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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 4. SCHOOL LIBRARY PROGRAMS SUBCHAPTER A. STANDARDS AND GUIDELINES

13 TAC §4.2

The Texas State Library and Archives Commission (commission) proposes new §4.2, School Library Programs: Collection Development Standards.

BACKGROUND. House Bill 900, 88th R.S. (2023) (HB 900) amended Education Code, §33.021, to require the commission, with approval by majority vote of the State Board of Education (SBOE), to adopt standards for school library collection development that a school district shall adhere to in developing or implementing the district's library collection development policies. HB 900 specifies that the standards must be reviewed and updated at least once every five years and includes certain requirements that must be included in the standards. Section 33.021 also requires the commission to adopt voluntary standards for school library services, other than collection development standards, that a school district shall consider in developing, implementing, or expanding library services. The voluntary standards are codified in §4.1 (relating to School Library Programs: Standards and Guidelines for Texas). Proposed new §4.2 is necessary to implement HB 900.

School library programs provide vital learning opportunities and support for students and staff. Grounded in the nation's commitment to ensure an informed citizenry, school libraries foster an essential exchange of ideas and support reading skills and engagement, the basis for almost all learning activities. The work of administering school library programs and curating collections of resources for the specific K-12 environment requires the professional expertise of librarians along with consistent practices that meet both state requirements and address the specific needs of the local student population they serve. School library materials are instructional resources that broadly support curriculum but are not individually required. Students may voluntarily select reading materials. The proposed rules ensure school libraries benefit from sound collection development policies that support parental involvement.

The commission developed these standards as a baseline upon which school districts may build. These standards establish the essential elements of an effective policy for building and maintaining school library collections and allow for further specification and guidelines by local educational agencies. These standards were also developed in recognition that resources vary widely among school districts, and some districts may lack resources to fully implement every aspect of the standards. To accommodate the variations in local capacity, the rules provide several means to achieve a successful collection development policy that meets the requirements of HB 900.

ANALYSIS OF PROPOSED NEW SECTIONS. Proposed new §4.2 establishes the mandatory collection development standards. The SBOE Committee on Instruction considered these standards at its August 30, 2023, meeting and provided feedback. Staff considered this feedback and made changes to the standards based on that feedback.

Proposed §4.2(a) would require each public school district board of trustees or governing body to approve and institute a collection development policy that describes the processes and standards by which a school library acquires, maintains, and withdraws materials.

Proposed §4.2(b) provides that school library collections should include a range of materials that are age appropriate and suitable to the campus and students the school library serves, offering guidance on the overall goals of a school library's collection. Under this guidance, a collection should enrich and support the Texas Essential Knowledge and Skills (TEKS), incorporated into the rule by reference to the statute, Education Code, §28.002. By referencing the statute, future amendments to the TEKS will be automatically incorporated into the rule. Additional guidance for collections under the proposed rule includes fostering growth and an enjoyment of reading in broad areas and representation of Texas and the people who live here.

Proposed §4.2(c) sets forth multiple requirements for a school library collection development policy, including the requirements stated in HB 900.

Proposed §4.2(d) describes "evaluation of materials" as used within the proposed new rule to guide librarians in the process. Under the proposed rule, evaluation would include consideration of the factors proposed to guide library collections generally in subsection (b), which includes that the materials are age appropriate and suitable to the campus and students the library serves, local priorities and school district standards, and at least two additional factors, such as recommendations from parents, guardians, and local community members; consultation with educators and library staff; an extensive review of the text; the context of a work; or authoritative reviews. The commission recognizes the importance of authoritative reviews to aid district staff and librarians in evaluating materials for possible inclusion in a collection.

Proposed §4.2(e) describes "reconsideration process" as referenced in the proposed new rule. The rule would require that a reconsideration process ensure that any parent or legal guardian

of a student enrolled in the district or current school district employee may request the reconsideration of a specific item in their school district's library catalog. The rule would further require that a reconsideration process establish a uniform procedure an individual must follow when filing a request. The process should also include a reasonable timeframe, approved by the school board, for the review and final decision by a committee or other authority charged with conducting the review and making a decision. and establish a uniform process approved by the school district board of trustees or governing body for the treatment of any library material undergoing reconsideration. Lastly, the process should include a review and appeal process that is approved by the school district and provide that if an item has gone through the reconsideration process and remains in the collection, it may not be reconsidered again within one year of final decision.

Proposed §4.2(f) encourages a school district to ensure a State Board for Educator Certification (SBEC) certified professional librarian or other dedicated professional library staff trained on proper collection development standards is responsible for the selection and acquisition of library materials. Proposed §4.2(g) requires a school district to develop collection assessment and evaluation procedures to periodically appraise the quality of library materials in the school library to ensure the library's goals, objectives, and information needs are serving its community. Proposed §4.2(h) recommends school districts review their collection development policies at least every two years, a practice that will ensure the policy remains up-to-date and consistent with current district priorities. Proposed §4.2(i) allows school districts to add procedures to the minimum requirements to satisfy local needs so long as the added procedures do not conflict with the minimum requirements. The commission recognizes that school districts across the state have different goals, priorities, and resources and proposes these rules as a baseline of minimum requirements upon which school districts are encouraged to build. Lastly, proposed §4.2(j) provides that school districts are responsible for ensuring their school libraries implement and adhere to these collection development standards. The commission has no enforcement authority with respect to school libraries.

FISCAL IMPACT. Sarah Karnes, Director, Library Development and Networking, has determined that for each of the first five years the proposed new section is in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the rule, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Karnes has determined that for each of the first five years the proposed new section is in effect, the anticipated public benefit will be increased transparency in a public school library's collection development policies and processes and consistency across the state. There are no anticipated economic costs to persons required to comply with the proposed new section.

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed new section do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed new section will be in effect, the commission has determined the following:

1. The proposed new section will not create or eliminate a government program;

2. Implementation of the proposed new section will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed new section will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed new section will not require an increase or decrease in fees paid to the commission;

5. The proposal will create a new regulation as required by HB 900;

6. The proposal will not expand or repeal an existing regulation;

7. The proposed new section will not increase the number of individuals subject to the proposal's applicability; and

8. The proposed new section will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to their property that would otherwise exist in the absence of government action. Therefore, the proposed new section does not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed new section may be submitted to Sarah Karnes, Director, Library Development and Networking Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The new section is proposed under Education Code, §33.021, which requires the commission to adopt standards for school library collection development that a school district shall adhere to in developing or implementing the district's library collection development policies.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§4.2. School Library Programs: Collection Development Standards.

(a) Each Texas public school district board or governing body must approve and institute a collection development policy that describes the processes and standards by which a school library acquires, maintains, and withdraws materials.

(b) A school library collection should include materials that are age appropriate and suitable to the campus and students it serves and include a range of materials. A school library collection should:

(1) Enrich and support the Texas Essential Knowledge and Skills (TEKS) and curriculum established by Education Code, §28.002 (relating to Required Curriculum), while taking into consideration students' varied interests, abilities, and learning styles;

(2) Foster growth in factual knowledge, literary appreciation, aesthetic values, and societal standards;

(3) Encourage the enjoyment of reading to foster thinking skills, personal learning, and encourage discussion based on rational analysis; and

(4) Represent the ethnic, religious, and cultural groups of the state and their contribution to Texas, the nation, and the world.

(c) A school library collection development policy must:

(1) Describe the purpose and collection development goals;

(2) Designate the responsibility for collection development;

(3) Establish procedures for the evaluation, selection, acquisition, reconsideration, and deselection of materials;

(4) Consider the distinct age groups, grade levels, and possible access to materials by all students within a campus;

(5) Include a process to determine and administer student access to material rated by library material vendors as "sexually relevant" as defined by Education Code, §35.001 consistent with any policies adopted by the Texas Education Agency and local school board requirements;

(6) Include an access plan that, at a minimum, allows efficient parental access to the school district's library and online library catalog; and

(7) Comply with all applicable local, state, and federal laws and regulations. Specifically, a collection development policy must:

(A) Recognize that parents are the primary decision makers regarding their student's access to library material;

(B) Prohibit the possession, acquisition, and purchase of harmful material, as defined by Penal Code, §43.24, library material rated sexually explicit material by the selling library material vendor under Education Code, §35.002, or library material that is pervasively vulgar or educationally unsuitable as referenced in Pico v. Board of Education, 457 U.S. 853 (1982);

(C) Recognize that obscene content is not protected by the First Amendment to the United States Constitution;

(D) Apply to all library materials available for use or display, including material contained in school libraries, classroom libraries, and online catalogs;

(E) Ensure schools provide library catalog transparency, including, but not limited to:

(i) Online catalogs that are publicly available; and

(ii) Information about titles and how and where material can be accessed;

(F) Recommend schools communicate effectively with parents regarding collection development, including, but not limited to:

(i) Access to district/campus policies relating to school libraries;

(ii) Consistent access to library resources; and

(iii) Opportunities for students, parents, educators, and community members to provide feedback on library materials and services; and

(G) Prohibit the removal of material based solely on the ideas contained in the material or the personal background of the author of the material or characters in the material.

(d) Evaluation of materials as referenced in this section includes a consideration of the factors described in subsection (b), consideration of local priorities and school district standards, and at least two of the following:

(1) Consideration of recommendations from parents, guardians, and local community members;

(2) Consultation with the school district's educators and library staff and/or consultation with library staff of similarly situated school districts and their collections and collection development policies;

(3) An extensive review of the text of item;

(4) The context of a work, including consideration of the contextual characteristics, overall fit within existing school library collection, and potential support of the school curriculum; or

(5) Consideration of authoritative reviews of the items from sources such as professional journals in library science, recognized professional education or content journals with book reviews, national and state award recognition lists, library science field experts, and highly acclaimed author and literacy expert recommendations.

(e) A reconsideration process as referenced in this section should ensure that any parent or legal guardian of a student currently enrolled in the school district or employee of the school district may request the reconsideration of a specific item in their school district's library catalog. A reconsideration process should:

(1) Establish a uniform procedure an individual must follow when filing a request;

(2) Require a school district to include a form to request a reconsideration of an item on the school's public internet website if the school has a public internet website or ensure the form is publicly available at a school district administrative office;

(3) Require that the completed request for reconsideration form be distributed to the campus administrator, school librarian, and school district board of trustees or governing body at the time of submission;

(4) Include a reasonable timeframe, approved by the school board, for the review and final decision by a committee or authority charged with the review. A reasonable timeframe should take into account:

(A) The time necessary to convene a committee to meet and review the item;

(B) Flexibility that may be necessary depending on the number of pending reconsideration requests; and

(C) Other factors relevant to a fair and consistent process, including informing the requester on the progress of the review in a timely fashion;

(5) Establish a uniform process approved by the school district board of trustees or governing body for the treatment of any library material undergoing reconsideration;

(6) Include a review and appeal process approved by the school district board of trustees or governing body; and

(7) Provide that if an item has gone through the reconsideration process and remains in the collection, it may not be reconsidered within one year of final decision.

(f) School districts should ensure a professional librarian certified by the State Board for Educator Certification or other dedicated professional library staff trained on proper collection development standards is responsible for the selection and acquisition of library materials.

(g) A school district must develop collection assessment and evaluation procedures to periodically appraise the quality of library materials in the school library to ensure the library's goals, objectives, and information needs are serving its community and should stipulate the means to weed or update the collection.

(h) A school district's collection development policy should be reviewed at least every two years and updated as necessary.

(i) School districts may add procedures to these minimum requirements to satisfy local needs so long as the added procedures do not conflict with these minimum requirements.

(j) School districts are responsible for ensuring their school libraries implement and adhere to these collection development standards.

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 October 16, 2023.

TRD-202303843
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 463-5460

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

The Public Utility Commission of Texas (commission) proposes the repeal of §25.173 relating to Goal for Renewable Energy and proposes new §25.173 relating to Renewable Energy Credit Program. The proposed new rule will establish a temporary solar only renewable energy credit (REC) trading program, as required by the uncodified requirement in section 53 of House Bill (HB) 1500 enacted by the 88th Texas Legislature (R.S.). The proposed new rule will also provide direction to the Electric Reliability Council of Texas (ERCOT) in maintaining an accreditation and banking system to award and track voluntary RECs generated by eligible facilities as required by the Public Utility Regulatory Act (PURA) §39.9113.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed new rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program; the proposed new rule will reestablish a modified version of an existing ERCOT program as directly required by statute;

(2) implementation of the proposed rule will not require the cre `ation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will not, in effect, create a new regulation, because it is replacing a similar regulation;

(6) the proposed rules will repeal an existing regulation, but it will replace that regulation with a similar regulation;

(7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rule it is being proposed to replace; and

(8) the proposed rules will not affect this state's economy.

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Public Benefits

Zachary Dollar, Market Economist, Market Analysis Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Dollar has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the alignment of the REC program with the requirements of PURA. The proposed rule will also temporarily extend incentives for the generation of solar energy. The proposed rule will also enable the continued accreditation and marketing of renewable energy credits and the verification of green products. There will be no adverse economic effect on small businesses, micro-businesses or rural communities as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with these sections as proposed. Any economic costs would vary from person to person and are difficult to ascertain. However, Mr. Dollar believes the benefits accruing from implementation of the proposed sections will outweigh these costs.

Mr. Dollar has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment

impact statement is required under Administrative Procedure Act §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by November 6, 2023. Interested persons should contact David Smeltzer at david.smeltzer@puc.texas.gov prior to requesting a public hearing to discuss the purpose and scope of a public hearing on a proposed rule. If a hearing is scheduled, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by November 6, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. All comments should refer to Project Number 55323.

16 TAC §25.173

Statutory Authority

The repeal is proposed under the following provisions of PURA: §14.001, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.151, which gives the commission complete authority to oversee the independent organization's operations; and §39.9113, which requires the independent organization certified under §39.151 for the ERCOT power region to maintain an accreditation and banking system to award and track voluntary renewable energy credits generated by eligible facilities.

The repeal is proposed under the provisions of HB 1500 §53 from the 88th Texas Legislature (R. S.) which directs the commission to adopt a program, effective until September 1, 2025, to apply repealed PURA §39.904 as it existed immediately before the section's effective repeal date only to renewable energy technologies that exclusively rely on an energy source that is naturally regenerated over a short time and are derived directly from the sun.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151, and 39.9113; and HB 1500 from the 88th Texas Legislature (R S.).

§25.173. Goal for Renewable Energy.

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 October 12, 2023.

TRD-202303800

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 936-7322

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16 TAC §25.173

The new section is proposed under the provisions of HB 1500 §53 from the 88th Texas Legislature (R. S.) which directs the commission to adopt a program, effective until September 1, 2025, to apply repealed PURA §39.904 as it existed immediately before the section's effective repeal date only to renewable energy technologies that exclusively rely on an energy source that is naturally regenerated over a short time and are derived directly from the sun.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151, and 39.9113; and HB 1500 from the 88th Texas Legislature (R S.).

§25.173. Renewable Energy Credit Program.

(a) Purpose. The purposes of this section are to:

(1) Establish a solar renewable portfolio standard program based on repealed PURA §39.904, and phase out this program by September 1, 2025, and

(2) Direct the independent organization certified under PURA §39.151 for the ERCOT region to administer a voluntary renewable energy credit (REC) accreditation program.

(b) Definitions.

(1) Compliance period--A 12-month compliance period beginning January 1, 2024, and ending December 31, 2024 (2024 compliance period), and a partial compliance period beginning January 1, 2025, and ending August 31, 2025 (2025 compliance period).

(2) Compliance premium--A premium awarded by the program administrator in conjunction with a renewable energy credit that is generated by a renewable energy source that meets the criteria of subsection (d) of this section. For the purpose of the renewable energy portfolio standard requirements, one compliance premium is equal to one solar renewable energy credit.

(3) Designated representative--A person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credits trading program.

(4) Existing facilities--Renewable energy generators placed in service before September 1, 1999.

(5) Generation offset technology--Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(6) Microgenerator--A customer who owns one or more eligible renewable energy generating units with a rated capacity of less than 1MW operating on the customer's side of the utility meter.

(7) New facilities--Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable

facility achieved through repowering activities undertaken on or after September 1, 1999.

(8) Off-grid generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Opt-out notice--Written notice submitted to the commission by a transmission-level voltage customer under PURA §39.904(m-1).

(10) Program administrator--The entity responsible for carrying out the administrative responsibilities related to the renewable energy credits accreditation and solar renewable energy credits trading programs as set forth in this section. In accordance with PURA §39.9113, the program administrator for the REC accreditation program is the independent organization certified under PURA §39.151 for the ERCOT region. The commission also appoints the independent organization certified under PURA §39.151 for the ERCOT region as the program administrator for the solar renewable energy credits trading program.

(11) REC aggregator--An entity managing the participation of two or more microgenerators in the REC trading program.

(12) REC offset (offset)--A REC offset represents one megawatt-hour (MWh) of renewable energy from an existing facility that is not eligible to earn renewable energy credits or compliance premiums.

(13) Renewable energy credit (REC)--A REC represents one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (d) of this section.

(14) Renewable energy credit account (REC account)--An account maintained by the program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs, solar RECs, or compliance premiums by a program participant.

(15) Renewable energy credits accreditation program (accreditation program)--The process of awarding, trading, tracking, and submitting RECs as a means of meeting the renewable energy requirements set out in subsection (f) of this section.

(16) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(17) Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(18) Renewable portfolio standard (RPS)--The amount of capacity required to meet the requirements of PURA §39.904 under subsection (h) of this section.

(19) Repowered facility--An existing facility that has been modernized or upgraded to use renewable energy technology to produce electricity consistent with this rule.

(20) Retail entity--Municipally-owned utilities, generation and transmission cooperatives and distribution cooperatives that offer customer choice, retail electric providers (REPs), and investor-owned utilities that have not unbundled under PURA Chapter 39.

(21) Settlement period--The period following a compliance period in which the settlement process for that compliance period takes place as set forth in subsection (i) of this section.

(22) Small producer--A renewable resource that is less than ten megawatts (MW) in size.

(23) Solar renewable energy credit (solar REC)--A REC representing one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (d) of this section.

(24) Solar renewable energy credit trading program (trading program)--The process of awarding, trading, tracking, and submitting solar RECs or compliance premiums as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(25) Transmission-level voltage customer--A customer that receives electric service at 60 kilovolts (kV) or higher or that receives electric service directly through a utility-owned substation that is connected to the transmission network at 60 kV or higher.

(c) Certification of renewable energy facilities. The commission will certify all renewable facilities that will produce either REC offsets, RECs, solar RECs, or compliance premiums for sale in the trading and accreditation programs. To be awarded REC offsets, RECs, solar RECs, or compliance premiums, a power generator must complete the certification process described in this subsection. The program administrator must not award REC offsets, RECs, solar RECs, or compliance premiums for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility must file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application must include the location, owner, technology, and rated capacity of the facility, and must demonstrate that the facility meets the resource eligibility criteria in subsection (d)(1)(A) of this section. Any subsequent changes to the information in the application must be filed with the commission within 30 days of such changes.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission will inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission will either certify the renewable facility as eligible to receive REC offsets, RECs, solar RECs, or compliance premiums or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended for such time as is necessary for commission action.

(3) Upon receiving notice of certification of new facilities, the program administrator will create a REC account for the designated representative of the renewable resource.

(4) The commission or program administrator may make on-site visits to any certified facility, and the commission will decertify any facility if it is not in compliance with the provisions of this subsection.

(5) A decertified renewable generator may not be awarded RECs or solar RECs. However, any RECs awarded by the program administrator and transferred to a retail entity prior to the decertification remain valid.

(d) Renewable energy credits, solar renewable energy credits, and compliance premiums.

(1) Renewable Energy Credits (RECs).

(A) Facilities eligible for producing RECs for the accreditation program. For a renewable facility to be eligible to produce RECs for the trading program it must be either a new facility, a small producer, or a repowered facility as defined in subsection (b) of this section and must also meet the requirements of this subsection.

(i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must register under subsection (c) of this section.

(ii) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 25.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis.

(iii) For a renewable energy technology that requires the use of fossil fuel that exceeds 2.0% of the total annual fuel input on a BTU or equivalent basis, RECs can only be earned on the renewable portion of the production. A renewable energy resource using a technology described by this clause must comply with the following requirements:

(I) A meter must be installed and periodic tests of the heat content of the fuel must be conducted to measure the amount of fossil fuel input on a British thermal unit (BTU) or equivalent basis that is used at the facility;

(II) The renewable energy resource must calculate the electricity generated by the unit in MWh, based on the BTUs (or equivalent) produced by the fossil fuel and the efficiency of the renewable energy resource, subtract the MWh generated with fossil fuel input from the total MWh of generation and report the renewable energy generated to the program administrator;

(III) The renewable energy resource must report the generation to the program administrator in the measurements, format, and frequency prescribed by the program administrator, which may include a description of the methodology for calculating the non-renewable energy produced by the resource; and

(IV) The renewable energy resource is subject to audit to verify the accuracy of the data submitted to the program administrator and compliance with this section, to be conducted by the program administrator or an independent third party as requested by the program administrator. If the program administrator requires a third party audit, the audit must be performed at the expense of the renewable energy resource.

(iv) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered can not be verified as delivered to Texas customers. A facility is not ineligible if the facility is a generation-offset, off-grid, or on-site distributed renewable facility and it otherwise meets the requirements of this subparagraph.

(v) For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.

(vi) For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production. Furthermore, the contribution toward statewide renewable capacity megawatt goals from such facilities must be equal to the fraction of the facility's annual MWh energy output from renewable fuel multiplied by the facility's nameplate MW capacity.

(vii) For repowered facilities, a facility is eligible to earn RECs on all renewable energy produced up to a capacity of 150 MW. A repowered facility with a capacity greater than 150 MW may earn RECs for the energy produced in proportion to 150 divided by nameplate capacity.

(B) Facilities not eligible for producing RECs for the accreditation program. A renewable facility is not eligible to produce RECs if it is:

(i) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or

(ii) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under subparagraph (A) of this paragraph.

(2) Solar Renewable Energy Credits.

(A) Facilities eligible for producing solar RECs and compliance premiums for the trading and accreditation programs. For a renewable facility to be eligible to produce solar RECs for the trading and accreditation programs it must be either a new facility, a small producer, or a repowered facility as defined in subsection (b) of this section and must also meet the requirements of this paragraph:

(i) A renewable energy resource must not be ineligible under subparagraph (B) of this paragraph and must register under subsection (c) of this section.

(ii) A facility must only use renewable energy technologies that exclusively rely on an energy source that is naturally regenerated, over a short time and derived directly from the sun.

(iii) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered can not be verified as delivered to Texas customers. A facility is not ineligible if the facility is a generation-offset, off-grid, or on-site distributed renewable facility and it otherwise meets the requirements of this subparagraph.

(iv) For repowered facilities, a facility is eligible to earn RECs on all renewable energy produced up to a capacity of 150 MW. A repowered facility with a capacity greater than 150 MW may earn RECs for the energy produced in proportion to 150 divided by nameplate capacity.

(B) Facilities not eligible for producing solar RECs and compliance premiums in the trading and accreditation programs. A renewable facility is not eligible to produce solar RECs if it is:

(i) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or

(ii) An existing facility that is not a small producer as defined in subsection (b) of this section or has not been repowered as permitted under this subsection

(3) Compliance Premiums. The trading program administrator will award compliance premiums to solar REC generators certified by the commission under subsection (c) of this section. A compliance premium is created in conjunction with a solar REC.

(A) For eligible solar technologies as set forth in paragraph (2)(A)(ii) of this subsection, one compliance premium will be awarded for each solar REC awarded for energy generated after January 1, 2024, ending December 31, 2024.

(B) Except as provided in this paragraph, the award, retirement, trade, and registration of compliance premiums must follow the requirements of paragraph (4) of this subsection, subsection (e), and (i) of this section.

(C) A compliance premium may be used by any entity toward its RPS requirement under subsection (e)(2) of this section.

(D) A compliance premium may not be used by any entity toward the RPS requirement after the 2024 compliance period.

(E) The program administrator must increase the statewide RPS requirement calculated for the 2025 compliance period under subsection (e)(2)(A) of this section by the number of compliance premiums retired during the previous compliance period.

(4) Production, transfer, and expiration of RECs and solar RECs. The production, transfer, and expiration of RECs and solar RECs must follow the requirements of this paragraph.

(A) The owner of a renewable resource will earn one REC or solar REC when a MWh is metered at that renewable resource. The program administrator will record the energy in metered MWh and credit the REC account of the renewable resource that generated the energy on a quarterly basis. Quarterly production must be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up.

(B) The transfer of RECs or solar RECs between parties is effective only when the transfer is recorded by the program administrator.

(C) The program administrator will require that RECs or solar RECs be adequately identified prior to recording a transfer and must issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information must be provided:

(i) identification of the parties;

(ii) REC or solar REC serial number, REC or solar REC issue date, and the renewable resource that produced the REC or solar REC;

(iii) the number of RECs or solar RECs to be transferred; and

(iv) the transaction date.

(D) A retail entity must surrender RECs or solar RECs to the program administrator for retirement from the market for a compliance period. The program administrator will document all REC or solar Rec retirements annually.

(E) On or after each April 1, the program administrator will retire RECs or solar RECs that have not been retired by retail entities and have reached the end of their compliance life.

(F) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of RECs or solar RECs are accurately recorded.

(G) All RECs or solar RECs will have a compliance life of three compliance periods, after which the program administrator will retire them from the accreditation program.

(H) Each REC or solar REC that is not used in the compliance period in which it was created may be banked and is valid for the next two compliance periods. For purposes of this subparagraph, calendar year 2023 counts as a single compliance period.

(e) Solar renewable energy credits trading program.

(1) Solar- RECs may be generated, transferred, and retired by renewable energy power generators certified under subsection (c) of this section, retail entities, and other market participants as set forth in subsection (d)(4) of this section.

(A) The program administrator will apportion an RPS requirement among all retail entities as a percentage of the retail sales of each retail entity as set forth in paragraph (2) of this subsection. Each retail entity is responsible for retiring sufficient RECs as set forth in paragraph (2) of this subsection and subsection (d)(4) of this section for the 2024 and 2025 compliance periods. The requirement to retire solar RECs to comply with this section becomes effective on the date a retail entity begins serving retail electric customers in Texas or, for an electric utility, as specified by law.

(B) A power generating company may participate in the trading program and may generate solar RECs and buy or sell solar RECs as set forth in subsection (d)(4) of this section.

(C) Solar RECs will be credited on an energy basis as set forth in subsection (d)(4) of this section.

(D) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (d)(2)(A) of this section may sell solar RECs generated by such a resource to retail entities as set forth in subsection (d)(4) of this section.

(E) Except where specifically stated, the provisions of this section apply uniformly to all participants in the trading program.

(F) The trading program ends after the end of the 2025 compliance period on September 1, 2025.

(2) Allocation of RPS requirement to retail entities. The program administrator must allocate RPS requirements among retail entities. Any renewable capacity that is retired before January 1, 2015, or any capacity shortfalls that arise due to purchases of solar RECs from out-of-state facilities must be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity must occur two compliance periods after the facility is retired or the capacity shortfall occurs. The program administrator must use the following methodology to determine the total annual RPS requirement for a given year and the final RPS allocation for individual retail entities:

(A) The total statewide RPS requirement for each compliance period must be calculated in terms of MWh and must be equal to the applicable capacity requirement set forth in this paragraph multiplied by 8,760 hours for the 2024 compliance period and 5,840 hours for the 2025 compliance period, multiplied by the appropriate capacity conversion factor set forth in paragraph (3) of this subsection. The renewable energy capacity requirements for the compliance periods beginning January 1, 2024 are:

(i) 1,310 MW of new resources in the 2024 compliance period; and

(ii) 655 MW of new resources in the 2025 compliance period.

(B) The final RPS allocation for an individual retail entity for a compliance period must be calculated as follows:

(i) Beginning with the 2008 compliance period, prior to the preliminary RPS allocation, each retail entity's total retail energy sales are reduced to exclude the consumption of customers that opt out in accordance with paragraph (4) of this subsection. Each retail entity's preliminary RPS allocation is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all retail entities and multiplying that percentage by the total statewide RPS requirement for that compliance period.

(ii) The adjusted RPS allocation for each retail entity that is entitled to an offset is determined by reducing its preliminary RPS allocation by the offsets to which it qualifies, as determined under paragraph (5) of this subsection, with the maximum reduction equal to the retail entity's preliminary RPS allocation. The total reduction for all retail entities is equal to the total usable offsets for that compliance period.

(iii) Each retail entity's final RPS allocation for a compliance period must be increased to recapture the total usable offsets calculated under clause (ii) of this subparagraph. The additional RPS allocation must be calculated by dividing the retail entity's preliminary RPS allocation by the total preliminary RPS allocation of all retail entities. This fraction must be multiplied by the total usable offsets for that compliance period and this amount must be added to the retail entity's adjusted RPS allocation to produce the retail entity's final RPS allocation for the compliance period.

(C) Concurrent with determining final individual RPS allocations for the current compliance period in accordance with this subsection, the program administrator must recalculate the final RPS allocations for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a retail entity's corrected final RPS allocation and its original final RPS allocation for the previous compliance periods must be added to or subtracted from the retail entity's final RPS allocation for the current compliance period.

(3) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate solar RECs to retail entities must be calculated during the fourth quarter of each odd-numbered compliance year. The capacity conversion factor must:

(A) Be based on actual generator performance data for the previous two years for all renewable resources in the trading program during that period for which at least 12 months of performance data are available;

(B) Represent a weighted average of generator performance; and

(C) Use all actual generator performance data that is available for each renewable resource, excluding data for testing periods.

(4) Opt-out notice.

(A) A customer receiving electrical service at transmission-level voltage who submits an opt-out notice to the commission for the applicable compliance period must have its load excluded from the RPS calculation.

(B) An investor-owned utility that is subject to a renewable energy requirement under this section must not collect costs attributable to the trading program from an eligible customer who has submitted an opt-out notice. An investor-owned utility whose rates include the cost of solar RECs must file a tariff to implement this paragraph, not later than 30 days after the effective date of this section.

(C) A customer opt-out notice must be filed in the commission-designated project number before the beginning of a compliance period for the notice to be effective for that period. Each opt-out notice must include the name of the individual customer opting out, the customer's ESI IDs, the retail entities serving those ESI IDs, and the term for which the notice is effective, which may not exceed two years. The customer opting out must also provide the information included in the opt-out notice directly to ERCOT and may request that ERCOT protect the customer's ESI ID and consumption as confidential information. For notices submitted for the 2008 compliance period, a customer may amend a notice to include this information not later than January 15, 2009, if its initial notice did not include the information. A customer may revoke a notice under this paragraph at any time prior to the end of a compliance period by filing a letter in the designated project number and providing notice to ERCOT.

(5) Nomination and award of REC offsets.

(A) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its RPS requirement, as calculated in paragraph (2) of this subsection, only if those offsets were nominated in a filing with the commission by June 1, 2001.

(B) The program administrator must award offsets consistent with the commission's actions to verify designations of REC offsets and with this section.

(C) REC offsets must be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.

(D) REC offsets qualify for use in a compliance period under paragraph (2) of this subsection only to the extent that:

(i) The resource producing the REC offset has continuously since September 1, 1999, been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative (or successor in interest) nominating the resource under subparagraph (A) of this paragraph or, if the resource has been committed under a contract that expired after September 1, 1999, and before January 1, 2002, it was owned by or its output was committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and

(ii) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.

(E) If the production of energy from a facility that is eligible for an award of REC offsets ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in subparagraph (D)(i) of this paragraph has lapsed or is no longer in effect, the retail entity must no longer be awarded REC offsets related to the facility.

(F) REC offsets can not be traded.

(f) Renewable energy credits accreditation program. The program administrator must maintain a voluntary banking and accreditation system to monitor a voluntary renewable energy credit accreditation program.

(1) Renewable energy credits may be generated, transferred, and retired by renewable energy power generators certified under subsection (c) of this section, retail entities, and other market

participants as set forth in this section. For purposes of this subsection, there is no distinction between renewable energy credits and solar renewable energy credits.

(A) A power generating company may participate in the accreditation program and may generate RECs and buy or sell RECs as set forth in subsection (d)(4) of this section.

(B) RECs must be credited on an energy basis as set forth in subsection (d)(4) of this section.

(C) A municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (d)(1)(A) and (2)(A) of this section may sell RECs generated by such a resource to retail entities as set forth in subsection (d)(4) of this section.

(2) ERCOT may assign additional attributes to RECs, such as more precise REC-generation timestamps, to allow buyers to distinguish between RECs.

(g) Responsibilities of the program administrator. At a minimum, the program administrator must perform the following functions:

(1) Create accounts that track RECs, solar RECs, and compliance premiums for each participant in both the trading program and accreditation program;

(2) Award RECs, solar RECs, or compliance premiums to registered renewable energy facilities on a quarterly basis based on verified meter reads during the compliance period;

(3) Award offsets to retail entities on an annual basis based on a nomination submitted by the retail entity under subsection (e)(5) of this section;

(4) Annually record the retirement of RECs, solar RECs, and compliance premiums that each retail entity submits;

(5) Retire RECs, solar RECs, and compliance premiums at the end of each REC, solar REC, or compliance premiums' compliance life;

(6) Maintain public information on its website that provides trading program and accreditation program information to interested buyers and sellers of RECs, solar RECs, or compliance premiums;

(7) Create an exchange procedure where persons may purchase and sell RECs, solar RECs, or compliance premiums. The exchange must ensure the anonymity of persons purchasing or selling RECs, solar RECs, or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval;

(8) Make public each month the total energy sales of retail entities in Texas for the previous month;

(9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;

(10) Allocate the RPS requirement to each retail entity in accordance with subsection (e)(2) of this section; and

(11) Submit an annual report to the commission. The program administrator must submit a report to the commission on or before May 15 of each calendar year. The report must contain information pertaining to renewable energy power generators and retail entities. At a minimum, the report must contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all retail entities participating in the trading program, each retail entity's RPS requirement, the number of offsets used by each retail entity, the number of solar RECs retired by each retail entity, the number of compliance premiums retired by each retail entity, a listing of all retail entities that were in compliance with the RPS requirement, a listing of all retail entities that failed to comply with the RPS requirement, and the deficiency of each retail entity that failed to retire sufficient solar RECs or compliance premiums to meet its RPS requirement.

(h) Penalties and enforcement. If by April 1 of the year following a compliance period the program administrator determines that a retail entity has not retired sufficient solar RECs or compliance premiums to satisfy its allocation, the retail entity is subject to an administrative penalty, under PURA §15.023, of $50 per MWh that is deficient.

(i) Settlement process. The compliance period is the settlement period during which the following actions must occur:

(1) 30 days after the end of the compliance period, the program administrator will notify each retail entity of its total RPS requirement for the previous compliance period as determined under subsection (e)(2) of this section.

(2) 90 days after the end of the compliance period, each retail entity must submit solar RECs or compliance premiums to the program administrator from its account equivalent to its RPS requirement for the previous compliance period. If the retail entity does not submit sufficient solar RECs or compliance premiums to satisfy its obligation, the retail entity is subject to the penalty provisions in subsection (h) of this section.

(3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.

(j) Microgenerators and REC aggregators. A REC aggregator may manage the participation of multiple microgenerators in the trading and accreditation programs. The program administrator will assign to the REC aggregator all RECs or solar RECs accrued by the microgenerators who are under a REC management contract with the REC aggregator.

(1) The microgenerator's units must be installed and connected to the grid in compliance with commission Substantive Rules, applicable interconnection standards adopted under the commission Substantive Rules, and federal rules.

(2) Notwithstanding subsection (d)(1)(A)(iii) of this section, a REC aggregator may use any of the following methods for reporting generation to the program administrator, as long as the same method is used for each microgenerator in an aggregation unit, as defined by the REC aggregator. A REC aggregator may have more than one aggregation and may choose any of the methods listed below for each aggregation unit.

(A) The REC aggregator may provide the program administrator with production data that is measured and verified by an electronic meter that meets ANSI C12 standards and that will be separate from the aggregator's billing meter for the service address and for which the billing data and the renewable energy data are separate and verifiable data. Such actual data must be collected and transmitted within a reasonable time and is subject to verification by the program

administrator. REC aggregators using this method will be awarded one REC for every MWh generated.

(B) The REC aggregator may provide the program administrator with sufficient information for the program administrator to estimate with reasonable accuracy the output of each unit, based on known or observed information that correlates closely with the generation output. REC aggregators using this method will be awarded one REC for every 1.25 MWh generated. After installing the unit, the certified technician must provide the microgenerator, the REC aggregator, and the program administrator the information required by the program administrator under this paragraph.

(C) A generating unit may have a meter that transmits actual generation data to the program administrator using applicable protocols and procedures. Such protocols and procedures must require that actual data be collected and transmitted within a reasonable time. REC aggregators using this method will be awarded one REC for every MWh generated.

(3) REC aggregators must register with the commission and the program administrator and must also register to participate in the trading and accreditation programs.

(4) A microgenerator participating in the trading program individually without the assistance of a REC aggregator must comply with the requirements of this subsection.

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 October 12, 2023.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

(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 figures in 16 TAC §§402.420, 402.706 and 402.707 are not included in the print version of the Texas Register. The figures are available in the on-line version of the October 27, 2023, issue of the Texas Register.)

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§402.200 (General Restrictions on the Conduct of Bingo), 402.203 (Unit Accounting) 402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.404 (License Classes and Fees), 402.405 (Temporary Authorization), 402.413 (Military Service Members, Military Veterans, and Military Spouses), 402.420 (Qualifications and Requirements for Conductor's License), 402.451 (Operating Capital), 402.452 (Net Proceeds), 402.503 (Bingo Gift Certificates), 402.600 (Bingo Reports and Payments), 402.706 (Schedule of Sanctions), and 402.707 (Expedited Administrative Penalty Guideline). The purpose of the proposed amendments is to implement statutory changes required by House Bill 639 (HB 639), Senate Bill 422 (SB 422), and Senate Bill 643 (SB 643) from the Regular Session of the 88th Texas Legislature.

The proposed amendments implementing HB 639 increase the maximum yearly number of temporary bingo licenses that a non-regular authorized organization may receive from 6 to 12.

The proposed amendments implementing SB 422 allow military members to engage in bingo without a license or worker registration for up to three years while they are stationed at a military base in Texas, provided they are similarly licensed or registered and in good standing in another state.

The proposed amendments implementing SB 643 amend the definition of "regular license" to mean a 2-year license to conduct bingo that is not a temporary license; require the Commission to issue to regular licensees 48 temporary licenses for each 12-month period ending on the anniversary of their licensing date; increase the maximum prize value that can be awarded during an occasion from $2,500 to $5,000 and eliminate the $750 prize limit for a single game; allow units three days to deposit bingo funds into their bank account; provide that all of the members of a unit may not be penalized for a violation that is wholly attributable to a specific member or members of the unit; change the required net proceeds period from 12 months to 24 months; and specify that prize fees retained by the organization or held in escrow for remittance to the Commission, a county, or a municipality are not included in the calculation of operating capital.

Annika Guarnero, Acting Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

LaDonna Castañuela, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amended rules will be in effect, the anticipated public benefit will be the implementation of recent legislation.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Annika Guarnero, Acting Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

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

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

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

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

(6) The proposed amendments do not expand or limit an existing regulation.

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

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed rule amendments from any interested person. Comments may be submitted to Tyler Vance, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered. The Commission also will hold a public hearing to receive comments on this proposal at 10:00 a.m. on November 13, 2023, at 1700 N. Congress Ave., Austin, Texas 78701, Stephen F. Austin State Office Building, Room 170.

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.200, §402.203

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.200. General Restrictions on the Conduct of Bingo.

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

(c) Location of bingo occasion. A bingo occasion may be conducted only on premises which are:

(1) owned by a licensed authorized organization;

(2) owned by a governmental agency when there is no charge to the licensed authorized organization for use of the premises;

~~[(3) leased, or used only by the holder of a temporary license; or]~~

(3) [~~(4)~~] owned or leased by a licensed commercial lessor; or [~~lessor.~~]

(4) leased or used by the holder of a temporary license who does not hold a regular license.

(d) - (n) (No change.)

(o) The total aggregate amount of prizes awarded for regular bingo games during a single bingo occasion may not exceed $5,000. [~~$2500.~~] This subsection does not apply to:

(1) a pull-tab bingo game; or

(2) a prize of $50 or less that is actually awarded in an individual game of regular bingo.

(p) (No change.)

§402.203. Unit Accounting.

(a) - (k) (No change.)

(l) Responsibilities of Unit Members.

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

(5) If a unit demonstrates that a violation of this subchapter or commission rules is wholly attributable to a specific licensed authorized organization member or members of the unit, a penalty for the violation may not be imposed on a unit member to which the violation is not attributable and the penalty imposed on a unit member to which the violation is attributable may not be in an amount greater than the amount initially assessed against each unit member.

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 October 16, 2023.

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5392

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400, 402.401, 402.404, 402.405, 402.413, 402.420, 402.451, 402.452

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.400. General Licensing Provisions.

(a) - (l) (No change.)

(m) Each person required to be named in an application for license under the Bingo Enabling Act other than a temporary license will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor or manufacturer's license and for an individual listed on an application who is not a Texas resident. A criminal record history inquiry at the state and/or national level may be conducted on the operator and officer or director required to be named in an application for a non-regular [~~non-annual~~] temporary license under the Bingo Enabling Act.

(n) (No change.)

§402.401. Temporary License.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) (No change.)

(2) Regular license--A license to conduct bingo that is effective for a period of two years [~~one year~~] unless revoked or suspended by the Commission. [~~A regular license may be referred to as an annual license.~~]

(3) (No change.)

(b) General.

(1) - (2) (No change.)

(3) Display. A [~~The~~] licensed authorized organization must conspicuously display an issued license during a temporary [~~bingo~~] occasion at the premises. [~~licensed bingo premises a temporary license.~~]

(4) Voluntary surrender of regular license.

(A) An authorized organization that no longer holds a regular license to conduct bingo may conduct any remaining designated temporary occasions so long as the total number of occasions does not exceed twelve (12) [~~six~~] per calendar year. If more than twelve (12) [~~over six~~] previously specified occasions remain, the licensed authorized organization must provide to the Commission written notification of no more than twelve (12) [~~six~~] of the dates of the temporary licenses that will be utilized. This notification must be provided within ten days of surrender of the regular license. The Commission will automatically revoke all temporary licenses in excess of the twelve (12) [~~six~~] per year.

(B) If the Commission denies or revokes a regular license by final and unappealable order, any temporary license held by the regular license holder [~~that stated the specific date and time of any bingo occasion~~] will likewise be denied or revoked.

(5) (No change.)

(c) (No change.)

(d) Regular license holder.

(1) Subject to the other provisions of this chapter, a [~~A~~] regular license holder [~~must apply for a temporary license at least seven calendar days prior to the bingo occasion~~] shall be issued forty-eight (48) temporary licenses for each 12-month period that ends on the anniversary of the date the license was issued or renewed. Any unused temporary licenses will expire on the anniversary of the date the temporary licenses were issued.

(2) (No change.)

[~~(3) The Commission may issue a temporary license to a regular license holder without listing the specific date or time of a bingo occasion. The temporary bingo occasion must be conducted at the same location as shown on the organization's regular license. Such a license shall be referred to as a "temporary-on-demand license".~~]

[~~(A) The regular license holder must submit an application on the prescribed form that indicates the number of temporary-on-demand licenses requested for the license period.~~]

[~~(B) Before using a temporary-on-demand license, the regular license holder must notify the Commission of the date and time the temporary license will be used by submitting a form prescribed by the Commission. The Commission will verify receipt of the notice in accordance with Bingo Enabling Act §2001.103(g). The license holder is not required to display the Commission's verification during the occasion but must maintain it in their records pursuant to §402.500(a) of this title (relating to General Records Requirements).~~]

[~~(C) Any temporary-on-demand license must be used prior to the expiration date of the regular license in effect at the time the temporary license application was filed.~~]

(3) Before using a temporary license, the regular license holder must notify the Commission of the date and time and location of the bingo occasion for which the temporary license will be used by submitting a form prescribed by the Commission. The Commission will verify receipt of the notice in accordance with Bingo Enabling Act §2001.103(g). The license holder is not required to display the Commission's verification during the occasion but must maintain it in their records pursuant to §402.500(a) of this title (relating to General Records Requirements).

(4) (No change.)

[~~(5) If the organization is issued the amendment license filed under Occupations Code, §2001.108 prior to being issued the temporary license, the temporary license application shall be discontinued.~~]

(e) Non-regular license holder. A non-regular license holder that wishes to conduct a bingo occasion must file a complete application for a temporary license on a form prescribed by the Commission at least 30 calendar days prior to the bingo occasion.

(1) - (2) (No change.)

(3) Non-regular license holders may not receive more than twelve (12) temporary licenses in a calendar year.

§402.404. License Classes and Fees.

(a) Definitions.

(1) License period--For purposes of Texas Occupations Code §2001.158, [~~§2001.104 and §2001.158,~~] the term "license period" means the eight (8) [~~four~~] full calendar quarters immediately preceding the license end date.

(2) (No change.)

(b) - (j) (No change.)

§402.405. Temporary Authorization.

(a) - (i) (No change.)

(j) A regular license that has been issued to an applicant shall expire two years [~~one year~~] from the date of the first issuance of any temporary authorization under this section.

(k) (No change.)

§402.413. Military Service Members, Military Veterans, and Military Spouses.

(a) - (e) (No change.)

(f) A military service member or a military spouse may engage in any activity for which a license or bingo worker registration is required without obtaining the applicable license or registration if the member or spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in Texas. Before engaging in the activity, the military member or spouse must notify the Commission of their intent to conduct the activity in this state and must submit proof of their residency in this state along with a copy of their military identification card. Within thirty (30) days, [~~Upon receipt,~~] the Commission will verify that the military service member or military spouse is currently licensed in good standing in another state that has licensing requirements that are substantially equivalent to the requirements in Texas. If so, the Commission shall authorize the military service member or military spouse to engage in the activity. The authorization is

effective only for the period during which the military service member or the military service member to whom the military spouse is married is stationed at a military installation in this state, not to exceed three years. The authorization may not be renewed. The military member or spouse shall comply with all other laws and regulations applicable to the business or occupation in this state. In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization.

§402.420. Qualifications and Requirements for Conductor's License.

An applicant must provide with its application documentation demonstrating that it meets all qualifications and requirements for a license to conduct bingo based on the type of organization it is. The qualifications, requirements, and necessary documentation for different types of organizations are shown in the chart below.
Figure: 16 TAC §402.420
[~~Figure: 16 TAC §402.420~~]

§402.451. Operating Capital.

(a) (No change.)

(b) The bingo account balance of a licensed authorized organization, reconciled to include outstanding checks and deposits in transit, on the last day of each calendar quarter may not exceed the total of:

(1) (No change.)

(2) prize fees held in the bingo account to be paid to the Commission and local governments, or to be retained under Bingo Enabling Act §2001.502(b)(3); [~~§2001.502(b)(2);~~] and

(3) (No change.)

(c) (No change.)

(d) Licensed Authorized Organization's Calculations.

[~~(1) The retained operating capital limit for a licensed authorized organization with a one year license will be calculated based on the quarterly reports for the four (4) calendar quarters immediately preceding the license start date.~~]

(1) [~~(2)~~] The retained operating capital limit for a licensed authorized organization with a regular [~~two year~~] license will be calculated for each 12-month period of the license.

(2) [~~(3)~~] The retained operating capital limit for a licensed authorized organization submitting the first renewal of its license to conduct bingo will be calculated based on the quarterly reports for the three (3) calendar quarters immediately preceding the license start date.

(3) [~~(4)~~] The retained operating capital limit is effective for the four (4) calendar quarters beginning on the first day of the calendar quarter immediately following the license start date.

(e) (No change.)

(f) A licensed authorized organization's or unit's most recent quarterly report information at the time of the calculation will be used to calculate its retained operating capital limit. Prize fees are not included in calculation of operating capital if they are held in escrow for remittance to the commission or local governments or retained by a licensed organization under Bingo Enabling Act §2001.502(b)(3).

(g) - (k) (No change.)

§402.452. Net Proceeds.

(a) Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period. [~~If the organization has a two year license, the net proceeds from the conduct of bingo must result in a positive amount over each year of the organization's license period.~~]

(b) Calculation of Net Proceeds for Organizations. [~~a License Period.~~]

(1) (No change.)

(2) The calculation of net proceeds for a regular [~~one year~~] license will be based on the quarterly reports for the eight (8) [~~four (4)~~] calendar quarters immediately preceding the license end date.

[~~(3) Net proceeds for a two-year license will be calculated for each year of the license. The calculation of net proceeds for the first year of the license will be based on the quarterly reports for the four (4) calendar quarters immediately preceding the one year anniversary of the license beginning date. The calculation of net proceeds for the second year of the license will be based on the quarterly reports for the four (4) calendar quarters immediately preceding the two-year anniversary of the license beginning date.~~]

(3) [~~(4)~~] The calculation of net proceeds for an organization submitting the first renewal of its license to conduct bingo will be based on the quarterly reports for the seven (7) [~~three (3)~~] calendar quarters immediately preceding the license end date. If the bingo operations of an organization fail to result in positive net proceeds for the first renewal of a license, the Commission shall recalculate the net proceeds using the quarterly reports for the seven (7) [~~three (3)~~] calendar quarters immediately preceding the license end date and the quarterly report for the one (1) calendar quarter in which the license end date falls to determine compliance.

(c) Calculation of Net Proceeds for Units.

(1) Net proceeds for units will be calculated at the end of each quarter for the prior eight (8) [~~four (4)~~] quarter period.

(2) (No change.)

(3) The calculation of net proceeds for a licensed authorized organization that withdraws from a unit will be based on the following for the eight (8) [~~four (4)~~] calendar quarters immediately preceding the license end date:

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

(4) (No change.)

(d) - (e) (No change.)

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

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5392

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SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.503

The amendment is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to

enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.503. Bingo Gift Certificates.

(a) - (f) (No change.)

(g) Reporting Requirements:

(1) - (2) (No change.)

(3) When a gift certificate is redeemed, the sale of bingo paper, card-minding device, or pull-tab bingo shall be reported for that occasion. The gift certificate, when redeemed, shall be exchanged for cash from the gift certificate funds and deposited into the bingo account by the end of the third business day after the bingo occasion. [~~occasion for organizations as required by Occupations Code §2001.451, and by the end of the second business day after the bingo occasion for units as required by Occupations Code §2001.435.~~]

(4) (No change.)

(h) - (i) (No change.)

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SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.600

The amendment is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.600. Bingo Reports and Payments.

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

(d) Quarterly Report for information relating to the conduct of bingo games.

(1) An authorized organization holding a regular [~~an annual~~] license, temporary license, or a temporary authorization to conduct bingo must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report for financial and statistical information relating to the conduct of bingo games. The report and supplements must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter even if there were no games conducted during that quarter. Failure to file a required report or supplement by the due date may result in an administrative penalty.

(2) (No change.)

(3) The Commission may deny a renewal application of an authorized organization holding a regular [~~an annual~~] license or revoke a license of an authorized organization holding a regular [~~an annual~~] license if the licensee remits to the Commission two insufficient checks for prize fees within four quarters.

(e) - (m) (No change.)

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

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.706, §402.707

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction; and SB 422 and SB 643, which require the Commission to adopt the rules necessary to implement the changes in the law by December 1st, 2023, and January 1st, 2024, respectively.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

§402.706. Schedule of Sanctions.

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

(c) Unless otherwise provided by this subchapter, the terms and conditions of a settlement agreement between the Commission and a person charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules will be based on the Schedule of Sanctions incorporated into this section.
Figure: 16 TAC §402.706(c)
[~~Figure: 16 TAC §402.706(c)~~]

(d) - (l) (No change.)

§402.707. Expedited Administrative Penalty Guideline.

(a) - (f) (No change.)

(g) If a person is charged with a repeat violation that may be expedited within 36 months (3 years) of the first violation, then the

penalty for a repeat violation will be imposed according to the Expedited Administrative Penalty Chart for repeat violations.
Figure: 16 TAC §402.707(g)
[~~Figure: 16 TAC §402.707(g)~~]

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

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER M. TOTAL RESEARCH EXPENDITURES

19 TAC §§13.300 - 13.305

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter M, §§13.300 - 13.304 and new §13.305, concerning Total Research Expenditures. Specifically, this amendment and new rule will revise the reporting of total research expenditures to the Coordinating Board for use in state research funding allocations for the Comprehensive Research Fund, National Research Support Fund, and Texas University Fund (TUF), in accordance with changes made by H.B. 1595, 88th Texas Legislature, Regular Session. This amendment and new rule presumes passage of House Joint Resolution 3, 88th Texas Legislature, Regular Session, the vote for which would take place November 7, 2023. If the constitutional amendment is approved, the provisions of H.B. 1595 go into effect on January 1, 2024. Negotiated rulemaking was used in the development of these proposed rules. Reports of negotiated rulemaking committees are public information and are available upon request from the Coordinating Board.

Rules 13.300 and 13.301 note the purpose and authority of the subchapter. Proposed revisions now prescribe the requirement of total research expenditures to be submitted by fund source and lay out the use of the data in the allocation of the Texas Comprehensive Research Fund, National Research Support Fund, Texas Research University Fund, Texas University Fund (TUF), and formula funding for research. The rule also establishes the portions of Texas Education Code (TEC) that authorize the Coordinating Board to adopt rules pertaining to the TUF.

Rule 13.302 lists definitions pertinent to research expenditure reporting. The revisions add paragraphs (1), (5), (8), (10), (12), and (23) to include fund sources by which institutions must report expenditures to the Coordinating Board. The fund sources align with the Higher Education Research and Development (HERD) Survey conducted by the National Center for Science and Engineering Statistics under the National Science Foundation. Paragraphs (24) and (25) provide a more granular breakout of funding sources for State and Local Government Expenditures to appropriately implement funding formulas for the health-related institutions.

Paragraph (15) establishes that private expenditures include expenditures of funds reported as Business Expenditures, Nonprofit Organization Expenditures, and All Other Expenditures. This definition matches the definition under Texas Administrative Code, chapter 15, subchapter B, Texas University Fund for use in the allocation of certain state funding.

Paragraphs (9), (11), and (13) define certain sectors of Texas public institutions of higher education.

Paragraphs (4), (6), and (7) specify three distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board; "Coordinating Board," meaning the state agency as a whole; and "Coordinating Board Staff or Board Staff," meaning the staff of the agency. Separating these terms allows the Coordinating Board to make a distinction between actions taken by the governing body, agency staff, and the agency as a whole.

Revisions to paragraph (16) and the addition of paragraph (18) align definitions of research and development (R&D) with the HERD Survey. The revision of paragraph (19) clarifies what is included on the research expenditure survey and the addition of paragraph (22) adds clarity on what is considered a sponsored project.

The revision of §13.303 removes a provision made unnecessary due to the addition of §13.305 and clarifies that pass throughs to other agencies of higher education also do not meet the narrow definition of R&D expenditures. Other revisions include clarification that total research expenditures may only include recovered indirect costs and clarification on the treatment of counting expenditures where the dollars expended are reported on an institution's annual financial report, but the actual work is conducted at a separate entity.

The revision of §13.304 clarifies that Coordinating Board staff will post the report of total research expenditures and the source of information for a legislatively required report.

The addition of §13.305 provides for the explicit direction of reporting total research expenditures to the Coordinating Board. The rule provides the breakout of fund source categories and requires a subset reporting of State of Texas Source Expenditures and State Contracts and Grants to accurately implement certain funding formulas for health-related institutions. The rule specifies that unrecovered indirect costs and pass-throughs to certain sectors of higher education do not meet the narrow definition of R&D expenditures. Pass-throughs to these sectors of higher education would result in the state including certain research expenditures in multiple funding formulas so separating these expenditures out in reporting allows the state to only include the research expenditure in funding formulas for the institution who received the pass-through funding.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local

governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as the result of adopting this rule is the refinement of reporting total research expenditures by fund source, in accordance with the provisions of H.B. 1595, 88th Texas Legislature, Regular Session, which requires the collection and use of certain federal and private research expenditures in state funding allocations and aligning data submissions with federal data survey requirements. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed in accordance with changes made by H.B. 1595, 88th Texas Legislature, Regular Session (2023), which requires the collection of federal and private research expenditures for use in the allocation of the Comprehensive Research Fund and as part of the eligibility criteria and distribution methodology for the National Research Support Fund and Texas University Fund.

The proposed amendment affects Texas Education Code Sections 62.095, 62.132, 62.1335, 62.134, 62.145, 62.1481, 62.1482, and 62.151.

§13.300. Purpose and Scope.

The purpose of this subchapter is to establish standards and accounting methods for determining total research expenditures, by fund source, based on all research conducted at Texas institutions of higher education. These amounts are for use in the allocation of the Texas Comprehensive Research Fund, National Research Support Fund, Texas Research University Fund, Texas University Fund, and formula funding for research, as authorized in an applicable biennium's General Appropriations Act.

§13.301. Authority.

Texas Education Code, §61.0662, requires the Coordinating Board to maintain an inventory of all institutional and programmatic research activities being conducted by all institutions of higher education. Texas Education Code, §62.051, establishes the Texas Research University Fund and §62.053, authorizes the Coordinating Board to prescribe standards and accounting methods for determining the amount of total research funds expended. Texas Education Code §62.152 authorizes the Board to adopt rules as necessary to implement chapter 62, subchapter G (Texas University Fund).

§13.302. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) All Other Expenditures--Expenditures of all other funds not reported under the expenditure categories of Business, Nonprofit Organizations, Institutional Funds, State and Local Government or Federal Expenditures, as defined in this section. All Other Expenditures includes funds from foreign universities, foreign governments, portions of gifts designated for research by the donors (including from the reporting institution's 501(c)(3)), and nonfederal and nonstate funds received from other institutions of higher education.

(2) [~~(1)~~] Annual Financial Report (AFR)--Institutional financial report for one fiscal year as required by Texas Education Code, §51.005.

(3) [~~(2)~~] Areas of Special Interest--Major research topics important to the public, or required by statute, as listed in the Research Expenditure Survey.

[~~(3) Coordinating Board or Board--The Texas Higher Education Coordinating Board.~~]

(4) Board--The governing body of the Texas Higher Education Coordinating Board.

[~~(4) Research Expenditures or Expenditures--In a specific fiscal year, expenditure of funds paid out by an institution to support institutional Research and Development activities.~~]

(5) Business Expenditures--Expenditures of funds from domestic or foreign for-profit organizations.

(6) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(7) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board and the Commissioner.

(8) Federal Expenditures--Expenditures of funds received by the reporting institution from any agency of the United States government for research and development. These include reimbursements, contracts, grants, and any identifiable amounts spent on research and development from Federal programs including Federal monies passed through state agencies to the reporting institution and federal funds that were passed through to the reporting institution from another institution.

(9) General Academic Teaching Institution--Any public general academic teaching institution as defined in Texas Education Code, §61.003(3).

(10) Institutional Fund Expenditures--This includes funds expended for R&D that are controlled at the institutional level, such as Available University Fund (AUF) or other funding held locally used for R&D, excluding institution research administration and support. This category includes cost sharing from unrestricted sources (cost sharing from restricted sources should be classified according to the underlying source), unrestricted funds from the reporting institution's 501(c)(3),

and unrecovered indirect costs. Unrecovered indirect costs may not exceed the institution's federally negotiated Facilities and Administrative rate.

(11) Medical and Dental Unit--Any public health related institution as defined in Texas Education Code, §61.003(5).

(12) Nonprofit Organization Expenditures--Expenditures of funds from domestic or foreign non-profit foundations and organizations, except universities and colleges.

(13) Other Agency of Higher Education--Any public agency of higher education as defined in Texas Education Code, §61.003(6).

(14) [~~(5)~~] Pass-through to Sub-recipient--Sponsored project [~~External award~~] funds that are passed from one entity to a sub-recipient. The sub-recipient expends the [~~award~~] funds to carry out part of the sponsored project on behalf of[~~, or in connection with,~~] the pass-through entity.

(15) Private Expenditures--Expenditures of funds reported as Business Expenditures, Non-profit Organization Expenditures, and All Other Expenditures. Amounts exclude R&D expenditures that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.

(16) [~~(6)~~] Research and Development (R&D)--R&D activity is creative and systematic work undertaken in order to increase the stock of knowledge "including knowledge of humankind, culture, and society" and to devise new applications of available knowledge. R&D covers three activities: basic research, applied research, and experimental development. R&D does not include public service or outreach programs, curriculum development (unless included as part of an overall research project), or non-research training grants. R&D does not include capital projects (i.e., construction or renovation of research facilities). [~~All research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions:~~]

[~~(A) Research--The systematic study directed toward fuller scientific knowledge or understanding of the subject studied.~~]

[~~(B) Development--The systematic use of knowledge or understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.~~]

[~~(C) R&D Training--R&D also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.~~]

(17) R&D Training--Activities involving the training of individuals in research techniques are included in R&D, where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(18) Research Expenditures or Expenditures--In a specific fiscal year, expenditures of funds paid out by an institution to support institutional Research and Development activities. Expenditures do not include in-kind donations.

(19) [~~(7)~~] Research Expenditure Survey--The mandatory survey instrument administered by the Coordinating Board pursuant to Texas Education Code, §61.0662, that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source. The survey includes a Research Expenditure Survey, specific definition of R&D, and reporting guidelines for R&D activities. The survey separately accounts for unrecovered indirect costs and pass-through expenditures to other general academic teaching institutions, medical and dental units, or other agencies of higher education, by funding source. [~~Instrument that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source. The survey includes a Research Expenditure Survey, specific definition of R&D, and reporting guidelines for R&D activities.~~]

(20) [~~(8)~~] Research fields--Subject areas for R&D, as listed in the Research Expenditure Survey.

(21) [~~(9)~~] Sources and Uses Template--An annual survey of Texas general academic and health-related institutions to detail financial information and provide specific information about revenues and expenditures.

(22) Sponsored Projects--Sponsored projects include grants, contracts, cooperative agreements and other legally binding means of transfer under which an entity provides a return benefit to, or agrees to provide a defined deliverable or complete a specified set of activities for, an external sponsor in exchange for funds. External sponsors are those that are not part of the entity.

(23) State and Local Government Expenditures--Expenditures of funds received for R&D via appropriations from the state of Texas, including non-formula support items, and funds received from any state, county, municipality, or other local government entity in the United States, including state health agencies. Expenditures include state funds that support R&D at agricultural and other experiment stations.

(24) State Contracts and Grants--A subset of State and Local Government Expenditures that includes only expenditures of interagency contracts, contracts with Texas local governments, and other such state funding sources for R&D.

(25) State of Texas Source Expenditures--A subset of State and Local Government Expenditures that includes only expenditures of funds appropriated by the state of Texas for research, including state appropriated research non-formula support items and research formula funding.

§13.303. Standards and Accounting Methods for Determining Total Research Expenditures.

[~~(a) Each institution reports R&D expenditures annually in the Research Expenditure Survey.~~]

(a) [~~(b)~~] R&D expenditures for Texas A&M University include consolidated expenses from Texas A&M University and its service agencies.

(b)[~~(c)~~] Research expenses from the AFR shall be [~~are~~] reconciled to the total R&D expenditures of the Research Expenditure Survey by a:

(1) Decrease of the AFR total by the amount of R&D expenses that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey. Pass-throughs to other general academic teaching institutions, medical or dental units, and other agencies of higher education [~~public academic or health related entities~~] do not meet the narrow definition of R&D expenditures.

(2) Increase of the AFR total by the amount of recovered indirect costs associated with expenses for R&D as reported through the Research Expenditure Survey.

(3) Increase of the AFR total by the amount of capital outlay for research equipment, not including R&D plant expenses or construction.

(4) Increase of the AFR total by the amount of expenditures for conduct of R&D made by an institution's research foundation, or 501(c) corporation on behalf of the institution, and not reported in the institution's AFR, including indirect costs.

(5) Increase of the AFR total to include expenses related to research performed by the agency or institution but recognized on the AFR of a separate agency or institution who received and expended the funding. The agency or institution who received and expended the funding but did not perform the research must make a corresponding decrease of its AFR total for this amount. This accounting event is not a pass-through to subrecipient [~~by the amount of pass-throughs from Texas Engineering Experiment Station, as defined for the Research Expenditure Survey~~].

§13.304. Reporting of Total Research Expenditures.

(a) Coordinating [~~The~~] Board staff shall annually post a report of total research expenditures of all public institutions of higher education on its website.

(b) Not later than January 1 of each year, the Board shall submit to the legislature information regarding human stem cell research reported by the institutions to [~~obtained by~~] the Coordinating Board in the Research Expenditure Survey from reports required by this subsection.

§13.305. Institutional Reporting of Total Research Expenditures by Funding Source.

(a) Institutions shall report all research expenditures on the Research Expenditure Survey using the following categories:

(1) Federal Expenditures;

(2) State and Local Government Expenditures;

(3) Business Expenditures;

(4) Nonprofit Organization Expenditures;

(5) Institutional Fund Expenditures; and

(6) All Other Expenditures.

(b) Institutions shall report State of Texas Source Expenditures and State Contracts and Grants as subsets of State and Local Government Expenditures.

(c) Institutions shall report the original source of expenditures, when possible. Institutions shall report each category and show adjustments by the amount of R&D expenses that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey. Unrecovered indirect costs and pass-throughs to other general academic teaching institutions, medical and dental units, and other agencies of higher education do not meet the narrow definition of R&D expenditures.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6548

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CHAPTER 15. RESEARCH FUNDS [~~NATIONAL RESEARCH UNIVERSITIES~~]

SUBCHAPTER B. TEXAS UNIVERSITY FUND

19 TAC §§15.20 - 15.30

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 15, Subchapter B, §§15.20 - 15.30, concerning the Texas University Fund (TUF). Specifically, this will create rules to govern the eligibility, distribution methodology, and reporting for the TUF and implementation of eligibility requirements for the National Research Support Fund in accordance with changes made by H.B. 1595, 88th Texas Legislature, Regular Session. This new subchapter presumes passage of House Joint Resolution 3, 88th Texas Legislature, Regular Session, the vote for which would take place November 7, 2023. If the constitutional amendment is approved, the provisions of H.B. 1595 go into effect on January 1, 2024. Negotiated rulemaking was used in the development of these proposed rules. Reports of negotiated rulemaking committees are public information and are available upon request from the Coordinating Board.

Chapter 15 title is amended to revise the name from National Research Universities to Research Funds to more accurately reflect the rules in this section of administrative code.

Rule 15.20 establishes the purpose of the subchapter to govern the receipt and allocation of funds distributed from the TUF. The rule also establishes the portions of Texas Education Code (TEC) that authorize the Coordinating Board to adopt rules pertaining to the TUF and rules governing the eligibility threshold of research expenditures for the National Research Support Fund (NRSF).

Rule 15.21 lists definitions pertinent to the TUF. Paragraphs (2), (3), and (5) specify three distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board; "Coordinating Board," meaning the state agency as a whole; and "Coordinating Board Staff or Board Staff," meaning the staff of the agency. Separating these terms allows the Coordinating Board to make a distinction between actions taken by the governing body, agency staff, and the agency as a whole.

Paragraphs (6) and (10) establish the federal and private expenditures eligible for inclusion in the TUF eligibility and distribution criteria. Institutions report federal and private expenditures to the Coordinating Board under Texas Administrative Code, Chapter 13, Subchapter M, Total Research Expenditures. Federal and private expenditures exclude amounts that do not meet the Coordinating Board's narrow definition of research and development expenditures, including unrecovered indirect administration and pass-through funds to other public institutions of higher education. Pass-throughs to certain sectors of higher education would result in the state including certain research expenditures in multiple funding formulas, so separating these expenditures out in reporting allows the state to only include the research expen-

diture in funding formulas for the institution who received the pass-through funding.

Paragraphs (7), (8), and (9) define the Texas public institutions of higher education that are subject to the exclusion pertaining to pass-through funding.

Paragraph (12) defines a TUF-eligible institution as one listed in H.B. 1595 or an institution that becomes eligible by reaching the statutorily required thresholds.

Rules 15.22 and 15.23 define the institutions eligible to receive distributions from the TUF in a fiscal year in accordance with TEC §62.145, as amended by H.B. 1595. This includes listed institutions in statute as well as the eligibility requirements for a new institution to become TUF-eligible in future years. This provision provides that the Coordinating Board shall annually calculate and publish an increased threshold of research expenditures based on the increase in the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, in accordance with statutory requirements.

Rule 15.24 describes the allocation of distributions of the TUF to the Permanent Endowment for Education and Research (PEER) and the Research Performance Funding, in accordance with TEC §62.148(c), as amended by H.B. 1595.

Rule 15.25 provides for the calculation of PEER base funding for TUF-eligible institutions, in accordance with TEC §62.1481, as added by H.B. 1595, and for the Coordinating Board to confer with the Legislative Budget Board each fiscal year to determine the allocation of funding. The rule establishes two levels of Base Funding: Level 1 and Level 2. Level 1 Base Funding recipients receive the maximum allocation of PEER base funding; Level 2 Base Funding recipients receive half the amount of Level 1 Base Funding. The rule establishes the criteria an institution must meet to receive Level 1 Base Funding. The rule provides that the Coordinating Board shall annually calculate and publish an increased threshold of research expenditures as part of the entry into Level 1 Base Funding based on the increase in the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, in accordance with statutory requirements.

Rule 15.26 provides for the calculation of the Research Performance Funding, in accordance with TEC §62.1482, as added by H.B. 1595, and for the Coordinating Board to confer with the Legislative Budget Board each fiscal year to determine the allocation of funding. The rule provides that 85% of research performance funds shall be allocated in each fiscal year proportional to an institution's share of the most recent three-year average of federal and private research expenditures. The rule defines private expenditures used in the calculation of funding to include business expenditures, nonprofit expenditures, and all other expenditures. Eligible expenditures shall exclude unrecovered indirect costs and pass-through funds to other general academic teaching institutions, medical and dental units, and other agencies of higher education.

The rule provides that 15% of research performance funds shall be allocated in each fiscal year proportional to an institution's share of the most recent three-year average of research doctoral degrees awarded. The Coordinating Board shall annually publish a list of eligible research doctoral degrees that qualify for purposes of calculation; these degrees include an academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field and that requires completion of original research. This list shall be updated by Coordinating Board staff to reflect all degree titles included in the most recently published National Science Foundation Survey of Earned Doctorates and any additional degree titles identified by the Commissioner.

Rule 15.27 provides for the calculation of the legislative appropriations required to be appropriated for a new institution to become TUF-eligible or for a Level 2 Base Funding institution to receive Level 1 Base Funding. The calculation maintains existing TUF-eligible institutions or Level 1 Base Funding recipients' share of the Permanent Endowment for Education and Research.

Rule 15.28 defines the percentage share of the market value of the TUF that may be reported by TUF-eligible institutions for financial reporting purposes. The percentage share is based on an institution's receipt of Level 1 or Level 2 Base Funding from the PEER and the market value as of August 31st of the reported fiscal year, as determined by the Comptroller of Public Accounts.

Rule 15.29 requires the Coordinating Board to annually publish the metrics pertaining to the TUF for all general academic institutions each fiscal year.

Rule 15.30 provides that the Coordinating Board shall annually calculate and publish an increased threshold of research expenditures as part of the eligibility requirements for the NRSF based on the increase in the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, in accordance with TEC §62.132, as amended by H.B. 1595.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as the result of adopting these rules is the creation of a new subchapter of Texas Administrative Code to implement the eligibility requirements, distribution methodology, and reporting for the Texas University Fund, and implementation of eligibility requirements for the National Research Support Fund in accordance with the provisions of H.B. 1595, 88th Texas Legislature, Regular Session. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new subchapter is proposed under Texas Education Code, Section 62.132, as added by Section 6 of H.B. 1595, 88th Texas Legislature, Regular Session, which provides for the Coordinating Board to set the eligibility threshold for the National Research Support Fund by rule, and Section 62.152, as added by Section 19 of H.B. 1595, which provides the Coordinating Board with rulemaking authority to implement the new Texas University Fund.

The proposed new subchapter affects Texas Education Code, Sections 62.132 and 62.141 - 62.152.

§15.20. Authority and Purpose.

(a) This subchapter establishes rules for eligible institutions to receive funds through the Texas University Fund and the allocation of funds distributed from the Texas University Fund each state fiscal year. The Texas University Fund is established to support general academic teaching institutions to achieve national prominence as major research universities and drive the state economy.

(b) The Board adopts subchapter B pursuant to Texas Education Code, §62.152, requiring the Board to adopt rules to implement Texas Education Code, Chapter 62, subchapter G, Texas University Fund. Texas Education Code, §62.132, provides that the Board specify the eligibility threshold of research expenditures for receipt of the National Research Support Fund.

§15.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Available University Fund (AUF)--A fund established in Article 7, §18, of the Texas Constitution to receive all interest and earnings of the Permanent University Fund (PUF) and used to pay the debt service on PUF-backed bonds.

(2) Board--The governing body of the Texas Higher Education Coordinating Board.

(3) Commissioner--The Texas Commissioner of Higher Education.

(4) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(5) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board and the Commissioner.

(6) Federal Expenditures--Expenditures of funds reported as Federal Expenditures, as defined in §13.302 of this title (relating to Definitions). Amounts exclude R&D expenditures that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.

(7) General Academic Teaching Institution--Any college, university, or institution so classified in Texas Education Code, §61.003(3).

(8) Medical and Dental Unit--Any public health related institution as defined in Texas Education Code, §61.003(5).

(9) Other Agency of Higher Education--Any agency of higher education as defined in Texas Education Code, §61.003(6).

(10) Private Expenditures--Expenditures of funds reported as Business Expenditures, Non-profit Organization Expenditures, and All Other Expenditures as defined in §13.302 of this title. Amounts exclude R&D expenditures that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.

(11) Research Expenditure Survey--Instrument administered by the Coordinating Board that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source, as defined in §13.302 of this title.

(12) Texas University Fund (TUF)-Eligible Institution--An institution listed in Texas Education Code, §62.145(a), or an institution that becomes eligible by meeting the requirements listed in Texas Education Code, §62.145(b).

§15.22. Eligible Institutions.

(a) The following general academic teaching institutions are eligible to receive distributions from the Texas University Fund in a state fiscal year:

(1) Texas State University;

(2) Texas Tech University;

(3) University of Houston; and

(4) University of North Texas.

(b) A general academic teaching institution not listed above may become a TUF-eligible institution in a state fiscal year if it meets the statutory requirements.

§15.23. Eligibility to Receive a Distribution from the Texas University Fund.

(a) General academic teaching institutions may become a TUF-eligible institution in a state fiscal year if, based on most recently available data, the institution:

(1) Is not entitled to participate in funding through the Available University Fund;

(2) Expends an average of $20.0 million in combined Federal Expenditures and Private Expenditures during the prior three fiscal years, adjusted in accordance with subsection (b);

(3) Awards an average of at least 45 research doctoral degrees, as determined by §15.26 of this subchapter (relating to Research Performance Funding), per academic year during the prior three fiscal years; and

(4) The legislature provides an appropriation to the Texas University Fund, as defined in §15.27 of this subchapter (relating to Percentage Share for Legislative Appropriation).

(b) For the purpose of calculating the combined Federal Expenditures and Private Expenditures threshold amount in subsection (a)(2), beginning in state fiscal year 2025, and in each subsequent fiscal year, the Coordinating Board shall adjust the research expenditure threshold by any increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor during the preceding state fiscal year.

(c) The Coordinating Board staff shall annually publish the threshold of combined Federal Expenditures and Private Expenditures for TUF eligibility.

(d) Once an institution meets the criteria in subsection (a), an institution remains eligible to receive a distribution in each subsequent fiscal year.

§15.24. Allocation of Distributions.

In a state fiscal year, the allocation of funds distributed from the Texas University Fund shall be as follows:

(1) Seventy-five (75) percent to the Permanent Endowment for Education and Research Base Funding; and

(2) Twenty-five (25) percent to Research Performance Funding.

§15.25. Permanent Endowment for Education and Research Base Funding.

(a) In a state fiscal year, the Coordinating Board shall confer with the Legislative Budget Board to determine Permanent Endowment for Education and Research Base Funding for TUF-eligible institutions based on the following categories:

(1) Level 1 Base Funding for TUF-eligible institutions that are eligible to receive the maximum allocation of base funding as calculated in subsection (b); and

(2) Level 2 Base Funding for TUF-eligible institutions that are not eligible to receive the maximum allocation of base funding.

(b) A TUF-eligible institution shall receive Level 1 Base funding if it meets the following criteria:

(1) The institution expended at least $45.0 million in combined Federal Expenditures and Private Expenditures in fiscal years 2021 and 2022; or

(2) The institution expends at least $45.0 million in combined Federal Expenditures and Private Expenditures, adjusted in accordance with subsection (c), per state fiscal year during the prior two fiscal years and the legislature provides an appropriation to the Texas University Fund, as defined in §15.27 of this subchapter (relating to Percentage Share for Legislative Appropriation).

(c) For the purpose of calculating the threshold of research funding under subsection (b), beginning in state fiscal year 2025, and in each subsequent fiscal year, the qualifying amount of combined Federal Expenditures and Private Expenditures will be adjusted by any increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor during the preceding state fiscal year.

(d) Coordinating Board staff shall annually publish the threshold of combined Federal Expenditures and Private Expenditures required for an allocation of funding under subsection (b)(2).

(e) Once an institution meets the criteria in subsection (b), an institution remains eligible to receive Level 1 Base Funding in each subsequent state fiscal year. All other TUF eligible institutions shall receive Level 2 Base Funding in each state fiscal year.

(f) TUF-eligible institutions that are eligible for Level 1 Base funding shall receive the following share of the Permanent Endowment for Education and Research Base Funding. Two divided by the sum of:

(1) the number of TUF-eligible institutions eligible for Level 1 funding multiplied by two; and

(2) the number of TUF-eligible institutions that are not eligible to receive Level 1 funding.

(g) Level 2 Base Funding shall be half the share of Level 1 Base Funding.

(h) The percentage share for Level 1 and Level 2 Base Funding is then multiplied by the total amount distributed for the Permanent Endowment for Education and Research to determine each individual institution's funding amount.

§15.26. Research Performance Funding.

(a) In a state fiscal year, the Coordinating Board shall confer with the Legislative Budget Board to determine Research Performance Funding allocations for each TUF-eligible institution based on the following:

(1) Eighty-five percent (85%) of the Research Performance Funds shall be allocated based on the most recent three-year average of combined Federal Expenditures and Private Expenditures. The allocation shall be proportional based on the institutions' share of total combined Federal Expenditures and Private Expenditures.

(A) Federal Expenditures and Private Expenditures are as reported in each state fiscal year on the Research Expenditure Survey as required by §13.303 of this title (relating to Standards and Accounting Methods for Determining Total Research Expenditures). Private research expenditures include business expenditures, nonprofit organization expenditures, and all other expenditures.

(B) For purposes of the allocation of the Research Performance funds, Federal Expenditures and Private Expenditures shall exclude unrecovered indirect costs and pass through funds to other general academic teaching institutions, medical and dental units, and other agencies of higher education.

(2) Fifteen percent (15%) of the Research Performance Funds shall be allocated based on the most recent three-year average of research doctoral degrees awarded. The allocation shall be proportional based on the institutions' share of the total research doctoral degrees awarded.

(A) Research doctoral degrees that qualify for purposes of calculation are those that are reflected on a list of research doctoral degrees published annually by Coordinating Board staff on March 1 of each fiscal year. Research doctoral degrees include an academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field and that requires completion of original research.

(B) The list of research doctoral degrees shall be annually updated by Coordinating Board staff to reflect all degree titles included in the most recently published National Science Foundation Survey of Earned Doctorates and any additional degree titles identified by the Commissioner.

§15.27. Percentage Share for Legislative Appropriation.

(a) For the purposes of calculating the legislative appropriation required for an individual institution to become TUF-eligible or to receive Level 1 Base Funding, the legislature must appropriate an amount to the Texas University Fund not less than the difference between:

(1) the quotient of:

(A) the market value of the Texas University Fund on September 1 of the state fiscal year; and

(B) one minus an incoming institution's percentage share of the Texas University Fund; and

(2) the market value of the Texas University Fund on September 1 of the state fiscal year.

(b) For purposes of calculating the legislative appropriation to become a TUF-eligible institution, an institution's percentage share of the Texas University Fund for a state fiscal year shall equal the following calculation:

(1) If the institution meets the research expenditure criteria to receive Level 1 Base Funding upon entry, as defined in §15.25 of this subchapter (relating to Permanent Endowment for Education and Research Base Funding), the percentage share shall equal the share of Level 1 Base funding an institution would have received in Permanent Endowment for Education and Research Base Funding, as calculated in §15.25 of this subchapter, had an additional institution been included in the allocation as a recipient of Level 1 Base Funding.

(2) If the institution does not meet the research expenditure criteria to receive Level 1 Base Funding upon entry, as defined in §15.25 of this subchapter, the percentage share shall equal the share of Level 2 Base funding an institution would have received in Permanent Endowment for Education and Research Base Funding, as calculated in §15.25 of this subchapter, had an additional institution been included in the allocation as a recipient of Level 2 Base Funding.

(c) For purposes of calculating the legislative appropriation for a currently TUF-eligible institution to receive Level 1 Base Funding, an institution's percentage share of the Texas University Fund for a state fiscal year shall equal the difference between the share of Level 1 Base Funding and Level 2 Base Funding an institution would have received in Permanent Endowment for Education and Research Base Funding, as calculated in §15.25 of this subchapter, had an additional institution been included in the allocation as a recipient of Level 1 Base Funding, instead of a recipient of Level 2 Base Funding.

§15.28. Endowment Calculation.

(a) A TUF-eligible institution may report a percentage share of the market value of the Texas University Fund as a true endowment for financial reporting purposes.

(b) An institution shall calculate its percentage share as seventy-five percent of the market value of the Texas University Fund multiplied by the institution's share of the Permanent Endowment for Education and Research base funding, as calculated in §15.25 of this subchapter (relating to Permanent Endowment for Education and Research Base Funding).

(c) The market value of the Texas University Fund shall be as of August 31 of the reported fiscal year as determined by the Comptroller of Public Accounts.

§15.29. Reporting.

Coordinating Board staff shall annually publish the most recent three state fiscal years of combined Federal Expenditures and Private Expenditures and research doctorates awarded, as defined under this subchapter, for general academic teaching institutions.

§15.30. National Research Support Fund.

Coordinating Board staff shall annually publish the adjusted threshold of combined Federal Expenditures and Private Expenditures needed to establish eligibility to receive a distribution from the National Research Support Fund. The amount shall align with the threshold established and published for §15.23(a)(2) of this subchapter (relating to Eligibility to Receive a Distribution from the Texas University Fund).

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER D. TEXAS FIRST EARLY HIGH SCHOOL COMPLETION PROGRAM

19 TAC §21.51, §21.52

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter D, §21.51 and §21.52, concerning Texas First Early High School Completion Program. Specifically, this amendment will align the rules with statutory amendments to Texas Education Code, §28.0253, that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session.

Rule 21.51 aligns the description of institutions eligible to participate in the program with recent legislative changes. The proposed amendments reflect the expansion of the program to all Texas public institutions of higher education to align with statutory amendments to Texas Education Code, §28.0253, enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session. The amendments add definitions for the terms used in statute and this subchapter governing applicability of the program, including definitions for public high school and open-enrollment charter school.

Rule 21.52(a) adds language to clarify that a student shall be allowed to graduate and receive a high school diploma under the Texas First Early High School Completion Program from a school district or open-enrollment charter school, as required by statute.

Rule 21.52(a)(2)(C) adds a new assessment to meet standards for eligibility for the Texas First Early High School Completion Program by adding the Foreign Language Achievement Testing Services (FLATS) assessment to Figure 1. This amendment reflects the availability of an additional assessment instrument that institutions of higher education may use to establish language proficiency.

Rule 21.52(b) clarifies that the method in which a counselor or administrator at the public school of a student who is eligible for the Texas First Early High School Completion Program will be a method established by the Coordinating Board.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the alignment of the rules with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Jennielle.strother@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

The proposed amendment affects Texas Education Code, Chapter 56, Subchapter K-1.

§21.51. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Coordinating Board--The agency, including staff, known as the Texas Higher Education Coordinating Board [~~"Coordinating board" means the agency, including staff, known as the Texas Higher Education Coordinating Board~~].

(2) Eligible Institution--An institution of higher education according to Texas Education Code, §61.003(8) [~~"Eligible institution" means an institution of higher education that is designated as a research university or emerging research university under the coordinating board's accountability system~~].

(3) Institution of Higher Education--An institution of higher education according to Texas Education Code 61.003 [~~"Institution of higher education" has the meaning assigned by Texas Education Code §61.003~~].

(4) Open-enrollment Charter--Has the meaning assigned by Texas Education Code, §12.002(3) and subchapter D.

(5) [~~(4)~~] Program--The [~~"Program" means the~~] Texas First Early High School Completion Program established under this section includes an open-enrollment charter high school or high school that is within a Texas school district.

§21.52. Eligibility for Texas First Diploma.

(a) Notwithstanding any other state or local law, a school district or open-enrollment charter school shall allow a student to graduate and receive a high school diploma [~~a student is entitled to early high school graduation~~] under the Texas First Early High School Completion Program if the student meets the criteria established in paragraphs (1) and (2) of this subsection. A student who achieves a required score on an assessment to meet the requirement of any one of paragraphs (1) and (2) of this subsection, shall be allowed to use that same assessment to meet the requirement of another section if the student's score meets the required minimum for each section.

(1) The student has met the following minimum criteria at the time of graduation:

(A) Earned at least twenty-two (22) high school credits by any permissible method, including credit by examination;

(B) Earned a final Grade Point Average equivalent to 3.0 on a 4.0 scale;

(C) Earned an overall scaled score in at least the 80th percentile on one or more of the following assessments: ACT, SAT, PSAT/NMSQT, TSIA/TSIA2, or GED, or alternatively, has a grade point average in the top ten percent of the student's current class during the current or semester prior to the counselor's or administrator's verification under subsection (b) of this section of a student's eligibility for early graduation under the Program; and

(D) Completed the requirement for the State of Texas Assessments of Academic Readiness End-of-Course (STAAR EOC) examinations for English I or II, Algebra I, and Biology by one of the following methods:

(i) If the student has taken the STAAR EOC for English I or II, Algebra I, and Biology, the student has achieved the satisfactory level of performance as defined by the Commissioner of Education; or

(ii) If the student has not taken the required STAAR EOC assessment for English I or II, Algebra I, or Biology, the student has satisfied the STAAR EOC requirement by achieving a passing score on a substitute assessment for that subject area authorized under Title 19 Texas Administrative Code, Chapter 101, Subchapter DD, §101.4002(b).

(2) The student has demonstrated the student's mastery of each subject area of English/Language Arts, Mathematics, Science, Social Studies, and a language other than English through assessments or other means eligible institutions commonly use to place students in courses that may be credited toward degree program requirements. A student may demonstrate mastery of each subject area, as applicable, by meeting one or more of the following criteria:

(A) Earning a score on the STAAR EOC assessment that meets the college readiness standards necessary to be exempt from application of the Texas Success Initiative as set out in Title 19 Texas Administrative Code, Chapter 4, Subchapter C, §4.54;

(B) Credit earned in a course in the core curriculum of an institution of higher education in which the student received at least a C; or

(C) Meeting the standards on the assessments set out in Figure 1.

Figure: 19 TAC §21.52(a)(2)(C)

~~Figure: 19 TAC §21.52(a)(2)(C)~~

(b) A counselor or administrator at the public school of a student who is eligible for early graduation under the Program must verify

that the student meets the requirements in subsection (a)(1) and (2) of this section using a method established by the Coordinating Board prior to issuing a diploma to the student under this Program. A student is responsible for providing the official copy of the assessment results to their counselor or administrator to verify these requirements.

(c) A school that issues a diploma under the Program shall require the minimum number of assessments to demonstrate that the student meets the criteria established in subsection (a)(1) and (2) of this section and may not require a student to take any other STAAR End-of-Course assessment to graduate under the Program, except as required by 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.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6537

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS
SUBCHAPTER T. TEXAS FIRST SCHOLARSHIP

19 TAC §§22.550 - 22.552, 22.554 - 22.556

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter T, §§22.550 - 22.552 and 22.554 - 22.556, concerning Texas First Scholarship. Specifically, this amendment will align the rules with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session.

Rule 22.550 aligns the purpose of the program with recent legislative changes. The proposed amendments reflect the expansion of the program to all Texas public institutions of higher education to align with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session.

Rule 22.551 adds the definition of academic year. The proposed amendments establish a definition of academic year to be consistently applied across all institutions for this program. The amendments are proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

Rule 22.552 aligns the description of institutions eligible to participate in the program with recent legislative changes. The proposed amendments reflect the expansion of the program to all Texas public institutions of higher education to align with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session.

Rule 22.554 clarifies the academic year used in determining the discontinuation of a student's eligibility. The proposed amendments establish a standard to be used across all participating institutions to reflect that the discontinuation of a student's eligibility is based on the first academic year that begins after a student's graduation from high school. The amendments are proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

Rule 22.555 clarifies the academic year used in determining the scholarship amount. The proposed amendments align the calculation with the academic year that is also used to determine the extent of a student's eligibility time period. The amendments are proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

Rule 22.556 clarifies the time period used in calculating the institution's disbursement. The proposed amendments align the calculation of the disbursement with the reporting period used to make the calculation. The amendments are proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the alignment of the rules with statutory changes that were enacted on September 1, 2023, through Senate Bill 2294, 88th Texas Legislature, Regular Session. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Pro-

grams, P.O. Box 12788, Austin, Texas 78711-2788, or via email at charles.contero-puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement this subchapter.

The proposed amendment affects Texas Education Code, Chapter 56, Subchapter K-1.

§22.550. Authority and Purpose.

(a) Authority. Unless otherwise noted in a section, the authority [~~Authority~~] for this subchapter is provided in the Texas Education Code, Chapter 56, Subchapter K-1, Texas First Scholarship Program. This subchapter establishes procedures to administer Texas Education Code, §§56.221 - 56.227.

(b) Purpose. The purpose of this program is to incentivize the enrollment of high performing students at [~~the~~] Texas [~~public research and emerging research~~] institutions of higher education as defined in Texas Education Code, §61.003.

§22.551. Definitions.

In addition to the words and terms defined in §13.142 of this title [~~Title~~] (relating to Definitions) and §22.1 of this chapter [~~Chapter~~] (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Academic Year--The 12-month period starting with the fall semester.

(2) [~~(1)~~] Program--The Texas First Scholarship program.

(3) [~~(2)~~] Scholarship--The Texas First Scholarship.

§22.552. Eligible Institutions.

(a) Participation.

(1) For any student graduating through the Texas First Early High School Completion Program on or after September 1, 2023, institutions of higher education, as defined in Texas Education Code, §61.003, are required to apply the state credit available to a student through the Program to the eligible student's cost of attendance, as outlined in §22.555 of this subchapter (relating to Scholarship Amount).

(2) For any student graduating through the Texas First Early High School Completion Program before September 1, 2023, institutions of higher education, as defined in Texas Education Code, §61.003), that are [~~Institutions~~] designated as either a public research university or public emerging research university under the coordinating board's accountability system are required to apply the state credit available to a student through the Program to the eligible student's costs of attendance, as outlined in §22.555 of this subchapter [~~(relating to Scholarship Amount)~~].

(b) Responsibilities. Participating public institutions are required to abide by the General Provisions outlined in subchapter [~~Subchapter~~] A of this chapter [~~Chapter~~] (relating to General Provisions).

(c) Approval. Each eligible public institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner or his/her designee, prior to receiving reimbursement through the program.

§22.554. Discontinuation of Eligibility or Non-Eligibility.

State credit offered to a student through this program expires at the end of the first academic year that begins following the student's graduation from high school.

§22.555. Scholarship Amount.

(a) The scholarship is issued by the Coordinating Board [~~staff~~] as a state credit for use by an eligible student at any eligible institution.

(1) For a student who graduated from high school two or more semesters or the equivalent earlier than the student's high school cohort, the state credit offered to the student will equal the maximum annual (two semester) TEXAS Grant award determined by the Coordinating Board [~~staff for the applicable academic year~~]. The calculation is based on TEXAS Grant value for the first academic year that begins following the student's graduation from high school.

(2) For a student who graduated from high school less than two semesters or the equivalent earlier than the student's high school cohort, the state credit offered to the student will equal half of the amount described by paragraph (1) of this subsection.

(b) The amount of state credit offered to a student under the program may not be considered in the calculation of any state or institutional need-based aid awards or the calculation of the student's overall financial need, unless the combination of the credit and other federal, state, and institutional financial aid, excluding work-study and loan programs, for which the student would otherwise be eligible exceeds the estimated total cost of attendance at the eligible institution at which the student is enrolled.

(c) On enrollment of an eligible student at an eligible institution, the institution shall apply the state credit to the student's charges for tuition, mandatory fees, and other costs of attendance.

(1) The amount applied for the semester is equal to the lesser of:

(A) The amount of the state credit available to the student; or

(B) The student's actual tuition, mandatory fees, and other costs of attendance at the institution.

(2) Remaining state credit may be applied to subsequent semesters prior to the end of [~~within~~] the first academic year that begins following the student's graduation from high school.

§22.556. Institutional Reimbursement.

(a) The Coordinating [~~Board~~] staff shall distribute to each eligible institution an amount of funds equal to the amount of state credit applied by the institution under §22.555 of this subchapter (relating to Scholarship Amount) during the [~~preceding~~] academic period reported under subsection (b) of this section [~~year~~].

(b) The institution's annual Financial Aid Database submission will be used to calculate the reimbursement amount.

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 October 13, 2023.

TRD-202303819
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 427-6365

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CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS
SUBCHAPTER D. LOAN REPAYMENT PROGRAM FOR MENTAL HEALTH PROFESSIONALS

19 TAC §§23.93 - 23.101

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter D, §§23.93 - 23.101, concerning Loan Repayment Program for Mental Health Professionals. Specifically, the amendments will align the eligible specialties, selection of recipients, eligibility for the program, and amount of repayment assistance in the Mental Health Professionals Loan Repayment Program with statutory changes enacted by House Bill 1211 (HB 1211), House Bill 2100 (HB 2100), and Senate Bill 532 (SB 532), 88th Texas Legislature, Regular Session.

Rule 23.93 amends the description of the purpose of the program to align with the program's expansion, as outlined in HB 1211, HB 2100, and SB 532, 88th Texas Legislature, Regular Session.

Rule 23.94 amends definitions for words and terms within the Mental Health Professionals Loan Repayment Program rules. The definitions are adopted to provide clarity for words and terms that are integral to the understanding and administration of the rules. Specifically, definitions for community-based mental health services, local mental health authority, state hospitals, and Title I schools, are added, and the definition of full-time service is amended, as these changes are necessary for the understanding and administration of additional eligibility, as outlined in HB 1211, HB 2100, and SB 532, 88th Texas Legislature, Regular Session. Additional, non-substantive changes are also made to provide clarity and define an acronym.

Rule 23.95 amends the list of eligible practice specialties, adding licensed specialist in school psychology. The change aligns the rule with the amendment to Texas Education Code (TEC), Section 61.601, HB 1211, 88th Texas Legislature, Regular Session.

Rule 23.96 amends the requirements for conditional approval into the program. The amendment adds the requirements for mental health professionals who provide mental health services to patients in state hospitals, individuals receiving community-based mental health services from a local mental health authority, or students enrolled in an eligible district or school. The change aligns the rule with the amendments to TEC, Sections 61.603 and 61.607, HB 1211 and SB 532, 88th Texas Legislature, Regular Session. The amendment also delineates between applicants who first establish eligibility for the program before September 1, 2023, and applicants who first establish eligibility for the program on or after September 1, 2023, as required by Section 11 of SB 532, 88th Texas Legislature, Regular Session. The amendment also makes a non-substantive change that aligns with a similar change in §23.93 (relating to Definitions).

Rule 23.97 amends the selection process within each practice specialty to account for applications from mental health professionals who provide mental health services to patients in state hospitals that may not be located in mental health professional shortage areas. Applications from mental health professionals who provide mental health services to individuals receiving community-based mental health services from a local mental health authority or students enrolled in an eligible district or school are accounted for in the current rule text. The amendment also makes non-substantive changes that align with similar changes in §23.93 (relating to Definitions).

Rule 23.98 amends the requirements to receive disbursements of loan repayment assistance. The amendment delineates between the requirements for licensed specialists in school psychology and the requirements for other providers. The change aligns the rule with the amendments to TEC, Sections 61.603 and 61.607, made by HB 1211 and SB 532, 88th Texas Legislature, Regular Session. It also delineates between applicants who first establish eligibility for the program before September 1, 2023, and applicants who first establish eligibility for the program on or after September 1, 2023, as required by Section 11 of HB 532, 88th Texas Legislature, Regular Session. Of note, while HB 1211 amends TEC, Section 61.603 to require one, two, three, four, or five years of service for licensed specialists in school psychology, SB 532 amends TEC, Section 61.607, to only provide payments to all participants in the program after one, two, or three years of service. Rule 23.98 is thus written to conform with the latter.

Rule 23.99 is amended to make a non-substantive change that aligns with a similar change in §23.93 (relating to Definitions).

Rule 23.100 amends the amount of repayment assistance a participant may receive through the program. The maximum amount a licensed specialist in school psychology may receive is added to the rule to align with the amendments to TEC, Section 61.607, HB 1211, 88th Texas Legislature, Regular Session. The rule also amends the percentage of the maximum funding that a participant may receive for each year of participation in the program to align with amendments to TEC, Section 61.607, made by SB 532, 88th Legislative Session. It also delineates between applicants who first establish eligibility for the program before September 1, 2023, and applicants who first establish eligibility for the program on or after September 1, 2023, as required by Section 11 of SB 532, 88th Texas Legislature, Regular Session.

Rule 23.101 is amended to make a non-substantive change that aligns with a similar change in §23.93 (relating to Definitions).

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the potential expansion in the number of mental health professionals providing services in areas of the state currently experiencing shortages. There are no anticipated economic costs

to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at charles.contero-puls@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, Section 61.608, which provides the Coordinating Board with the authority to adopt rules necessary to administer Texas Education Code, Chapter 61, Subchapter K.

The proposed amendment affects Texas Education Code, Chapter 61, Subchapter K.

§23.93. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter K, Repayment of Certain Mental Health Professional Education Loans. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.601 - 61.609.

(b) Purpose. The [~~primary~~] purpose of the Loan Repayment Program for Mental Health Professionals is to encourage qualified mental health professionals to provide services to designated recipients [~~practice~~] in a mental health professional shortage area or state hospital, through a mental health authority, or to students in eligible schools [~~designated by the U. S. Department of Health and Human Services, and provide mental health care services to recipients under the medical assistance program authorized by the Texas Human Resources Code, Chapter 32, and to enrollees under the child health plan program authorized by the Texas Health and Safety Code, Chapter 62~~].

§23.94. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board Staff --The staff of the Texas Higher Education Coordinating Board.

(2) CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.

(3) Community-Based Mental Health Services--The services found under Subchapter B, Chapter 534, Health and Safety Code.

(4) [~~(3)~~] Full-time Service--Employed or contracted full-time (at least 32 hours per week for providers participating only in the state-funded program, or at least 40 hours per week for providers participating in both the state funded program and the SLRP [~~providers~~]) by an agency or facility [~~in a mental health professional shortage area~~] for the primary purpose of providing direct mental health services to:

(A) in a mental health professional shortage area [~~Medicaid recipients~~]:

(i) Medicaid recipients;

(ii) CHIP enrollees;

(iii) persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or

(iv) persons in facilities operated by or under contract with the Texas Department of Criminal Justice; or

(B) patients in state hospitals; [~~CHIP enrollees;~~]

(C) individuals receiving community-based mental health services from a local mental health authority; and/or [~~persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or~~]

(D) students enrolled in an eligible district or school. [~~persons in facilities operated by or under contract with the Texas Department of Criminal Justice;~~]

(5) Local Mental Health Authority--as defined in Texas Health and Safety Code, §531.002.

(6) [~~(5)~~] Medicaid--The medical assistance program authorized by Chapter 32, Human Resources Code.

(7) [~~(4)~~] MHPSAs--Mental Health Professional Shortage Areas (MHPSAs) are designated by the U.S. Department of Health and Human Services (HHS) as having shortages of mental health providers and may be geographic (a county or service area), demographic (low income population), or institutional (comprehensive health center, federally qualified health center, or other public facility). Designations meet the requirements of Sec. 332 of the Public Health Service Act, 90 Stat. 2270-2272 (42 U.S.C. 254e). Texas MHPSAs are recommended for designation by HHS based on analysis of data by the Department of State Health Services.

(8) [~~(7)~~] Psychiatrist--A licensed physician who is a graduate of an accredited psychiatric residency training program.

(9) [~~(6)~~] Service Period--A period of 12 consecutive months qualifying a mental health professional for loan repayment.

(10) SLRP--A grant provided by the Health Resources and Services Administration to assist states in operating their own State Loan Repayment Program (SLRP) for primary care providers working in Health Professional Shortage Areas (HPSA).

(11) State Hospital--Facilities found under §552.0011, Health and Safety Code.

(12) Title I School--Texas public schools that receive federal funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. §6301 et seq.).

§23.95. Eligible Practice Specialties.

For purposes of this subchapter, the following mental health providers may apply for enrollment in the program:

(1) a psychiatrist;

(2) a psychologist, as defined by §501.002, Occupations Code;

(3) a licensed professional counselor, as defined by §503.002, Occupations Code;

(4) an advanced practice registered nurse, as defined by §301.152, Occupations Code, who holds a nationally recognized board certification in psychiatric or mental health nursing;

(5) a licensed clinical social worker, as defined by §505.002, Occupations Code;

(6) a licensed specialist in school psychology, as defined by §501.002, Occupations Code;

(7) [~~(6)~~] a licensed chemical dependency counselor, as defined by §504.001, Occupations Code; and

(8) [~~(7)~~] a licensed marriage and family therapist, as defined by §502.002, Occupations Code.

§23.96. Eligibility for Conditional Approval of Applications.

(a) To be eligible for the Board staff to reserve loan repayment funds, a mental health professional must:

(1) ensure that the Board staff has received the completed application by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident and have no license restrictions;

(3) not be currently fulfilling another obligation to provide mental health services as part of a scholarship agreement, a student loan agreement, or another student loan repayment agreement. [;]

[~~(4) agree to provide five consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and~~]

[~~(5) agree to provide mental health services to:~~]

[~~(A) Individuals enrolled in Medicaid or CHIP or both; or~~]

[~~(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.~~]

(b) For applicants who first establish eligibility for the program before September 1, 2023, a mental health professional must:

(1) agree to provide five consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and

(2) agree to provide mental health services to:

(A) Individuals enrolled in Medicaid or CHIP or both; or

(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(c) For applicants who first establish eligibility for the program on or after September 1, 2023, a mental health professional must:

(1) agree to provide three consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and

(2) agree to provide mental health services to:

(A) Individuals enrolled in Medicaid or CHIP or both; or

(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(d) Notwithstanding subsection (c), for applicants who first establish eligibility for the program on or after September 1, 2023, who provide mental health services to patients in state hospitals, individuals receiving community-based mental health services from a local mental health authority, or students enrolled in an eligible district or school, a mental health professional must agree to provide three consecutive years of eligible service as outlined in §23.98 of this subchapter (relating to Eligibility for Disbursement of Loan Repayment Assistance).

§23.97. Selection of Eligible Applicants and Limitations.

(a) Each fiscal year an application deadline will be posted on the program web page.

(b) Not more than 10 percent of the number of repayment assistance grants paid under this subchapter each year may be awarded to mental health professionals providing mental health services to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice. Applications from these professionals will be selected on a first-come-first-served basis.

(c) Not more than 30 percent of the number of repayment assistance grants paid under this subchapter each fiscal year may be awarded to mental health professionals in any one of the eligible practice specialties, unless excess funds remain available after the 30 percent maximum has been met.

(d) For each practice specialty, applications will be ranked in order of the following priorities:

(1) providers who benefitted from awards the previous year;

(2) providers who sign SLRP [~~SLFP~~] contracts;

(3) providers whose employers are located in areas having MHPSA scores that reflect the highest degrees of shortage. If a provider works for an agency located in an MHPSA that has satellite clinics and the provider works in more than one of the clinics, the highest MHPSA score where the provider works shall apply. If a provider travels to make home visits, the provider's agency base location and its MHPSA score shall apply. If a provider works for different employers in multiple MHPSAs having different degrees of shortage, the location having the highest MHPSA score shall apply;

(4) providers in state hospitals;

(5) [~~(4)~~] providers whose employers are located in rural areas, if, in the case of providers serving at multiple sites, at least 75% of their work hours are spent serving in those areas; and

(6) [~~(5)~~] providers whose applications were received on the earliest dates.

(e) If funds remain available after loan repayment awards have been reserved for applicants selected according to the criteria stated in

subsection (d) of this section, applications will be ranked in order of the following priorities, regardless of the applicant's practice specialty:

(1) providers whose employers are located in areas having MHPSA scores that reflect the highest degrees of shortage. If a provider works for an agency located in an MHPSA that has satellite clinics and the provider works in more than one of the clinics, the highest MHPSA score where the provider works shall apply. If a provider travels to make home visits, the provider's agency base location and its MHPSA score shall apply. If a provider works for different employers in multiple MHPSAs having different degrees of shortage, the location having the highest MHPSA score shall apply;

(2) providers whose employers are located in rural areas, if, in the case of providers serving at multiple sites, at least 75% of their work hours are spent serving in those areas; and

(3) providers whose applications were received on the earliest dates.

(f) If state funds are not sufficient to allow for maximum award amounts stated in §23.100 [~~§23.100(2) and (3)~~] of this subchapter [~~title~~] (relating to Amount of Repayment Assistance) for all eligible applicants, the Board staff may adjust in an equitable manner the state-funded distribution amounts for a fiscal year, in accordance with TEC 61.607(d).

§23.98. Eligibility for Disbursement of Loan Repayment Assistance.

(a) To be eligible to receive loan repayment assistance as a mental health professional who first established eligibility for the program before September 1, 2023, a mental health provider must:

(1) have completed one, two, three, four, or five consecutive years of practice in an MHPSA providing direct patient care to Medicaid enrollees and/or CHIP enrollees, if the practice serves children or persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor; and

(2) after an award is disbursed for a third consecutive year of service, a psychiatrist must have earned certification from the American Board of Psychiatry and Neurology or the American Osteopathic Board of Psychiatry and Neurology to qualify for continued loan repayment assistance.

(b) To be eligible to receive loan repayment assistance as a mental health professional who first established eligibility for the program on or after September 1, 2023, a mental health provider must have completed one, two, or three consecutive years of practice:

(1) in an MHPSA providing direct patient care to Medicaid enrollees and/or CHIP enrollees, if the practice serves children or persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor;

(2) providing mental health services to patients in a state hospital; or

(3) to individuals receiving community-based mental health services from a local mental health authority.

(c) Notwithstanding subsection (b), to be eligible to receive loan repayment assistance as a specialist in school psychology as outlined under §23.95(6) of this subchapter (relating to Eligible Practice Specialties), the mental health professional must:

(1) have completed one, two, or three consecutive years of employment in:

(A) a school district which is located partially or completely in a MHPSA;

(B) an open-enrollment charter school located in a MHPSA; or

(C) a Title I school; and

(2) have provided mental health services to students enrolled in that district or school during that time of employment.

§23.99. Eligible Lender and Eligible Education Loan.

(a) The Board staff shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate, graduate, and professional education of the mental health professional and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, or private foundation. A credit card debt is not considered an educational loan eligible for repayment.

(b) To be eligible for repayment, an education loan must:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for the undergraduate, graduate, or professional education of the individual applying for repayment assistance;

(2) not have been made during residency or to cover costs incurred after completion of graduate or professional education;

(3) not be in default at the time of the professional's application;

(4) not have an existing obligation to provide service for loan forgiveness through another program;

(5) not be subject to repayment through another student loan repayment or loan forgiveness program or as a condition of employment; and

(6) if the loan was consolidated with other loans, the applicant must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for his or her undergraduate, graduate, or medical education.

§23.100. Amount of Repayment Assistance.

(a) Loan repayment awards will be disbursed directly to lenders on behalf of eligible mental health professionals. [~~and:~~]

[~~(1) Repayment assistance for each year of full-time service will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:~~]

[~~(A) for the first year, 10 percent;~~]

[~~(B) for the second year, 15 percent;~~]

[~~(C) for the third year, 20 percent~~]

[~~(D) for the fourth year, 25 percent; and~~]

[~~(E) for the fifth year, 30 percent.~~]

[~~(2) The total amount of state appropriated repayment assistance received by a mental health professional under this subchapter may not exceed:~~]

[~~(A) $160,000, for a psychiatrist;~~]

[(B) $80,000, for:]

[(i) a psychologist;]

[(ii) a licensed clinical social worker, if the social worker has received a doctoral degree related to social work; or]

[(iii) a licensed professional counselor, if the counselor has received a doctoral degree related to counseling; or]

[(iv) a licensed marriage and family therapist, if the marriage and family therapist had received a doctoral degree related to marriage and family therapy;]

[(C) $60,000, for an advanced practice registered nurse;]

[(D) $40,000, for a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling; and]

[(E) $10,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received an associate degree related to chemical dependency counseling or behavioral science.]

[(3) If a mental health provider's total student loan indebtedness is less than the total amount of repayment assistance allowed for the provider's practice specialty, the annual loan repayment award amounts based on full-time service will be the following percentages of the student loan debt owed at the time of application for enrollment in the program:]

[(4) An eligible professional may receive prorated loan repayment assistance based on the percentage of full-time service provided for each service period, for a minimum of 20 hours per week if employed or contracted by an agency or facility in a mental health professional shortage area for the primary purpose of providing direct mental health services to:]

[(A) Medicaid recipients;]

[(B) CHIP enrollees;]

[(C) persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or,]

[(D) persons in facilities operated by or under contract with the Texas Department of Criminal Justice.]

[(5) Failure to meet the program requirements will result in non-payment for the applicable service period(s) and, except under circumstances determined by the Board to constitute good cause, removal from the program.]

(b) Repayment assistance for each year of full-time service for mental health professionals who first established eligibility for the program before September 1, 2023, will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:

(1) for the first year, 10 percent;

(2) for the second year, 15 percent;

(3) for the third year, 20 percent;

(4) for the fourth year, 25 percent; and

(5) for the fifth year, 30 percent.

(c) Repayment assistance for each year of full-time service for mental health professionals who first established eligibility for the program on or after September 1, 2023, will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:

(1) for the first year, 33.33 percent;

(2) for the second year, 33.33 percent; and

(3) for the third year, 33.34 percent.

(d) The total amount of state appropriated repayment assistance received by a mental health professional under this subchapter may not exceed:

(1) $160,000, for a psychiatrist;

(2) $80,000, for:

(A) a psychologist;

(B) a licensed clinical social worker, if the social worker has received a doctoral degree related to social work;

(C) a licensed professional counselor, if the counselor has received a doctoral degree related to counseling; or

(D) a licensed marriage and family therapist, if the marriage and family therapist had received a doctoral degree related to marriage and family therapy;

(3) $60,000, for an advanced practice registered nurse;

(4) $40,000, for a licensed specialist in school psychology, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling; and

(5) $10,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received an associate degree related to chemical dependency counseling or behavioral science.

(e) If a mental health provider's total student loan indebtedness is less than the total amount of repayment assistance allowed for the provider's practice specialty, the annual loan repayment award amounts based on full-time service will be the following percentages of the student loan debt owed at the time of application for enrollment in the program:

(1) For mental health professionals who first established eligibility for the program before September 1, 2023, amounts are 10% for year one, 15% for year two, 20% for year three, 25% for year four, and 30% for year five.

(2) For mental health professionals who first established eligibility for the program on or after September 1, 2023, amounts are 33.33% for year one, 33.33% for year two, and 33.34% for year three.

(f) An eligible professional may receive prorated loan repayment assistance based on the percentage of full-time service provided for each service period, for a minimum of 20 hours per week.

(g) Failure to meet the program requirements will result in non-payment for the applicable service period(s) and, except under circumstances determined by the Board staff to constitute good cause, removal from the program.

§23.101. Dissemination of Information.

The Board staff shall disseminate information about the Mental Health Professional Education Loan Repayment program to each institution of higher education or private or independent institution of higher education and to any appropriate state agency and professional association.

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 October 13, 2023.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 427-6365

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §232.7 and §232.11, concerning general certification provisions. The proposed amendments would provide minor technical edits to clarify the existing hardship exemption processes established in rule, would implement the statutory requirements of House Bill (HB) 2929, 88th Texas Legislature, Regular Session, 2023, and would update the continuing professional education (CPE) training requirements to remove the limit on certain professional development hours that can be completed by classroom teachers and school counselors every five years for the purposes of standard certificate renewal.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 232, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements, provide for rules that establish the requirements relating to types and classes of certificates issued, certificate renewal, and CPE.

As a result of the 88th Texas Legislature, Regular Session, 2023, HB 2929 amended TEC, §21.054(d) and (f), and added subsection (d-2), removing limits on the number of hours in certain specific topics that classroom teachers and school counselors can obtain in CPE every five years for purposes of certificate renewal.

Following is a description of the proposed amendments to 19 TAC Chapter 232, Subchapter A.

§232.7. Requirements for Certificate Renewal.

The proposed amendment to 19 TAC §232.7(b) would make a minor technical edit in the cross reference to paragraphs (1)-(4) to separate criteria in paragraphs (1)-(3) specific to hardship exemption requests due to catastrophic illnesses of the educator or family member and military service from criteria in paragraph (4) specific to a hardship exemption request made by a local education agency on behalf of an educator with an inactive standard certificate due to non-compliance with completion of CPE hours to meet certificate renewal requirements.

The proposed amendment to §232.7(b)(5) would add a cross reference to subsection (b)(4) to confirm that a fee is required only for hardship exemption requests specified in paragraph (4).

§232.11. Number and Content of Required Continuing Professional Education Hours.

The proposed amendment to 19 TAC §232.11(d)(3) would remove the limit on CPE hours that can be completed by classroom teachers renewing certificates on or after September 1, 2023. The section would be updated to align with provisions of HB 2929 that allow classroom teachers to complete at least 25 percent of training hours, including e-instruction, in specified topics and to confirm that hours completed beyond the 25 percent minimum can also be utilized for certificate renewal purposes.

The proposed new §232.11(d)(4) would add that CPE training hours on topics described in §232.11(d)(3) in excess of 25 percent will be counted toward a teacher's overall training requirements.

The proposed amendment to §232.11(f)(2) would strike the September 1, 2024 certificate renewal reference and related requirements on CPE hours for school counselors and would update language to specify that school counselors renewing on or after September 1, 2023, must complete at least 25 percent of CPE hours in specified topics, in alignment with provisions of HB 2929.

The proposed amendment to §232.11(f)(3) would strike paragraph (3), which limits the total number of CPE hours that a school counselor can complete in specific topics if renewing on or after September 1, 2024. The information is no longer applicable and/or needed based on clarifications about CPE training hours provided in HB 2929.

The proposed amendment to §232.11 would preserve the discretion for educators in choosing CPE hours while still reminding educators of the significance of these topic areas.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that, for the first five years the proposed rulemaking would be in effect, 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: The Texas Education Agency (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

proposal 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, repeal, or limit 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 clear guidance for applicants, educators, school districts, and providers on CPE requirements. The TEA staff has determined there is no anticipated cost to persons required to comply with the proposal.

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

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include 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 October 27, 2023, and ends November 27, 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/. The SBEC will take registered oral and written comments on the proposal at the December 8, 2023 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

19 TAC §232.7

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators; TEC, §21.041(b)(1)-(4), 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; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code (TGC), Chapter 2001, and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator (AED); and TEC, §21.0543, which requires the SBEC to propose rules that provide for CPE credit related to digital technology instruction; and Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a); 21.0031(f); 21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054; 21.0541; and 21.0543; and Texas Occupations Code, §55.002 and §55.003.

§232.7. Requirements for Certificate Renewal.

(a) The Texas Education Agency (TEA) staff shall develop procedures to:

(1) notify educators at least six months prior to the expiration of the renewal period to the email address as specified in §230.91 of this title (relating to Procedures in General);

(2) confirm compliance with all renewal requirements pursuant to this subchapter;

(3) notify educators who are not renewed due to noncompliance with this section; and

(4) verify that educators applying for reactivation of certificate(s) under §232.9 of this title (relating to Inactive Status and Late Renewal) are in compliance with subsection (c) of this section.

(b) The TEA staff shall administratively approve each hardship exemption request that meets the criteria specified in paragraphs (1) - (3) of this subsection for a hardship exemption due to a catastrophic illness or military service or paragraph (4) ~~[(1)-(4)]~~ of this subsection for a hardship exemption requested by a local education agency .

(1) A hardship exemption must be due to one of the following circumstances that prevented the educator's completion of renewal requirements:

(A) catastrophic illness or injury of the educator;

(B) catastrophic illness or injury of an immediate family member; or

(C) military service of the educator.

(2) The request for a hardship exemption must include documentation from a licensed physician or verified military records.

(3) The request for the amount of time allowed for renewal is equal to:

(A) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the educator's catastrophic illness or injury; or

(B) the amount of time that a licensed physician determined that the educator was not able to complete renewal requirements due to the catastrophic illness or injury of an immediate family member; or

(C) two years of additional time for a military service member, in accordance with the Texas Occupations Code, §55.003.

(4) A hardship exemption may be approved for a local education agency on behalf of an educator who has an invalid certificate due to lack of earning the required continuing professional education (CPE) hours as prescribed in §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours). The hardship exemption is valid for the academic year of the application and may be renewed up to one additional academic year, provided that the superintendent or designee of the local education agency requests the extension.

(5) If a hardship exemption request, as described in paragraph (4) of this subsection, is approved, the educator must pay the appropriate renewal fee, pursuant to §230.101 of this title (relating to Schedule of Fees for Certification Services).

(c) To be eligible for renewal, an educator must:

(1) subject to §232.16(c) of this title (relating to Verification of Renewal Requirements), satisfy CPE requirements, pursuant to §232.11 of this title;

(2) hold a valid standard certificate that is not currently suspended and has not been surrendered in lieu of revocation or revoked by lawful authority;

(3) not be a respondent in a disciplinary proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);

(4) be in compliance with all terms of any orders of the State Board for Educator Certification resulting from a disciplinary proceeding against the educator under Chapter 249 of this title;

(5) successfully resolve any reported criminal history, as defined by §249.3 of this title (relating to Definitions);

(6) not be in arrears of child support, pursuant to the Texas Family Code, Chapter 232;

(7) pay the renewal fee, provided in §230.101 of this title, which shall be a single fee regardless of the number of certificates being renewed; and

(8) submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the Texas Education Code, §22.0831.

(d) The TEA staff shall renew the certificate(s) of an educator who meets all requirements of this subchapter.

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 October 16, 2023.

TRD-202303839
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 475-1497

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19 TAC §232.11

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators; TEC, §21.041(b)(1)-(4), 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; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code (TGC), Chapter 2001, and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.054(d), as amended by House Bill (HB) 2929, 88th Texas Legislature, Regular Session, 2023, which specifies that subject to subsection (d-2), continuing education requirements for a classroom teacher may not require that more than 25 percent of the training required every five years include instruction in specified topics; TEC, §21.054(d-2), as added by HB 2929, 88th Texas Legislature, Regular Session, 2023, which specifies that training in a topic of instruction described by subsection (d) attended by a classroom teacher in excess of an amount of hours equal to 25 percent of the training required of the teacher every five years shall be counted towards the teacher's overall training requirements; TEC, §21.054(f), as amended by HB 2929, 88th Texas Legislature, Regular Session, 2023, which specifies that continuing education requirements for a counselor must provide that at least 25 percent of training required every five years include instruction in specified topics; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator (AED); TEC, §21.0543, which requires the SBEC to propose rules that provide for CPE credit related to digital technology instruction; and TEC, §22.0831(f), which states SBEC may propose rules regarding the deadline

for the national criminal history check and implement sanctions for persons failing to comply with the requirements; and Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a); 21.0031(f); 21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054; 21.054(d), as amended by HB 2929, 88th Texas Legislature, Regular Session, 2023; 21.054(d-2), as amended by HB 2929, 88th Texas Legislature, Regular Session, 2023; 21.054(f), as amended by HB 2929, 88th Texas Legislature, Regular Session; 2023; 21.0541; 21.0543; and 22.0831(f); and TOC, §55.002 and §55.003.

§232.11. Number and Content of Required Continuing Professional Education Hours.

(a) The appropriate number of clock-hours of continuing professional education (CPE) must be completed during each five-year renewal period.

(b) One semester credit hour earned at an accredited institution of higher education is equivalent to 15 CPE clock-hours.

(c) Required Content.

(1) All educators must receive CPE training regarding educating students with disabilities. This training must include information particular to educating students with dyslexia.

(2) Other than hours earned to comply with subsections (d), (e), (f), (g), and (k) of this section, professional development activities shall be related to the certificate(s) being renewed and focus on the standards required for issuance of the certificate(s), including:

(A) content area knowledge and skills; and

(B) professional ethics and standards of conduct.

(d) Classroom Teacher.

(1) Classroom teacher certificate holders shall complete 150 clock-hours.

(2) A classroom teacher who renews a certificate prior to September 1, 2023, must attain some hours of CPE that includes training directly related to each of the following topics and may include two or more listed topics combined:

(A) collecting and analyzing information that will improve effectiveness in the classroom;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into classroom instruction;

(D) educating diverse student populations, including:

(i) students who are educationally disadvantaged; and

(ii) students at risk of dropping out of school; and

(E) understanding appropriate relationships, boundaries, and communications between educators and students.

(3) Subject to paragraph (4) of this subsection, [~~For~~] a classroom teacher who renews a certificate on or after September 1, 2023, may not be required to obtain more than 25 percent [~~not more than 37.5 hours~~] of CPE training hours, including e-instruction [~~shall include instruction~~] in [~~,~~] and [~~must be~~] directly related to, each of the following topics , which[~~and~~] may include two or more listed topics combined:

(A) collecting and analyzing information that will improve effectiveness in the classroom;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into classroom instruction;

(D) educating diverse student populations, including:

(i) students who are educationally disadvantaged; and

(ii) students at risk of dropping out of school; and

(E) understanding appropriate relationships, boundaries, and communications between educators and students.

(4) Training in a topic of instruction described by paragraph (3) of this subsection obtained by a classroom teacher in excess of an amount of hours equal to 25 percent of CPE training hours shall be counted toward the teacher's overall training requirements.

(e) Principal and Principal as Instructional Leader.

(1) Principal and Principal as Instructional Leader certificate holders shall complete 200 clock-hours.

(2) A principal and principal as instructional leader who renews a certificate prior to September 1, 2023, must attain some hours of CPE that include training directly related to each of the following topics:

(A) effective and efficient management, including:

(i) collecting and analyzing information;

(ii) making decisions and managing time; and

(iii) supervising student discipline and managing behavior;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into campus curriculum and instruction;

(D) effective implementation of the Texas Model for Comprehensive School Counseling Programs under Texas Education Code (TEC) [~~TEC~~], §33.005;

(E) mental health programs addressing a mental health condition;

(F) educating diverse student populations, including:

(i) students who are educationally disadvantaged;

(ii) emergent bilingual students; and

(iii) students at risk of dropping out of school; and

(G) preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under Texas

Penal Code, §21.12, or for which reporting is required under TEC, §21.006.

(3) For a principal and principal as instructional leader who renews a certificate on or after September 1, 2023, not more than 50 hours of CPE training shall include instruction in, and must be directly related to, each of the following topics and may include two or more listed topics combined:

(A) effective and efficient management, including:

(i) collecting and analyzing information;

(ii) making decisions and managing time; and

(iii) supervising student discipline and managing behavior;

(B) recognizing early warning indicators that a student may be at risk of dropping out of school;

(C) digital learning, digital teaching, and integrating technology into campus curriculum and instruction;

(D) effective implementation of the Texas Model for Comprehensive School Counseling Programs under TEC, §33.005;

(E) mental health programs addressing a mental health condition;

(F) educating diverse student populations, including:

(i) students who are educationally disadvantaged;

(ii) emergent bilingual students; and

(iii) students at risk of dropping out of school; and

(G) preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under Texas Penal Code, §21.12, or for which reporting is required under TEC, §21.006.

(f) School Counselor.

(1) School Counselor certificate holders shall complete 200 clock-hours.

(2) A school counselor who renews a certificate on or after September 1, 2023, [~~prior to September 1, 2024,~~] must attain at least 25 percent [~~some hours~~] of CPE hours that includes training directly related to each of the following five topics [~~that include~~] :

(A) assisting students in developing high school graduation plans;

(B) implementing dropout prevention strategies;

(C) informing students concerning:

(i) college admissions, including college financial aid resources and application procedures; and

(ii) career opportunities;

(D) counseling students concerning mental health conditions and substance abuse, including through the use of grief-informed and trauma-informed interventions and crisis management and suicide prevention strategies; and

(E) effective implementation of the Texas Model for Comprehensive School Counseling Programs under TEC, §33.005.

~~[(3) For a school counselor who renews a certificate on or after September 1, 2024, not more than 50 hours of CPE training shall include instruction in, and must be directly related to, each of the following topics and may include two or more listed topics combined:~~

~~[(A) assisting students in developing high school graduation plans;]~~

~~[(B) implementing dropout prevention strategies;]~~

~~[(C) informing students concerning:]~~

~~*[(i)* college admissions, including college financial aid resources and application procedures; and]~~

~~*[(ii)* career opportunities;]~~

~~[(D) counseling students concerning mental health conditions and substance abuse, including through the use of grief-informed and trauma-informed interventions and crisis management and suicide prevention strategies; and]~~

~~[(E) effective implementation of the Texas Model for Comprehensive School Counseling Programs under TEC, §33.005.]~~

(g) Superintendent.

(1) Superintendent certificate holders shall complete 200 clock-hours.

(2) An individual who holds a superintendent certificate that is renewed on or after January 1, 2021, must complete at least 2.5 hours of training every five years on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children, in accordance with TEC, §21.054(h). For purposes of this subsection, "other maltreatment" has the meaning assigned by Human Resources Code, §42.002.

(h) School Librarian and Learning Resources Specialist certificate holders shall complete 200 clock-hours.

(i) Educational Diagnostician certificate holders shall complete 200 clock-hours.

(j) Reading Specialist certificate holders shall complete 200 clock-hours.

(k) The required CPE for educators who teach students with dyslexia must include training regarding new research and practices in educating students with dyslexia. The required training may be satisfied through an online course approved by Texas Education Agency staff.

(l) Professional development activities may include:

(1) an evidence-based mental health first aid training program or an evidence-based grief-informed and trauma-informed care program that is offered through a classroom instruction format that requires in-person attendance. A person receiving this training will receive twice the number of hours of instruction provided under that program, not to exceed 16 hours;

(2) suicide prevention training that meets the guidelines for suicide prevention training approved under the TEC, §21.451;

(3) an instructional course on the use of an automated external defibrillator in accordance with the guidelines established by the device's manufacturer and approved by the American Heart Association, the American Red Cross, other nationally recognized associations, or the medical director of a local emergency medical services provider, in accordance with the TEC, §21.0541;

(4) education courses that:

(A) use technology to increase the educator's digital literacy; and

(B) assist the educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices;

(5) educating students with mental health conditions, including how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma;

(6) for classroom teachers, educating emergent bilingual students; and

(7) educating students who engage in substance abuse.

(m) An educator holding multiple classes of certificates shall complete the higher number of required CPE clock-hours in the classes held during each five-year renewal period unless otherwise specified in applicable State Board for Educator Certification rules codified in the Texas Administrative Code, Title 19, Part 7.

(n) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE clock-hours. Educators must complete a minimum of one-fifth of the additional CPE clock-hours for each full calendar year that the additional class of certificate is valid.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

19 TAC §§234.1, 234.3, 234.5, 234.6, 234.9, 234.11

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§234.1, 234.3, 234.5, and 234.6 and new §234.9 and §234.11, concerning military service members, military spouses, and military veterans. The proposed revisions would implement Senate Bills (SBs) 422 and 544 and House Bill (HB) 621, 88th Texas Legislature, Regular Session, 2023. The proposed revisions would add military service members as being eligible to receive several of the provisions in place for military spouses; would add provisions to issue a three-year temporary certificate to eligible military veterans, peace officers, fire protection personnel, and emergency medical services personnel; and would also add provisions for the issuance of a one-year temporary certificate to certain instructors for the Community College of the Air Force.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 234 consolidate all military-related provisions into one chapter for all members of the military community (i.e., military service members, military spouses, and military veterans).

The proposed revisions to 19 TAC Chapter 234 would implement SBs 422 and 544 and HB 621, 88th Texas Legislature, Regular Session, 2023. Following is a description of the proposed revisions.

§234.1. Purpose.

The proposed amendment to 19 TAC §234.1 would create a new subsection (b) that adds peace officers, fire protection personnel, emergency medical services personnel, and qualified instructors for the Community College of the Air Force to these provisions usually dedicated to members of the military community (i.e., military service members, military spouses, and military veterans). The proposed change would implement legislation passed during the 88th Texas Legislature Regular Session, 2023, in a more streamlined manner by placing all the statutory provisions into one SBEC rule chapter. Proposed new subsection (c) would be relettered accordingly.

§234.3. Definitions.

The proposed amendment to 19 TAC §234.3 would expand the section by adding the definitions of the following additional eight terms: permanent change of station order, review of credentials, peace officer, fire protection personnel, emergency medical services personnel, Texas Education Agency (TEA) staff, license, and state agency. These definitions are being added to align with provisions in legislation and to offer further clarity in the review and processing of requests from members of the military community and additional groups identified in the most recent legislation passed (e.g., peace officer, fire protection personnel, emergency medical services personnel).

§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.

The proposed amendment to 19 TAC §234.5(a) would strike the language "as soon as practicable" to replace it with "within 30 days of receipt of a complete application" to align with specifications in SB 422 that emphasize the importance of timely review and processing of certification applications submitted by members of the military community.

The proposed amendment to §234.5(b) would add military service members and military veterans to the three-year certificate issuance provisions referenced in this section that are already in place for military spouses following completion of a successful review of out of state credentials.

Proposed new §234.5(f) would implement provisions from SB 422 to allow a military service member to be issued a three-year temporary certificate upon successful completion of a credentials review or to declare his or her intent to teach in Texas up to three years maximum on a license issued by another state department of education following TEA's review of his or her credentials and written confirmation of approval. These proposed changes mirror provisions reflected in §234.5(d) and §234.5(e) and established for military spouses in previous legislative sessions.

Proposed relettered §234.5(g) would add military spouses to the provisions already in rule, and the subsequent subsections would be relettered, with no additional changes to the rule text.

Proposed new §234.5(m) would be added to reference applicability of the permanent change of station order as an acceptable document that can be submitted by members of the military com-

munity to establish residency requirements as applicable for certificate issuance and to serve as an acceptable form of identification to approve the military-related fee exemptions and other established provisions for members of the military community.

§234.6. Review of Credentials and Issuance of Licensure to Military Service Members, Military Spouses, and Military Veterans.

The proposed amendment to 19 TAC §234.6(b)(1) would add clarification that a military service member is eligible for issuance of the Texas standard certificate following approval of an exemption from required examinations or after the required state certification examinations have been passed. The proposed amendment would also confirm that completion of a criminal background check is also required prior to certificate issuance.

The proposed amendment to §234.6(b)(2)(C) would add clarification that military spouses are eligible for issuance of the Texas standard certificate following approval of an exemption from required examinations or after the required state certification examinations have been passed.

The proposed amendment to §234.6(b)(3) would add clarification that military veterans are eligible for issuance of the Texas standard certificate following approval of an exemption from required examinations or after the required state certification examinations have been passed. The proposed amendment also confirms that completion of a criminal background check is also required prior to certificate issuance.

Proposed new §234.6(c) would implement a provision in SB 422 to clarify that a change in the marital status of a military spouse would not impact his or her right to utilize provisions specified in §234.6(b)(2)(A) and (B).

§234.9. Certification of Military Veterans, Peace Officers, Fire Protection Personnel, and Emergency Medical Services Personnel.

Proposed new 19 TAC §234.9(a)-(c) would implement provisions of HB 621, 88th Texas Legislature, Regular Session, 2023, to identify military veterans, peace officers, fire protection personnel, and emergency medical services personnel as the population of individuals eligible to receive the three-year temporary certificate and would establish the requirements for certificate issuance.

Proposed new §234.9(d) would provide guidance on the process to obtain a Texas standard certificate following expiration of the three-year temporary certificate.

§234.11. Certification of Full-Time Instructors for the Community College of the Air Force.

Proposed new 19 TAC §234.11(a) and (b) would implement provisions of SB 544, 88th Texas Legislature, Regular Session, 2023, to identify full-time instructors of the Community College of the Air Force as the population of individuals eligible to receive the one-year temporary certificate and would establish the requirements for certificate issuance. Proposed new §234.11(c) would provide guidance on the process to obtain a Texas standard certificate following expiration of the one-year temporary certificate.

Technical edits were made where applicable in the proposal to align the singularity of the terms *military service member, military spouse, and military veteran.*

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that, for the first five years the proposed rulemaking would be in effect, 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: The 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 increase the number of individuals subject to the rule's applicability because it would add military service members to some of the provisions already in place for military spouses, would add military veterans, peace officers, fire protection personnel, and emergency medical services personnel to the list of individuals eligible to receive a new, temporary three-year certificate created by the 88th Texas Legislature, Regular Session, 2023, to teach career and technology courses and would add full-time instructors for the Community College of the Air Force to the list of individuals eligible to receive a new temporary, one-year certificate, also created by the legislation. The proposed rulemaking would also create a new regulation by adding sections to these rules to comply with legislation and effectively implement the bills, and it would expand an existing regulation by adding to the population of individuals eligible to obtain certification and benefit from provisions specified in legislation.

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 limit or repeal an existing regulation; would not 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 the public benefit anticipated as a result of the proposal would be continued support to members of the military community who seek to become educators in Texas and the creation of additional certification pathways for military veterans, peace officers, fire protection personnel, emergency medical services personnel, and full-time instructors for the Community College of the Air Force. There is no anticipated cost to persons who are required to comply with the proposal, unless the TEA staff is unable to qualify them for military-fee exemption provisions already established in rule by past legislation. Any individuals not eligible for the military-fee exemption provisions would be subject to the

costs already established and applicable to anyone interested in pursuing teacher certification in Texas.

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

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the revisions 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 October 27, 2023, and ends November 27, 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/. The SBEC will take registered oral and written comments on the proposal at the December 8, 2023 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

STATUTORY AUTHORITY. The amendments and new sections are proposed under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0444, as added by House Bill (HB) 621, 88th Texas Legislature, Regular Session, 2023, which creates a temporary certification to teach career and technology education for certain military service members and first responders and requires the SBEC to propose rules for certificate issuance; TEC, §21.052(b-1), which requires the SBEC to propose rules to establish procedures to establish residency and expedite processing of certification applications submitted by a military veteran or military spouse; TEC, §21.052(c), which states the SBEC can specify the term of a temporary certificate issued under this subsection; TEC, §21.052(d-1), which requires the SBEC to issue a three-year temporary certificate to eligible military spouses of active-duty service members; TEC, §21.052(f), which requires the SBEC to maintain an Internet website that outlines the procedures for military community members to obtain certification in Texas; TEC, §21.052(i), which defines active-duty service, lists the branches of the United States armed forces, and confirms the members of the military community eligible for processes established to certify educators from outside the state; TEC, §21.0525, as added by Senate Bill (SB) 544, 88th Texas Legislature, Regular Session, 2023, which creates a temporary teaching certificate for certain persons with experience as instructors for the Community College of the Air Force and requires the SBEC to propose rules for certificate issuance; TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; and TEC, §21.458(a-2), as added by HB 621, 88th Texas Legislature, Regular Session, 2023, which specifies that a school district shall assign a mentor teacher to a classroom teacher who has been issued a temporary certificate to teach career and technology education under TEC, §21.0444, for at least two years; and Texas Occupations Code (TOC), §55.001, which defines key terms and identifies the individuals relevant to the processing and support of members of the military community; TOC, §55.002, which provides clarification and guidelines for implementing fee exemptions for members of the military community; TOC, §55.003, which states military service members are eligible to receive a two-year extension of time to complete requirements for license renewal; TOC, §55.004(a)-(c), which requires state agencies to adopt rules for issuance of licensure to members of the military community and provides alternatives to become eligible for licensure; TOC, §55.004(d), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023, which requires state agencies to adopt rules to allow military service members to use the same options as military spouses to meet the residency and other state-specific requirements for licensure; TOC, §55.0041, as amended by SB 422, 88th Texas Legislature, Regular Session, 2023, which updates the section title to add military service members and include them in all related provisions addressed by this section; TOC, §55.005(a), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023, which specifies that a state agency that issues a license must do so no later than 30 days following the date that a military service member, military veteran, or military spouse applies for licensure; TOC, §55.005(b), which requires that a license issued under §55.005 confers the same rights, privileges, and responsibilities as a license not issued under §55.005; TOC, §55.006, which requires state agencies to determine renewal requirements for expedited licenses issued to members of the military community; TOC, §55.007, which provides state agencies authority to credit verified military service, training, or education toward licensing requirements; TOC, §55.008, which authorizes state agencies to credit verified relevant military service, training, or education relevant to the occupation toward the apprenticeship requirements for licensure; TOC, §55.009, which confirms state agencies that issue licensure shall waive license application and examination fees paid to the state for applicable members of the military community; and TOC, §55.010, which requires state agencies to prominently post notification of licensure provisions for military service members, military veterans, and military spouses on the home page of the agency's website.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement Texas Education Code (TEC), §§21.041(b)(2) and (4); 21.044(a); 21.0444, as added by HB 621, 88th Texas Legislature, Regular Session, 2023; 21.052(b-1), (c), (d-1), (f), and (i); 21.0525, as added by SB 544, 88th Texas Legislature, Regular Session, 2023; 21.054; and 21.458(a-2), as added by HB 621, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code (TOC), §§55.001; 55.002; 55.003; 55.004(a)-(c); 55.004(d), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023; 55.0041, as amended by SB 422, 88th Texas Legislature, Regular Session, 2023; 55.005(a), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023; 55.005(b); 55.006; 55.007; 55.008; 55.009; and 55.010.

§234.1. Purpose.

(a) The purpose of identifying military service members, military spouses, and military veterans is to establish a process to count applicable military service for timely admission into educator preparation programs, expedite the completion of certification credential reviews,

support certification examination and licensure application fee exemptions as applicable, and support certification renewal of members of the military community.

(b) Effective September 1, 2023, in support of legislation passed by the 88th Texas Legislature, Regular Session, 2023, this chapter has been updated to include military veterans, peace officers, fire protection personnel, emergency medical services personnel, who meet the qualifications outlined in this chapter to be issued a three-year temporary certificate to be placed in a career and technology education assignment, and to include qualified instructors for the Community College of the Air Force to be issued a one-year temporary certificate upon enrollment in a Texas-approved educator preparation program.

(c) [~~(b)~~] In the event of conflict with any other rule in the Texas Administrative Code, Title 19, Part 7, this chapter shall supersede with regard to the certification of military service members, military spouses, and military veterans.

§234.3. Definitions.

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

(1) Military service member--A person who is on active duty.

(2) Military spouse--A person who is married to a military service member.

(3) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(4) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by the Texas Government Code (TGC), §437.001, or similar military service of another state.

(5) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(6) Permanent change of station order--United States armed forces active duty member document ordering a permanent change of station.

(7) Texas Education Agency staff--an employee of the Texas Education Agency (TEA) who performs administrative functions on behalf of the State Board for Educator Certification.

(8) Review of credentials--the licensure process completed by TEA staff for individuals certified to teach in other states or countries as specified in Chapter 230, Subchapter H, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries).

(9) Peace officer--as defined by Texas Code of Criminal Procedure, Article 2.12.

(10) Fire protection personnel--as defined by TGC, §419.021.

(11) Emergency medical services personnel--as defined by Health and Safety Code, §773.003.

(12) License--a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business, occupation, or profession.

(13) State agency--a department, board, bureau, commission, committee, division, office, council, or agency of the state.

§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.

(a) The application for certification of a military service member, military veteran, or military spouse, including an application based upon certification by a jurisdiction other than Texas that has certification requirements substantially similar to the Texas certification requirements, shall be processed within 30 days of receipt of a complete application [~~as soon as practicable~~].

(b) As soon as practicable after the issuance of a one-year certificate, Texas Education Agency (TEA) staff shall notify a military service member, a military spouse, and a military veteran, in writing or by email, [~~a military spouse~~] of the requirements for obtaining a standard Texas certificate.

(c) A military spouse who has been issued a one-year certificate prior to September 1, 2017, under the provisions of this chapter, is eligible for two additional years from the date of issuance, not to exceed a total of three years maximum, to align with provisions for a military spouse referenced in subsection (d) of this section.

(d) Effective September 1, 2017, a military spouse shall be issued a three-year temporary certificate upon completion of the review of credentials.

(e) Effective December 1, 2019, prior to beginning employment, a military spouse must declare his or her intent to teach in Texas with a license issued by another state department of education, by submitting an application and required documents for a review of credentials to the TEA and by completing the criminal background check. TEA staff must provide approval for the military spouse to teach in Texas a maximum of three years with credentials issued by another state.

(f) Effective December 1, 2023, a military service member shall be issued a three-year temporary certificate upon completion of the review of credentials, or, prior to beginning employment, a military service member must declare his or her intent to teach in Texas with a license issued by another state department of education, by submitting an application and required documents for a review of credentials to the TEA and completing the criminal background check. TEA staff must provide approval for the military service member to teach in Texas a maximum of three years with credentials issued by another state.

(g) [~~(f)~~] A military service member, [~~or~~] a military veteran , or a military spouse shall be entitled to credit verified military service, training, clinical and professional experience, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification. TEA staff and educator preparation programs (EPPs) shall use information from the U.S. Department of Veterans Affairs or other reliable sources to assist in crediting applicable military service, training, or education to certification requirements.

(h) [~~(g)~~] A military service member pursuing certification in career and technical education must meet requirements for the certificate, but for career and technical education certificate areas requiring experience and licensure, the military service member shall be entitled to substitute military experience in the trade for the required license or professional credential for the specific trade.

(i) [~~(h)~~] A military service member, military spouse, and military veteran shall complete educator examination requirements for certificate issuance as outlined in Texas Education Code, Chapter 21, Subchapter B, and rules in the Texas Administrative Code, Title 19, Part 7, or qualify for an exemption from required Texas examinations through

provisions in §152.1001 of Part 2 of this title (relating to Exceptions to Examination Requirements for Individuals Certified Outside the State).

(j) [(i)] A military [Military] service member [members] and a military veteran [veterans] are exempt from certification application fees that are paid to the state that lead to initial certification. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(k) [(j)] A military [Military] service member [members] and a military veteran [veterans] are exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, one-year certificate, or out-of-state standard certificate. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(l) [(k)] A military spouse is [Military spouses are] exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, three-year temporary certificate, or out-of-state standard certificate. This member [These members] of the military community is [are] exempt from paying the portion of the examination registration fee that is paid to the TEA.

(m) As applicable to meet residency requirements and establish acceptable identification for military-related fee exemption and other provisions, a military service member, military spouse, or military veteran can submit a copy of the permanent change of station order for the military service member, military spouse, or military veteran.

§234.6. Review of Credentials and Issuance of Licensure to Military Service Members, Military Spouses, and Military Veterans.

(a) To complete a review of credentials leading to issuance of licensure in Texas, each military service member [members], military veteran [veterans], or military spouse [spouses] must submit an application for review of credentials, copies of standard certificates issued in the other state(s), and official transcripts showing degree(s) conferred and date(s).

(b) Upon completion of the review, the Texas Education Agency (TEA) will notify each military service member, military veteran, or military spouse, as specified in paragraphs (1) - (3) of this subsection, to provide results of the licensure review and information on next steps in the licensure process as follows.

(1) A military [Military] service member [members] will receive written results of the credentials review and be issued the Texas standard certificate that aligns with certificate areas issued in other states following confirmation of exemption from or successful completion of required examinations and completion of a criminal background check.

(2) A military spouse [Military spouses] will receive written results of the credentials review and have the following three options to teach in Texas with:

(A) the license issued by another state department of education, confirmed by TEA to be in good standing;

(B) the Texas temporary three-year certificate already available under provisions in §234.5(d) of this title (relating to Certification of Military Service Members, Military Spouses, and Military Veterans); and

(C) the Texas standard certificate eligible for issuance immediately following a successful review of credentials by TEA , confirmation of exemption from or successful completion of required examinations, and completion of a criminal background check.

(3) A military veteran [Military veterans] will receive written results of the credentials review and be issued the Texas standard certificate that aligns with certificate areas issued in other states following confirmation of exemption from or successful completion of required examinations and completion of a criminal background check.

(c) A change in the marital status of a military spouse does not impact the provisions specified in subsection (b)(2)(A) and (B) of this section.

§234.9. Certification of Military Veterans, Peace Officers, Fire Protection Personnel, and Emergency Medical Services Personnel.

(a) Effective September 1, 2023, military veterans, peace officers, fire protection personnel, and emergency medical services personnel as defined in §234.3 of this title (relating to Definitions) shall be issued a one-time, nonrenewable, three-year temporary certificate for career and technology education if they meet the following:

(1) has served in the armed forces of the United States and was honorably discharged, retired, or released from active duty; or

(2) has served as a first responder and, while in good standing not because of pending or final disciplinary actions or a documented performance problem, retired, resigned, or separated from employment as a first responder; and

(A) has an associate degree from an accredited institution of higher education and 48 months of active duty military service or service as a first responder; or

(B) a bachelor's degree, which includes 60 semester credit hours completed at a public or private institution of higher education with a minimum grade point average of at least 2.50 on a four-point scale and military service or service as a first responder.

(b) A school district shall assign a mentor teacher to a classroom teacher who has been issued a temporary certificate to teach career and technology education under Texas Education Code (TEC), §21.0444, for at least two school years. A teacher assigned as a mentor must:

(1) to the extent practicable, teach in the same school;

(2) to the extent practicable, teach the same subject or grade level, as applicable; and

(3) meet the qualifications prescribed by commissioner of education rules adopted under TEC, §21.458(b), or §153.1011 of Part 2 of this title (relating to Mentor Program Allotment).

(c) An individual who meets the qualifications specified in subsection (a) of this section and who is interested in obtaining the three-year, nonrenewable temporary certificate, may submit the following items to the Texas Education Agency staff:

(1) a completed application;

(2) verification of military veteran status or licensure as a peace officer, fire protection services personnel, or emergency medical services personnel; and

(3) an official transcript showing degree conferred and conferral date, or successful completion of college coursework.

(d) A military veteran, peace officer, fire protection personnel, and emergency services personnel must enroll in a Texas-approved educator preparation program to complete requirements for issuance of the standard certificate.

§234.11. Certification of Full-Time Instructors for the Community College of the Air Force.

(a) Effective September 1, 2023, a one-year, temporary certificate may be issued to an individual who served as a full-time instructor for the Community College of the Airforce if he or she meets the following:

(1) holds a bachelor's degree as defined in §227.10 of this title (relating to Admission Criteria);

(2) has at least two semesters' experience as a full-time instructor for the Community College of the Air Force; and

(3) is currently enrolled in a Texas-approved educator preparation program.

(b) An individual who meets the qualifications specified in subsection (a) of this section and is interested in obtaining the one-year temporary certificate, may submit the following items to the Texas Education Agency (TEA) staff:

(1) a completed application;

(2) a copy of credentials to serve as an instructor for the Community College of the Air Force;

(3) an official transcript showing degree conferred and conferral date; and

(4) verification of at least two semesters' experience as a full-time instructor for the Community College of the Air Force.

(c) A qualified instructor for the Community College of the Air Force must take and pass all required examinations identified by TEA staff during the review of credentials and must complete any additional requirements specified for issuance of the standard certificate.

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 October 16, 2023.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 556. NURSE AIDES

26 TAC §§556.2, 556.3, 556.5, 556.8

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Title 26, Part 1, Chapter 556, Nurse Aides, amendments to §556.2, concerning Definitions; §556.3 concerning Nurse Aide Competency Evaluation Program (NATCEP) Requirements; §556.5, concerning Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements; and §556.8, concerning Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP). These rules contain references to §556.4, concerning Filing and Processing an Application for a NATCEP, and §556.7, concerning Review and Reapproval of a NATCEP, which are not being changed.

BACKGROUND AND PURPOSE

The purpose of the proposal is to amend the rules to stipulate that NATCEPs must accept 60 hours of classroom training through HHSC's computer-based training (CBT) for nurse aide candidates seeking to qualify for the Certified Nurse Aide (CNA) exam. The proposal updates definitions and references associated with the nurse aide CBT training and clarifies related requirements. Also, the proposal revises rule language regarding required credentials for NATCEP directors and instructors to align the rules more closely with federal requirements. More specifically, the Code of Federal Regulations (CFR) does not differentiate between the credentials required by the NATCEP program director versus the program instructor but states that the program must train nurse aides under the general supervision of a registered nurse with at least two years of nursing experience, at least one of which must be in providing long term care services. This proposal removes specific credentialing requirements in rule for NATCEP directors and instructors and replaces them with language allowing either or both to meet the federal requirements outlined in the CFR.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §556.2 revises definitions for nurse aide rules and updates references. Paragraph (6) updates the definition of "classroom training" to include HHSC's CBT. Paragraph (10) removes the definition of "curriculum" and renumbers the rule accordingly. Paragraph (12) updates the definition of facility to include a hospice inpatient unit licensed under Texas Health and Safety Code, Chapter 142. New paragraph (25) defines the acronym "NATCEP." New paragraph (29) adds a definition for "nurse aide curriculum." Paragraph (34) amends the definition of "performance record" to require documentation of the nurse aide's performance on HHSC Form 5497-NATCEP. Paragraph (37) updates a rule reference. Paragraph (38) updates the rule references for required program instructor credentials. Paragraph (41) updates the rule reference for required skills examiner credentials.

The proposed amendment to §556.3 changes the title to use the acronym "NATCEP" and revises NATCEP requirements. New subsection (j) provides that a NATCEP using a hospice inpatient unit as a clinical site may provide clinical training only in those services authorized to be provided to clients under Texas Health and Safety Code, Chapter 142. The addition of subsection (j) renumbers the subsequent subsections in the section. Subsection (n) states that the NATCEP must ensure the trainee has completed 100 hours of training, provides that the 60 hours of classroom training may be taught by the NATCEP or obtained by a trainee through HHSC's CBT, and clarifies that the 40 hours of clinical training is provided by the NATCEP. Subsection (o) updates the rule reference for requirements regarding the maintenance of NATCEP records. Subsection (p) clarifies that NATCEPs must include 16 hours of classroom training except as provided in subsection (q). Subsection (q) includes the new requirement that a NATCEP must accept proof of completion of HHSC's CBT in lieu of the 16 hours of introductory classroom training in subsection (p) and eight hours of infection control training in subsection (t); it also specifies that the trainee only performs services for which the trainee has been trained and found by a program instructor to be proficient and that such trainee may only do so under appropriate supervision and as clearly identified as a trainee during the clinical training portion of the NATCEP. Sub-

section (r) stipulates that a NATCEP that fails to accept proof of completion of HHSC's CBT for classroom training may be subject to withdrawal of program approval.

Additionally, subsection (s) within §556.3 provides updated references related to program instructor requirements. Subsection (t) clarifies that a NATCEP must teach eight hours of infection control to trainees except as provided in subsection (q), which allows trainees to complete HHSC's CBT. Subsection (w) makes a non-substantive editorial revision for clarity. Subsection (x) clarifies that a NATCEP must use HHSC Form 5497-NATCEP to document a trainee's performance of duties or skills taught and maintain a copy of it. New subsection (y) includes a provision stipulating that if a trainee successfully completes HHSC's CBT, the NATCEP must retain a copy of the HHSC-issued certificate of completion. The proposed amendment also includes non-substantive editorial and renumbering changes. Subsection (z) makes non-substantive editorial changes for clarity. Subsections (aa) and (dd) clarify rule language to differentiate between a "facility" and a "nursing facility" within the rule.

The proposed amendment to §556.5 makes the rule consistent with 42 CFR §483.152 and affords NATCEP staff more flexibility to meet the requirements. Subsection (a) stipulates that a NATCEP must have an approved program director and instructor to provide training, that the training must be performed by or under the general supervision of a registered nurse (RN) who has a minimum of two years of nursing experience, one of which must be in a nursing facility, and that the NATCEP application must certify that the program meets this requirement. Subsection (b) reiterates the requirement that a program director must be an RN in the state of Texas, have a minimum of two years of nursing experience, and have completed a course with a focus on teaching adult students or have experience in teaching adult students or supervising nurse aides. Subsection (c) allows an instructor to be a licensed vocational nurse (LVN) or RN in the state of Texas who has a minimum of two years of nursing experience and has completed a course with a focus on teaching adult students or has experience in teaching adult students or supervising nurse aides. Subsection (d) stipulates that either the program director or instructor must have at least one year of experience providing long term care services in a nursing facility. It also provides that if a NATCEP instructor is an LVN, the NATCEP must have a director with at least one year of experience providing long term care services in a nursing facility or an instructor who is an RN with at least one year of providing long term care services in a nursing facility. Subsection (e) moves the credentialing requirements for program director to subsection (d). It also clarifies that the NATCEP director must determine if trainees pass both the classroom and clinical training portions of the program and sign a competency evaluation application and the certificate of completion or a letter on letterhead stationary of the NATCEP or nursing facility stating that the training passed both the classroom and clinical portions of the competency portions of the NATCEP. Finally, it adds that completion of the classroom training for trainees who complete the HHSC CBT is determined by the certificate of completion, which includes the date the trainee completed it. Subsection (f) moves the credentialing requirements for program instructor to subsection (d). Non-substantive edits update references and renumber and improve clarity and readability.

The proposed amendment to §556.8 changes the title to use the acronym "NATCEP" and revises procedures relating to withdrawal of approval of a NATCEP. Subsection (a) clarifies that HHSC immediately withdraws approval of a facility-based NATCEP assessed a civil money penalty of $5,000 or more, which is adjusted annually under 45 CFR §102. Subsection (b) provides that HHSC will review allegations of noncompliance with this chapter by a NATCEP, notifying the program in writing and giving the program an opportunity to correct the noncompliance or providing documentation showing compliance, in writing, to HHSC within 10 days of receipt of notice of noncompliance. It further stipulates that if the NATCEP fails to correct the noncompliance, provide documentation showing compliance, or respond to HHSC's first notification, HHSC sends a second notice, which the NATCEP has 20 days to comply with or have its approval withdrawn. Subsection (d) replaces HHSC's means of notification of noncompliance via certified mail with email. Non-substantive edits improve clarity and readability.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will expand existing rule;

(7) the proposed rules will not change the number of individuals subject to the rule; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities. We are unable to determine what the economic effect on NATCEPs may be, as NATCEPs may make changes in their business practices pursuant to the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COST TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from development of the labor pool of qualified nurse aides to care for nursing facility residents, greater flexibility for NATCEPs to meet federal regulations, and clarified requirements regarding NATCEP approval.

Trey Wood has also determined that for the first five years the rules are in effect, there are no economic costs to persons who are required to comply with the proposed rules because nurse aides opting to take HHSC's free trainings will not need to pay a NATCEP to complete their training.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal 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, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Caroline Sunshine, Policy Specialist, by email to HHSCLTCR-Rules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R025" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §250.0035(d), which stipulates that the Executive Commissioner of HHSC shall adopt rules necessary to implement §250.0035, related the issuance and renewal of certificates of registration and the regulation of nurse aides as necessary to protect the public health and safety.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §531.0035.

§556.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice [~~, or~~] through online instruction taught in a virtual classroom location, or through an HHSC-approved computer-based training (CBT).

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

[~~(10) Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by HHSC.~~]

(10) [~~(11)~~] Direct supervision--Observation of a trainee performing skills in a NATCEP.

(11) [~~(12)~~] Employee misconduct registry (EMR)--The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(12) [~~(13)~~] Facility--Means:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) a licensed intermediate care facility for an individual with an intellectual disability or related condition licensed under Texas Health and Safety Code, Chapter 252;

(C) a type B assisted living facility licensed under Texas Health and Safety Code, Chapter 247; [~~or~~]

(D) a general or special hospital licensed under Texas Health and Safety Code, Chapter 241; or

(E) a hospice inpatient unit licensed under Texas Health and Safety Code, Chapter 142.

(13) [~~(14)~~] Facility-based NATCEP--A NATCEP offered by or in a nursing facility.

(14) [~~(15)~~] General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(15) [~~(16)~~] HHSC--The Texas Health and Human Services Commission or its designee.

(16) [~~(17)~~] Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(17) [~~(18)~~] Informal Review (IR)--An opportunity for a nurse aide to dispute a finding of misconduct by providing testimony and supporting documentation to an impartial HHSC staff person.

(18) [~~(19)~~] Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

(A) a physician;

(B) a physician assistant;

(C) a physical, speech, or occupational therapist;

(D) a physical or occupational therapy assistant;

(E) a registered nurse;

(F) a licensed vocational nurse; or

(G) a licensed social worker.

(19) [~~(20)~~] Licensed nurse--A registered nurse or licensed vocational nurse.

(20) [~~(21)~~] Licensed vocational nurse (LVN)--An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(21) [~~(22)~~] Military service member--A person who is on active duty.

(22) [~~(23)~~] Military spouse--A person who is married to a military service member.

(23) [~~(24)~~] Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(24) [~~(25)~~] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent, use of a resident's belongings or money without the resident's consent.

(25) NATCEP--Nurse Aide Training and Competency Evaluation Program.

(26) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(27) Non-facility-based NATCEP--A NATCEP not offered by or in a nursing facility.

(28) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity and who has been issued a certificate of registration. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(29) Nurse aide curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities, developed by HHSC.

(30) [~~(29)~~] Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect, or misappropriation of resident property.

(31) [~~(30)~~] Nurse aide training and competency evaluation program (NATCEP)--A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a nursing facility.

(32) [~~(31)~~] Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(33) [~~(32)~~] Nursing services--Services provided by nursing personnel that include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) management of health care during acute and chronic phases of illness;

(D) guidance and counseling of individuals and families; and

(E) referral to other health care providers and community resources when appropriate.

(34) [~~(33)~~] Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP and documented on HHSC Form 5497-NATCEP, Texas Nurse Aide Performance Record.

(35) [~~(34)~~] Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(36) [~~(35)~~] Personal protective equipment (PPE)--Specialized clothing or equipment, worn by an employee for protection against infectious materials.

(37) [~~(36)~~] Program director--An individual who is approved by HHSC and meets the requirements in §556.5(b) and (d) [~~§556.5(a)~~] of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(38) [~~(37)~~] Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(c) and (d) [~~§556.5(b)~~] of this chapter.

(39) [~~(38)~~] Resident--An individual accepted for care or residing in a facility.

(40) [~~(39)~~] Registered nurse (RN)--An individual licensed by the Texas Board of Nursing to practice professional nursing.

(41) [~~(40)~~] Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(h) [~~§556.5(d)~~] of this chapter.

(42) [~~(41)~~] Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§556.3. NATCEP [~~Nurse Aide Training and Competency Evaluation Program (NATCEP)~~] Requirements.

(a) To train nurse aides, a nursing facility must apply for and obtain approval from HHSC to offer a NATCEP or contract with another entity offering a NATCEP. The nursing facility must participate in Medicare, Medicaid, or both, to apply for approval to be a NATCEP.

(b) A person who wants to offer a NATCEP must file a complete NATCEP application with HHSC.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each location at which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site. The clinical site must have all necessary equipment needed to practice and perform skills training.

(e) A NATCEP may offer clinical training hours in a laboratory setting under the following circumstances:

(1) no appropriate and qualified clinical site is located within 20 miles of the location of the NATCEP; or

(2) HHSC has determined that clinical training provided in a facility poses a risk to an individual's health or safety based on the existence of a disaster declared at the federal or state level. A NATCEP must request the ability to complete clinical training hours in a laboratory setting under the circumstances described in subsection (e)(1) of this section. HHSC will alert the public of the availability of laboratory training under the circumstances described in subsection (e)(2) of this section.

(f) HHSC does not approve a NATCEP offered by or in a nursing facility if, within the previous two years, the nursing facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than $5,000 as adjusted annually under 45 Code of Federal Regulations (CFR) part 102 for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(g) Clinical training provided by a NATCEP in a facility other than a nursing facility must be provided under the direct supervision of the NATCEP instructor and cannot be delegated to any staff of the facility.

(h) A NATCEP using an assisted living facility as a clinical site may provide clinical training only in those services that are authorized to be provided to residents under Texas Health and Safety Code, Chapter 247.

(i) A NATCEP using an intermediate care facility for an individual with an intellectual disability or related conditions as a clinical site may provide clinical training only in those services that are authorized to be provided to individuals under Texas Health and Safety Code, Chapter 252.

(j) A NATCEP using a hospice inpatient unit as a clinical site may provide clinical training only in those services that are authorized to be provided to clients under Texas Health and Safety Code, Chapter 142.

(k) [~~(j)~~] A nursing facility that is prohibited from offering a NATCEP under subsection (e) of this section may contract with a person to offer a NATCEP in accordance with §1819(f)(2)(C) and §1919(f)(2)(C) of the Act so long as the person has not been employed by the nursing facility or by the nursing facility's owner and:

(1) the NATCEP is offered to employees of the nursing facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited nursing facility;

(3) there is no other NATCEP offered within a reasonable distance from the nursing facility; and

(4) an adequate environment exists for operating a NATCEP in the nursing facility.

(l) [~~(k)~~] A person who wants to contract with a nursing facility in accordance with subsection (k) [~~(j)~~] of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited nursing facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the nursing facility is no longer prohibited from offering a NATCEP.

(m) [~~(l)~~] A nursing facility that is prohibited from offering a NATCEP under subsection (e)(3) of this section may request a Centers for Medicare and Medicaid Services waiver of the prohibition related to the civil money penalty in accordance with §1819(f)(2)(D) and §1919(f)(2)(D) of the Act and 42 CFR §483.151(c) if:

(1) the civil money penalty was not related to the quality of care furnished to residents;

(2) the NATCEP submits a request to HHSC for the waiver; and

(3) the Centers for Medicare and Medicaid Services approves the waiver.

(n) [~~(m)~~] A NATCEP must ensure the trainee has completed 100 hours of training [~~provide at least 100 hours of training to a trainee~~]. The 100 hours must include:

(1) 60 hours of classroom training: [~~; and~~]

(A) taught by the NATCEP either in-person or virtually; or

(B) completed by the trainee through HHSC's computer-based training (CBT) within the preceding 12 months; and

(2) 40 hours of clinical training provided by the NATCEP with at least one program instructor for every 10 trainees.

(o) [~~(n)~~] A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (y) [~~(q)~~] of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course. This policy and associated procedures must describe the procedures the NATCEP uses to:

(A) verify a trainee's identity;

(B) ensure protection of a trainee's privacy and personal information; and

(C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(p) [~~(o)~~] A NATCEP must teach the curriculum established by HHSC and described in 42 CFR §483.152. Except as provided in subsection (q) of this section, the [~~The~~] NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;

(2) infection control;

(3) safety and emergency procedures, including the Heimlich maneuver;

(4) promoting a resident's independence;

(5) respecting a resident's rights;

(6) basic nursing skills, including:

(A) taking and recording vital signs;

(B) measuring and recording height and weight;

(C) caring for a resident's environment;

(D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(E) caring for a resident when death is imminent;

(7) personal care skills, including:

(A) bathing;

(B) grooming, including mouth care;

(C) dressing;

(D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;

(B) awareness of developmental tasks associated with the aging process;

(C) how to respond to a resident's behavior;

(D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

(A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;

(B) communicating with a cognitively impaired resident;

(C) understanding the behavior of a cognitively impaired resident;

(D) appropriate responses to the behavior of a cognitively impaired resident; and

(E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

(A) training a resident in self-care according to the resident's abilities;

(B) use of assistive devices in transferring, ambulation, eating, and dressing;

(C) maintenance of range of motion;

(D) proper turning and positioning in bed and chair;

(E) bowel and bladder training; and

(F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

(A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(q) If a trainee completes HHSC's 60-hour classroom training CBT, a NATCEP must accept proof of completion of the CBT in lieu of the 16 introductory hours of classroom training in subsection (p) of this section and the eight hours of infection control training in subsection (t) of this section. The NATCEP must ensure that the trainee:

(1) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(2) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(3) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(4) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(r) A NATCEP that fails to accept proof of completion of the classroom training in accordance with subsection (n)(1)(B) of this chapter may be subject to §556.8 of this chapter (relating to Withdrawal of Approval of a NATCEP).

(s) [~~(p)~~] A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(b) - (d) [~~§556.5(a) and (b)~~] of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(t) [~~(q)~~] Except as provided in subsection (q) of this section, a [~~A~~] NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(u) [~~(r)~~] A NATCEP must verify that a trainee:

(1) is not listed on the NAR in revoked status;

(2) is not listed as unemployable on the EMR; and

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) or convicted of a criminal offense listed in THSC §250.006(b) within the five years immediately before participating in the NATCEP.

(v) [~~(s)~~] A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of the [a] NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(w) [(t)] A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. The [A] NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(x) [(u)] A NATCEP must use [an] HHSC Form 5497-NATCEP, Texas Nurse Aide Performance Record, [performance record] to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record. The NATCEP must maintain a copy of the performance record.

(y) [(v)] A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records available to HHSC or its designees at any reasonable time.

(1) The classroom and clinical training records must include:

(A) dates and times of all classroom and clinical training;

(B) the full name and social security number of each trainee;

(C) a record of the date and time of each classroom and clinical training session a trainee attends;

(D) a final course grade that indicates pass or fail for each trainee; and

(E) a physical or electronic sign-in record for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (o)(2) [(i)(2)] of this section.

(2) If a trainee completes the classroom training by successfully completing HHSC's CBT, a NATCEP must retain records that include a copy of the trainee's certification of completion for the CBT. The certificate of completion must be issued by HHSC and include the date the trainee completed the CBT.

(3) [(2)] A NATCEP must provide to HHSC, on the NATCEP application, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(z) [(w)] A nursing facility must not charge a nurse aide for any portion of a [the] NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins the [a] NATCEP.

(aa) [(x)] HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a nursing facility within 12 months of [after] completing the NATCEP.

(bb) [(y)] HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(cc) [(z)] HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(dd) [(aa)] A new employee or trainee orientation given by a nursing facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(ee) [(bb)] A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.5. Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements.

(a) A NATCEP must have an approved program director and program instructor to provide training.

(1) Training of trainees must be performed by or under the general supervision of a registered nurse (RN) who has a minimum of two years of nursing experience, at least one year of which must be in a nursing facility.

(2) An applicant for a NATCEP must certify on the NATCEP application that the NATCEP meets the requirements in paragraph (1) of this subsection.

(b) A program director must:

(1) be an RN in the state of Texas;

(2) have a minimum of two years of nursing experience; and

(3) have completed a course focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(c) An instructor must:

(1) be a licensed vocational nurse (LVN) or an RN in the state of Texas;

(2) have a minimum of two years of nursing experience; and

(3) have completed a course focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(d) Either the program director or a program instructor must have at least one year of experience providing long term care services in a nursing facility. If an instructor is an LVN, a NATCEP must have:

(1) a director with at least one year of providing long term care services in a nursing facility; or

(2) an instructor who is an RN with at least one year of providing long term care services in a nursing facility.

(e) [(a)] Program director. A program director must directly perform training or have general supervision of the program instructor and supplemental trainers. A NATCEP must have a program director when the NATCEP applies for initial approval by HHSC in accordance

with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval.

[(1) The program director must:]

[(A) be an RN in the state of Texas;]

[(B) have a minimum of two years of nursing experience, with at least one year of providing long term care services in a nursing facility; and]

[(C) have completed a course that focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.]

(1) [(2)] In a facility-based NATCEP, the director of nursing (DON) for the nursing facility may be approved as the program director but must not conduct the training.

(2) [(3)] A program director may supervise more than one NATCEP.

(3) [(4)] A program director's responsibilities include, but are not limited to:

(A) directing the NATCEP in compliance with the Act and this chapter;

(B) directly performing training or having general supervision of the program instructor and supplemental trainers;

(C) ensuring that NATCEP records are maintained;

(D) determining if trainees have passed both the classroom and clinical training portions [portion] of the NATCEP;

(E) signing a competency evaluation application completed by a trainee who has passed both the classroom and clinical training portions [portion] of the NATCEP; and

(F) signing a certificate of completion or a letter on letterhead stationery of the NATCEP or the nursing facility, stating that the trainee passed both the classroom and clinical training portions [portion] of the NATCEP if the trainee does not take the competency evaluation with the same NATCEP. The certificate or letter must include the date training was completed, the total training hours completed, and the official NATCEP name and number on file with HHSC.

(G) Completion of the classroom training for trainees who complete the HHSC CBT is determined by the certificate of completion, which includes the date the trainee completed the CBT.

(4) [(5)] A NATCEP must submit a NATCEP application for HHSC approval if the program director of the NATCEP changes.

(f) [(b)] Program instructor. A NATCEP must have at least one qualified program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter and when training occurs.

[(1) A program instructor must:]

[(A) be a licensed nurse;]

[(B) have a minimum of one year of nursing experience in a nursing facility;]

[(C) have completed a course that focused on teaching adult students or have experience teaching adult students or supervising nurse aides; and]

[(D) work under the general supervision of the program director or be the program director.]

(1) [(2)] The program instructor is responsible for conducting the classroom and clinical training of the NATCEP under the general supervision of the program director.

(2) [(3)] An applicant for a NATCEP must certify on the NATCEP application that all program instructors meet the requirements in subsection (c) of this section [paragraph (1)(A) - (D) of this subsection].

(3) [(4)] A NATCEP must submit a NATCEP application for HHSC approval if a program instructor of the NATCEP changes.

(g) [(c)] Supplemental trainers. Supplemental trainers may supplement the training provided by the program instructor in a NATCEP.

(1) A supplemental trainer must be a licensed health professional acting within the scope of the professional's practice and have at least one year of experience in the field of instruction.

(2) The program director must select and supervise each supplemental trainer.

(3) A supplemental trainer must not act in the capacity of the program instructor without HHSC approval. To request approval, a NATCEP must submit a NATCEP application to HHSC.

(h) [(d)] Skills examiner. A skills examiner must administer the [a] competency evaluation.

(1) HHSC or its designee approves an individual as a skills examiner if the individual:

(A) is an RN;

(B) has a minimum of one year of professional experience in providing care for the elderly or chronically ill of any age; and

(C) has completed a skills training seminar conducted by HHSC or its designee.

(2) A skills examiner must:

(A) adhere to HHSC standards for each skill examined;

(B) conduct a competency evaluation in an objective manner according to the criteria established by HHSC;

(C) validate competency evaluation results on forms prescribed by HHSC;

(D) submit prescribed forms and reports to HHSC or its designee; and

(E) not administer a competency evaluation to an individual who participates in a NATCEP for which the skills examiner was the program director, the program instructor, or a supplemental trainer.

§556.8. Withdrawal of Approval of a NATCEP [Nurse Aide Training and Competency Evaluation Program (NATCEP)].

(a) HHSC immediately withdraws approval of a [nursing] facility-based NATCEP if the nursing facility where the NATCEP is offered has:

(1) been granted a waiver concerning the services of an RN under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) been subject to an extended (or partially extended) survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) been assessed a civil money penalty of not less than $5,000, as adjusted annually under 45 Code of Federal Regulations (CFR), Part 102, for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) been subject to denial of payment under Title XVIII or Title XIX of the Act;

(5) operated under state-appointed or federally appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Social Security Act;

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2); or

(8) refused to permit unannounced visits by HHSC.

(b) HHSC withdraws approval of a NATCEP if the NATCEP does not comply with §556.3 of this chapter (relating to NATCEP [~~Nurse Aide Training and Competency Evaluation Program (NAT-CEP)~~] Requirements).

(1) HHSC reviews allegations of noncompliance with this chapter by a NATCEP. If HHSC receives an allegation of noncompliance, HHSC notifies the NATCEP in writing and gives the NATCEP an opportunity to correct the noncompliance or provide documentation showing compliance. The NATCEP must correct the noncompliance or provide evidence of compliance and submit notification of the correction or documentation to show compliance to HHSC, in writing, within 10 days after receipt of the notice of noncompliance.

(2) If the NATCEP fails to correct the noncompliance, provide documentation showing compliance, or respond to the first notification from HHSC, HHSC sends a second notice. The NATCEP must correct the noncompliance or provide documentation showing compliance and submit notification of the correction or documentation to show compliance to HHSC, in writing, within 20 days after receipt of the second notice. Failure to comply will result in withdrawal of approval of the NATCEP.

(c) If HHSC withdraws approval of a NATCEP for failure to comply with §556.3 of this chapter, HHSC does not approve the NATCEP for at least two years after the date the approval was withdrawn.

(d) If HHSC proposes to withdraw approval of a NATCEP based on subsection (a) of this section, HHSC notifies the NATCEP [~~by certified mail~~] of the facts or conduct alleged to warrant the withdrawal. HHSC sends [~~mails~~] the notice to the facility's last known email address as shown in HHSC records.

(e) A dually certified nursing facility that offers a NATCEP may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself, in accordance with 42 CFR [~~Code of Federal Regulations (CFR)~~], Part 498.

(f) A nursing facility that offers a NATCEP and that participates only in Medicaid may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act), except the nursing facility must request the hearing within 60 days after receipt of the notice described in subsection (d) of this section, as allowed by 42 CFR §431.153.

(g) A nursing facility may request a hearing under subsection (e) or (f) of this section, but not both.

(h) If the finding of noncompliance that led to the denial of approval of the NATCEP by HHSC is overturned, HHSC rescinds the denial of approval of the NATCEP.

(i) If HHSC proposes to withdraw approval of a NATCEP based on §556.3 of this chapter or §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the NATCEP may request a hearing to challenge the withdrawal. A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedures Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If a NATCEP does not make a timely request for a hearing, the applicant has waived the opportunity for a hearing and HHSC may withdraw the approval.

(j) A trainee who started a NATCEP before HHSC sent notice that it was withdrawing approval of the NATCEP may complete the NATCEP.

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 October 12, 2023.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: November 26, 2023
For further information, please call: (512) 438-3161

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts proposes amendment to §3.334, concerning local sales and use taxes.

The comptroller proposes to add subsection (c)(7) regarding the location where an order is received:

"The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller."

The text is taken from Section 3.10.1C5 of the Streamlined Sales and Use Tax Agreement. *See* https://www.streamlinedsalestax.org/docs/default-source/agreement/ssuta/ssuta-

as-amended-through-05-24-23-with-hyperlinks-and-compiler-notes-at-end.pdf.

In its 2014 rulemaking, the comptroller proposed a definition of "receive," but deleted the proposed definition in response to concerns stated in oral and written comments. *See* (39 TexReg 4179) (May 30, 2014) (proposed rule amendment) and (39 TexReg 9598) (December 5, 2014) (adopted rule amendment).

In its January 2023 rulemaking, the comptroller again declined to adopt a definition of "receive" and instead, addressed the two circumstances that were most prominently debated - automated website orders and fulfillment warehouses. Subsection (b) of the adopted rule articulated the comptroller's interpretation that an automated website "receives" the order and that a fulfillment warehouse does not "receive" the order when it is forwarded from the website to the warehouse. *See* (48 TexReg 400) (January 27, 2023).

Since then, it has become apparent that other circumstances also require a clear articulation of the comptroller's interpretation of the term "received." Thus, the comptroller is proposing a general standard that is applicable to all situations, as well as to automated website orders and fulfillment warehouses.

The proposed standard comports with the ordinary usage of the terms, as evidenced by the fact that the standard has been approved by twenty-four states under the Streamlined Sales Tax Agreement. The proposed standard will also promote uniformity with those states that have elected or will elect origin-based sourcing.

The comptroller is currently in litigation with cities claiming that the location where an order is received should be the location where the vendor forwards the order for fulfillment, rather than the location where the order is received from the customer. *See City of Coppell, Texas; the City of Humble, Texas; the City of DeSoto, Texas; the City of Carrollton, Texas; the City of Farmers Branch, Texas; and the City of Round Rock, Texas v. Glenn Hegar,* Cause No. D-1-GN-21-003198 in Travis County, Texas District Court. However, as explained more fully in the January 2023 rulemaking, the legislative history indicates that the legislature did not intend a fulfillment warehouse to be the location where the order was received unless the fulfillment warehouse received the order directly from the customer. *See* (48 TexReg 398) (January 27, 2023).

In addition, as explained more fully in the January 2023 rulemaking (48 TexReg 396), the comptroller's current interpretation goes as far back as Comptroller's Decision No. 15,654 (1985), which stated:

"But it seems to the administrative law judge that the legislature was amending the law if not entirely in reaction to the then-pending case of *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633 (Tex. Civ. App.-Texarkana, writ ref'd n.r.e.), at least partly in reaction to that case. And if that be so, then the legislature did not want warehousing and storage facilities (many of which are outside city limits) to be the places where sales were consummated for local sales tax purposes unless orders were actually received there by personnel working there, but wanted the office location out of which the salesman operated to be the place where the sales were consummated."

The comptroller expects this issue to be fully litigated. But in the interim, the comptroller must still apply the local tax consummation statutes to pending controversies, and taxpayers are entitled to understand the basis for the comptroller's rulings. Adoption of a definitive standard may also facilitate a more definitive decision from the courts.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by updating the rule to reflect or clarify the current policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

The comptroller will hold a hearing to take public comments, on November 8, 2023 in Room 2.034 of the Barbara Jordan Building, 1601 Congress Ave., Austin, Texas 78701. Interested persons may sign up to testify beginning at 8:30 a.m. and testimony will be heard on a first come first serve basis. All persons will have 10 minutes to present their testimony and shall also provide their testimony in writing prior to their oral testimony.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The comptroller proposes the amendment under Tax Code, §§111.002 (Comptroller's Rule; Compliance; Forfeiture); 321.306 (Comptroller's Rules); 322.203 (Comptroller's Rules); 323.306 (Comptroller's Rules), which authorize the comptroller to adopt rules to implement the tax statutes.

The amendment to this section implements Tax Code, §151.0595 (Single Local Tax Rate for Remote Sellers); Tax Code, Chapter 321, Subchapters A, B, C, D, and F; Tax Code, Chapter 322; Tax Code, Chapter 323.

§3.334. Local Sales and Use Taxes.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cable system--The system through which a cable service provider delivers cable television or bundled cable service, as those terms are defined in §3.313 of this title (relating to Cable Television Service and Bundled Cable Service).

(2) City--An incorporated city, municipality, town, or village.

(3) City sales and use tax--The tax authorized under Tax Code, §321.101(a), including the additional municipal sales and use tax authorized under Tax Code, §321.101(b), the municipal sales and use tax for street maintenance authorized under Tax Code, §327.003, the Type A Development Corporation sales and use tax authorized under Local Government Code, §504.251, the Type B Development Corporation sales and use tax authorized under Local Government Code, §505.251, a sports and community venue project sales and use tax

adopted by a city under Local Government Code, §334.081, and a municipal development corporation sales and use tax adopted by a city under Local Government Code, §379A.081. The term does not include the fire control, prevention, and emergency medical services district sales and use tax authorized under Tax Code, §321.106, or the municipal crime control and prevention district sales and use tax authorized under Tax Code, §321.108.

(4) Comptroller's website--The comptroller's website concerning local taxes located at: https://comptroller.texas.gov/taxes/sales/.

(5) County sales and use tax--The tax authorized under Tax Code, §323.101, including a sports and community venue project sales and use tax adopted by a county under Local Government Code, §334.081. The term does not include the county health services sales and use tax authorized under Tax Code, §324.021, the county landfill and criminal detention center sales and use tax authorized under Tax Code, §325.021, or the crime control and prevention district sales and use tax authorized under Tax Code, §323.105.

(6) Drop shipment--A transaction in which an order is received by a seller at one location, but the item purchased is shipped by the seller from another location, or is shipped by the seller's third-party supplier, directly to a location designated by the purchaser.

(7) Engaged in business--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(8) Extraterritorial jurisdiction-An unincorporated area that is contiguous to the corporate boundaries of a city as defined in Local Government Code, §42.021.

(9) Fulfill--To complete an order by transferring possession of a taxable item to a purchaser, or to ship or deliver a taxable item to a location designated by the purchaser. The term does not include receiving or tracking an order, determining shipping costs, managing inventory, or other activities that do not involve the transfer, shipment, or delivery of a taxable item to the purchaser or a location designated by the purchaser.

(10) Itinerant vendor--A seller who travels to various locations for the purpose of receiving orders and making sales of taxable items and who has no place of business in this state. A person who sells items through vending machines is also an itinerant vendor. A salesperson that operates out of a place of business in this state is not an itinerant vendor.

(11) Kiosk--A small stand-alone area or structure:

(A) that is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) that is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(12) Local taxes--Sales and use taxes imposed by any local taxing jurisdiction.

(13) Local taxing jurisdiction--Any of the following:

(A) a city that imposes sales and use tax as provided under paragraph (3) of this subsection;

(B) a county that imposes sales and use tax as provided under paragraph (5) of this subsection;

(C) a special purpose district created under the Special District Local Laws Code or other provisions of Texas law that is authorized to impose sales and use tax by the Tax Code or other provisions of Texas law and as governed by the provisions of Tax Code, Chapters 321 or 323 and other provisions of Texas law; or

(D) a transit authority that imposes sales and use tax as authorized by Transportation Code, Chapters, 451, 452, 453, 457, or 460 and governed by the provisions of Tax Code, Chapter, 322.

(14) Marketplace provider--This term has the meaning given in §3.286 of this title.

(15) Order placed in person--An order placed by a purchaser with the seller while physically present at the seller's place of business regardless of how the seller subsequently enters the order.

(16) Place of business of the seller - general definition--A place of business of the seller must be an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items from persons other than employees, independent contractors, and natural persons affiliated with the seller. An "established outlet, office, or location" usually requires staffing by one or more sales personnel. The term does not include a computer server, Internet protocol address, domain name, website, or software application. The "purpose" element of the definition may be established by proof that the sales personnel of the seller receive three or more orders for taxable items at the facility during the calendar year. Additional criteria for determining when a location is a place of business of the seller are provided in subsection (b) of this section for distribution centers, manufacturing plants, storage yards, warehouses and similar facilities; kiosks; and purchasing offices. An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business, is not a place of business of the seller if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or exists solely to rebate a portion of the tax imposed by those chapters to the contracting business. An outlet, office, facility, or location does not exist to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or solely to rebate a portion of the tax imposed by those chapters if the outlet, office, facility, or location provides significant business services, beyond processing invoices, to the contracting business, including logistics management, purchasing, inventory control, or other vital business services.

(17) Purchasing office--An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business.

(18) Remote Seller--As defined in §3.286 of this title, a remote seller is a seller engaged in business in this state whose only activity in the state is:

(A) engaging in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; or

(B) soliciting orders for taxable items by mail or through other media including the Internet or other media that may be developed in the future.

(19) Seller--This term has the meaning given in §3.286 of this title and also refers to any agent or employee of the seller.

(20) Special purpose district--A local governmental entity authorized by the Texas legislature for a specific purpose, such as crime control, a local library, emergency services, county health services, or a county landfill and criminal detention center.

(21) Storage--This term has the meaning given in §3.346 of this title (relating to Use Tax).

(22) Temporary place of business of the seller--A location operated by a seller for a limited period of time for the purpose of selling and receiving orders for taxable items and where the seller has inventory available for immediate delivery to a purchaser. For example, a person who rents a booth at a weekend craft fair or art show to sell and take orders for jewelry, or a person who maintains a facility at a job site to rent tools and equipment to a contractor during the construction of real property, has established a temporary place of business. A temporary place of business of the seller includes a sale outside of a distribution center, manufacturing plant, storage yard, warehouse, or similar facility of the seller in a parking lot or similar space sharing the same physical address as the facility but not within the walls of the facility.

(23) Transit authority--A metropolitan rapid transit authority (MTA), advanced transportation district (ATD), regional or subregional transportation authority (RTA), city transit department (CTD), county transit authority (CTA), regional mobility authority (RMA) or coordinated county transportation authority created under Transportation Code, Chapters 370, 451, 452, 453, 457, or 460.

(24) Two percent cap--A reference to the general rule that, except as otherwise provided by Texas law and as explained in this section, a seller cannot collect, and a purchaser is not obligated to pay, more than 2.0% of the sales price of a taxable item in total local sales and use taxes for all local taxing jurisdictions.

(25) Use--This term has the meaning given in §3.346 of this title.

(26) Use tax--A tax imposed on the storage, use or other consumption of a taxable item in this state.

(b) Determining the place of business of a seller.

(1) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller for the purpose of selling taxable items where sales personnel of the seller receive three or more orders for taxable items during the calendar year from persons other than employees, independent contractors, and natural persons affiliated with the seller is a place of business of the seller. Forwarding previously received orders to the facility for fulfilment does not make the facility a place of business.

(B) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller.

(2) Kiosks. A kiosk is not a place of business of the seller for the purpose of determining where a sale is consummated for local tax purposes. A seller who owns or operates a kiosk in Texas is, however, engaged in business in this state as provided in §3.286 of this title.

(3) Purchasing offices.

(A) A purchasing office is not a place of business of the seller if the purchasing office exists solely to rebate a portion of the local sales and use tax imposed by Tax Code, Chapters 321, 322, or 323 to a business with which it contracts; or if the purchasing office functions or exists to avoid the tax legally due under Tax Code, Chapters 321, 322, or 323. A purchasing office does not exist solely to rebate a portion of the local sales and use tax or to avoid the tax legally due under Tax Code, Chapters 321, 322, or 323 if the purchasing office provides significant business services to the contracting business beyond processing invoices, including logistics management, purchasing, inventory control, or other vital business services.

(B) In making a determination under subparagraph (A) of this paragraph, as to whether a purchasing office provides significant business services to the contracting business beyond processing invoices, the comptroller will compare the total value of the other business services to the value of processing invoices. If the total value of the other business services, including logistics management, purchasing, inventory control, or other vital business services, is less than the value of the service to process invoices, then the purchasing office will be presumed not to be a place of business of the seller.

(C) If the comptroller determines that a purchasing office is not a place of business of the seller, the sale of any taxable item is deemed to be consummated at the place of business of the seller from whom the purchasing office purchased the taxable item for resale and local sales and use taxes are due according to the following rules.

(i) When taxable items are purchased from a Texas seller, local sales taxes are due based on the location of the seller's place of business where the sale is deemed to be consummated, as determined in accordance with subsection (c) of this section.

(ii) When the sale of a taxable item is deemed to be consummated at a location outside of this state, local use tax is due based on the location where the items are first stored, used or consumed by the entity that contracted with the purchasing office in accordance with subsection (d) of this section.

(4) An order that is received by a salesperson who is not at a place of business of the seller when the salesperson receives the order is treated as being received at the location from which the salesperson operates. Examples include orders that a salesperson receives by mail, telephone, including Voice over Internet Protocol and cellular phone calls, facsimile, and email while traveling. The location from which the salesperson operates is the principal fixed location where the salesperson conducts work-related activities. The location from which a salesperson operates will be a place of business of the seller only if the location meets the definition of a "place of business of a seller" in subsection (a)(16) of this section on its own, without regard to the orders imputed to that location by this paragraph.

(5) A facility without sales personnel is usually not a "place of business of the seller." A vending machine is not "an established outlet, office, or location," and does not constitute a "place of business of the seller." Instead, a vending machine sale is treated as a sale by an itinerant vendor. See subsections (a)(10) and (c)(6) of this section. However, a walk-in retail outlet with a stock of goods available for immediate purchase through a cashier-less point of sale terminal at the outlet would be "an established outlet, office, or location" so as to constitute a "place of business of the seller" even though sales personnel are not required for every sale. A computer that operates an automated shopping cart software program is not an established outlet, office, or

location," and does not constitute a "place of business of the seller." A computer that operates an automated telephone ordering system is not "an established outlet, office, or location," and does not constitute a "place of business of the seller."

(c) Local sales tax - Consummation of sale - determining the local taxing jurisdictions to which sales tax is due. Except for the special rules applicable to remote sellers in subsection (i)(3) of this section, direct payment permit purchases in subsection (j) of this section, and certain taxable items, including taxable items sold by a marketplace provider, as provided in subsection (k) of this section, each sale of a taxable item is consummated at the location indicated by the provisions of this subsection. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in Texas, regardless of whether they have no place of business in Texas, a single place of business in Texas, or multiple places of business in Texas.

(1) Consummation of sale - order received at a place of business of the seller in Texas.

(A) Order placed in person. Except as provided by paragraph (3) of this subsection, when an order for a taxable item is placed in person at a seller's place of business in Texas, including at a temporary place of business of the seller in Texas, the sale of that item is consummated at that place of business of the seller, regardless of the location where the order is fulfilled.

(B) Order not placed in person.

(i) Order fulfilled at a place of business of the seller in Texas. When an order is received at a place of business of the seller in Texas and is fulfilled at a place of business of the seller in Texas, the sale is consummated at the place of business where the order is fulfilled.

(ii) Order not fulfilled at a place of business of the seller in Texas. When an order is received at a place of business of the seller in Texas and is fulfilled at a location that is not a place of business of the seller in Texas, the sale is consummated at the place of business where the order is received.

(2) Consummation of sale - order not received at a place of business of the seller in Texas.

(A) Order fulfilled at a place of business of the seller in Texas. When an order is received at a location that is not a place of business of the seller in Texas or is received outside of Texas, and is fulfilled from a place of business of the seller in Texas, the sale is consummated at the place of business where the order is fulfilled.

(B) Order not fulfilled from a place of business of the seller in Texas.

(i) Order fulfilled in Texas. When an order is received at a location that is not a place of business of the seller in Texas and is fulfilled from a location in Texas that is not a place of business of the seller, the sale is consummated at the location in Texas to which the order is shipped or delivered, or at which the purchaser of the item takes possession.

(ii) Order not fulfilled in Texas. When an order is received by a seller at a location that is not a place of business of the seller in Texas, and is fulfilled from a location outside of Texas, the sale is not consummated in Texas. However, a use is consummated at the first point in Texas where the item is stored, used, or consumed after the interstate transit has ceased. A taxable item delivered to a point in Texas is presumed to be for storage, use, or consumption at that point until the contrary is established. Local use tax should be collected as provided in subsection (d) of this section. Except as provided in subsection (i)(3) of this section, a remote seller required to collect state use tax under §3.286(b)(2) of this title must also collect local use tax.

(3) Exception for qualifying economic development agreements entered into before January 1, 2009, pursuant to Tax Code, §321.203(c-4) - (c-5) or §323.203(c-4) - (c-5). This paragraph is effective until September 1, 2024. If applicable, the local sales tax due on the sale of a taxable item is based on the location of the qualifying warehouse, which is a place of business of the seller, from which the item is shipped or delivered or at which the purchaser of the item takes possession.

(4) Local sales taxes are due to each local taxing jurisdiction with sales tax in effect where the sale is consummated. Local use tax may also be due if the total amount of local sales taxes due does not reach the two percent cap, and the item purchased is shipped or delivered to a location in one or more different local taxing jurisdictions, as provided in subsection (d) of this section.

(5) Multiple special purpose district taxes, multiple transit authority sales taxes, or a combination of the two may apply to a single transaction. If the sale of a taxable item is consummated at a location within the boundaries of multiple special purpose districts or transit authorities, local sales tax is owed to each of the jurisdictions in effect at that location. For example, a place of business of the seller located in the city of San Antonio is within the boundaries of both the San Antonio Advanced Transportation District and the San Antonio Metropolitan Transit Authority, and the seller is required to collect sales tax for both transit authorities. Similarly, a place of business of the seller in Flower Mound is located within the boundaries of two special purpose districts, the Flower Mound Crime Control District and the Flower Mound Fire Control District, and the seller is responsible for collecting sales tax for both special purpose districts.

(6) Itinerant vendors; vending machines.

(A) Itinerant vendors. Sales made by itinerant vendors are consummated at, and itinerant vendors must collect sales tax based upon, the location where the item is delivered or at which the purchaser of the item takes possession. Itinerant vendors do not have any responsibility to collect use tax.

(B) Vending machines. Sales of taxable items made from a vending machine are consummated at the location of the vending machine. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service) for more information about vending machine sales.

(7) The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.

(d) Local use tax. The provisions addressing the imposition of state use tax in §3.346 of this title also apply to the imposition of local use tax. For example, consistent with §3.346(e) of this title, all taxable items that are shipped or delivered to a location in this state that is within the boundaries of a local taxing jurisdiction are presumed to have been purchased for use in that local taxing jurisdiction as well as presumed to have been purchased for use in the state.

(1) General rules.

(A) When local use taxes are due in addition to local sales taxes as provided by subsection (c) of this section, all applicable

use taxes must be collected or accrued in the following order until the two percent cap is reached: city, county, special purpose district, and transit authority. If more than one special purpose district use tax is due, all such taxes are to be collected or accrued before any transit authority use tax is collected or accrued. See subparagraphs (D) and (E) of this paragraph.

(B) If a local use tax cannot be collected or accrued at its full rate without exceeding the two percent cap, the seller cannot collect it, or any portion of it, and the purchaser is not responsible for accruing it.

(C) If a seller collects a local sales tax on an item, or a purchaser accrues a local sales tax on an item, a use tax for the same type of jurisdiction is not due on the same item. For example, after a city sales tax has been collected or accrued for an item, no use tax is due to that same or a different city on that item, but use tax may be due to a county, special purpose district, or transit authority. Similarly, if one or more special purpose district sales taxes have been collected or accrued for an item, no special purpose district use tax is due on that item, and if one or more transit authority sales taxes have been collected or accrued for an item, no transit authority use tax is due on that item.

(D) Collection or accrual of use tax for multiple special purpose districts. If more than one special purpose district use tax is in effect at the location where use of an item occurs, the special purpose district taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all special purpose district taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the district with the earliest effective date would exceed the two percent cap, the tax for that district is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (C) of this paragraph, whether use tax is due for the district that next became effective.

(i) If the competing special purpose district taxes became effective on the same date, the special purpose district taxes are due in the order of the earliest date for which the election in which the district residents authorized the imposition of sales and use tax by the district was held.

(ii) If the elections to impose the local taxes were held on the same date, the special purpose district taxes are due in the order of the earliest date for which the enabling legislation under which each district was created became effective.

(E) Collection or accrual of use tax for multiple transit authorities. If more than one transit authority use tax is in effect at the location where use of an item occurs, and the two percent cap has not been met, the transit authority taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all transit authority taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the authority with the earliest effective date would exceed the two percent cap, the tax for that authority is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (D) of this paragraph, whether use tax is due for the authority that next became effective.

(i) If the competing transit authorities became effective on the same date, the transit authority taxes are due in the order of the earliest date for which the election in which the authority residents authorized the imposition of sales and use tax by the authority was held.

(ii) If the elections to impose local taxes were held on the same date, the transit authority use taxes are due in the order of the earliest date for which the enabling legislation under which each authority was created became effective.

(2) General use tax rules applied to specific situations. The following fact patterns explain how local use tax is to be collected or accrued and remitted to the comptroller based on, and subject to, the general rules in paragraph (1) of this subsection.

(A) Sale consummated outside the state, item delivered from outside the state or from a location in Texas that is not operated by the seller - local use tax due. Except as provided in subsection (i)(3) of this section, if a sale is consummated outside of this state according to the provisions of subsection (c) of this section, and the item purchased is either shipped or delivered to a location in this state as designated by the purchaser from a location outside of the state, or if the order is drop shipped directly to the purchaser from a third-party supplier, local use tax is owed based upon the location in this state to which the order is shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use tax due on the sale. If the seller does not collect the local use taxes due on the sale, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller according to the provisions in paragraph (1) of this subsection. For example, if an order for a taxable item is received by a seller at a location outside of Texas, and the order is shipped to the purchaser from a location outside of the state, local use tax is due based upon the location to which the order is shipped or delivered or at which the purchaser of the item takes possession.

(B) Sale consummated in Texas outside a local taxing jurisdiction, item delivered into one or more local taxing jurisdictions - local use tax due. If a sale is consummated at a location in Texas that is outside of the boundaries of any local taxing jurisdiction according to the provisions of subsection (c) of this section, and the order is shipped or delivered to the purchaser at a location in this state that is within the boundaries of one or more local taxing jurisdictions, local use tax is due based on the location to which the items are shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use taxes due on the sale, regardless of the location of the seller in Texas. If the seller fails to collect any local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(C) Sale consummated in any local taxing jurisdictions imposing less than 2.0% in total local taxes - local sales taxes and use taxes due. If a sale is consummated at a location in Texas where the total local sales tax rate imposed by the taxing jurisdictions in effect at that location does not equal 2.0% according to the provisions of subsection (c) of this section, and the item is shipped or delivered to the purchaser at a location in this state that is inside the boundaries of a different local taxing jurisdiction, additional local use tax may be due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the two percent cap. The seller is responsible for collecting any additional local use taxes due on the sale, regardless of the location of the seller in Texas. See subsection (i) of this section. If the seller fails to collect the additional local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(i) Example one - if an order is received in person at a place of business of the seller, such that the sale is consummated at the location where the order is received as provided under subsection (c)(1)(A) of this section, and the local sales tax due on the sale does not meet the two percent cap, additional local use taxes are due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the provisions in paragraph (1) of this subsection.

(ii) Example two - if a seller receives an order for a taxable item at a seller's place of business in Texas, and the seller ships or delivers the item from an out-of-state location to a location in this state as designated by the purchaser, local sales tax is due based upon the location of the place of business of the seller where the order is received. If the local sales tax due on the item does not meet the two percent cap, use taxes, subject to the provisions in paragraph (1) of this subsection, are due based upon the location where the items are shipped or delivered or at which the purchaser of the item takes possession.

(e) Effect of other law.

(1) Tax Code, Title 2, Subtitles A (General Provisions) and B (Enforcement and Collection), Tax Code, Chapter 141 (Multistate Tax Compact) and Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) apply to transactions involving local taxes. Related sections of this title and comptroller rulings shall also apply with respect to local taxes. This includes authorities such as court cases and federal law that affect whether an item is taxable or is excluded or exempt from taxation.

(2) Permits, exemption certificates, and resale certificates required by Tax Code, Chapter 151, shall also satisfy the requirements for collecting and remitting local taxes, unless otherwise indicated by this section or other sections of this title. For example, see subsection (n) of this section concerning prior contract exemptions.

(3) Any provisions in this section or other sections of this title related to a seller's responsibilities for collecting and remitting local taxes to the comptroller shall also apply to a purchaser if the seller does not collect local taxes that are due. The comptroller may proceed against the seller or purchaser for the local tax owed by either.

(f) Tax rates. Except as otherwise provided by law, no local governmental entity may adopt or increase a sales and use tax if, as a result of the adoption or increase of the tax, the combined rate of all sales and use taxes imposed by local taxing jurisdictions having territory in the local governmental entity would exceed 2.0% at any location within the boundaries of the local governmental entity's jurisdiction. The following are the local tax rates that may be adopted.

(1) Cities. Cities may impose sales and use tax at a rate of up to 2.0%.

(2) Counties. Counties may impose sales and use tax at rates ranging from 0.5% to 1.5%.

(3) Special purpose districts. Special purpose districts may impose sales and use tax at rates ranging from 0.125% to 2.0%.

(4) Transit authorities. Transit authorities may impose sales and use tax at rates ranging from 0.25% to 1.0%.

(g) Jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements.

(1) Jurisdictional boundaries.

(A) City boundaries. City taxing jurisdictional boundaries cannot overlap one another and a city cannot impose a sales and use tax in an area that is already within the jurisdiction of another city.

(B) County boundaries. County tax applies to all locations within that county.

(C) Special purpose district and transit authority boundaries. Special purpose districts and transit authorities may cross or share boundaries with other local taxing jurisdictions and may encompass, in whole or in part, other local taxing jurisdictions, including cities and counties. A geographic location or address in this state may lie within the boundaries of more than one special purpose district or more than one transit authority.

(D) Extraterritorial jurisdictions. Except as otherwise provided by paragraph (3) of this subsection concerning strategic partnership agreements and subsection (l)(5) of this section concerning the City of El Paso and Fort Bliss, city sales and use tax does not apply to taxable sales that are consummated outside the boundaries of the city, including sales made in a city's extraterritorial jurisdiction. However, an extraterritorial jurisdiction may lie within the boundaries of a special purpose district, transit authority, county, or any combination of the three, and the sales and use taxes for those jurisdictions would apply to those sales.

(2) Combined areas. A combined area is an area where the boundaries of a city overlap the boundaries of one or more other local taxing jurisdictions as a result of an annexation of additional territory by the city, and where, as the result of the imposition of the city tax in the area in addition to the local taxes imposed by the existing taxing jurisdictions, the combined local tax rate would exceed 2.0%. The comptroller shall make accommodations to maintain a 2.0% rate in any combined area by distributing the 2.0% tax revenue generated in these combined areas to the local taxing jurisdictions located in the combined areas as provided in Tax Code, §321.102 or Health and Safety Code, §775.0754. Combined areas are identified on the comptroller's website. Sellers engaged in transactions on which local sales or use taxes are due in a combined area, or persons who must self-accrue and remit tax directly to the comptroller, must use the combined area local code when reporting the tax rather than the codes for the individual city, county, special purpose districts, or transit authorities that make up the combined area.

(3) City tax imposed through strategic partnership agreements.

(A) The governing bodies of a district, as defined in Local Government Code, §43.0751, and a city may enter into a limited-purpose annexation agreement known as a strategic partnership agreement. Under this agreement, the city may impose sales and use tax within all or part of the boundaries of a district. Areas within a district that are annexed for this limited purpose are treated as though they are within the boundaries of the city for purposes of city sales and use tax.

(B) Counties, transit authorities, and special purpose districts may not enter into strategic partnership agreements. Sales and use taxes imposed by those taxing jurisdictions do not apply in the limited-purpose annexed area as part of a strategic partnership agreement between a city and an authorized district. However, a county, special purpose district, or transit authority sales and use tax, or any combination of these three types of taxes, may apply at locations included in a strategic partnership agreement between a city and an authorized district if the tax is imposed in that area by the applicable jurisdiction as allowed under its own controlling authorities.

(C) Prior to September 1, 2011, the term "district" was defined in Local Government Code, §43.0751 as a municipal utility district or a water control and improvement district. The definition was amended effective September 1, 2011, to mean a conservation and reclamation district operating under Water Code, Chapter 49.

(h) Places of business of the seller and job sites crossed by local taxing jurisdiction boundaries.

(1) Places of business of the seller crossed by local taxing jurisdiction boundaries. If a place of business of the seller is crossed by one or more local taxing jurisdiction boundaries so that a portion of the place of business of the seller is located within a taxing jurisdiction and

the remainder of the place of business of the seller lies outside of the taxing jurisdiction, tax is due to the local taxing jurisdictions in which the sales office is located. If there is no sales office, sales tax is due to the local taxing jurisdictions in which any cash registers are located.

(2) Job sites.

(A) Residential repair and remodeling; new construction of an improvement to realty. When a contractor is improving real property under a separated contract, and the job site is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on any separately stated charges for taxable items incorporated into the real property must be allocated to the local taxing jurisdictions based on the total square footage of the real property improvement located within each jurisdiction, including the square footage of any standalone structures that are part of the construction, repair, or remodeling project. For more information about tax due on materials used at residential and new construction job sites, refer to §3.291 of this title (relating to Contractors).

(B) Nonresidential real property repair and improvement. When taxable services are performed to repair, remodel, or restore nonresidential real property, including a pipeline, transmission line, or parking lot, that is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on the taxable services, including materials and any other charges connected to the services performed, must be allocated among the local taxing jurisdictions based upon the total mileage or square footage, as appropriate, of the repair, remodeling, or restoration project located in each jurisdiction. For more information about tax due on materials used at nonresidential real property repair and remodeling job sites, refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(i) Sellers' and purchasers' responsibilities for collecting or accruing local taxes.

(1) Sale consummated in Texas; seller responsible for collecting local sales taxes and applicable local use taxes. When a sale of a taxable item is consummated at a location in Texas as provided by subsection (c) of this section, the seller must collect each local sales tax in effect at the location. If the total rate of local sales tax due on the sale does not reach the two percent cap, and the seller ships or delivers the item into another local taxing jurisdiction, then the seller is required to collect additional local use taxes due, if any, based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession, regardless of the location of the seller in Texas. For more information regarding local use taxes, refer to subsection (d) of this section.

(2) Out-of-state sale; seller engaged in business in Texas. Except as provided in paragraph (3) of this subsection, when a sale is not consummated in Texas, a seller who is engaged in business in this state is required to collect and remit local use taxes due, if any, on orders of taxable items shipped or delivered at the direction of the purchaser into a local taxing jurisdiction in this state based upon the location in this state to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d) of this section.

(3) Local use tax rate for remote sellers.

(A) A remote seller required to collect and remit one or more local use taxes in connection with a sale of a taxable item must compute the amount using:

(i) the combined tax rate of all applicable local use taxes based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession; or

(ii) at the remote seller's election, the single local use tax rate published in the *Texas Register.*

(B) A remote seller that is storing tangible personal property in Texas to be used for fulfillment at a facility of a marketplace provider that has certified that it will assume the rights and duties of a seller with respect to the tangible personal property, as provided for in §3.286 of this title, may elect the single local use tax rate under subparagraph (A)(ii) of this paragraph.

(C) Notice to the comptroller of election and revocation of election.

(i) Before using the single local use tax rate, a remote seller must notify the comptroller of its election using a form prescribed by the comptroller. A remote seller may also notify the comptroller of the election on its use tax permit application form. The remote seller must use the single local use tax rate for all of its sales of taxable items until the election is revoked as provided in clause (ii) of this subparagraph.

(ii) A remote seller may revoke its election by filing a form prescribed by the comptroller. If the comptroller receives the notice by October 1, the revocation will be effective January 1 of the following year. If the comptroller receives the notice after October 1, the revocation will be effective January 1 of the year after the following year. For example, a remote seller must notify the comptroller by October 1, 2020, for the revocation to be effective January 1, 2021. If the comptroller receives the revocation on November 1, 2020, the revocation will be effective January 1, 2022.

(D) Single local use tax rate.

(i) The single local use tax rate in effect for the period beginning October 1, 2019, and ending December 31, 2019, is 1.75%.

(ii) The single local use tax rate in effect for the period beginning January 1, 2020, and ending December 31, 2020, is 1.75%.

(E) Annual publication of single local use tax rate. Before the beginning of a calendar year, the comptroller will publish notice of the single local use tax rate in the *Texas Register* that will be in effect for that calendar year.

(F) Calculating the single local use tax rate. The single local use tax rate effective in a calendar year is equal to the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year. As soon as practicable after the end of a state fiscal year, the comptroller must determine the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year by:

(i) dividing the total amount of net local sales and use taxes remitted to the comptroller during the state fiscal year by the total amount of net state sales and use tax remitted to the comptroller during the state fiscal year;

(ii) multiplying the amount computed under clause (i) of this subparagraph by the rate provided in Tax Code, §151.051; and

(iii) rounding the amount computed under clause (ii) of this subparagraph to the nearest .0025.

(G) Direct refund. A purchaser may request a refund based on local use taxes paid in a calendar year for the difference between the single local use tax rate paid by the purchaser and the amount the purchaser would have paid based on the combined tax rate for all applicable local use taxes. Notwithstanding the refund requirements

under §3.325(a)(1) of this title (relating to Refunds and Payments Under Protest), a non-permitted purchaser may request a refund directly from the comptroller for the tax paid in the previous calendar year, no earlier than January 1 of the following calendar year within the statute of limitation under Tax Code, 111.104 (Refunds).

(H) Marketplace providers. Notwithstanding subparagraph (A) of this paragraph, marketplace providers may not use the single local use tax rate and must compute the amount of local use tax to collect and remit using the combined tax rate of all applicable local use taxes.

(4) Purchaser responsible for accruing and remitting local taxes if seller fails to collect.

(A) If a seller does not collect the state sales tax, any applicable local sales taxes, or both, on a sale of a taxable item that is consummated in Texas, then the purchaser is responsible for filing a return and paying the tax. The local sales taxes due are based on the location in this state where the sale is consummated as provided in subsection (c) of this section.

(B) A purchaser who buys an item for use in Texas from a seller who does not collect the state use tax, any applicable local use taxes, or both, is responsible for filing a return and paying the tax. The local use taxes due are based on the location where the item is first stored, used, or consumed by the purchaser.

(C) For more information about how to report and pay use tax directly to the comptroller, see §3.286 of this title.

(5) Local tax is due on the sales price of a taxable item, as defined in Tax Code, §151.007, in the report period in which the taxable item is purchased or the period in which the taxable item is first stored, used, or otherwise consumed in a local taxing jurisdiction.

(6) A purchaser is not liable for additional local use tax if the purchaser pays local use tax using the rate elected by an eligible remote seller according to paragraph (3) of this subsection. The remote seller must be identified on the comptroller's website as electing to use the single local use tax rate. A purchaser must verify that the remote seller is listed on the comptroller's website. If the remote seller is not listed on the comptroller's website, the purchaser will be liable for additional use tax due in accordance to paragraph (4) of this subsection.

(j) Items purchased under a direct payment permit.

(1) When taxable items are purchased under a direct payment permit, local use tax is due based upon the location where the permit holder first stores the taxable items, except that if the taxable items are not stored, then local use tax is due based upon the location where the taxable items are first used or otherwise consumed by the permit holder.

(2) If, in a local taxing jurisdiction, storage facilities contain taxable items purchased under a direct payment exemption certificate and at the time of storage it is not known whether the taxable items will be used in Texas, then the taxpayer may elect to report the use tax either when the taxable items are first stored in Texas or are first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. See also §3.288(i) of this title (relating to Direct Payment Procedures and Qualifications) and §3.346(g) of this title.

(3) If local use tax is paid on stored items that are subsequently removed from Texas before they are used, the tax may be recovered in accordance with the refund and credit provisions of §3.325 of this title and §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(k) Special rules for certain taxable goods and services. Sales of the following taxable goods and services are consummated at, and local tax is due based upon, the location indicated in this subsection.

(1) Amusement services. Local tax is due based upon the location where the performance or event occurs. For more information on amusement services, refer to §3.298 of this title (relating to Amusement Services).

(2) Cable services. When a service provider uses a cable system to provide cable television or bundled cable services to customers, local tax is due as provided for in §3.313 of this title. When a service provider uses a satellite system to provide cable services to customers, no local tax is due on the service in accordance with the Telecommunications Act of 1996, §602.

(3) Florists. Local sales tax is due on all taxable items sold by a florist based upon the location where the order is received, regardless of where or by whom delivery is made. Local use tax is not due on deliveries of taxable items sold by florists. For example, if the place of business of the florist where an order is taken is not within the boundaries of any local taxing jurisdiction, no local sales tax is due on the item and no local use tax is due regardless of the location of delivery. If a Texas florist delivers an order in a local taxing jurisdiction at the instruction of an unrelated florist, and if the unrelated florist did not take the order within the boundaries of a local taxing jurisdiction, local use tax is not due on the delivery. For more information about florists' sales and use tax obligations, refer to §3.307 of this title (relating to Florists).

(4) Landline telecommunications services. Local taxes due on landline telecommunications services are based upon the location of the device from which the call or other transmission originates. If the seller cannot determine where the call or transmission originates, local taxes due are based on the address to which the service is billed. For more information, refer to §3.344 of this title (relating to Telecommunications Services).

(5) Marketplace provider sales. Local taxes are due on sales of taxable items through a marketplace provider based on the location in this state to which the item is shipped or delivered or at which the purchaser takes possession. For more information, refer to §3.286 of this title.

(6) Mobile telecommunications services. Local taxes due on mobile telecommunications services are based upon the location of the customer's place of primary use as defined in §3.344(a)(8) of this title, and local taxes are to be collected as indicated in §3.344(h) of this title.

(7) Motor vehicle parking and storage. Local taxes are due based on the location of the space or facility where the vehicle is parked. For more information, refer to §3.315 of this title (relating to Motor Vehicle Parking and Storage).

(8) Natural gas and electricity. Any local city and special purpose taxes due are based upon the location where the natural gas or electricity is delivered to the purchaser. As explained in subsection (l)(1) of this section, residential use of natural gas and electricity is exempt from all county sales and use taxes and all transit authority sales and use taxes, most special purpose district sales and use taxes, and many city sales and use taxes. A list of the cities and special purpose districts that do impose, and those that are eligible to impose, local sales and use tax on residential use of natural gas and electricity is available on the comptroller's website. For more information, also refer to §3.295 of this title (relating to Natural Gas and Electricity).

(9) Nonresidential real property repair and remodeling services. Local taxes are due on services to remodel, repair, or restore

nonresidential real property based on the location of the job site where the remodeling, repair, or restoration is performed. See also subsection (h)(2)(B) of this section and §3.357 of this title.

(10) Residential real property repair and remodeling and new construction of a real property improvement performed under a separated contract. When a contractor constructs a new improvement to realty pursuant to a separated contract or improves residential real property pursuant to a separated contract, the sale is consummated at the job site at which the contractor incorporates taxable items into the customer's real property. See also subsection (h)(2)(A) of this section and §3.291 of this title.

(11) Waste collection services. Local taxes are due on garbage or other solid waste collection or removal services based on the location at which the waste is collected or from which the waste is removed. For more information, refer to §3.356 of this title (relating to Real Property Service).

(l) Special exemptions and provisions applicable to individual jurisdictions.

(1) Residential use of natural gas and electricity.

(A) Mandatory exemptions from local sales and use tax. Residential use of natural gas and electricity is exempt from most local sales and use taxes. Counties, transit authorities, and most special purpose districts are not authorized to impose sales and use tax on the residential use of natural gas and electricity. Pursuant to Tax Code, §321.105, any city that adopted a local sales and use tax effective October 1, 1979, or later is prohibited from imposing tax on the residential use of natural gas and electricity. See §3.295 of this title.

(B) Imposition of tax allowed in certain cities. Cities that adopted local sales tax prior to October 1, 1979, may, in accordance with the provisions in Tax Code, §321.105, choose to repeal the exemption for residential use of natural gas and electricity. The comptroller's website provides a list of cities that impose tax on the residential use of natural gas and electricity, as well as a list of those cities that do not currently impose the tax, but are eligible to do so.

(C) Effective January 1, 2010, a fire control, prevention, and emergency medical services district organized under Local Government Code, Chapter 344 that imposes sales tax under Tax Code, §321.106, or a crime control and prevention district organized under Local Government Code, Chapter 363 that imposes sales tax under Tax Code, §321.108, that is located in all or part of a municipality that imposes a tax on the residential use of natural gas and electricity as provided under Tax Code, §321.105 may impose tax on residential use of natural gas and electricity at locations within the district. A list of the special purpose districts that impose tax on residential use of natural gas and electricity and those districts eligible to impose the tax that do not currently do so is available on the comptroller's website.

(2) Telecommunication services. Telecommunications services are exempt from all local sales taxes unless the governing body of a city, county, transit authority, or special purpose district votes to impose sales tax on these services. However, since 1999, under Tax Code, §322.109(d), transit authorities created under Transportation Code, Chapter 451 cannot repeal the exemption unless the repeal is first approved by the governing body of each city that created the local taxing jurisdiction. The local sales tax is limited to telecommunications services occurring between locations within Texas. See §3.344 of this title. The comptroller's website provides a list of local taxing jurisdictions that impose tax on telecommunications services.

(3) Emergency services districts.

(A) Authority to exclude territory from imposition of emergency services district sales and use tax. Pursuant to the provisions of Health and Safety Code, §775.0751(c-1), an emergency services district wishing to enact a sales and use tax may exclude from the election called to authorize the tax any territory in the district where the sales and use tax is then at 2.0%. The tax, if authorized by the voters eligible to vote on the enactment of the tax, then applies only in the portions of the district included in the election. The tax does not apply to sales made in the excluded territories in the district and sellers in the excluded territories should continue to collect local sales and use taxes for the local taxing jurisdictions in effect at the time of the election under which the district sales and use tax was authorized as applicable.

(B) Consolidation of districts resulting in sales tax sub-districts. Pursuant to the provisions of Health and Safety Code, §775.018(f), if the territory of a district proposed under Health and Safety Code, Chapter 775 overlaps with the boundaries of another district created under that chapter, the commissioners court of each county and boards of the counties in which the districts are located may choose to create a consolidated district in the overlapping territory. If two districts that want to consolidate under Health and Safety Code, §775.024 have different sales and use tax rates, the territory of the former districts located within the consolidated area will be designated as sub-districts and the sales tax rate within each sub-district will continue to be imposed at the rate the tax was imposed by the former district that each sub-district was part of prior to the consolidation.

(4) East Aldine Management District.

(A) Special sales and use tax zones within district; separate sales and use tax rate. As set out in Special District Local Laws Code, §3817.154(e) and (f), the East Aldine Management District board may create special sales and use tax zones within the boundaries of the District and, with voter approval, enact a special sales and use tax rate in each zone that is different from the sales and use tax rate imposed in the rest of the district.

(B) Exemptions from special zone sales and use tax. The sale, production, distribution, lease, or rental of; and the use, storage, or other consumption within a special sales and use tax zone of; a taxable item sold, leased, or rented by the entities identified in clauses (i) - (vi) of this subparagraph are exempt from the special zone sales and use tax. State and all other applicable local taxes apply unless otherwise exempted by law. The special zone sales and use tax exemption applies to:

(i) a retail electric provider as defined by Utilities Code, §31.002;

(ii) an electric utility or a power generation company as defined by Utilities Code, §31.002;

(iii) a gas utility as defined by Utilities Code, §101.003 or §121.001, or a person who owns pipelines used for transportation or sale of oil or gas or a product or constituent of oil or gas;

(iv) a person who owns pipelines used for the transportation or sale of carbon dioxide;

(v) a telecommunications provider as defined by Utilities Code, §51.002; or

(vi) a cable service provider or video service provider as defined by Utilities Code, §66.002.

(5) Imposition of city sales tax and transit tax on certain military installations; El Paso and Fort Bliss. Pursuant to Tax Code, §321.1045 (Imposition of Sales and Use Tax in Certain Federal Military Installations), for purposes of the local sales and use tax imposed under

Tax Code, Chapter 321, the city of El Paso includes the area within the boundaries of Fort Bliss to the extent it is in the city's extraterritorial jurisdiction. However, the El Paso transit authority does not include Fort Bliss. See Transportation Code, §453.051 concerning the Creation of Transit Departments.

(m) Restrictions on local sales tax rebates and other economic incentives. Pursuant to Local Government Code, §501.161, Section 4A and 4B development corporations may not offer to provide economic incentives, such as local sales tax rebates authorized under Local Government Code, Chapters 380 or 381, to persons whose business consists primarily of purchasing taxable items using resale certificates and then reselling those same items to a related party. A related party means a person or entity which owns at least 80% of the business enterprise to which sales and use taxes would be rebated as part of an economic incentive.

(n) Prior contract exemptions. The provisions of §3.319 of this title (relating to Prior Contracts) concerning definitions and exclusions apply to prior contract exemptions.

(1) Certain contracts and bids exempt. No local taxes are due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of any local tax if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of any local tax if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(2) Annexations. Any annexation of territory into an existing local taxing jurisdiction is also a basis for claiming the exemption provided by this subsection.

(3) Local taxing jurisdiction rate increase; partial exemption for certain contracts and bids. When an existing local taxing jurisdiction raises its sales and use tax rate, the additional amount of tax that would be due as a result of the rate increase is not due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of the tax rate increase if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of the tax rate increase if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(4) Three-year statute of limitations.

(A) The exemption in paragraph (1) of this subsection and the partial exemption in paragraph (3) of this subsection have no effect after three years from the date the adoption or increase of the tax takes effect in the local taxing jurisdiction.

(B) The provisions of §3.319 of this title apply to this subsection to the extent they are consistent.

(C) Leases. Any renewal or exercise of an option to extend the time of a lease or rental contract under the exemptions provided by this subsection shall be deemed to be a new contract and no exemption will apply.

(5) Records. Persons claiming the exemption provided by this subsection must maintain records which can be verified by the comptroller or the exemption will be lost.

(6) Exemption certificate. An identification number is required on the prior contract exemption certificates furnished to sellers. The identification number should be the person's 11-digit Texas taxpayer number or federal employer's identification (FEI) number.

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 October 16, 2023.

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Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

34 TAC §31.5, §31.6

The Teacher Retirement System of Texas (TRS) proposes to amend §31.5 (relating to Notice and Forfeiture Requirements for Certain Service Retirees) and §31.6 (relating to Second EAR Warning Payments) under Subchapter A (relating to General Provisions and Procedures) of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

In 2021, the Texas Legislature passed House Bill 1585 which added, among other provisions, an employment after retirement ("EAR") notice procedure (also called a "three strikes" procedure) that ensured TRS would issue at least two warnings to a TRS service retiree before that retiree would forfeit his or her entire annuity for a month because the retiree exceeded the limits on employment after retirement during that month.

Importantly, this notice procedure, which is under Government Code §824.601(b-3), requires that a TRS service retiree cannot be subject to a second warning (and the possible dollar-for-dollar partial forfeiture associated with a second warning) until the month after the month TRS issues a first warning to a TRS retiree for exceeding the limits on EAR. Further, a TRS retiree cannot be subject to mandatory full forfeiture of his or her annuity until the month after the month TRS issues the second warning letter. These requirements are clear in the statute.

However, §31.5 and §31.6 currently provide, at least in part, that a TRS service retiree is not subject to a second warning until the retiree receives, rather than TRS issues, a first warning. Further, the rules provide that a TRS retiree is not subject to a mandatory forfeiture until the retiree receives, rather than TRS issues, both required notices.

By requiring that the retiree receive, rather than TRS issue, these EAR notices before the retiree can be subject to the next level of EAR forfeiture, §31.5 and §31.6 are in conflict with Government Code §824.601(b-3). In addition, the receipt, rather than issue, standard creates a substantial administrative hurdle for TRS in administering the EAR "three strikes" procedure.

Specifically, TRS sends EAR notices to service retirees by both first class and certified mail to the retiree's current mailing address on file with TRS to ensure that the retirees timely receive their EAR notices. However, if a retiree did not maintain an accurate current mailing address with TRS, and TRS was unable to locate (or at least was delayed in locating) the retiree, the retiree could arguably not be subject to the next EAR notice and potentially full forfeiture until TRS receives a current mailing address for the member.

In addition, because the month TRS issues an EAR notice can be different from the month a TRS service retiree receives that notice, the month in which a TRS retiree is subject to the next level of EAR forfeiture could, in some cases, be ambiguous even if the retiree receives the EAR notice.

If adopted, TRS intends for proposed amended §31.5 and §31.6 to become effective on February 1, 2024.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rules will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed amended rules will be for the proposed amended rules to conform with statute.

Mr. Green has also determined that the public will incur no new costs as a result of complying with the proposed amended rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amended rules. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rules. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rules are in effect, the proposed amended rules will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rules, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rules because the proposed amended rules do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The proposed amended rules are proposed under the authority of Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed amended rules affect the following statutes: Government Code §824.601, which relates to loss of monthly benefits; Government Code § 824.602, which relates to exceptions; and Government Code §824.6021, relating to temporary exception to mitigate learning loss attributable to COVID-19 pandemic.

§31.5. Notice and Forfeiture Requirements for Certain Service Retirees.

(a) A service retiree with an effective date of retirement after January 1, 2021, shall only forfeit the service retiree's monthly annuity payment based on the service retiree's employment by a Texas public educational institution during a calendar month if TRS [~~the retiree~~] has previously issued [~~received~~] the warnings required by subsections (b) and (c) of this section to the retiree.

(b) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter (relating to Employment after Retirement Exceptions), TRS shall issue a written EAR warning to the service retiree notifying the retiree of this fact. The EAR warning under this subsection may address multiple months of the service retiree's employment.

(c) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the service retiree the warning under subsection (b) of this section, then TRS shall issue a second EAR warning to the service retiree that:

(1) notifies the service retiree of this fact; and

(2) requires the service retiree to pay TRS an amount equal to the lesser of the total amount of either:

(A) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(B) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by §31.6 of this title (relating to Second EAR Warning Payments).

(d) The EAR warning under subsection (c) of this section may address multiple months of the service retiree's employment.

(e) If TRS determines that a service retiree's employment by a Texas public educational institution does not qualify for an exception under Subchapter B of this chapter and that employment occurs in a month after the month TRS issued to the retiree the second EAR warning under subsection (c) of this section, the service retiree is not entitled to receive a monthly annuity payment for any such month and TRS shall collect any annuity payments the service retiree received to which the service retiree was not entitled.

(f) If TRS determines after issuing an EAR warning under subsections (b) or (c) of this section that the service retiree's employment by a Texas public educational institution did not qualify for an exception under Subchapter B of this chapter and that employment occurred in a month prior to or during the month TRS issued such a warning but was not included in the warning, then TRS shall:

(1) issue an EAR warning in accordance with subsection (b) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or an earlier month; or

(2) issue an EAR warning and request for payment under subsection (c) of this section if the excluded month was the month TRS issued the EAR warning under that subsection or in an earlier month that was also after the month TRS issued the EAR warning under subsection (b) of this section.

(g) If a service retiree appeals a TRS determination regarding the service retiree's employment with a Texas public educational institution during a month or months that TRS included in an EAR warning under subsection (b) or (c) of this section, the EAR warning shall still be considered to have been issued by TRS unless the service retiree's appeal contests every month addressed by the applicable warning. If the service retiree contests the TRS determination for every month included in an EAR warning, that EAR warning shall not be considered to have been issued during the pendency of the service retiree's appeal.

(h) If a service retiree prevails on an appeal of every month included in an EAR warning under subsection (b) or (c) of this section, then TRS shall rescind the EAR warning. If the service retiree's appeal does not prevail on any month included in an EAR warning under subsection (b) or (c) of this section, then the EAR warning shall be reinstated and TRS shall adjust the amounts owed by the service retiree to TRS, if any, for months after the issuance of the reinstated EAR warning in which TRS determined the service retiree's employment by a Texas public educational institution did not qualify for an exception to the limits on EAR as provided by Subchapter B of this chapter.

(i) TRS shall consider an EAR warning under this section to have been issued on the date TRS sends the warning to the service retiree.

§31.6. Second EAR Warning Payments.

(a) If TRS issues [~~A service retiree who receives~~] a second EAR warning as provided in §31.5 of this title (relating to Notice and Repayment Requirements for Certain Service Retirees) to a service retiree, the service retiree shall pay to TRS an amount equal to the lesser of either:

(1) the service retiree's gross monthly annuity payments for the months addressed by this warning; or

(2) the total gross amount of compensation earned by the service retiree during the months addressed by this warning as described by this section.

(b) The amount in subsection (a)(2) of this section shall only include all compensation earned by the service retiree based on the service retiree's employment with a Texas public educational institution during a month subject to the second EAR warning regardless of when such an amount is paid to the service retiree. The amount shall not include:

(1) compensation paid to the service retiree during the applicable months unless the service retiree also earned the compensation based on the service retiree's employment with a Texas public educational institution during a month subject to the second warning;

(2) compensation earned by the service retiree in a position that qualifies for the exception under §31.16 of this title (relating to Federally-funded COVID-19 Personnel); and

(3) compensation paid to the service retiree that would not qualify as creditable compensation if paid to an active member by an employer for the same services.

(c) A service retiree may elect to pay the greater of the two amounts described by subsection (a) of this section. If a retiree elects to pay the greater amount, the retiree must notify TRS of this election in writing.

(d) If an employer adjusts the compensation earned by a service retiree in a month subject to a second EAR warning payment under this section but does not adjust the hours or days worked by the retiree relating to that compensation, the amount due shall be adjusted for that payment, and TRS shall request or return any amounts necessary to correct the payment so long as the adjustment is received no later than 12 months after the end of the school year in which the compensation was earned.

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

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Don Green
Chief Financial Officer
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6506

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