

## Chapter 61. School Districts

### Subchapter CC. Commissioner's Rules Concerning School Facilities

#### §61.1032. Instructional Facilities Allotment.

- (a) Definitions. The following definitions apply to the instructional facilities allotment (IFA) governed by this section:
- (1) Instructional facility--real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by Texas Education Code (TEC), §28.002.
  - (2) Noninstructional facility--a facility that may occasionally be used for instruction, but the predominant use is for purposes other than teaching the curriculum required by TEC, §28.002.
  - (3) Necessary fixture--equipment necessary to the use of a facility for its intended purposes, but which is permanently attached to the facility, such as lighting and plumbing.
  - (4) Debt service--as used in this section, debt service shall include regularly scheduled payments of principal and interest that are made between September 1 and August 31 each year on general obligation bonded debt or the underlying bonded debt applicable to an eligible lease-purchase agreement as reported in the final official statement (FOS) or in the bond order, if the bonds are privately placed, to the state information depository. Debt service payments that are not reported to the state information depository are not eligible to receive IFA state assistance.
  - (5) Allotment--the amount of eligible debt service that can be considered for state aid. The total allotment is made up of a combination of state aid and local funds. The state share and local share are adjusted annually based on changes in average daily attendance (ADA), property values, and debt service.
  - (6) State information repository--the Municipal Advisory Council of Texas (MAC).
  - (7) Sale date--the date of the award (i.e., the official acceptance by the issuer of a bid or an offer to purchase a new issue of municipal securities by an underwriter).
- (b) Application process. A school district must complete a separate application requesting funding under the IFA for each debt issue or lease-purchase agreement proposed for funding. The commissioner of education may require supplemental information to be submitted at an appropriate time after the application is filed to reflect changes in amounts and conditions related to the debt. The application shall contain at a minimum the following:
- (1) a description of the needs and projects to be funded with the debt issue or other financing, with an estimate of cost of each project and a categorization of projects according to instructional and noninstructional facilities or other uses of funds;
  - (2) a description of the debt issuance or other financing proposed for funding, including a projected schedule of payments covering the life of the debt;
  - (3) an estimate of the weighted average maturity of bonded debt; and
  - (4) drafts of official statements or contracts that fully describe the debt and that are filed with the state information repository, as soon as available.
- (c) District eligibility. All school districts legally authorized to enter into eligible debt arrangements as defined in subsection (d) of this section are eligible to apply for an IFA.
- (d) Debt eligibility. In order to be eligible for state funding under this section, a debt service requirement must meet all of the criteria of this subsection.

- (1) The debt service must be an obligation of a school district that is entered into pursuant to the issuance of bonded debt under TEC, Chapter 45, Subchapter A; an obligation for refunding bonds as defined in TEC, §46.007; or an obligation under a lease-purchase agreement authorized by Local Government Code, §271.004.
- (2) Application for funding of bonded debt service must be received at the Texas Education Agency (TEA) before the sale date of an issue.
- (3) Application for funding of lease-purchase payments must be received at the TEA before the passage of an order by the school district board of trustees authorizing the lease-purchase agreement.
- (4) Eligible bonded debt must have a weighted average maturity of at least eight years. The term of a lease-purchase agreement must be for at least eight years. For purposes of this section, a weighted average maturity shall be calculated by dividing bond years by the issue price, where "bond years" is defined as the product of the dollar amount of bonds divided by 1,000 and the number of years from the dated date to the stated maturity, and "issue price" is defined as the par value of the issue plus accrued interest, less original issue discount or plus premium.
- (5) Funds raised by the district through the issuance of bonded debt must be used for an instructional facility purpose as defined by TEC, §46.001. The facility acquired by entering into a lease-purchase agreement must be an instructional facility as defined by TEC, §46.001.
- (6) If the bonded debt is for a refinancing or a combination of refinancing and new debt, the refinanced portion must meet the same eligibility criteria with respect to dates of first debt service as a new issue as defined by TEC, §46.003(d)(1). The method used for the allocation of debt service between qualified and nonqualified projects and between eligible and ineligible debt will be applied to the debt service schedule resulting from a refinancing of IFA-supported debt.
- (7) An amended application packet is required for any IFA-supported bonds or IFA-supported lease-purchase agreement that has undergone changes, including, but not limited to, refinancing, restatement, or any other transaction that materially affects the terms of the bonds or the terms of the lease-purchase agreement, including transactions that materially affect the terms of the underlying bonds. Amended application packets must be submitted to the TEA no later than 180 days following the date on which the transaction was approved by the attorney general, if the transaction required approval by the attorney general. If approval by the attorney general was not required, the amended application packet is due within 180 days of the date that the school board approved the transaction.
- (8) Failure to submit the amended application packet to the TEA division responsible for state funding within the 180-day period defined in paragraph (7) of this subsection will result in the suspension of IFA state aid payments for the applicable IFA allotment award. This suspension has the following effects.
  - (A) Debt service payments associated with the applicable IFA allotment will be disqualified for IFA state aid upon expiration of the 180-day period defined in paragraph (7) of this subsection. Debt service payments made after the 180-day period expires will not earn IFA state aid.
  - (B) IFA state aid associated with the applicable allotment will resume on the date the amended application packet, including any required supporting documentation, is received. The IFA state aid will be based on eligible debt service payments scheduled on or after the date the amended application packet is received.
  - (C) Current and future IFA state aid payments may be adjusted to reflect the disqualified debt service payments. If no IFA state aid is due in a fiscal year that is affected by such an adjustment, a district will be notified about the disqualified amount and the provisions in TEC, §46.009(e), will apply.

- (D) Unless otherwise requested, payments of IFA state aid based on the updated eligible debt service reported in the completed amended application packet shall be made with the payments due for the following fiscal year in accordance with TEC, §46.009(d).
- (9) In addition to the provisions in TEC, §46.007, refunding bonds must also meet the following criteria.
  - (A) The refinancing of bonds must result in a present value savings as defined by TEC, §46.007.
    - (i) Present value savings for fixed rate bonds shall be computed at the true interest cost of the refinanced bonds.
    - (ii) In a refinancing of variable rate bonds with fixed rate bonds, present value savings will be calculated based on:
      - (I) an assumed interest rate for the variable rate bonds equal to the Municipal Market Data index (or other comparable index) of "AAA" general obligation tax-exempt bonds for the month in which the bonds were originally issued; and
      - (II) the rate, if any, used to determine the amount deposited into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds in a variable rate mode.
    - (iii) In a refinancing of fixed rate bonds with variable rate bonds, present value savings will be calculated based on an assumed interest rate for the variable rate bonds equal to the ten-year average of the Municipal Market Data index (or other comparable index) of "AAA" general obligation tax-exempt bonds bearing interest in a variable rate mode comparable to the variable rate mode in which the refinanced bonds will be issued.
    - (iv) The district must certify the projected net present value savings for refinancing described in clauses (i)-(iii) of this subparagraph based on the parameters prescribed therein. The district must submit the certification in a format prescribed by the commissioner.
  - (B) A conversion of the period, mode, or index used to determine the interest rate for eligible debt in accordance with the order authorizing the issuance or delivery of such eligible debt shall not be considered a refunding of eligible debt, and a district shall be eligible for state funding assistance based on the new debt service schedule contingent upon receipt of the required amended application packet as defined in paragraph (7) of this subsection.
  - (C) A district may refinance IFA-supported debt up to two times after the issuance of the original IFA-supported debt. Upon the third or subsequent refinancing transaction, the TEA may evaluate the IFA-supported debt for conversion to the Existing Debt Allotment (EDA) program. Determination of eligibility for conversion will be based on the district's remaining capacity in the EDA program and the district's other IFA-supported debt. The TEA will notify the district of the conversion within 180 days of receiving notification of the third or subsequent refinancing transaction involving an IFA-supported debt.
- (10) Certain other refinanced debt may be eligible for the funding under this subsection.
  - (A) When a district issues a general obligation bond to acquire a facility that is the subject of an existing lease-purchase agreement of the district or refinances an existing lease-purchase agreement with another lease-purchase agreement, the transaction is considered a refinancing of the lease-purchase agreement for purposes of continued participation in the IFA program. Any transactions affecting the lease-purchase agreement, including those that affect the underlying bonds, are subject to the amendment requirements and eligibility criteria specified in paragraphs (7)-(9) of this subsection, including the

- restrictions related to early redemption and extension of maturity dates, and the requirement for the refinancing transactions to produce present value savings.
- (B) A lease-purchase agreement in the IFA program that is refinanced with a general obligation bond or another lease-purchase agreement at a present value savings and without extension of the original term of the lease-purchase agreement shall remain part of the IFA program. Any transaction that reduces the term of the lease-purchase agreement to less than eight years will result in the disqualification of IFA state aid on debt service that is associated with the lease-purchase agreement, beginning with the date that the transaction is approved by the school district board of trustees.
  - (C) Any portion of a bond issue that refinances a portion of a lease-purchase agreement that was originally ineligible for IFA funding shall remain ineligible. Ineligible debt includes refunded bonds that fail to meet the criteria under TEC, §46.007, and/or bonds used for purposes not meeting the definition of qualified projects as described in TEC, §46.001 and §46.002.
  - (D) Any portion of a bond issue that refinances a portion of an original lease-purchase agreement that was eligible for IFA consideration but exceeded the IFA limit shall not be eligible for consideration in future funding cycles.
  - (E) General obligation bonded debt that is used to refinance a lease-purchase agreement that is not in the IFA program shall gain eligibility for the IFA by the terms of that program. Any interest and sinking (I&S) fund tax effort associated with the bonded debt payments may be counted for purposes of computing the IFA. For the refinancing to be considered for IFA funding, a district must submit an application to the program that identifies the refinancing as a new debt before the refinancing of the lease-purchase agreement.
  - (F) If any portion of a maturity of an IFA debt is refinanced at a present value cost or with an extension of the term beyond the fiscal year in which the final maturity occurs in the original debt service schedule, the entire amount of annual debt service associated with that maturity shall be removed from eligibility for further IFA state aid.
  - (G) Debt that is refinanced in a manner that disqualifies it for eligibility for funding within the IFA program shall be treated as new bonded debt at the time of issuance for the purpose of EDA funding consideration.
- (11) In addition to I&S fund taxes collected in the current school year, other district funds budgeted for the payment of bonds may be eligible for the IFA program for the purpose of meeting local share requirements pursuant to TEC, Chapter 46.
- (A) District revenues that qualify for meeting a district's local share requirement for the IFA are specified in the TEC, §46.003(b)-(d). The commissioner will provide each district with information on which tax collections were not equalized by state assistance in the preceding school year and worksheets to enable districts to calculate tax collections that will not receive state assistance in a current school year. The commissioner will determine the amount of excess collections, if any, to be applied to the IFA local share requirement.
  - (B) I&S fund taxes collected during a school year will be attributed first to satisfy the local share requirement of debts eligible for EDA state aid for that school year and, secondly, to satisfy the local share requirements of any IFA debts for that school year.
- (12) If a district issues debt that requires the deposit of payments into a mandatory I&S fund or debt service reserve fund, the deposits will be considered debt payments for the purpose of the IFA if the district's bond covenant calls for the deposit of payments into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds or if the final statement stipulates the requirements of the I&S fund and the bond covenant.
- (e) Biennial limitation on access to allotment. The guaranteed amount of state and local funds that a district may be awarded under TEC, §46.003, is prescribed by TEC, §46.005. A district may submit multiple

applications for approval during the same biennium. Timely application before executing the bond order for bonds or authorizing the order for a lease-purchase agreement must be made to ensure eligibility of the debt for program participation.

- (f) Additional applications. For previously awarded debt, increases in a district's debt allotment to pay for increases in debt service payment requirements in subsequent biennia must receive approval through one or more additional application(s). The portion of any increase in eligible, qualified debt service that may be funded in subsequent biennia is the amount that exceeds any previously awarded and approved allotments, within the biennial limitation on funding as calculated at the time of approval of the additional applications. If additional IFA state aid is approved, the allotment limit will be amended to reflect the increased IFA support for the applicable debt issuance.
- (g) Finality of award. Awards of assistance under TEC, Chapter 46, will be made based on the information available to TEA at the deadline for receipt of applications for that application cycle. Changes in the terms of the issuance of debt, either in the length of the payment schedule or the applicable interest rate, that occur after the time of the award of assistance will not result in an increase in the debt service considered for award.
  - (1) Any reduction in debt service requirements resulting from changes in the terms of issuance of debt shall result in a reduction in the amount of the award of assistance. Such a reduction in debt service requirements may result in an adjustment to the allotment awarded for the last application on the prioritization list to receive funding during an application cycle, if that application was not fully funded because of a lack of sufficient appropriations. In no case will changes to debt service amounts result in the awarding of additional IFA allotments for other eligible applications that were not funded during that application cycle because of a lack of sufficient appropriations.
  - (2) Refinancing of the bonds or lease-purchase agreements that receive IFA state aid may result in amendments to the allotment for the original IFA-supported debt issuance and may result in the designation of allotment amounts to be associated with the new debt issuances that include refundings of the original IFA-supported debt issuance.
- (h) Data sources.
  - (1) For purposes of determining the limitation on assistance and prioritization, the projected ADA as adopted by the legislature for appropriations purposes shall be used.
  - (2) For purposes of prioritization, the final property values certified by the comptroller of public accounts for the tax year preceding the year in which assistance is to begin shall be used. If final property values are unavailable, the most recent projection of property values shall be used.
  - (3) For purposes of both the calculation of the limitation on assistance and prioritization, the commissioner may consider, before the deadline for receipt of applications for that application cycle, adjustments to data values determined to be erroneous.
  - (4) For purposes of prioritization, enrollment increases over the previous five years shall be determined using Texas Student Data System Public Education Information Management System (TSDS PEIMS) submission data available at the time of application.
  - (5) For purposes of prioritization, outstanding debt is defined as voter-approved bonded debt or lease-purchase debt outstanding at the time of the application deadline.
  - (6) All final calculations of assistance earned shall be based on property values as certified by the comptroller for the preceding school year, and the final ADA for the current school year. A district must request any adjustment to state assistance based on changes in the final ADA, property values, or debt service or based on any other reason no later than three years following August 31 of the state fiscal year for which the adjustment is sought.
  - (7) For the TEA to determine eligible debt service applicable to eligible bonded debt or the underlying bonds of an eligible lease-purchase agreement, the debt service schedule a district submits on the application must reflect the debt service schedule the district reported in the FOS or, if no FOS is

prepared, in the final bond order or other official document describing the relevant financing activity, including a final debt service schedule. Failure to submit the required amended application packet to the TEA following any refinancing transaction as required by subsection (d)(7) of this section will result in the disqualification of debt service as prescribed in subsection (d)(8) of this section. IFA state aid for debt service payments that are later determined to be disqualified may be recovered through the reduction of future IFA state aid payments for the affected debt issuance.

- (i) Allocation of debt service between qualified and nonqualified projects. Debt service shall be allocated between qualified and nonqualified purposes and between eligible and ineligible categories of debt. The method used for allocation between qualified and nonqualified purposes shall be on the basis of pro rata value of the instructional facility versus the noninstructional purposes over the life of the debt service. The method of allocation of debt service between eligible and ineligible categories shall be on the basis of the pro rata value of the refinanced portion of the bond issue versus the new money portion of the bond issue. The method used for the allocation of debt service between qualified and nonqualified projects and between eligible and ineligible debt will be applied to the debt service schedule for the original bond issuance and for the revised debt service schedule that results from the refinancing of IFA-eligible bonds. This allocation method will also be applied to determine the eligible and qualified portions of the debt service on the bonds that are issued to refinance IFA-supported debt. Total IFA-eligible debt service for refinanced bonds is determined by the following method.
  - (1) The amount of remaining debt service on the original IFA-funded debt service must be reflected in the revised debt service schedule reported in the FOS, or (if no FOS is prepared) in a schedule submitted to the TEA, for that bond issue. The amount of IFA-related debt service for this bond series will be determined using the same pro rata allocation that was used to allocate the debt service for the original IFA allotment award as described in this subsection.
  - (2) The portion of the IFA-eligible debt service on the bond issue that refunds the IFA-supported debt is determined by:
    - (A) multiplying the debt service on the refunding bonds by the ratio that results from dividing the principal of refunding bonds by the total issue amount to determine the amount of IFA-related debt service associated with the refunding bonds; and
    - (B) then allocating the IFA-related debt service associated with the refunding bonds using the same pro rata allocation that was used to allocate the debt service for the original IFA allotment award as described in this subsection.
  - (3) The total amount of qualified, eligible IFA-related debt service is determined by the sum of IFA-related debt service as determined in paragraphs (1) and (2) of this subsection.
- (j) Payments and deposits.
  - (1) Payment of state assistance shall be made as soon as practicable after September 1 of each year. No payments shall be made until the execution of the bond order or the authorization of the lease-purchase agreement, whichever is applicable, has occurred. Requests for payments and/or adjustments submitted to the TEA after December 15 may be processed with the payments due for the following fiscal year in accordance with TEC, §46.009(d). Debt service for IFA-supported debt that is subject to the provisions of subsection (d)(7) of this section because of a refinancing or other transaction as described in subsection (d) of this section is not eligible for IFA state aid until a complete amended application packet has been submitted to the TEA, subject to the provisions of subsection (d)(8) of this section.
  - (2) Funds received from the state for bonded debt must be deposited to the I&S fund of the school district and must be considered in setting the tax rate necessary to service the debt.
  - (3) Funds received from the state for lease-purchase agreements must be deposited to the general fund of the district and used for lease-purchase payments.

- (4) A final determination of state assistance for a school year will be made using final attendance data and property value information as may be affected by TEC, §42.257. Additional amounts owed to districts shall be paid along with assistance in the subsequent school year, and any reductions in payments shall be subtracted from payments in the subsequent school year.
  - (5) As an alternative method of adjustment of payments, the commissioner may increase or decrease allocations of state aid under TEC, Chapter 42, to reflect appropriate increases or decreases in assistance under TEC, Chapter 46.
  - (6) Adjustments to state assistance based on changes in the final counts of ADA, changes to a district's property value, changes in the debt service schedule, or changes for any other reason must be requested no later than three years following the close of the school year for which the adjustment is sought. Changes to the debt service schedule will be subject to the provisions of subsection (d)(8) of this section, including the disqualification of debt service associated with a refinancing transaction as described in subsection (d)(7) of this section, if deadlines for reporting the refinancing transaction have not been met.
- (k) Approval of attorney general required. All bond issues and all lease-purchase agreements must receive approval from the attorney general before a deposit of state funds will be made in the accounts of the school district.
- (l) Deadlines.
- (1) The commissioner of education shall conduct an annual application cycle with a deadline of June 15 or the next working day after June 15 every year based on the availability of appropriations for the purpose of awarding new allotments. If no funding is available, the commissioner shall cancel the June 15 deadline.
  - (2) The commissioner shall establish the relevant limit on the date of first debt service payment from property taxes for eligible bonded debt that will be considered for funding in the announced application cycle.
  - (3) An application received after the deadline shall be considered a valid application for the subsequent period unless withdrawn by the submitting district before the end of the subsequent period.
  - (4) If the bond order or the lease-purchase agreement has not been approved by the attorney general within 180 days of the deadline for the current application cycle, the TEA shall consider the application withdrawn.
  - (5) The school district may not submit an application for bonded debt before the successful passage of an authorizing proposition. The election to authorize the debt must be held before the close of the application cycle. An application for a lease-purchase agreement may not be submitted before the end of the 60-day waiting period in which voters may petition for a referendum, or until the results of the referendum, if called, approve the agreement.
- (m) Prioritization and notice of award. Upon close of the application cycle, all eligible applications shall be ranked in order of property wealth per student in ADA. State assistance will be awarded beginning with the district with the lowest property wealth and continue until all available funds have been used. Each district shall be notified of the amount of assistance awarded and its position in the rank order for the application cycle. A district's wealth per student may be reduced if any or all of the following criteria are met.
- (1) A district's wealth per student is first reduced by 10% if the district does not have any outstanding debt at the time the district applies for assistance.
  - (2) A district's wealth per student is next reduced if a district has had substantial student enrollment growth in the preceding five-year period. For this purpose, the district's wealth per student is reduced:
    - (A) by 5.0%, if the district has an enrollment growth rate in that period that is 10% or more but less than 15%;

- (B) by 10%, if the district has an enrollment growth rate in that period that is 15% or more but less than 30%; or
  - (C) by 15%, if the district has an enrollment growth rate in that period that is 30% or more.
- (3) If a district has submitted an application with eligible debt and has not previously received any assistance due to a lack of appropriated funds, its property wealth for prioritization shall be reduced by 10% for each biennium in which assistance was not provided. The reduction is calculated after reductions for outstanding debt and enrollment are completed, if applicable. This reduction in property wealth for prioritization purposes is only effective if the district actually entered the proposed debt without state assistance before the deadline for a subsequent cycle for which funds are available.
- (n) Bond taxes. A school district that receives state assistance must levy and collect sufficient eligible taxes to meet its local share of the debt service requirement for which state assistance is granted. Failure to levy and collect sufficient eligible taxes shall result in pro rata reduction of state assistance. The requirement to levy and collect eligible taxes specified in this subsection may be waived at the discretion of the commissioner for a school district that must maintain local maintenance tax effort in order to continue receiving federal impact aid.
  - (o) Exclusion from taxes. The taxes collected for bonded debt service for which funding under TEC, Chapter 46, is granted shall be excluded from the tax collections used to determine the amount of state aid under TEC, Chapter 42. For a district operating with a waiver as described in subsection (n) of this section, the amount of the local share of the allotment shall be subtracted from the total tax collections used to determine state aid under TEC, Chapter 42.
  - (p) Calculation of bond tax rate (BTR) for lease-purchase agreements. The value of BTR in the formula for state assistance for a lease-purchase agreement shall be calculated based on the lease-purchase payment requirement, not to exceed the relevant limitations described in this section. The lease-purchase payment shall be divided by the guaranteed level (FYL), then by ADA, and then by 100. The value of BTR shall be subtracted from the value of district tax rate (DTR) as computed in TEC, §42.302, before limitation imposed by TEC, §42.303.
  - (q) Continued treatment of taxes and lease-purchase payments. Taxes associated with bonded debt may not be considered for state aid under TEC, Chapter 42. Bonded debt service or lease-purchase payments that were excluded from consideration for state assistance due to prioritization or due to the limitation on assistance may be considered for state assistance in subsequent biennia through additional applications. A modified application may be provided for previously rejected debt service or lease-purchase payments.
  - (r) Variable rate bonds. Variable rate bonds are eligible for state assistance under the IFA. For purposes of calculating the biennial limitation on access to the allotment, the payment requirement for a variable rate bond shall be valued at the minimum amount a district must budget for payment of interest cost and the scheduled minimum mandatory redemption amount, if applicable. For purposes of calculating state assistance under TEC, Chapter 46, the lesser of the actual payment or the limitation on the allotment shall be used. A district may exercise its ability to make payments in amounts in excess of the minimum, but the excess amount shall not be used in determining the value of BTR or in the calculation of state assistance under TEC, Chapter 46, in that year.
  - (s) Fixed-rate bonds. Computation for fixed-rate bonds shall be based on published debt service schedules as contained in the FOS or, for a private placement, in a supplemental filing with the TEA. Prepayment of a bond, either through an early call provision or some other mechanism, shall not increase the state's obligation or the computed state aid pursuant to the IFA. To the extent that prepayments reduce future debt service requirements, the computation of state aid shall also be appropriately adjusted.
  - (t) Reports required. The commissioner shall require such information and reports as are necessary to assure compliance with applicable laws.
    - (1) The commissioner shall require immediate notification by a district of relevant financing activities as described in subsection (d)(7) of this section. Failure by a district to make such notification will result in the disqualification of debt service from IFA state aid as described in subsection (d)(8) of



this section. A district is also required to report changes in use of bond proceeds or other actions taken by the district that might affect state funding requirements by submitting a complete amended application packet. Failure to submit the amended application packet will result in the suspension of IFA state aid payments for the applicable IFA allotment award, as described in subsection (d)(8) of this section.

- (2) A complete amended application packet, as prescribed by the commissioner, includes:
  - (A) the appropriate schedules needed to identify the original IFA allotment award or the most recently approved revised allotment award, including the assigned document control number and changes to the title of the debt issuance, the authorization to issue the debt, and other relevant terms;
  - (B) the appropriate schedules needed to describe changes in the use of the bond proceeds, if applicable;
  - (C) the appropriate schedules needed to describe changes in debt service schedules to demonstrate present value savings;
  - (D) an electronic copy of the FOS that is filed with the state information repository, or, if an FOS is not available, an electronic copy of the final bond order or other official document describing the relevant financing activity that is filed with the state information repository, including a final debt service schedule; and
  - (E) an electronic copy of the letter from the attorney general approving the transaction that is filed with the state information repository, if the transaction required approval by the attorney general.
- (3) Receipt of the complete amended application packet is required before debt service payments on the relevant debt issuances will be qualified for IFA state aid.
- (4) Upon evaluation of the complete amended application packet, the TEA may request additional supporting documentation.

*Statutory Authority: The provisions of this §61.1032 issued under the Texas Education Code, §§46.002-46.007, 46.009, 46.013, and 46.061.*

*Source: The provisions of this §61.1032 adopted to be effective October 13, 1997, 22 TexReg 9887; amended to be effective December 27, 1998, 23 TexReg 12916; amended to be effective January 8, 2001, 25 TexReg 194; amended to be effective May 16, 2002, 27 TexReg 4013; amended to be effective May 4, 2008, 33 TexReg 3414; amended to be effective June 28, 2018, 43 TexReg 4187.*

**§61.1033. School Facilities Standards for Construction before January 1, 2004.**

- (a) Definitions and procedures. The following words, terms, and procedures, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
  - (1) Educational program--A written document that includes the following information:
    - (A) a summary of the school district's educational philosophy, mission, and goals; and
    - (B) a description of the general nature of the district's instructional program in accordance with §74.1 of this title (relating to Essential and Knowledge and Skills).
  - (2) Educational specifications--Educational specifications for a proposed new school facility or major space renovation include a description of the proposed project, expressing the range of issues and alternatives. The following information should be included in the educational specifications:
    - (A) the instructional programs, grade configuration, and type of facility;
    - (B) number of students;

- (C) a list of any specialized classrooms or major support areas, noninstructional support areas, or external activity spaces;
  - (D) estimated size of facility;
  - (E) estimated budget for the facility project;
  - (F) school administrative organization; and
  - (G) hours of operation that include the instructional day, extracurricular activities, and any public access or use.
- (3) Instructional space--General classrooms, specialized classrooms, and major support areas.
  - (4) Library--Library will include the following minimum requirements:
    - (A) reading room;
    - (B) stack area; and
    - (C) necessary service areas.
  - (5) Major space renovations--At least 50% of the gross area of the facility's instructional space is within the limits of the work. Other renovations associated with repair or replacement of architectural interior or exterior finishes; fixtures; equipment; and electrical, plumbing, and mechanical systems are not subject to the requirements of subsections (d) and (e) of this section, but shall comply with applicable building codes as required by subsection (f) of this section.
  - (6) Square feet per pupil--The net interior space of a room divided by the maximum number of pupils to be housed in that room during a single class period.
  - (7) Square feet per room measurements--The net square footage of a room that will house 22 students at the elementary level and 25 students at the middle or high school level. The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space or storage space, such as closets or preparation offices.
- (b) Implementation date. The requirements for school facility standards shall apply to projects for new construction or major space renovations approved by a school district board of trustees after September 1, 1998, and before January 1, 2004.
  - (c) Certification of design and construction.
    - (1) In this section, the word "certify" indicates that the architect or engineer has reviewed the standards contained in this chapter and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform to the provisions of this section, except as indicated on the certification.
    - (2) The school district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance.
    - (3) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.
      - (A) The school district shall provide the architect or engineer the long-range school facility plan and/or educational specifications approved by the board of trustees as required by this subchapter, and building code specifications for the facility.
      - (B) The architect or engineer shall perform a building code search under applicable regulations that may influence the project, and shall certify that the design has been researched before it is final.

- (C) The architect or engineer shall also certify that the facility has been designed according to the provisions of this section, based on the long-range school facility plan and/or educational specifications, building code specifications, and all documented changes to the construction documents provided by the district.
  - (D) The building contractor or construction manager shall certify that the facility has been constructed in general accordance with the construction documents specified in subparagraph (C) of this paragraph.
  - (E) When construction is completed, the school district shall certify that the facility conforms to the design requirements specified in subparagraph (A) of this paragraph.
- (d) Space, minimum square foot requirements.
- (1) A school district shall provide instructional space if required by the district educational specifications described in subsection (e) of this section.
  - (2) For each type of instructional space, a district may satisfy the requirements of this section by using, as appropriate, either the standard for the minimum square feet per pupil or for square feet per room specified in paragraphs (1)-(3) of this subsection. Room size requirements are based on rooms that will house 22 students at the elementary level and 25 students at the middle or high school level.
    - (A) General classrooms.
      - (i) Classrooms for prekindergarten-Grade 1 shall have a minimum of 36 square feet per pupil or 800 square feet per room.
      - (ii) Classrooms at the elementary school level shall have a minimum of 30 square feet per pupil or 700 square feet per room.
      - (iii) Classrooms at the secondary school level shall have a minimum of 28 square feet per pupil or 700 square feet per room.
    - (B) Specialized classrooms.
      - (i) Computer laboratories shall have a minimum of 41 square feet per pupil or 900 square feet per room at the elementary school level; and 36 square feet per pupil or 900 square feet per room at the secondary school level.
      - (ii) Science lecture/lab shall have a minimum of 41 square feet per pupil or 900 square feet per room at the elementary school level; 50 square feet per pupil or 1,000 square feet per room at the middle school level; and 50 square feet per pupil or 1,200 square feet per room at the high school level. A science lecture/lab is a classroom where both lecture and lab work occur in the same room and during the same class period.
    - (C) Major support areas.
      - (i) Primary gymnasiums or physical education space, if required by the district's educational program, shall have a minimum of 3,000 square feet at the elementary school level; 4,800 square feet at the middle school level; and 7,500 square feet at the high school level.
      - (ii) Libraries shall have a minimum of 3.0 square feet times the planned student capacity of the school. The minimum size of any elementary school library shall be 1,400 square feet. The minimum size of any middle school library shall be 2,100 square feet. The minimum size of any high school library shall be 2,800 square feet.
  - (3) Other space requirements should be developed from school district design criteria as required to meet educational program needs.

- (e) Educational adequacy. A proposed new school facility or major space renovation of an existing school facility meets the conditions of educational adequacy if the design of the proposed project is based on the requirements of the school district's educational program and the student population that it serves.
- (f) Construction quality.
  - (1) Districts with existing building codes. A school district located in an area that has adopted local building codes shall comply with those codes (including fire and mechanical, electrical, and plumbing codes). The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority.
  - (2) Districts without existing building codes. A school district located in an area that has not adopted local building codes shall adopt and use the latest edition of either the Uniform Building Code or Standard (Southern) Building Code (and related fire, mechanical, and plumbing codes); and the National Electric Code. A qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, and mechanical and electrical design. The review shall be conducted before bidding and must be conducted by a certified building code consultant. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. Any disputes shall be a matter for contract resolution.
  - (3) Other provisions. School districts shall comply with the provisions of the Americans with Disabilities Act of 1990 (Title I and Title II) and other local, state, and federal requirements as applicable.

*Statutory Authority: The provisions of this §61.1033 issued under the Texas Education Code, §46.008.*

*Source: The provisions of this §61.1033 adopted to be effective September 1, 1998, 23 TexReg 7221; amended to be effective June 9, 2003, 28 TexReg 4420.*

#### **§61.1034. New Instructional Facility Allotment.**

- (a) Definitions. The following definitions apply to the new instructional facility allotment (NIFA) in accordance with the Texas Education Code (TEC), §42.158.
  - (1) Instructional campus--A campus that:
    - (A) has its own unique campus ID number registered with the Texas Education Agency (TEA), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;
    - (B) receives federal and/or state and/or local funds as its primary support;
    - (C) provides instruction in the Texas Essential Knowledge and Skills (TEKS);
    - (D) has one or more grade groups in the range from early education through Grade 12; and
    - (E) is not a program for students enrolled in another public school.
  - (2) Instructional facility--A real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the TEC, §28.002.
  - (3) New instructional facility--A facility that includes:
    - (A) a newly constructed instructional facility, which is a new instructional campus built from the ground up;

- (B) a repurposed instructional facility, which is a facility that has been renovated to become an instructional facility for the first time for the applying school district or charter school; or
  - (C) a leased facility operating for the first time as an instructional facility for the applying school district or charter school with a minimum lease term of not less than 10 years. The lease must not be a continuation of or renegotiation of an existing lease for an instructional facility.
- (b) Eligibility. The following eligibility criteria apply to the NIFA in accordance with the TEC, §42.158.
- (1) Both school districts and open-enrollment charter schools are eligible to apply for the NIFA for eligible facilities.
  - (2) The facility for which NIFA funds are requested must meet the following requirements.
    - (A) The facility must qualify as an instructional campus and a new instructional facility used for teaching the curriculum required by the TEC, Chapter 28.
    - (B) To qualify for first-year funding, a new facility must not have been occupied in the prior school year. To qualify for follow-up funding, the facility must have been occupied for the first time in the prior school year and funded for the NIFA for that first year. If an instructional facility qualifies as a new instructional facility but did not receive the allotment in the first year of eligibility due to a failure to apply, the school district or open-enrollment charter school may still apply for and receive funding for the average daily attendance (ADA) earned only during the second year of occupation in the new instructional facility.
    - (C) With the exception of a covered walkway connecting the new facility to another building, the new facility must be physically separate from other existing school structures.
    - (D) If the applicant is an open-enrollment charter school, the facility must be a charter school site approved for instructional use in the original open-enrollment charter as granted by either the State Board of Education or the commissioner of education or in an amendment granted under §100.1033(b)(9)-(11) of this title (relating to Charter Amendment), as described in §100.1001(3)(D) of this title (relating to Definitions).
  - (3) Expansion or renovation of existing instructional facilities, as well as portable and temporary structures, are not eligible for the NIFA.
- (c) Application process. To apply for the NIFA, school districts and open-enrollment charter schools must complete the TEA's online application process requesting funding pursuant to the NIFA.
- (1) The initial (first-year) application, or an application for one-year funding only, must be submitted electronically no later than July 15. The application must include the following:
    - (A) the electronic submission of the TEA's online application for initial funding; and
    - (B) the electronic submission of the following materials:
      - (i) a brief description and photograph of the newly constructed, repurposed, or leased instructional facility;
      - (ii) a copy of a legal document that clearly describes the nature and dates of the new or repurposed construction or a copy of the applicable lease;
      - (iii) a site plan;
      - (iv) a floor plan; and
      - (v) if applicable, a demolition plan.
  - (2) Second-year applications require only the electronic submission of the TEA's online application for follow-up funding no later than July 15 of the year preceding the applicable school year.

- (d) Survey on days of instruction. In the fall of the school year after a school year for which an applicant received NIFA funds, the school district or open-enrollment charter school that received the funds must complete an online survey on the number of instructional days held in the new facility and submit the completed survey electronically. The TEA will use submitted survey information in determining the final (settle-up) amount earned by each eligible school district and open-enrollment charter school, as described in subsection (e)(6) of this section.
- (e) Costs and payments. The costs and payments for the NIFA are determined by the commissioner.
- (1) The allotment for the NIFA is a part of the cost of the first tier of the Foundation School Program (FSP). This allotment is not counted in the calculation of weighted average daily attendance for the second tier of the FSP.
  - (2) If, for all eligible applicants combined, the total cost of the NIFA exceeds the amount appropriated, each allotment is reduced so that the total amount to be distributed equals the amount appropriated. Reductions to allotments are made by applying the same percentage adjustment to each school district and charter school.
  - (3) If an additional \$1 million is appropriated for the NIFA for a school year under the TEC, §42.158(d-1), and if proration as described in paragraph (2) of this subsection is necessary for the school year, the additional appropriation must first be applied to prevent a reduction in the NIFA for eligible high school facilities. Any funds remaining after preventing all reductions in the NIFA for eligible high school facilities will be prorated as described in paragraph (2) of this subsection.
  - (4) Allocations will be made in conjunction with allotments for the FSP in accordance with the school district's or open-enrollment charter school's payment class. For school districts that are not subject to the requirements of the TEC, Chapter 41, and do not receive payments from the Foundation School Fund, NIFA distributions will correspond to the schedule for payment class 3.
  - (5) For school districts that are required to reduce wealth pursuant to the TEC, Chapter 41, any NIFA funds for which the school district is eligible are applied as credits to the amounts owed to equalize wealth.
  - (6) For all school districts and open-enrollment charter schools receiving the NIFA, a final (settle-up) amount earned is determined by the commissioner when information reported through the survey described in subsection (d) of this section is available in the fall of the school year after the school year for which NIFA funds were received. The final amount earned is determined using the submitted survey information and final counts of ADA for the school year for which NIFA funds were received, as reported through the Texas Student Data System Public Education Information Management System.
  - (7) The amount of funds to be distributed for the NIFA to a school district or open-enrollment charter school is in addition to any other state aid entitlements.
- (f) Ownership of property purchased with NIFA funds. Property purchased with NIFA funds by an open-enrollment charter school is presumed to be public property under the TEC, §12.128, and remains public property in accordance with that section.

*Statutory Authority: The provisions of this §61.1034 issued under the Texas Education Code, §42.158.*

*Source: The provisions of this §61.1034 adopted to be effective January 3, 2000, 24 TexReg 12065; amended to be effective September 23, 2004, 29 TexReg 9184; amended to be effective January 2, 2012, 36 TexReg 9325; amended to be effective September 11, 2018, 43 TexReg 5774.*

#### **§61.1035. Assistance with Payment of Existing Debt.**

- (a) Eligibility. Certain restrictions apply to debt and to school districts eligible for the existing debt allotment (EDA).
- (1) Debt eligible for the EDA is an existing obligation of a school district made through the issuance of a bond for instructional or non-instructional purposes pursuant to Texas Education Code (TEC),

Chapter 45, Subchapter A, or through the refunding of bonds as defined in TEC, §46.007. Lease-purchase agreements authorized by Local Government Code, §271.004, are not eligible. Payments demonstrating eligibility for the EDA must appear on the debt service schedule contained in the final official statement (FOS) or bond order. The debt service schedule contained in the FOS (or in the bond order, if the bonds are privately placed) and filed with the state information depository will be used to determine eligible bond payments. Bond issues and their related debt service payments that are not reported to the state information depository are not eligible to receive EDA state assistance.

- (2) Eligible bond payments include regularly scheduled principal and interest payments that are made between September 1 and August 31 each year.
  - (3) A lease purchase refinanced with a general obligation bond shall be eligible for consideration for the EDA in future years.
- (b) Qualifying debt service. The following provisions apply to the applicability of debt service payments for use in calculating EDA state aid.
- (1) Computation of qualifying debt service for fixed-rate bonds shall be based on debt service schedules obtained from the state information depository. Prepayment of a bond, either through an early call provision or some other mechanism, shall not increase the state's obligation or the computed state aid pursuant to the EDA. To the extent that prepayments reduce future debt service requirements, the computation of state aid shall also be appropriately adjusted.
  - (2) Computation of qualifying debt service for a variable rate bond shall be based on the minimum payment requirement necessary to meet the computed interest costs for the year.
  - (3) If a district issues debt that requires the deposit of payments into a mandatory I&S fund or debt service reserve fund, the deposits will be considered qualifying debt payments for the purpose of the EDA if the district's bond covenant calls for the deposit of payments into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds or if the FOS stipulates the requirements of the I&S fund.
- (c) Local share requirement. The following district revenues qualify to meet the local share requirement of the EDA when computing state assistance amounts.
- (1) District revenues that qualify to meet a district's local share requirement for the EDA are specified in the TEC, §46.032(b) and (c). The commissioner of education will provide each district with information about which tax collections were not equalized by state assistance in the preceding school years and worksheets to enable districts to calculate tax collections that will not receive state assistance in a current school year. The commissioner will determine the amount of excess collections, if any, to be applied to the EDA local share requirement.
  - (2) I&S fund taxes collected during a school year will be attributed first to satisfy the local share requirement of debts eligible for EDA state aid for that school year and then to satisfy the local share requirements of any Instructional Facilities Allotment (IFA) debts for that school year.
- (d) Limits on assistance. The following exclusions apply to the amount of state assistance to which a district is entitled under the TEC, Chapter 46, Subchapter B.
- (1) For purposes of computing EDTR, as specified in the TEC, §46.034, and in accordance with the provisions of the TEC, §46.033, relating to eligible bonds for the EDA, tax collections or payment amounts associated with bonded debt in the IFA program shall be excluded from the calculation.
  - (2) Excess funds budgeted in prior tax years that conform to the TEC, §46.032(c)(2) and (3), will not be applied for purposes of computing a district's tax rate for the payment of eligible bonds for the final year of the preceding state fiscal biennium as specified in the TEC, §46.034(b).
- (e) Data and payment cycles. The necessary data elements to calculate state assistance for existing debt and the associated payment cycle are determined by the commissioner.

- (1) An initial, preliminary payment of state assistance will be made as soon as practicable after September 1 of each year. This payment will be based on an estimate of ADA; the taxable value of property certified by the comptroller of public accounts for the preceding school year as determined in accordance with Government Code, Chapter 403, Subchapter M; and the amount of taxes budgeted to be collected for payment of eligible bonds from the prior year Texas Student Data System Public Education Information Management System (TSDS PEIMS) budget submission.
  - (2) A near final determination of assistance for a school year will be made at the close of business for the current school year when final counts of ADA and tax collections are available. If applicable, this determination will also take into account a reduced property value that reflects a rapid decline pursuant to TEC, §42.2521.
    - (A) Any additional amounts owed will be paid as soon as practicable after the near final determination is made.
    - (B) Overallocations determined at near final will first be subtracted from the EDA or IFA entitlements in the subsequent school year. If an overallocation cannot be recovered by reducing the subsequent year's allocation, the district will be notified and the balance will be collected from the district in accordance with the TEC, §46.009(e).
  - (3) A final determination of assistance for a school year will be made after audited tax collections are submitted to the Texas Education Agency (TEA) in the annual financial and compliance report.
    - (A) Any additional amounts owed will be paid as soon as practicable after the final determination is made. Any additional overallocations calculated as a result of the final determination will be subtracted from entitlements in the subsequent school year.
    - (B) Adjustments to state assistance based on changes in the final counts of ADA, changes to IFA eligible debt, or any other reason must be requested no later than three years following the close of the school year for which the adjustment is sought.
- (f) Deposit and uses of funds.
- (1) Funds received from the state for assistance with existing debt must be deposited in the district's I&S fund and must be taken into account before setting the I&S fund tax rate.
  - (2) State and local shares of the EDA must be used for the exclusive purpose of making principal and interest payments on eligible debt.
- (g) Refinancing of eligible debt.
- (1) A district that refinances eligible debt in part or in full must submit the refinancing information to the state information depository, which will send the revised information to the TEA division responsible for state funding. Refinancing of eligible debt includes:
    - (A) the refunding of eligible debt through the issuance of refunding bonds; and
    - (B) the conversion of the period, mode, or index used to determine the interest rate for eligible debt in accordance with the order authorizing the issuance or delivery of such eligible debt.
  - (2) The portion of the debt eligible for state assistance on refinanced bonds is subject to the same limits as eligible debt that has not been refinanced.
  - (3) If a refinancing transaction decreases the current year bond payment requirement, the reduced payment amount shall be the basis of determining the limit on funding.
  - (4) If a refinancing transaction increases the bond payment requirement, the amount of increase will only be used to determine state aid if the refinancing took place before the end of the previous state fiscal biennium.



*Statutory Authority: The provisions of this §61.1035 issued under the Texas Education Code, §§46.031, 46.032, 46.033, 46.034, 46.035, 46.036, 46.037, and 46.061.*

*Source: The provisions of this §61.1035 adopted to be effective December 12, 1999, 24 TexReg 10858; amended to be effective May 16, 2002, 27 TexReg 4017; amended to be effective September 5, 2004, 29 TexReg 8282; amended to be effective May 4, 2008, 33 TexReg 3415; amended to be effective June 19, 2018, 43 TexReg 3883.*

**§61.1036. School Facilities Standards for Construction on or after January 1, 2004.**

- (a) Definitions and procedures. The following words, terms, and procedures, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Architect--An individual registered as an architect under the Texas Occupations Code, Chapter 1051, and responsible for compliance with the architectural design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1051.
  - (2) Educational program--A written document, developed and provided by the district, that includes the following information:
    - (A) a summary of the school district's educational philosophy, mission, and goals; and
    - (B) a description of the general nature of the district's instructional program in accordance with §74.1 of this title (relating to Essential Knowledge and Skills). The written educational program should describe:
      - (i) the learning activities to be housed, by instructional space;
      - (ii) how the subject matter will be taught (methods of instructional delivery);
      - (iii) the materials and equipment to be used and stored;
      - (iv) utilities and infrastructure needs; and
      - (v) the characteristics of furniture needed to support instruction.
  - (3) Educational specifications--A written document for a proposed new school facility or major space renovation that includes a description of the proposed project, expressing the range of issues and alternatives. School districts that do not have personnel on staff with experience in developing educational specifications shall use the services of a design professional or consultant experienced in school planning and design to assist in the development of the educational specifications. The school district shall allow for input from teachers, other school campus staff, and district program staff in developing the educational specifications. The following information should be included in the educational specifications:
    - (A) the instructional programs, grade configuration, and type of facility;
    - (B) the spatial relationships--the desired relationships for the functions housed at the facility:
      - (i) should be developed by the school district to support the district's instructional program;
      - (ii) should identify functions that should be:
        - (I) adjacent to, immediately accessible;
        - (II) nearby, easily accessible; and
        - (III) removed from or away from; and
      - (iii) should relate to classroom/instructional functions, instructional support functions, building circulation, site activities/functions, and site circulation;
    - (C) number of students;

- (D) a list of any specialized classrooms or major support areas, noninstructional support areas, outdoor learning areas, outdoor science discovery centers, living science centers, or external activity spaces;
  - (E) a schedule of the estimated number and approximate size of all instructional and instructional support spaces included in the facility;
  - (F) estimated budget for the facility project;
  - (G) school administrative organization;
  - (H) provisions for outdoor instruction;
  - (I) hours of operation that include the instructional day, extracurricular activities, and any public access or use;
  - (J) the safety of students and staff in instructional programs, such as science and vocational instruction; and
  - (K) the overall security of the facility.
- (4) Engineer--An individual registered as an engineer under the Texas Occupations Code, Chapter 1001, and responsible for compliance with the engineering design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1001.
- (5) Grade levels:
- (A) elementary school level--a school facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;
  - (B) middle school level--a school facility that includes some or all grades from Grade 6 through Grade 8 or Grade 9, or a school facility that includes only Grade 6;
  - (C) high school level--a school facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or a school facility that includes only Grade 9; and
  - (D) secondary school level--a school facility that includes some or all grades from Grade 6 through Grade 12.
- (6) Hazardous chemical--As defined by the Texas Health and Safety Code, Chapter 502, Hazard Communication Act.
- (7) Instructional space--General classrooms, specialized classrooms, outdoor learning areas, and major support areas.
- (8) Library--Library will include the following minimum requirements:
- (A) reading/instructional area;
  - (B) reference/independent study area;
  - (C) stack area;
  - (D) circulation desk/area;
  - (E) computer/online reference areas; and
  - (F) necessary ancillary areas, such as offices, workrooms, head-end room, and storage rooms.
- (9) Long-range school facility plan--School districts are encouraged to formulate a long-range facilities plan prior to making major capital investments. When formulating a plan, a school district's process should allow for input from teachers, students, parents, taxpayers, and other interested parties that reside within the school district. Major considerations should include:
- (A) a description of the current and future instructional program and instructional delivery issues;

- (B) the age, condition, and educational appropriateness of all buildings on the campus (in district), considering condition of all components and systems as well as design flexibility, including an estimate of cost to replace or refurbish and appropriate recommendations;
  - (C) verification of the suitability of school site(s) for the intended use, considering size, shape, useable land, suitability for the planned improvements, and adequate vehicular and pedestrian access, queuing, parking, playgrounds and fields, etc.; and
  - (D) a timeline and a series of recommendations to modify or supplement existing facilities to support the district's instructional program.
- (10) Major space renovations--Renovations to all or part of the facility's instructional space where the scope of the work in the affected part of the facility involves substantial renovations to the extent that most existing interior walls and fixtures are demolished and then subsequently rebuilt in a different configuration and/or function. Other renovations associated with repair or replacement of architectural interior or exterior finishes; fixtures; equipment; and electrical, plumbing, and mechanical systems are not subject to the requirements of subsections (d) and (e) of this section, but shall comply with applicable building codes as required by subsection (f) of this section.
- (11) Portable, modular building--An industrialized building as defined by the Texas Occupations Code, §1202.003, or any other manufactured or site-built building that is capable of being relocated and is used as a school facility.
- (12) Square feet per student--The net square footage of a room divided by the maximum number of students to be housed in that room during any single class period.
- (13) Square feet per room measurements--The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space, classroom door alcoves, or storage space, such as closets or preparation offices. The net square footage of a room shall be measured from the inside surfaces of the room's walls.
- (14) Abbreviations:
- (A) ANSI--American National Standards Institute;
  - (B) ICC--International Code Council; and
  - (C) NFPA--National Fire Protection Association.
- (b) Implementation date. The requirements for school facility standards shall apply to projects for new construction or major space renovations for which the construction documents have been approved by a school district board of trustees, or a board's authorized representative, on or after January 1, 2004. For projects for which a school district approved the construction documents prior to January 1, 2004, if a school district makes changes or revisions to the design of the projects on or after January 1, 2004, and before the end of construction, the changes or revisions are subject to the standards specified in §61.1033 of this title (relating to School Facilities Standards for Construction before January 1, 2004). For projects funded from bond elections passed prior to October 1, 2003, and for which a contract for construction has been awarded no later than December 31, 2005, a school district may comply with the standards specified in §61.1033(d)(2)(B)(ii) of this title in lieu of the standards specified in subsection (d)(5)(C)(iii) of this section, and with the standards specified in §61.1033(d)(2)(C)(ii) of this title in lieu of the standards specified in subsection (d)(5)(D)(ii) of this section.
- (c) Certification of design and construction.
- (1) In this section, the word "certify" indicates that the architect or engineer has reviewed the standards contained in this chapter and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform to the provisions of this section, except as indicated on the certification.

- (2) The school district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance.
- (3) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.
  - (A) The school district shall provide the architect or engineer the educational program and educational specifications approved by the board of trustees as required by this subchapter, and building code specifications for the facility. If a school district has a long-range school facility plan, it shall also be provided to the architect or engineer.
  - (B) The architect or engineer shall perform a building code search under applicable regulations that may influence the project, and shall certify that the design has been researched before it is final.
  - (C) The architect or engineer shall also certify that the facility has been designed according to the provisions of this section, based on the educational program, educational specifications, long-range school facility plan, building code specifications, and all documented changes to the construction documents provided by the district.
  - (D) The building contractor or construction manager shall certify that the facility has been constructed in general accordance with the construction documents specified in subparagraph (C) of this paragraph. If the school district acts as general contractor, it shall make the certification required by this paragraph.
  - (E) When construction is completed, the school district shall certify that the facility conforms to the design requirements specified in subparagraph (A) of this paragraph.
  - (F) The certifications specified in subparagraphs (A)-(E) of this paragraph shall be gathered on the "Certification of Project Compliance" form developed by the Texas Education Agency (TEA). The school district will retain this form in its files indefinitely until review and/or submittal is required by representatives of the TEA.
- (d) Space, minimum square foot, and design requirements.
  - (1) A school district shall provide instructional space if required by the district educational specifications described in subsection (e) of this section.
  - (2) For each type of instructional space, a district shall satisfy the requirements of this section by using the standard for square feet per room specified in paragraph (5)(B)-(D) of this subsection. For school districts with facilities that have one or more classrooms with maximum class sizes that are normally less than 22 students at the elementary level and less than 25 students at the middle or high school level, the school districts may satisfy the requirements of this section for those classrooms by using the standard for the minimum square feet per student specified in paragraph (5)(B)-(D) of this subsection. These classrooms shall be designed on the basis of expected maximum class size, and not expected average class size. Upon submission by a district, alternate classroom designs with square feet per room measurements less than those specified in this subsection may be considered for approval by the TEA division responsible for state funding on a case-by-case basis.
  - (3) School districts should consider providing extra square footage in classrooms where the use on a regular basis of multiple computers, large furniture, televisions, mobile laptop carts, mobile video conferencing carts, monitors on carts, or the like is anticipated. To improve circulation and usability of classroom space, school districts with class sizes that are normally larger than 25 students for Grades 5-12 should also consider increasing the minimum classroom size by adding the appropriate minimum square feet per student specified in paragraph (5)(B)-(D) of this subsection for each student in excess of 25.

- (4) Compliance with the standards specified in paragraph (5)(B)-(D) of this subsection will be evaluated based on the school district's intended full-time and/or part-time use of the areas, and not the name of the areas as identified in the construction documents.
- (5) Instructional area size and design requirements.
- (A) Design criteria. The school district shall provide the architect or engineer with all expected class sizes for the facilities, with the list of chemicals to be used in the science laboratories or science laboratory/classrooms, and with the number of computers anticipated in the library, so that the architect or engineer can adequately design the facilities to meet the criteria specified in subparagraphs (B)-(D) of this paragraph.
- (B) General classrooms.
- (i) Classrooms for prekindergarten-Grade 1 shall have a minimum of 800 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 36 square feet per student.
- (ii) Classrooms at the elementary school level for Grades 2 and up shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 32 square feet per student.
- (iii) Classrooms at the secondary school level shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 28 square feet per student.
- (C) Specialized classrooms.
- (i) A computer classroom used for the teaching of computer skills shall have a minimum of 900 square feet per room. The minimum room size is ideal for 25 students; 36 square feet per student should be added to the minimum square footage for each student in excess of 25. School districts with small class sizes may have computer classrooms that provide a minimum of 36 square feet per student. School districts should consider the heat output of computers when designing the ventilation system that serves a computer classroom.
- (ii) Computer laboratories that are not used regularly for scheduled instruction but that are intended to support other instructional areas shall have a minimum of 25 square feet per computer station. For computer laboratories where the use of portable computers, such as laptop computers, is anticipated, the size may be reduced to 20 square feet per computer station.
- (iii) The following provisions shall apply to combination science laboratories/classrooms, where each student has a lab station and where typically there is a clearly defined laboratory area and a clearly defined lecture area.
- (I) Combination science laboratories/classrooms shall have a minimum of 900 square feet per room at the elementary school level. The minimum room size is adequate for 22 students; 41 square feet per student shall be added to the minimum square footage for each student in excess of 22.
- (II) Combination science laboratories/classrooms shall have a minimum of 1,200 square feet per room at the middle school level. The minimum room size is adequate for 24 students; 50 square feet per student shall be added to the minimum square footage for each student in excess of 24.
- (III) Combination science laboratories/classrooms shall have a minimum of 1,400 square feet per room at the high school level. The minimum room

size is adequate for 24 students; 58 square feet per student shall be added to the minimum square footage for each student in excess of 24.

- (IV) School districts with small class sizes may have combination science laboratories/classrooms that provide a minimum of 41 square feet per student but not less than 700 square feet total at the elementary school level, a minimum of 50 square feet per student but not less than 950 square feet total at the middle school level, and a minimum of 58 square feet per student but not less than 1,100 square feet total at the high school level.
- (iv) For districts that choose to use separate science classrooms and science laboratories, the following provisions shall apply.
  - (I) A science classroom shall be a minimum of 700 square feet regardless of grade level served.
  - (II) A science laboratory shall have a minimum of 800 square feet at the elementary school level. The minimum laboratory size is adequate for 22 students; 36 square feet per student shall be added to the minimum square footage for each student in excess of 22.
  - (III) A science laboratory shall have a minimum of 900 square feet at the middle school level. The minimum laboratory size is adequate for 24 students; 38 square feet per student shall be added to the minimum square footage for each student in excess of 24.
  - (IV) A science laboratory shall have a minimum of 1,000 square feet at the high school level. The minimum laboratory size is adequate for 24 students; 42 square feet per student shall be added to the minimum square footage for each student in excess of 24.
  - (V) Science classrooms shall be provided at a ratio not to exceed 2:1 of science classrooms to science laboratories at the middle school and high school levels. The science laboratories shall be located convenient to the science classrooms they serve.
  - (VI) School districts with small class sizes may have science classrooms that provide a minimum of 32 square feet per student, and they may have science laboratories that provide a minimum of 36 square feet per student but not less than 600 square feet total at the elementary school level, a minimum of 38 square feet per student but not less than 700 square feet total at the middle school level, and a minimum of 42 square feet per student but not less than 800 square feet total at the high school level.
- (v) If hazardous or vaporous chemicals are to be used in the science laboratories or science laboratories/classrooms, a separate chemical storage room shall be provided. The chemical storage room shall be separate from, and shall not be combined as part of, a preparation room or an equipment storage room; however, the chemical storage room may be located so that access is through a preparation room or equipment storage room. The chemical storage room shall be secure to prevent access to chemicals by students. One chemical storage room may be shared among multiple laboratories or laboratories/classrooms.
- (vi) Each school science laboratory, science classroom, science laboratory/classroom, science preparatory room, and chemical storage room shall include the following provisions.

- (I) A built-in fume hood shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in fume hood should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The exhaust shall be vented to the outside above the roof and away from air vents.
- (II) A built-in eye/face wash that can wash both eyes simultaneously shall be provided in each room where hazardous chemicals are used by instructors and/or students. The eye/face wash shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season should consider a tepid water system with a heated source.
- (III) A built-in safety shower shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in safety shower should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The safety shower shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season should consider a tepid water system with a heated source.
- (IV) Ventilation systems serving science rooms shall be designed and constructed so that under normal operation the return air from the science rooms is not recirculated into non-science areas. In the chemical storage rooms, a ventilation system shall exhaust the air to the outside, and shall not be recirculated back into the space.
- (V) An exhaust fan that is controlled by the instructor shall be provided in all rooms where hazardous or vaporous chemicals are to be used or stored. The exhaust fan shall be of sufficient size to exhaust the total volume of air in the room within 15 minutes. The exhaust shall be vented to the outside above the roof and away from air vents.
- (VI) A minimum of 6 linear feet of total horizontal workspace, such as lab stations, lab tables, countertops, desktops, or some combination of these, shall be provided for each student in each middle school and high school science laboratory and science laboratory/classroom.
- (VII) If electricity, gas, and/or water are provided in student areas, emergency shut-off controls shall be provided for each in a location accessible to the instructor but not easily accessible to students.
- (vii) Special education classrooms shall have a minimum of 400 square feet per room. School districts with small class sizes may have rooms that provide a minimum of 40 square feet per student.
- (viii) Specialized classrooms not otherwise identified within these standards shall at a minimum comply with the requirements specified in subparagraph (B) of this paragraph.
- (ix) Compliance with the standards specified in clauses (iii) and (iv) of this subparagraph will be evaluated based on the average class size in those classrooms.

- (D) Major support areas.
  - (i) Primary gymnasiums or physical education space, if required by the district's educational program, shall have a minimum of 3,000 square feet at the elementary school level; 4,800 square feet at the middle school level; and 7,500 square feet at the high school level.
  - (ii) A school district shall consider the School Library Standards and Guidelines as adopted under Texas Education Code, §33.021, when developing, implementing, or expanding library services. Libraries for campuses with a planned student capacity of 100 or less shall be a minimum of 1,400 square feet. Libraries for campuses with a planned student capacity of 101 to 500 shall be a minimum of 1,400 square feet plus an additional 4.0 square feet for each student in excess of 100. Libraries for campuses with a planned student capacity of 501 to 2,000 shall be a minimum of 3,000 square feet plus an additional 3.0 square feet for each student in excess of 500. Libraries for campuses with a planned student capacity of 2,001 or more shall be a minimum of 7,500 square feet plus an additional 2.0 square feet for each student in excess of 2,000. A school district that plans to locate more than 12 student computers in the library shall add 25 square feet of space for each additional computer anticipated. The space allotments within the library shall be based on a formula of 30% for the reading/instructional area and reference/independent study area; 45% for the stack area, circulation desk/area, and computer/online reference areas; and 25% for the necessary ancillary areas. Windows shall be placed so that adequate wall and floor space remains to accommodate the shelving necessary for the library collection size established by the School Library Standards and Guidelines.
- (6) It is not the intent of these standards to limit the use of nontraditional, alternative, sustainable, and/or innovative school designs. A nontraditional design model is one that works to break down the scale of the school and to improve the connection of the student to the resources available within the school environment. If a school district chooses to use a nontraditional model, the following provisions shall apply.
  - (A) The instructional spaces where teachers will instruct groups of students in specialized coursework shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (5)(C) of this subsection.
  - (B) Large group lecture spaces that do not use tables or desks for the students shall have a minimum of 15 square feet per student. Large group lecture spaces that do use tables or desks for the students shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (5)(B) of this subsection. A minimum of 150 square feet shall be provided for each small group, conference, or office space area or room.
  - (C) An individual student learning area that is assigned to a specific student shall have a minimum of 35 square feet. An individual student learning area that is not assigned to a specific student shall have a minimum of 25 square feet.
  - (D) If necessary under the design model, up to half of the reading/reference area function of the library may be dispersed throughout the facility outside the normal library boundaries. The sum total square footage of all library-related areas shall meet the minimum square feet specified for libraries in paragraph (5)(D)(ii) of this subsection.
- (7) Other space requirements should be developed from school district design criteria as required to meet educational program needs.
- (e) Educational adequacy. A proposed new school facility or major space renovation of an existing school facility meets the conditions of educational adequacy if the design of the proposed project is based on the



requirements of the school district's educational program, the educational specifications, and the student population that it serves.

- (f) Construction quality.
  - (1) Districts with existing building codes.
    - (A) A school district located in an area that has adopted local construction codes shall comply with those codes (including building, fire, plumbing, mechanical, fuel gas, energy conservation, and electrical codes). The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority. If the local building authority does not require a plan review, then a qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third party architect or engineer. A qualified building code consultant is a person who maintains, as a minimum, a current certification from the ICC. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment and with the approval of the local building authority, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.
    - (B) For school facilities projects subject to these standards, and where not otherwise required by local code, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the International Building Code (IBC) and International Fire Code (IFC).
    - (C) As part of their school facilities projects and where not otherwise required by local code, school districts should consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. In absence of a local code, each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.
    - (D) If the local building authority does not conduct reviews and inspections during the course of construction of the facility, then a qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.
  - (2) Districts without existing building codes.
    - (A) A school district located in an area that has not adopted local building codes shall adopt and use the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes from the latest edition of the family of International Codes as published by the ICC; and the National Electric Code as published by the NFPA. As an alternative, a school district may adopt the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes as adopted by a nearby municipality or county. A qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements

of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third party architect or engineer. A qualified building code consultant is a person who maintains, as a minimum, a current certification from the ICC. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

- (B) For school facilities projects subject to these standards, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.
  - (C) As part of their school facilities projects, school districts should consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. Each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.
  - (D) A qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction of the facility for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.
- (3) Special provisions for portable, modular buildings. Any portable, modular building capable of being relocated that is purchased or leased for use as a school facility by a school district, whether that building is manufactured off-site or constructed on-site, must comply with all provisions of this section. Effective September 1, 2007, the following additional provisions shall apply to any portable, modular building that is purchased or leased for use as a school facility by a school district.
- (A) A school district located in an area that has adopted local construction codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by the local building authority for compliance with the mandatory building codes or approved designs, plans, and specifications. The school district is not required to seek additional inspection of the portable, modular building other than what is required by the local building authority. If the local building authority does not perform inspections, then a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, shall inspect the facility, including the construction of the foundation system and the erection and installation of the facility on the foundation, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas

Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by the local building authority or an independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

- (B) A school district located in an area that has not adopted local building codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by an independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.
  - (C) A qualified, independent third party inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.
  - (D) A school district that has purchased or leased a portable, modular building for use as a school facility on or after September 1, 2007, and before the effective date of this section, shall have the inspections required by this subsection performed within 60 days of the effective date of this section; any items of noncompliance identified during the inspections shall be brought into compliance by the school district within 90 days of the date of the inspections.
- (4) Other provisions.
- (A) For school facilities projects subject to these standards, an adequate technology, electrical, and communications infrastructure shall be provided. To ensure the adequacy of the infrastructure, the school district and the architect or engineer shall seek the input of the school district staff, including, but not limited to, the technology director, the library director, the program directors, the maintenance director, and the campus staff, in the planning and design of the infrastructure.
  - (B) As part of their school facilities projects, school districts should consider the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. School districts should consult with a qualified indoor air quality specialist during the design process to ensure that the potential for indoor air quality problems after construction and occupancy of a facility is minimized. School districts should use the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services under the Texas Health and Safety Code, Chapter 385. School districts should also use the "Indoor Air Quality Tools for Schools" program administered by the U.S. Environmental Protection Agency.
  - (C) As part of their school facilities projects, school districts should consider the use of sustainable school designs. A sustainable design is a design that minimizes a facility's impact on the environment through energy and resource efficiency.

- (D) School district facilities shall comply with the "Texas Accessibility Standards" as promulgated under the Texas Government Code, Chapter 469, Elimination of Architectural Barriers, as prepared and administered by the Texas Department of Licensing and Regulation.
- (E) School district facilities shall comply with the provisions of the Americans with Disabilities Act of 1990 (Title I and Title II).
- (F) School district facilities shall comply with all other local, state, and federal requirements as applicable.

*Statutory Authority: The provisions of this §61.1036 issued under the Texas Education Code, §46.002 and §46.008.*

*Source: The provisions of this §61.1036 adopted to be effective June 9, 2003, 28 TexReg 4420; amended to be effective September 24, 2008, 33 TexReg 8001.*

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

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

- (4) a certification that the existing school district science laboratories are insufficient in number to comply with the curriculum requirements imposed for the recommended and advanced high school programs under the TEC, §28.025(b-1)(1);
  - (5) the number of science laboratories to be constructed or renovated; and
  - (6) a timeline for each construction or renovation project proposed by the high school campus.
- (c) Prioritization and notice of award. Upon close of the application cycle, all eligible applications will be ranked in order of the school district's property wealth per student in average daily attendance. For purposes of ranking within this grant program, a charter school's property wealth is defined as being equal to the property wealth of the school district from which the highest percentage of the charter school's students are drawn. Grants will be awarded beginning with the school district with the lowest property wealth and continue until all available funds have been used. The commissioner of education will award the full amount of the grant to which a school district is entitled under this section, except that the commissioner may award less than the full amount to the last school district for which any funds are available. By posting on the Texas Education Agency (TEA) website, the commissioner will notify each school district of the amount of grant awarded and its position in the rank order for the application cycle.
- (d) Data sources.
- (1) For purposes of determining prioritization, the projected average daily attendance as adopted by the legislature for appropriations purposes will be used.
  - (2) For purposes of prioritization, the final property values certified by the comptroller of public accounts for the tax year preceding the year in which assistance is to begin will be used. If final property values are unavailable, the most recent projection of property values will be used.
  - (3) For purposes of prioritization, the commissioner may consider, before the deadline for receipt of applications for that fiscal year, adjustments to data values determined to be erroneous.
- (e) Payments, determination of need, and eligible projects.
- (1) Payment of the grant will be made as soon as practicable after June 1 of each year. No payments will be made until all initial submissions required by the application have been received and approved by the TEA division responsible for state funding.
  - (2) For a construction project, the grant amount is limited to not more than \$200 per square foot of the science laboratory to be constructed.
    - (A) For science laboratories identified as combination science laboratories/classrooms, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 2,050 square feet for each science laboratory/classroom.
    - (B) For science laboratories identified as stand-alone laboratories, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,550 square feet for each stand-alone science laboratory.
  - (3) For a renovation project, the grant amount is limited to not more than \$100 per square foot of the science laboratory to be renovated.
    - (A) For science laboratories identified as combination science laboratories/classrooms, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,640 square feet for each science laboratory/classroom.
    - (B) For science laboratories identified as stand-alone laboratories, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,240 square feet for each stand-alone science laboratory.

- (4) The maximum number of science laboratories/classrooms eligible for funding for each campus under this grant program is determined by subtracting the number of existing laboratories/classrooms on the campus from the number of laboratories/classrooms needed. The number of laboratories/classrooms needed on a campus is calculated using the formula "E x LC" where:
  - (A) "E" is the campus enrollment;
  - (B) "LC" is the laboratories/classrooms calculation factor, which is equal to 0.007353; and
  - (C) any resulting fractional number of laboratories/classrooms needed is rounded up to the next whole number.
- (5) The maximum number of science stand-alone laboratories eligible for funding for each campus under this grant program is determined by subtracting the number of existing stand-alone laboratories on the campus from the number of stand-alone laboratories needed. The number of stand-alone laboratories needed on a campus is calculated using the formula "E x SAL" where:
  - (A) "E" is the campus enrollment;
  - (B) "SAL" is the stand-alone laboratories calculation factor, which is equal to 0.003676; and
  - (C) any resulting fractional number of stand-alone laboratories needed is rounded up to the next whole number.
- (6) The following additional limitations and requirements apply to the science laboratory grant program.
  - (A) For a project to be eligible for the grant program, a contract for construction or renovation cannot have been entered into by a school district at the time of the application deadline.
  - (B) Renovations to existing science laboratories/classrooms or to existing science stand-alone laboratories are not eligible for this grant program.
  - (C) Eligibility is limited to construction or renovation projects at high school campuses.
  - (D) A school district that received funds under this grant program for a campus in a prior application cycle is not eligible to apply for additional funds under this grant program for that same campus until three subsequent cycles have passed.
  - (E) All projects must comply with §61.1036 of this title.
- (f) Deadlines and accountability.
  - (1) The commissioner will conduct an annual application cycle with a deadline of April 15 or the next business day after April 15 every year. A school district may file an amendment to its initial application before the deadline; any amendment received after the deadline will not be considered.
  - (2) When all funds within an application cycle have been awarded, the remaining unfunded applications will carry forward and be considered valid applications for the two application cycles immediately following the initial application except for those applications withdrawn by the submitting school districts before the end of the two following cycles. A school district that subsequently proceeds with its construction or renovations projects in the absence of grant funds will not have its application invalidated. An application that remains unfunded after three application cycles will expire and will not be eligible for consideration in future cycles.
  - (3) If no excess funds are available, the commissioner will not make awards, and all applications received on or before the April 15 deadline will be considered valid applications for the following cycle except for those applications withdrawn by the submitting school districts before the end of the following application cycle. A school district that subsequently proceeds with its construction or renovation projects in the absence of grant funds will not have its application invalidated.

- (4) An application received after the deadline will be considered a valid application for the following cycle unless withdrawn by the submitting school district before the end of the following application cycle.
- (5) Within one year of award of grant, the school district must submit evidence in a form acceptable to the commissioner that a contract has been awarded for the construction or renovation projects identified in the application. Within two years of award of grant, the school district must submit evidence in a form acceptable to the commissioner that all work has been completed for the construction or renovation projects identified in the application, with a final accounting of the costs incurred by the school district for the projects. Failure to provide satisfactory evidence by any of the deadlines specified in this paragraph could be cause for the commissioner to cancel the school district's grant and to recover the grant amount from other scheduled Foundation School Program payments due to the school district.
- (g) Reports required. The commissioner will require such information and reports as are necessary to assure compliance with applicable laws.

*Statutory Authority: The provisions of this §61.1037 issued under the Texas Education Code, §7.062.*

*Source: The provisions of this §61.1037 adopted to be effective July 6, 2008, 33 TexReg 5004; amended to be effective September 1, 2010, 35 TexReg 7796.*

#### **§61.1038. School District Bond Enhancement Program.**

- (a) Statutory provision. The commissioner of education must administer the intercept credit enhancement program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter I.
- (b) Definitions. The following definitions apply to the intercept credit enhancement program for school district bonds.
  - (1) Application deadline--The last business day of the month in which an application for a credit enhancement is filed. Applications must be received by the Texas Education Agency (TEA) division responsible for state funding by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.
  - (2) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.
  - (3) Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds.
  - (4) Combination issue--An issuance of bonds for which an application is filed for a credit enhancement that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the credit enhancement is limited by the eligibility of the new money and refunding portions as defined in this subsection.
  - (5) Enrollment growth--Growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.
  - (6) Financial exigency--A determination by a school district board of trustees that the financial condition of the district requires a reduction in personnel, as authorized by the TEC, §21.211.
  - (7) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.
  - (8) New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the credit enhancement for new money issues is limited to the issuance of bonds

authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

- (A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or
  - (B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.
- (9) Notes issued to provide interim financing--An issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the credit enhancement under this section, the notes must be:
- (A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;
  - (B) approved by the Office of the Attorney General or issued in accordance with proceedings that have been approved the Office of the Attorney General; and
  - (C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.
- (10) Proposed annual debt service--Payments of principal and interest on the outstanding bonded debt for which the enhancement is sought scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought and each fiscal year for which the credit enhancement is or would be in effect as described in the amortization schedule for the bonded debt for which the enhancement is sought.
- (11) Refunding issue--An issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing, that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the credit enhancement for refunding issues is limited to refunding issues that refund bonds, including notes issued to provide interim financing, that were authorized by a bond election under the TEC, §45.003.
- (12) School District Bond Enhancement Program (SDBEP)--The intercept program to provide credit enhancement for school district bonds that is described by this section and established under the TEC, Chapter 45, Subchapter I.
- (13) Total debt service--Total outstanding principal and interest on bonded debt.
- (A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline, if the district has outstanding bonded indebtedness.
  - (B) The total debt service does not include:
    - (i) the amount of debt service to be paid on the bonds for which the credit enhancement is sought; or
    - (ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.
  - (C) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement or final maturity schedule.



- (c) Data sources.
  - (1) The following data sources will be used for purposes of prioritization:
    - (A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;
    - (B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;
    - (C) debt service information reported by the MAC of Texas or its successor as of the date of the application deadline; and
    - (D) enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.
  - (2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.
- (d) Application for the credit enhancement.
  - (1) Application process. Districts must apply to the commissioner of education for the guarantee or the credit enhancement of eligible bonds. The district must submit, in a form specified by the commissioner, the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The application will first be considered for guarantee of eligible bonds under §33.65 of this title (relating to Bond Guarantee Program). If Permanent School Fund (PSF) capacity has been exhausted, the application will then be considered for credit enhancement of eligible bonds. The application must be accompanied by a fee in the amount specified as the application fee amount in §33.65 of this title.
    - (A) The fee is due at the time the application for the guarantee or the credit enhancement is submitted. An application will not be processed until the fee has been received in accordance with the process prescribed by the commissioner for remitting the fee on the application form.
    - (B) The fee will not be refunded to a district that:
      - (i) is not approved for the guarantee or the credit enhancement; or
      - (ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.
    - (C) The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee or the credit enhancement.
  - (2) Approval.
    - (A) Under the TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for approval by the commissioner. The commissioner's review will include the following:
      - (i) the purpose of the bond issue;

- (ii) the district's accreditation status as defined by §97.1055 of this title (relating to Accreditation Status) in accordance with the following:
    - (I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the credit enhancement;
    - (II) if the district's accreditation status is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the credit enhancement; or
    - (III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the credit enhancement;
  - (iii) the district's compliance with statutes and rules of the TEA; and
  - (iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the Office of the Attorney General under the provisions of the TEC, §45.0031 and §45.005.
- (B) The commissioner will grant or deny approval for the credit enhancement based on the review described in subparagraph (A) of this paragraph and will provide an applicant district whose application has received or been denied approval for the credit enhancement written notice of approval or denial. Notice of denial will include the reasons for denial.
- (e) Application processing. To facilitate prioritization of applications for the guarantee authorized under §33.65 of this title, or for the credit enhancement authorized under this section, if the PSF capacity has been exhausted, all applications received during a calendar month will be held until the fifteenth business day of the subsequent month. On the fifteenth business day of each month, the commissioner of education will announce the results of the prioritization described in paragraph (5) of this subsection. If the PSF capacity has been exhausted, the commissioner will process the application for approval for the credit enhancement up to the available capacity of money appropriated for the FSP for credit enhancement under this section as of the application deadline, subject to the requirements of this subsection.
- (1) The school district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.
  - (2) The actual credit enhancement of the bonds is subject to the approval process prescribed in subsection (d) of this section.
  - (3) During those periods in which the PSF capacity has been exhausted, the commissioner in each month of each fiscal year will estimate the amount of funds available to make payments under the SDBEP from the FSP through the end of the fiscal year for purposes of providing approval for the credit enhancement of school district bonds under this section. The commissioner will confirm that a sufficient amount of these funds exists to enhance the credit of the bonds before the issuance of the approval for the credit enhancement in accordance with subsection (d)(2) of this section. The amount of funds available to make payments under the SDBEP from the FSP is limited as described in paragraph (4) of this subsection and does not include:
    - (A) Available School Fund (ASF) funds;
    - (B) any FSP funds designated for the facilities programs provided for under the TEC, Chapter 46;
    - (C) any funds designated for the charter school credit enhancement program provided for under the TEC, Chapter 45, Subchapter J; or

- (D) any federal funds, including federal funds provided by the American Recovery and Reinvestment Act of 2009.
- (4) Before approving school district bonds for credit enhancement under the SDBEP, the commissioner must:
  - (A) make the determination described in paragraph (3) of this subsection;
  - (B) determine that credit enhancement of the bonds will not cause the projected debt service coming due during the remainder of the fiscal year for bonds provided credit enhancement under this section to exceed the lesser of:
    - (i) one-half of the amount of funds due to public schools from the FSP for the final month of the current fiscal year; or
    - (ii) one-half of the amount of funds anticipated to be on hand in the FSP to make payments for the final month of the current fiscal year; and
  - (C) determine that the maximum annual debt service on the bonds provided credit enhancement under this section, during any state fiscal year, will not exceed the lesser of:
    - (i) one-half of the amount of funds due to public schools from the FSP for the final month of the current fiscal year; or
    - (ii) one-half of the amount of funds anticipated to be on hand in the FSP to make payments for the final month of the current fiscal year.
- (5) Credit enhancements will be awarded each month beginning with the districts with the lowest property wealth per ADA until the amount of funds available to make payments under the SDBEP from the FSP reaches its net capacity to enhance bonds, as described in paragraph (4) of this subsection. Credit enhancements will be awarded to applicants based on the amount available to fully enhance the bond issue for which the credit enhancement is sought. Applications for bond issues that cannot be fully enhanced will not receive an award. The amount of bond issue for which the guarantee or credit enhancement was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee or credit enhancement during the award process.
- (6) An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.
- (7) Each district that submits a valid application will be notified of the application status within 15 business days of the application deadline. If a district is awarded approval for the credit enhancement as described in subsection (d)(2) of this section, the bonds must be approved by the Office of the Attorney General within 180 days of the date of the letter granting the approval for the credit enhancement. The approval for the credit enhancement will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the district before the expiration of the 180-day period.
- (8) If a district does not receive a credit enhancement or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the district may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.
- (9) If the bonds are not approved by the Office of the Attorney General within 180 days of the date of the letter granting the approval for the credit enhancement, the commissioner will consider the application withdrawn, and the district must reapply for a credit enhancement.

- (10) Districts may not represent the bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval for the credit enhancement.
- (f) Eligibility.
  - (1) For bonds to be eligible for the credit enhancement under the SDBEP:
    - (A) bonds must be issued in the manner provided by the TEC, §45.054;
    - (B) payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year;
    - (C) the applicant school district's lowest credit rating from any credit rating agency may not be the same as or higher than that of the SDBEP;
    - (D) the bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in subsection (b)(10) of this section, for the term of the bonds by the number of years in the amortization schedule; and
    - (E) the applicant school district must agree in its application that the total annual debt service on bonds approved for the credit enhancement will be paid on or before August 15 of each state fiscal year.
  - (2) Refunding issues must comply with the following requirements to be eligible for the credit enhancement for the refunding bonds, except that subparagraph (C) of this paragraph does not apply to a refunding issue that provides long-term financing for notes issued to provide interim financing.
    - (A) Only refunding issues as defined in subsection (b)(11) of this section are eligible for the credit enhancement.
    - (B) The bonds to be refunded must have been:
      - (i) previously guaranteed by the PSF under the guarantee program authorized under §33.65 of this title or provided credit enhancement under this section;
      - (ii) issued on or after November 1, 2008, and before December 16, 2009; or
      - (iii) issued as notes to provide interim financing as defined in subsection (b)(9) of this section.
    - (C) The district must demonstrate that issuing the refunding bond(s) will result in a net present value savings to the district and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Net present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Net present value savings must be computed at the true interest cost of the refunding bonds.
    - (D) If a district files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the guarantee or the credit enhancement. A credit enhancement for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this subsection. The district making the application must present data to the commissioner that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.
    - (E) The refunding transaction must comply with the provisions of subsection (e)(7) and (9) of this section.
- (g) Limitations on access to the credit enhancement.

- (1) The commissioner will limit approval for the credit enhancement to a district with less than the amount of annual debt service per student in ADA or less than the amount of total debt service per student in ADA that is specified as the limitation in §33.65 of this title at the time of the application for a guarantee or a credit enhancement. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(5) of this section, of at least 25%, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by §33.65(b)(1) of this title. The total debt service amount is the amount defined by subsection (b)(13) of this section.
- (2) The eligibility of bonds to receive the credit enhancement is limited to those new money, refunding, and combination issues as defined in subsection (b)(8), (11), and (4), respectively, of this section.
- (h) Financial exigency. A school district that declares a financial exigency must designate the fiscal year to which the exigency applies. A state of financial exigency expires at the end of that fiscal year unless renewed or may be terminated by action of the board of trustees at any time before the end of the fiscal year.
  - (1) Declaration for current fiscal year.
    - (A) Application for credit enhancement of new money issue. The commissioner will deny approval of an application for the credit enhancement of a new money issue if the applicant school district has declared a state of financial exigency for the district's current fiscal year. The denial of approval will be in effect for the duration of the applicable fiscal year unless the district can demonstrate financial stability.
    - (B) Approval granted before declaration. If in a given district's fiscal year the commissioner grants approval for the credit enhancement of a new money issue and the school district subsequently declares a state of financial exigency for that same fiscal year, the district must immediately notify the commissioner and may not offer the bonds for sale unless the commissioner determines that the district may proceed.
    - (C) Application for credit enhancement of refunding issue. The commissioner will consider an application for the credit enhancement of a refunding issue that meets all applicable requirements specified in this section even if the applicant school district has declared a state of financial exigency for the district's current fiscal year. In addition to fulfilling all applicable requirements specified in this section, the applicant school district must also describe, in its application, the reason financial exigency was declared and how the refunding issue will support the district's financial recovery plan.
  - (2) Declaration in a previous fiscal year. An applicant school district that declared a state of financial exigency in a previous district fiscal year but that has not declared such a state for the district's current fiscal year will not be considered to be in a state of financial exigency for the purposes of this section.
- (i) Defeasance. The credit enhancement will be completely removed when bonds provided credit enhancement under this section are defeased, and such a provision must be specifically stated in the bond resolution. If bonds provided credit enhancement under this section are defeased, the district must notify the commissioner in writing within ten calendar days of the action.
- (j) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter I, matured principal and interest payments are limited to amounts due on bonds provided credit enhancement under this section at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment upon a tender of such bonds in accordance with the terms of the bonds do not constitute matured principal and interest payments.

- (k) Credit enhancement restrictions. The credit enhancement provided for eligible bonds in accordance with the provisions of the TEC, Chapter 45, Subchapter I, is restricted to matured bond principal and interest. The credit enhancement does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.
- (l) Notice of failure or inability to pay. A school district that has determined that it is or will be unable to pay maturing or matured principal or interest on a bond for which credit enhancement is provided under this section must immediately, but not later than the tenth business day before maturity date, notify the commissioner.
- (m) Payment from intercepted funds.
  - (1) Immediately after the commissioner receives the notice described in subsection (l) of this section, the commissioner will instruct the comptroller to transfer to the district's paying agent from the amount of funds available to make payments under the SDBEP from the FSP, as identified by the commissioner, the amount necessary to pay the maturing or matured principal or interest.
  - (2) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due.
  - (3) The procedures described in paragraphs (1) and (2) of this subsection apply to each payment of principal or interest on bonds as the payment becomes due until the bonds mature or are defeased according to state law.
  - (4) If, as a result of payments made under this subsection, there is insufficient money to fully fund the FSP, the commissioner will, to the extent necessary, reduce each school district's foundation school fund allocations, other than any portion appropriated from the ASF, in the same manner provided by the TEC, §42.253(h), for a case in which school district entitlements exceed the amount appropriated. The following fiscal year, the commissioner will increase each school district's entitlement under the TEC, §42.253, by an amount equal to the reduction under this paragraph.
  - (5) A payment made under this subsection by the state on behalf of a school district of funds the district owes on bonds for which credit enhancement is provided under this section creates a repayment obligation of the district to the state regardless of the maturity date of, or any payment of interest on, the bonds.
  - (6) This subsection does not create a debt of the state under the Texas Constitution or, except to the extent provided by this section, create a payment obligation.
- (n) Bonds not accelerated on failure to pay. If a school district fails to pay principal or interest on a bond for which credit enhancement is provided under this section when the amount matures, other amounts not yet mature are not accelerated and do not become due by virtue of the district's failure to pay amounts matured.
- (o) Reimbursement of FSP. If payment from the money appropriated to the FSP is made on behalf of a school district, the school district must reimburse the amount of the payment in accordance with the requirements of the TEC, §45.261.
- (p) Repeated failure to pay. If a total of two or more payments are made under the guarantee program authorized under §33.65 of this title or the SDBEP on the bonds of a school district, the commissioner will take action in accordance with the provisions of the TEC, §45.262.

*Statutory Authority: The provisions of this §61.1038 issued under the Texas Education Code, §45.261(b) and §45.263.*

*Source: The provisions of this §61.1038 adopted to be effective March 7, 2011, 36 TexReg 1492.*

**§61.1039. Open-Enrollment Charter School Bond Enhancement Program.**

- (a) Statutory provision. The commissioner of education must administer the open-enrollment charter school facilities credit enhancement program according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter J.
- (b) Definitions. The following definitions apply to the open-enrollment charter school facilities credit enhancement program.
  - (1) Amortization expense--The annual expense of any debt and/or loan obligations.
  - (2) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during a fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the open-enrollment charter holder is responsible for outstanding bonded indebtedness.
    - (A) The annual debt service will be determined by the current report of the bonded indebtedness of the open-enrollment charter holder as reported by the MAC of Texas or its successor as of the date of the application deadline.
    - (B) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement or final maturity schedule.
    - (C) Annual debt service includes required payments into a sinking fund as authorized under 26 United States Code (USC) §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.
  - (3) Application deadline--The last business day of the month in which an application for a credit enhancement is filed. Applications must be received by the Texas Education Agency (TEA) division responsible for state funding by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.
  - (4) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.
  - (5) Board resolution--The resolution adopted by the governing body of an open-enrollment charter holder that:
    - (A) requests credit enhancement of bonds through the Open-Enrollment Charter School Bond Enhancement Program; and
    - (B) authorizes the charter holder's administration to pursue bond financing.
  - (6) Bond resolution--The resolution authorizing the issuance of bonds adopted by the governing body of an issuer of bonds for the benefit of an open-enrollment charter holder.
  - (7) Combination issue--An issuance of bonds for which an application is filed for a credit enhancement that includes both a new money portion and a refunding portion, as permitted by the TEC, Chapter 53, or the Texas Government Code, Chapter 1207. The eligibility of combination issues for the credit enhancement is limited by the eligibility of the new money and refunding portions as defined in this subsection.
  - (8) Debt service coverage ratio--A measure of an open-enrollment charter holder's ability to pay interest and principal with cash generated from current operations. The debt service coverage ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses plus interest expense plus depreciation expense plus amortization expense, all divided by maximum annual debt service. The calculation can be expressed as: (Excess of revenues over expenses + interest expense + depreciation expense + amortization expense) / Maximum annual debt service.

- (9) Depreciation expense--The audited amount of depreciation that was expensed during the fiscal period.
  - (10) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state appropriated funding for school districts in the state of Texas.
  - (11) Maximum annual debt service--As of any date of calculation, the highest annual debt service requirements with respect to all outstanding debt for any succeeding fiscal year.
  - (12) New money issue--An issuance of revenue bonds for the purposes of the purchase, repair, or renovation of real property, including improvements to real property, for an educational facility, as that term is defined in the TEC, §53.02, of an open-enrollment charter school and for purposes of equipping real property of an open-enrollment charter school. Eligibility for the credit enhancement for new money issues is limited to the issuance of bonds authorized under the TEC, Chapter 53. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the open-enrollment charter holder or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A.
  - (13) Open-enrollment charter--This term has the meaning assigned in §100.1011 of this title (relating to Definitions).
  - (14) Open-enrollment charter holder--This term has the meaning assigned to the term "charter holder" in the TEC, §12.1012.
  - (15) Open-enrollment charter school--This term has the meaning assigned to the term "charter school" in §100.1011 of this title.
  - (16) Open-Enrollment Charter School Bond Enhancement Program (CSBEP)--The program to provide credit enhancement for open-enrollment charter school bonds that is described by this section and established under the TEC, Chapter 45, Subchapter J.
  - (17) Open-enrollment charter school campus--This term has the meaning assigned to the term "charter school campus" in §100.1011 of this title.
  - (18) Proposed annual debt service--Payments of principal and interest on the outstanding bonded debt for which the enhancement is sought scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought and each fiscal year for which the credit enhancement is or would be in effect as described in the amortization schedule for the bonded debt for which the enhancement is sought. Proposed annual debt service includes required payments into a sinking fund as authorized under 26 USC §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.
  - (19) Refunding issue--An issuance of bonds for the purpose of refunding bonds that have previously been issued under the TEC, Chapter 53, or the Texas Government Code, Chapter 1207, and have previously been approved by the Office of the Attorney General.
  - (20) School year--The period beginning the fourth Monday of August of the current calendar year and ending the Sunday before the fourth Monday of August of the following calendar year.
- (c) Eligibility to apply for the credit enhancement.
- (1) To have its application for the credit enhancement considered, an open-enrollment charter holder must:
    - (A) have operated at least one open-enrollment charter school in the state of Texas for at least three years;
    - (B) identify in its application for which open-enrollment charter school and, if applicable, for which open-enrollment charter school campus the bond funds will be used;



- (C) in its application, agree that the bonded indebtedness for which the credit enhancement is sought will be undertaken as an obligation of all tax-exempt entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness;
  - (D) not be considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation; and
  - (E) not have an unresolved corrective action that is more than one year old, unless the open-enrollment charter holder has taken appropriate steps to begin resolving the action.
- (2) For an open-enrollment charter holder to have its application for the credit enhancement considered, each open-enrollment charter school operated under the charter must not have an accreditation rating of Not Accredited-Revoked and must have a rating of acceptable or higher as its most recent state academic accountability rating. However, if an open-enrollment charter school operated under the charter is not yet rated because the school is in its first year of operation, that fact will not impact the charter holder's eligibility to apply for the credit enhancement.
- (d) Criteria to be met for open-enrollment charter holder to receive initial approval.
- (1) In determining whether an open-enrollment charter holder applicant is eligible to receive initial approval for the credit enhancement, the commissioner will investigate the financial status of the applicant open-enrollment charter holder and the accreditation status of all open-enrollment charter schools operated under the charter. For the open-enrollment charter holder's application to be eligible for initial approval by the commissioner, each open-enrollment charter school operated under the charter must be accredited and the open-enrollment charter holder must be financially sound. The commissioner's review will include review of the following:
- (A) the purpose of the bond issue;
  - (B) the accreditation status, as defined by §97.1055 of this title (relating to Accreditation Status), of all open-enrollment charter schools operated under the charter in accordance with the following, except that, if an open-enrollment charter school operated under the charter has not yet received an accreditation rating because it is in its first year of operation, that fact will not impact the charter holder's eligibility for consideration for the credit enhancement:
    - (i) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the open-enrollment charter holder will be eligible for consideration for the credit enhancement;
    - (ii) if the accreditation status of any open-enrollment charter school operated under the charter is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the open-enrollment charter holder will not be eligible for consideration for the credit enhancement; or
    - (iii) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited-Revoked, the open-enrollment charter holder will not be eligible for consideration for the credit enhancement;
  - (C) the open-enrollment charter holder's financial status and stability, regardless of each open-enrollment charter school's accreditation rating, including approval of the bonds by the Office of the Attorney General under the provisions of the TEC, §53.40;
  - (D) the audit history of the open-enrollment charter holder and of all open-enrollment charter schools operated under the charter;

- (E) the open-enrollment charter holder's compliance with statutes and rules of the TEA and with applicable state and federal program requirements and the compliance of all open-enrollment charter schools operated under the charter with these statutes, rules, and requirements;
  - (F) any interventions and sanctions to which the open-enrollment charter holder has been subject; to which any of the open-enrollment charter schools operated under the charter has been subject; and, if applicable, to which any of the open-enrollment charter school campuses operated under the charter has been subject;
  - (G) formal complaints made against the open-enrollment charter holder, against any of the open-enrollment charter schools operated under the charter, or against any of the open-enrollment charter school campuses operated under the charter;
  - (H) the state academic accountability rating of all open-enrollment charter schools operated under the charter and the campus ratings of all open-enrollment charter school campuses operated under the charter; and
  - (I) any unresolved corrective actions that are less than one year old.
- (2) For an open-enrollment charter holder to receive initial approval for credit enhancement:
- (A) the applicant open-enrollment charter holder's lowest credit rating from any credit rating agency may not be the same as or higher than that of the CSBEP;
  - (B) the bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in subsection (b)(18) of this section, for the term of the bonds by the number of years in the amortization schedule; and
  - (C) the open-enrollment charter holder must agree, in its application, that payments of all of the principal of the bonds will be scheduled during the first six months of the state fiscal year.
- (3) To receive initial approval for credit enhancement of bonds to be issued for the purchase, repair, or renovation of real property, the open-enrollment charter holder must agree, in its application, to execute a lien or require the owner of the property, if different, to execute a lien on that real property in a form prescribed by the commissioner and approved by the Office of the Attorney General to secure repayment of all amounts due to the state from the open-enrollment charter holder, including reimbursement of any private funds paid on behalf of an open-enrollment charter school under this section. The lien must be filed in the real property records of each county in which the real property is located. In accordance with the TEC, §45.306, the lien has priority over any other claim against the real property except a lien granted to the holders of obligations issued to finance the acquisition of the real property and any security interest or lien existing before credit enhancement is provided under this section. The open-enrollment charter holder must disclose all existing liens, security interests, or other encumbrances on the real property to be purchased, renovated, or improved and on any improvements proposed for the real property in the application and confirm that no additional liens or encumbrances have been placed on the property before the signing and filing of the lien under this subsection. On the payment or defeasance of the enhanced bonds, the lien will terminate and be released insofar as the paid or defeased bonds are concerned. Property purchased with the bond proceeds is presumed to be public property under the TEC, §12.128, and remains public property in accordance with that section.
- (e) Limitations on access to the credit enhancement.
- (1) The commissioner will limit approval of the credit enhancement to an open-enrollment charter holder with a historical debt service coverage ratio of at least 1.1 and a projected debt service coverage ratio of at least 1.20.

- (2) The eligibility of bonds to receive the credit enhancement is limited to those new money, refunding, and combination issues as defined in subsection (b)(12), (19), and (7), respectively, of this section.
  - (3) To be eligible to receive the credit enhancement, bonds may not provide for acceleration of amounts of principal or interest not yet matured by virtue of a charter holder's failure to make payments or for any other reason.
- (f) Application processing. To facilitate prioritization of applications for the credit enhancement, all applications received during a calendar month will be held until the twentieth business day of the subsequent month. On the twentieth business day of each month, the commissioner will announce the results of the prioritization described in paragraph (6) of this subsection, if prioritization was necessary, and process applications for initial approval of the credit enhancement up to the available capacity as of the application deadline, subject to the requirements of this subsection.
- (1) The open-enrollment charter holder may not submit an application for a credit enhancement before the governing body of the open-enrollment charter holder adopts a board resolution as defined in subsection (b)(5) of this section.
  - (2) The actual credit enhancement of the bonds is subject to the initial approval process and the final approval process prescribed in subsection (g) of this section.
  - (3) Refunding issues must comply with the following requirements to retain eligibility for the credit enhancement for the refunding bonds.
    - (A) The open-enrollment charter holder must demonstrate that issuing the refunding bond(s) will result in a net present value savings to the open-enrollment charter holder and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Net present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Net present value savings must be computed at the true interest cost of the refunding bonds.
    - (B) If an open-enrollment charter holder files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the credit enhancement. A credit enhancement for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the eligibility requirements described in this subsection. The open-enrollment charter holder making the application must present data to the commissioner that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.
    - (C) The refunding transaction must comply with the provisions of paragraphs (8) and (10) of this subsection.
  - (4) The commissioner in each month of each fiscal year will estimate the amount of funds available to make payments under the CSBEP from the FSP through the end of the fiscal year for purposes of providing initial approval to the credit enhancement of bonds issued for the benefit of open-enrollment charter holders under this section. The commissioner will confirm that a sufficient amount of these funds exists to enhance the credit of the bonds before the issuance of the final approval for the credit enhancement in accordance with subsection (g)(4) of this section.
  - (5) Before approving the credit enhancement of bonds issued by open-enrollment charter holders under the CSBEP, the commissioner must:
    - (A) allocate not more than 1.0% of the amount appropriated for the FSP for purposes of the CSBEP; and
    - (B) make the determination described in paragraph (4) of this subsection.
  - (6) If prioritization of applications is necessary because of limited program capacity, the commissioner will prioritize applications for the credit enhancement in the following way.

- (A) Applications from open-enrollment charter holders that have not had bonds issued previously will be considered before applications from open-enrollment charter holders that have had bonds issued previously.
  - (B) The commissioner first will prioritize by lottery all applications received from open-enrollment charter holders that have not had bonds issued previously.
  - (C) The commissioner then will prioritize by lottery all applications received from open-enrollment charter holders that have had bonds issued previously.
- (7) An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting open-enrollment charter holder before the end of the subsequent month.
  - (8) Each open-enrollment charter holder that submits a valid application will be notified of the application status within 20 business days of the end of the month following the application deadline. If an open-enrollment charter holder is awarded initial approval for the credit enhancement as described in subsection (g)(3) of this section, the following requirements must be met.
    - (A) The open-enrollment charter holder must comply with the provisions for final approval described in subsection (g)(4) of this section to maintain approval for the credit enhancement.
    - (B) The bonds must be approved by the Office of the Attorney General within 270 days of the date of the letter granting the approval of the credit enhancement. The initial approval for the credit enhancement will expire at the end of the 270-day period. The commissioner may extend the 270-day period, based on extraordinary circumstances, on receiving a written request from the open-enrollment charter holder before the expiration of the 270-day period.
  - (9) If an open-enrollment charter holder does not receive a credit enhancement or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the open-enrollment charter holder may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.
  - (10) If the bonds are not approved by the Office of the Attorney General within 270 days of the date of the letter granting the approval of the credit enhancement, the commissioner will consider the application withdrawn, and the open-enrollment charter holder must reapply for a credit enhancement.
  - (11) An open-enrollment charter holder may not represent bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval of the credit enhancement.
- (g) Application for the credit enhancement.
    - (1) Application process. Open-enrollment charter holders must apply to the commissioner for the credit enhancement of eligible bonds. The open-enrollment charter holder must submit, in a form specified by the commissioner, the information required under this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The application must be accompanied by a fee to be set by the commissioner.
      - (A) The fee is due at the time the application for the credit enhancement is submitted. An application will not be processed until the fee has been received in accordance with the process prescribed by the commissioner for remitting the fee on the application form.
      - (B) The fee will not be refunded to an open-enrollment charter holder that:
        - (i) is not approved for the credit enhancement; or

- (ii) does not sell its bonds before the expiration of its approval for the credit enhancement.
  - (C) The fee may be transferred to a subsequent application for the credit enhancement by the open-enrollment charter holder if the open-enrollment charter holder withdraws its application and submits the subsequent application for the same charter school before the expiration of its initial approval for the credit enhancement.
- (2) Application for the credit enhancement and charter renewal or amendment.
  - (A) If an open-enrollment charter holder applies for the credit enhancement during the school year in which the open-enrollment charter holder's charter is due to expire, application approval will be contingent on successful renewal of the charter, and the bonds for which the open-enrollment charter holder is applying for the credit enhancement may not be issued before the successful renewal of the charter.
  - (B) If an open-enrollment charter holder proposes to use the proceeds of the bonds for which it is applying for the credit enhancement for an expansion that requires a charter amendment, application approval will be contingent on approval of the amendment, and the bonds may not be issued before approval of the amendment.
- (3) Initial approval; denial. The TEA will notify an applicant in writing of initial approval for or of denial for the credit enhancement on the TEA's determination of whether the applicant has met all applicable requirements. Notification of denial will include the reasons for denial.
- (4) Final approval. An open-enrollment charter holder must receive final approval before completing the sale of the bonds for which the open-enrollment charter holder has received notification of initial approval.
  - (A) An open-enrollment charter holder that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the credit enhancement or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.
    - (i) The open-enrollment charter holder must receive written confirmation from the TEA that the available capacity of money allocated for the credit enhancement under this section continues to be available and must continue to meet the requirements of subsection (c) of this section before proceeding with the public or private offer to sell bonds.
    - (ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.
  - (B) An open-enrollment charter holder that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an agenda item on a meeting of the bond issuer's board of directors to approve the bond sale no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the issuer to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.
    - (i) The open-enrollment charter holder must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the bond issuer or by the pricing officer or committee.
    - (ii) The TEA will provide this notification within one business day before the date that the bond issuer expects to complete the sale by official action of the bond issuer or of a pricing officer or committee.

- (C) The TEA will process requests for final approval from open-enrollment charter holders that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.
  - (D) An open-enrollment charter holder may provide written notification as required by this paragraph by facsimile transmission or by electronic mail in a manner prescribed by the commissioner.
- (h) **Defeasance.** The credit enhancement will be completely removed when bonds approved for credit enhancement by this CSBEP are defeased, and such a provision must be specifically stated in the bond resolution. If bonds approved for credit enhancement by this CSBEP are defeased, the open-enrollment charter holder must notify the commissioner in writing within ten calendar days of the action.
  - (i) **Payments.** For purposes of the provisions of the TEC, Chapter 45, Subchapter J, matured principal and interest payments are limited to amounts due on bonds approved for credit enhancement at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.
  - (j) **Credit enhancement restrictions.** The credit enhancement provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter J, is restricted to matured bond principal and interest. The credit enhancement does not extend to any obligation of an open-enrollment charter holder under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.
  - (k) **Report on the use of funds and confirmation of use of funds by independent auditor.** An open-enrollment charter holder that issues bonds approved for credit enhancement by the CSBEP must report to the TEA annually in a form prescribed by the commissioner on the use of the bond funds until all bond proceeds have been spent. The open-enrollment charter holder's independent auditor must confirm in the open-enrollment charter holder's annual financial report that bond funds have been used in accordance with the purpose specified in the application for the credit enhancement.
  - (l) **Failure to comply with statute or this section.** An open-enrollment charter holder's failure to comply with the requirements of the TEC, Chapter 45, Subchapter J, or with the requirements of this section, including by making any misrepresentations in the open-enrollment charter holder's application for the credit enhancement, constitutes a material violation of the open-enrollment charter holder's charter.

*Statutory Authority: The provisions of this §61.1039 issued under the Texas Education Code, §§45.302, 45.303, and 45.308.*

*Source: The provisions of this §61.1039 adopted to be effective March 7, 2011, 36 TexReg 1498.*