizing the program;

(5) Total amount of state money lent through or debt supported by the program, as applicable;

(6) Total amount of credit support for interest or principal payments;

(7) Reasonable estimate of the costs of default associated with the program, computed in accordance with private-sector accounting standards for credit or other losses. The estimate shall include all assumptions, factors, formulas, and analysis used to calculate the cost of default;

(8) Current default rate of program;

(9) Highest default rate experienced in program;

(10) For each of the items described in paragraphs (5) through (9) of this subsection provide total amounts broken down for each public or private entity; and

(11) Any additional information required by the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 2, 2023.

TRD-202302726

Rob Latsha

Executive Director

Texas Bond Review Board

Earliest possible date of adoption: September 17, 2023

For further information, please call: (512) 475-4805



## CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

### SUBCHAPTER A. PROGRAM RULES

#### 34 TAC §§190.1 - 190.6, 190.8

The Texas Bond Review Board (BRB) proposes amendments to Texas Administrative Code, Title 34, Part 9, Chapter 190, Subchapter A, §190.1 General Provisions; §190.2 Allocation and Reservation System; §190.3 Filing Requirements for Applications for Reservation; §190.4 Filing Requirements for Applications for Carryforward; §190.5 Consideration of Qualified Applications by the Board; §190.6 Expiration Provisions; and §190.8 Notices, Filings, and Submissions.

#### Background and Justification:

The BRB proposes updates and clarifications to its rules in Texas Administrative Code (TAC) Chapter 190 based on the passage of House Bill 1766 by the 88th Legislature (2023 Regular Session). HB 1766 updates sections of Chapter 1372 of the Texas Government Code to stretch the limited "state-ceiling-resource" of the Private Activity Bond (PAB) program and incorporates a new first-priority classification for qualified residential rental projects.

An overview of the proposed rule amendments is as follows:

1) Proposed rule amendment to §190.3(e)(11) extends the limited "state ceiling" by restricting the amount of allocation designated at closing to a residential rental project if the program

is oversubscribed for a program year (the amount of residential rental requests submitted for the lottery exceeds the total available amount for SC4 and SC5) as required by HB 1766,

2) Proposed rule amendment to §190.2(d), and §190.3(e)(10) incorporate a new first priority classification and shifts the subsequent existing priority classifications down by one increment as required by HB 1766,

3) Proposed rule amendment to §190.1(c)(34), and §190.3(e)(4) provide uniformity among the timeframe requirements for all bond resolutions to make them valid for a period of 18 months,

4) Proposed rule amendment to §190.5(h), and §190.8(e) correct or eliminate any outdated language in order to conform to current practice, and

5) Proposed rule amendment to §190.2(d), §190.3(b)(13)-(16), §190.3(e)(7), §190.3(e)(9), §190.4(e)(5), §190.6(a), and §190.8(d) correct capitalization, punctuation, typographical, and other miscellaneous grammatical errors.

#### Fiscal Impact on State and Local Government:

Robert Latsha, Executive Director for the BRB, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications relating to costs or revenues of the state or local governments as a result of enforcing or administering the amendments of these rules. The anticipated economic cost to persons who are required to comply with the amendments, as proposed, is minimal to none.

#### Public Benefit:

Mr. Latsha also has determined that for each year of the first five years the rule amendments are in effect, the anticipated public benefit will be extending the limited "state-ceiling-resource" by restricting the amount of allocation designated at closing to a residential rental project if the program is oversubscribed for a program year as required by HB 1766 and incorporating a new first-priority classification pursuant to HB 1766.

#### Impact on Local Employment or Economy:

There is no effect on local economy for the first five years that the proposed amendments are in effect because the rule changes relating to allocations designated at closing and changes relating to the new first-priority classification are administrative in nature and the remaining changes merely clarify the language they replace. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§ 2001.022 or 2001.024(a)(6).

#### Government Growth Impact Statement:

The BRB provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed rule amendments. For each year of the first five years the proposed amendments are in effect, Mr. Latsha has determined:

1) The proposed rule amendments do not create or eliminate a government program; instead, the proposed amendments streamline and modernize the current PAB program to reflect the current administration of the program; and they implement required amendments pursuant to HB 1766.

2) Implementation of the proposed rule amendments does not require the creation of new employee positions or the elimination of existing employee positions.

3) Implementation of the proposed rule amendments does not require an increase or decrease in future legislative appropriations to the BRB.

4) The proposed rule amendments do not require an increase or decrease in fees paid to the BRB.

5) The proposed rule amendments do not create a new regulation.

6) The proposed rule amendments do not limit or repeal an existing BRB rule but expand or modify existing rules to comply with HB 1766.

7) The proposed rule amendments do not increase or decrease the number of individuals subject to the rule's applicability.

8) The proposed repeal does not positively or adversely affect the state's economy.

Fiscal Impact on Small and Microbusinesses and Rural Communities:

The proposed amendments will have no adverse economic effect on micro-businesses, small businesses, or rural communities because the amendments only affect the administration of the PAB program. The proposed amendments do not affect operations of any small or micro-business, and the proposed amendments should not have an impact on rural communities because the changes are administrative in nature or clarify existing language. The proposed amendments do not affect any local economy within the state.

One-for-One Rule Analysis:

The proposed rule amendments related to designated allocations at closing and amendments related to first-priority classification are exempt from §2001.0045 because, pursuant to the exception contained in §2001.0045(c)(9), the rule amendments are necessary to implement the requirements of HB 1766. As for the remaining rule amendments, they are not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons because the proposed amendments merely streamline administration of the PAB program and, as described above in the public benefit and cost note, the proposed amendments do not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

Takings-Impact Assessment:

The proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore, they do not constitute a taking under Texas Government Code §2007.043.

Environmental Rule Analysis:

BRB has determined that this proposal is not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure. Thus, this proposal is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the preparation of an environmental impact analysis is not required.

Public Comment:

Comments on the proposal may be submitted in writing to Robert Latsha, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to rob.latsha@brb.texas.gov or faxed to (512)

475-4802. The deadline for providing comments is thirty days after publication in the *Texas Register*.

Statutory Authority:

The amendments are proposed under Texas Government Code §1372.004, which authorizes the BRB to adopt rules relating to its administration of the PAB program. They are also proposed under Texas Government Code §1372.006, which authorizes the BRB to require fees, and Texas Government Code §1372.0321, which authorizes the BRB to prioritize reservations among issuers of qualified residential rental project issues. The statutory basis that authorizes BRB to designate an unencumbered state ceiling to an issuer is Texas Government Code §1372.073.

No other statute, articles, or codes are affected by the proposed rule amendments.

§190.1. *General Provisions.*

(a) - (b) (No change.)

(c) Definition of terms. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (33) (No change.)

(34) Local population--The population in the local government unit or units on whose behalf a housing finance corporation is created. If two local government units overlap, each having created housing finance corporations with the power to issue bonds to provide home mortgage financing, prior to the submission of either the application for reservation or the application for carryforward by either housing finance corporation, there shall be excluded from the population of the larger local government unit that portion of the population of any smaller local government unit having a population of 50,000 or more which is within the larger local government unit, unless the smaller local government unit assigns its authority to issue qualified mortgage bonds, based upon its population, to the larger local government unit. A resolution assigning authority to issue qualified mortgage bonds must have been adopted within the 18 [twelve] months preceding the date of submission of the application to the board.

(35) - (59) (No change.)

(d) - (f) (No change.)

§190.2. *Allocation and Reservation System.*

(a) - (c) (No change.)

(d) The order of priority for reservations in the category described in Government Code §1372.022(a)(4) shall further be determined as provided in Government Code §1372.0321 and Government Code §1372.0231.

(1) The first category of priority shall include those applications for a reservation for projects that:

(A) during the four-year period preceding the date of the application, have:

(i) filed an application for a low-income housing tax credit with the Texas Department of Housing and Community Affairs; and

(ii) closed on a previous reservation of bonds in accordance with Government Code §1372.042, as determined based on the date of allocation of those bonds; and

(B) require a subsequent issuance of bonds to maintain compliance with the percentage requirement described in Government Code §1372.0321(e); and

(C) have not previously applied for a subsequent issuance of bonds under Government Code §1372.0321(a).

(2) ~~[(4)]~~ The second ~~[first]~~ category of priority shall include those applications for a reservation for:

(A) projects:

(i) in which 50% of the units are reserved for families and individuals earning not more than 50% of the area median family income and in which the maximum allowable rents are restricted to 30% of 50% of area median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program; and

(ii) (No change.)

(B) (No change.)

(C) projects:

(i) in which 100% of the residential units in the project are reserved for families and individuals earning not more than 60% of or the area median family income and in which the maximum allowable rents are restricted to 30% of 60% of area median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program; and

(ii) (No change.)

(D) (No change.)

(3) ~~[(2)]~~ The third ~~[second]~~ category of priority shall include those applications for a reservation for a project in which at least 80% of the units are reserved for families and individuals earning not more than 60% of the area median family income and in which the maximum allowable rents are restricted to 30% of 60% of area median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program; ~~for at least 80% of the units~~.

(4) ~~[(3)]~~ The fourth ~~[third]~~ category of priority shall include those applications for any other qualified residential rental project.

(5) ~~[(4)]~~ Within each category of priority, reservations shall be granted in the order established by the lottery subject to Government Code §1372.0231.

(6) ~~[(5)]~~ Owners of Low Income Housing Tax Credits (LIHTC) and 501(c)(3) properties that issue through State agencies are prohibited from having policies, procedures and/or screening practices which have the effect of excluding applicants because they have Section 8 voucher or certificate. The verification of such an exclusionary practice on the part of the owner or manager by a state agency will be considered a violation and may result in the owner's inability to participate in future housing programs of the state.

(7) ~~[(6)]~~ When determining the priority level of an application established under Government Code §1372.0321, the applicant shall use the most current data available on October 1 of the year preceding the program year in which allocation is being sought, unless specifically otherwise provided in federal or state law or in this title. All American Community Survey (ACS) data must be five year estimates, and any reference to median income in this title shall be synonymous with median family income unless otherwise specified.

(e) - (p) (No change.)

§190.3. *Filing Requirements for Applications for Reservation.*

(a) (No change.)

(b) Application Filing. The issuer shall submit one electronic copy or one original application for reservation. Each application must be accompanied by the following:

(1) - (12) (No change.)

(13) ~~for~~ ~~[For]~~ a qualified residential rental project issue, an issuer shall provide a copy of an active executed earnest money contract between the borrower and the seller of the project. The earnest money contract for Tax-Exempt Bond Lottery Applications must be in effect at the time of submission of the application to the board and expire no earlier than December 1 of the year preceding the applicable program year. The earnest money contract must stipulate and provide for the borrower's option to extend the contract expiration date through March 1 of the program year, subject only to the seller's receipt of additional earnest money or extension fees, so that the borrower will have site control at the time a reservation is granted. If the borrower owns the property, evidence of ownership must be provided. For subsequent reservations granted throughout the remainder of the program year, the borrower must provide within the close of three business days following the notification of pending reservation:

(A) - (B) (No change.)

(14) ~~the~~ ~~[The]~~ borrower must be specified in the application for reservation of allocation. The borrower may be identified as a to-be-formed entity only if the application for reservation of allocation specifies a related entity or an entity that will be a component of the to-be-formed entity as borrower;

(15) ~~for~~ ~~[For]~~ qualified residential rental project issues where the borrower is an entity or to-be-formed entity that is designated or intends to seek abatement from ad valorem taxation, that intent to seek abatement must be specified on the application for reservation of allocation;

(16) ~~each~~ ~~[Each]~~ issuer of qualified student loan bonds authorized by §53B.47, Education Code, shall submit with the application for reservation the information as required in Government Code 1372.0281.

(c) - (d) (No change.)

(e) Closing documents. Not later than the fifth business day after the day on which the bonds are closed the issuer shall file with the board:

(1) - (3) (No change.)

(4) a certified copy of the bond resolution authorizing the issuance of bonds, and setting forth the specific principal amount of the bond issue and, unless the resolution authorizes the issuer to seek an allocation in multiple program years, adopted within 18 months ~~[one year]~~ of the application date;

(5) - (6) (No change.)

(7) other documents relating to the issuance of bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or the formula by which the interest is calculated;

(C) maturity schedule; and

(D) purchaser or purchasers; ~~[ and]~~

(8) (No change.)

(9) ~~for~~ ~~[For]~~ mortgage credit certificates the issuer shall file item in paragraph (1) of this subsection and the following:

(A) a certified copy of the issuer's resolution electing to convert state ceiling to mortgage credit certificates;

(B) issuer's mortgage credit certificate election; and

(C) program plan;[-]

(10) ~~for [For]~~ a residential rental project described in §190.2(d)(1), ~~[or ]~~ (2) or (3) of this title, evidence from the Texas Department of Housing and Community Affairs that an award of Low Income Housing Tax Credits has been approved for the project;[-]

(11) if for a program year Government Code §1372.037(b) applies, the certification issued by the Attorney General pursuant to Government Code §1202.003(b-1).

(f) - (g) (No change.)

§190.4. *Filing Requirements for Applications for Carryforward.*

(a) - (d) (No change.)

(e) Closing documents. Not later than the fifth business day after the day on which the bonds are closed the issuer shall file with the board:

(1) - (4) (No change.)

(5) other documents relating to the issuance of bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or the formula by which the interest is calculated;

(C) maturity schedule; and

(D) purchaser or purchasers; ~~[and]~~

(6) (No change.)

(f) - (g) (No change.)

§190.5. *Consideration of Qualified Applications by the Board.*

(a) - (g) (No change.)

(h) If any change in a qualified application or in any of the items accompanying the application should occur prior to the date state ceiling becomes available to an issuer, the issuer or authorized representative shall promptly notify the board of any such change. ~~[Upon state ceiling becoming available, an issuer or authorized representative, within three business days upon receipt of notice from the board that a portion of the state ceiling will be available to the issuer, must confirm and certify that the information contained in the qualified application and all items accompanying the application are and remain accurate and in full force and effect, except as may be specifically set forth in any amendment to the qualified application (which does not result in the application failing to constitute a qualified application); which amendment will constitute such certification.]~~ Prior to receiving a reservation, only an issuer, or authorized representative of the issuer, may amend the application to change the amount of the state ceiling requested, but the board may not accept an amendment to increase the amount of the state ceiling requested unless at the time of the amendment seeking an increase in the amount of state ceiling there are no other qualified applications pending, subsequent in order to said application, for which

state ceiling is not available. ~~[A reservation date will not be given by the board until the receipt of such certification.]~~

(i) (No change.)

§190.6. *Expiration Provisions.*

(a) A certificate of reservation for an application within the categories described by Government Code §1372.022(a)(1) and (2) shall expire at the close of business on the 210th calendar day after the date on which the reservation is given. A certificate of reservation for an application within the category ~~[categories]~~ described by Government Code §1372.022(a)(4), or an application for a qualified residential rental project contained in category Government Code §1372.022(a)(5), shall expire at the close of business on the 180th calendar day after the date on which the reservation is given. A certificate of reservation for an application within the categories described by Government Code §1372.022(a)(3) and (5), excluding applications for qualified residential rental projects contained in category Government Code §1372.022(a)(5), shall expire at the close of business on the 150th calendar day after the date on which the reservation is given. A certificate of reservation for an application for a qualified nonprofit corporation issuer of qualified student loan bonds shall expire at the close of business on the 210th calendar day after the date on which the reservation is given.

(b) - (c) (No change.)

§190.8. *Notices, Filings, and Submissions.*

(a) - (c) (No change.)

(d) Fees should be sent by either:

(1) check through overnight delivery and addressed as follows: Comptroller of Public Accounts Item Processing - Lockbox Section 208 ~~[200]~~ E. 10th St. Austin, Texas 78701; or

(2) (No change.)

(e) Fees must be received:

(1) (No change.)

(2) no later than 1 business day ~~[24 hours]~~ after the corresponding filing, but in no case may a fee be received after the corresponding filing deadline in order to meet the requirements of that deadline unless provided for in Chapter 1372, Government Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 2, 2023.

TRD-202302732

Rob Latsha

Executive Director

Texas Bond Review Board

Earliest possible date of adoption: September 17, 2023

For further information, please call: (512) 463-1741

