

Chapter 61. School Districts**Subchapter CC. Commissioner's Rules Concerning School Facilities****§61.1031. School Safety Requirements.**

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings.
- (1) Actively monitored--supervised by an adult who can visibly review visitors prior to entrance, who can take immediate action to close and/or lock the door, and whose duties allow for sufficient attention to monitoring.
 - (2) Exterior secured area--an area fully enclosed by a fence and/or wall that:
 - (A) if enclosed by a fence or wall, utilizes a fence or wall at least 6 feet high with design features that prevent it from being easily scalable, such as stone, wrought iron, chain link with slats or wind screen, or chain link topped with an anti-scaling device, or utilizes a fence or wall at least 8 feet high;
 - (B) is well maintained; and
 - (C) if gated, features locked gates with emergency egress hardware and has features to prevent opening from the exterior without a key or combination mechanism.
 - (3) Instructional facility--this term has the meaning assigned in Texas Education Code (TEC), §46.001, and includes any real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching curriculum under TEC, §28.002. For purposes of this section, an instructional facility does not include real property, improvements to real property, or necessary fixtures of an improvement to real property that are part of a federal, state, or private correctional facility or facility of an institution of higher education, medical provider, or other provider of professional or social services over which a school system has no control.
 - (4) Modular, portable building--
 - (A) an industrialized building as defined by Texas Occupations Code (TOC), §1202.002 and §1202.003;
 - (B) any relocatable educational facility as defined by TOC, §1202.004, regardless of the location of construction of the facility; or
 - (C) any other manufactured or site-built building that is capable of being relocated and is used as a school facility.
 - (5) Primary entrance--
 - (A) the main entrance to an instructional facility that is closest to or directly connected to the reception area; or
 - (B) any exterior door the school system intends to allow visitors to use to enter the facility during school hours either through policy or practice.
 - (6) School system--a public independent school district or public open-enrollment charter school.
 - (7) Secure vestibule--a secured space with two or more sets of doors and an office sign-in area where all but the exterior doors shall:
 - (A) remain closed, latched, and locked;
 - (B) comply with subsection (c)(3)(B) of this section; and
 - (C) only open once the visitor has been visually verified.

- (b) The provisions of this section apply to all school instructional facilities owned, operated, or leased by a school system, regardless of the date of construction or date of lease. The provisions of this section ensure that all school system instructional facilities have access points that are:
- (1) secured by design;
 - (2) maintained to operate as intended; and
 - (3) appropriately monitored.
- (c) A school system shall implement the following safety and security standards compliance requirements to all school instructional facilities owned, operated, or leased by the school system.
- (1) All instructional facilities campus-wide, including modular, portable buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location. The characters may be installed on the door, or on at least one door at locations where more than one door leads from the exterior to the same room inside the facility, or on the wall immediately adjacent to or above the door location. Characters shall comply with the International Fire Code, §505. The primary entrance of an instructional facility shall always be the first in the entire sequence and is the only door location that does not require numbering. The numbering sequence shall be clockwise and may be sequenced for the entire campus or for each facility individually. The door-numbering process must comply with any and all accessibility requirements related to signage.
 - (2) Unless a secure vestibule is present, a primary entrance shall:
 - (A) meet all standards for exterior doors;
 - (B) include a means to allow an individual located within the building to visually identify an individual seeking to enter the primary entrance when the entrance is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms;
 - (C) feature a physical barrier that prevents unassisted access to the facility by a visitor; and
 - (D) feature a location for a visitor check-in and check-out process.
 - (3) All exterior doors shall:
 - (A) be, by default, set to a closed, latched, and locked status, except that:
 - (i) a door may be unlocked if it is actively monitored or within an exterior secured area; and
 - (ii) for the purposes of ventilation, a school system may designate in writing as part of its multi-hazard emergency operations plan under TEC, §37.108, specific exterior doors that are allowed to remain open for specified periods of time if explicitly authorized by the school safety and security committee established by TEC, §37.109, when a quorum of members are present, and only if it is actively monitored or within an exterior secured area;
 - (B) be constructed, both for the door and door frame and their components, of materials and in a manner that make them resistant to entry by intruders. Unless inside an exterior secured area, doors constructed of glass or containing glass shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to open or otherwise enter through the door (for example, using forced entry-resistant film);
 - (C) include:
 - (i) a mechanism that fully closes and engages locking hardware automatically after entry or egress without manual intervention, regardless of air pressure within or outside of the facility; and
 - (ii) a mechanism that allows the door to be opened from the inside when locked to allow for emergency egress while remaining locked; and

- (D) if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic device.
- (4) Except when inside an exterior secured area, classrooms with exterior entry doors shall include a means to allow an individual located in the classroom to visually identify an individual seeking to enter the classroom when the door is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms.
- (5) Except when inside an exterior secured area, all windows that are adjacent to an exterior door and that are of a size and position that, if broken, would easily permit an individual to reach in and open the door from the inside shall be constructed or modified such that the glass cannot be easily broken.
- (6) Except when inside an exterior secured area, all ground-level windows near exterior doors that are of a size and position that permits entry from the exterior if broken shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to enter through the window frame (for example, using forced entry-resistant film).
- (7) If designed to be opened, all ground-level windows shall have functional locking mechanisms that allow for the windows to be locked from the inside and, if large enough for an individual to enter when opened or if adjacent to a door, be closed and locked when staff are not present.
- (8) Roof access doors should default to a locked, latched, and closed position when not actively in use and be lockable from the interior.
- (9) All facilities must:
 - (A) include one or more distinctive, exterior secure master key box(es) designed to permit emergency access to both law enforcement agencies and emergency responder agencies from the exterior (for example, a Knox box) at a location designated by the local authorities with applicable jurisdiction; or
 - (B) provide all local law enforcement electronic or physical master key access to the building(s).
- (10) A communications infrastructure shall be implemented that must:
 - (A) ensure equipment is in place such that law enforcement and emergency responder two-way radios can function within most portions of the building(s); and
 - (B) include a panic alert button, duress, or equivalent alarm system, via standalone hardware, software, or integrated into other telecommunications devices or online applications, that includes the following functionality:
 - (i) An alert must be capable of being triggered by campus staff, including temporary or substitute staff, from an integrated or enabled device.
 - (ii) An alert must be triggered automatically in the event a district employee makes a 9-1-1 call using the hardware or integrated telecommunications devices described in this subparagraph from any location within the school system.
 - (iii) With any alert generated, the location of where the alert originated shall be included.
 - (iv) The alert must notify a set of designated school administrators as needed to provide confirmation of response, and, if confirmed, notice must be issued to the 9-1-1 center of an emergency situation requiring a law enforcement and/or emergency response and must include the location of where the alert originated. A notice can simultaneously be issued to all school staff of the need to follow appropriate emergency procedures.
 - (v) For any exterior doors that feature electronic locking mechanisms that allow for remote locking, the alert system will trigger those doors to automatically lock.

- (11) In implementing the requirements of this section, school systems shall comply with state and federal Kari's Laws and federal RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems, including a multi-line telephone system.
- (d) Certain operating requirements. A school system shall implement the following.
- (1) Access control. The board of trustees or the governing board shall adopt a policy requiring the following continued auditing of building access:
 - (A) conduct at least weekly inspections during school hours of all exterior doors of all instructional facilities to certify that all doors are, by default, set to a closed, latched, and locked status and cannot be opened from the outside without a key as required in subsection (c)(3)(A) of this section;
 - (B) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the school system's safety and security committee as required by TEC, §37.109, and ensure the results are kept for review as part of the safety and security audit as required by TEC, §37.108;
 - (C) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the principal or leader of the instructional facility to ensure awareness of any deficiencies identified and who must take action to reduce the likelihood of similar deficiencies in the future; and
 - (D) include a provision in the school system's applicable policy stating that nothing in a school system's access control procedures will be interpreted as discouraging parents, once properly verified as authorized campus visitors, from visiting campuses they are authorized to visit.
 - (2) Exterior and interior door numbering site plan.
 - (A) A school system must develop and maintain an accurate site layout and exterior and interior door designation document for each instructional facility school system-wide that identifies all exterior and interior doors in the instructional facility and depicts all exterior doors on a floor plan with an alpha-numeric designation, in accordance with the door numbering specifications established in subsection (c)(1) of this section.
 - (B) Copies of exterior and interior door numbering site plans shall be readily available in each campus main office.
 - (C) Electronic copies of exterior and interior door numbering site plans shall be supplied to the local 9-1-1 administrative entity so that the site plans can be made available to emergency responders by 9-1-1 dispatchers.
 - (D) The site layout and exterior and interior door designation document should be oriented in a manner that depicts true north.
 - (3) Maintenance.
 - (A) A school system shall perform at least twice-yearly maintenance checks to ensure the facility components required in subsection (c) of this section function as required. At a minimum, maintenance checks shall ensure the following:
 - (i) instructional facility exterior doors function properly, including meeting the requirements in subsection (c)(3)(A) and (C) of this section;
 - (ii) the locking mechanism for any ground-level windows that can be opened function properly;
 - (iii) any perimeter barriers and related gates function properly;
 - (iv) all panic alert or similar emergency notification systems in classrooms and campus central offices function properly, which includes at least verification from multiple campus staff and classroom locations that a notification can be

issued and received by the appropriately designated personnel, that the alert is successfully broadcast to all campus staff and to appropriate law enforcement and emergency responders, and that a potential threat observed on video triggers an alert from video surveillance monitoring systems;

- (v) all school telephone systems and communications infrastructure provide accurate location information when a 9-1-1 call is made in accordance with state and federal laws and rules and when an alert is triggered in accordance with this section;
 - (vi) all exterior master key boxes function properly and the keys they contain function properly;
 - (vii) law enforcement and emergency responder two-way radios operate effectively within each instructional facility; and
 - (viii) two-way radios used by school system peace officers, school resource officers, or school marshals properly communicate with local law enforcement and emergency response services.
- (B) A school system shall ensure procedures are in place to require that staff who become aware of a facility component functionality deficiency that would be identified during the twice-yearly maintenance review described by subparagraph (A) of this paragraph immediately report the deficiency to the school system's administration, regardless of the status of the twice-yearly maintenance review.
- (C) A school system shall promptly remedy any deficiencies discovered as a consequence of maintenance checks required by subparagraph (A) of this paragraph or reports made under subparagraph (B) of this paragraph.
- (e) In implementing the requirements of this section, school systems shall comply with the provisions of §61.1040(j) of this title (relating to School Facilities Standards for Construction on or after November 1, 2021).
- (f) To the extent that any provisions of this section conflict with rules adopted in Chapter 61, Subchapter CC, of this title (relating to Commissioner's Rules Concerning School Facilities), including terms defined by this section or standards established by this section, the provisions of this section prevail.
- (g) In implementing the requirements of this section, school systems shall comply with the standards adopted under Texas Government Code, §469.052.
- (h) In implementing the requirements of this section, school systems must adopt a 3-year records control schedule that complies with the minimum requirements established by the Texas State Library and Archives Commission schedule, record series item number 5.4.017, as referenced in Texas Government Code, §441.169, and Texas Local Government Code, §203.041.
- (i) Certification.
- (1) All requirements in subsections (c) and (d) of this section shall be implemented during the 2022-2023 school year and thereafter. Annually, a school system shall certify compliance with those requirements as part of ongoing security audits under TEC, §37.108(b); maintain the certification locally; and report as required by the Texas School Safety Center. Any and all non-compliance shall be reported to the school system's safety and security committee, the school system's board, and the Texas School Safety Center, as required by TEC, §37.108(c).
 - (2) A school system may provisionally certify compliance of a facility component described in subsection (c) of this section that is not in compliance with the requirements of paragraph (1) of this subsection if:
 - (A) the school system has taken the necessary steps to initiate an upgrade of the facility component to ensure compliance; and

- (B) for the 2023-2024 school year, the contractor or supplier has been procured and has provided a time frame when the upgrade will be completed.
- (3) TEA may modify rule requirements or grant provisional certification for individual site needs as determined by the agency.
- (j) Subsection (i)(2) of this section and this subsection expire August 31, 2024.

Statutory Authority: The provisions of this §61.1031 issued under Texas Education Code, §7.061 and §37.115(b).

Source: The provisions of this §61.1031 adopted to be effective May 31, 2023, 48 TexReg 2716.

§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 depository --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 depository, 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, estimates of property values under TEC, §48.269, 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 current school year under TEC, §48.256, 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, §48.271. 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 48, 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 48. 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 48.
- (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, §48.202, before limitation imposed by TEC, §48.203.
- (q) Continued treatment of taxes and lease-purchase payments. Taxes associated with bonded debt may not be considered for state aid under TEC, Chapter 48. 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 depository, 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 depository, 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 depository, 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; amended to be effective June 21, 2022, 47 TexReg 3533.

§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), §48.152.
 - (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, §48.152.
 - (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) 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 subject to the excess local revenue provisions under TEC, §48.257, and do not receive payments from the Foundation School Fund, NIFA distributions will be reflected as reduced recapture payments.
 - (4) For school districts that are subject to the excess local revenue provisions under TEC, §48.257, NIFA distributions increase the amount of the FSP entitlement and so will automatically reduce any excess local revenue and reduce the requirement to send recapture to the state in the amount of the NIFA allocation.
 - (5) 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.
 - (6) 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, §§48.004, 48.152, and 48.266(f).

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; amended to be effective March 23, 2020, 45 TexReg 1988.

§61.1035. Assistance with Payment of Existing Debt.

§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; estimates of the taxable value of property under TEC, §48.269, as determined in accordance with Texas 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, taxable value of property defined by TEC, §48.256, for the current year as determined in accordance with Texas Government Code, Chapter 403, Subchapter M, 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, §48.258.

- (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; amended to be effective June 21, 2022, 47 TexReg 3534.

§61.1036. School Facilities Standards for Construction before November 1, 2021.

- (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 if:
- (1) a board of trustees adopts a fiscal year maintenance and operations budget where a capital improvement project title and a design or design and construction budget are delineated;
 - (2) a board of trustees calls a bond election where one or more capital improvement project titles as well as design or design and construction budgets are delineated; or
 - (3) a new contract or amendment to an existing contract for architectural services for new construction or a major renovation for a school facility project has been agreed to, and signed and dated by both parties to the agreement after January 1, 2004, and before November 1, 2021.
- (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; amended to be effective October 12, 2021, 46 TexReg 6915.

§61.1037. Science Laboratory Grant Program.

- (a) Definitions. The following words and terms, when used in this section, have the following meaning, unless the context clearly indicates otherwise.
 - (1) Average daily attendance--The definition of this term is assigned in the Texas Education Code (TEC), §48.005.
 - (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 or identified as laboratories under the applicable school facilities standards adopted under this subchapter. To provide clarity in the exercise of the grant program governed by this section, rooms identified as laboratories under the applicable school facilities standards adopted under this subchapter are referred to as "stand-alone laboratories" within this section and within the grant application.
 - (6) Enrollment--The actual high school campus enrollment for the school year before the year in which a school district submits an application for the science laboratory grant program.
 - (7) Support areas--For a construction project, support areas are limited to prep rooms, storage areas, and corridor access space. For a renovation project, support areas are limited to prep rooms and storage areas.
 - (8) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.
- (b) Application process. A school district must complete an application to request funding under the science laboratory grant program. The application must contain at a minimum the following:
- (1) a description of each individual high school campus for which funds are being requested;
 - (2) the enrollment on each high school campus;
 - (3) the number of existing science laboratories on each high school campus;
 - (4) a certification that the existing school district science laboratories are insufficient in number to comply with the curriculum requirements imposed for the recommended and advanced high school programs under the TEC, §28.025(b-1)(1);
 - (5) the number of science laboratories to be constructed or renovated; and
 - (6) a timeline for each construction or renovation project proposed by the high school campus.
- (c) Prioritization and notice of award. Upon close of the application cycle, all eligible applications will be ranked in order of the school district's property wealth per student in average daily attendance. For purposes of ranking within this grant program, a charter school's property wealth is defined as being equal to the property wealth of the school district from which the highest percentage of the charter school's students are drawn. Grants will be awarded beginning with the school district with the lowest property wealth and continue until all available funds have been used. The commissioner of education will award the full amount of the grant to which a school district is entitled under this section, except that the commissioner may award less than the full amount to the last school district for which any funds are available. By posting on the Texas Education Agency (TEA) website, the commissioner will notify each school district of the amount of grant awarded and its position in the rank order for the application cycle.
- (d) Data sources.
- (1) For purposes of determining prioritization, the projected average daily attendance as adopted by the legislature for appropriations purposes will be used.
 - (2) For purposes of prioritization, the final property values certified by the comptroller of public accounts for the tax year preceding the year in which assistance is to begin will be used. If final property values are unavailable, the most recent projection of property values will be used.
 - (3) For purposes of prioritization, the commissioner may consider, before the deadline for receipt of applications for that fiscal year, adjustments to data values determined to be erroneous.

- (e) Payments, determination of need, and eligible projects.
- (1) Payment of the grant will be made as soon as practicable after June 1 of each year. No payments will be made until all initial submissions required by the application have been received and approved by the TEA division responsible for state funding.
 - (2) For a construction project, the grant amount is limited to not more than \$200 per square foot of the science laboratory to be constructed.
 - (A) For science laboratories identified as combination science laboratories/classrooms, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 2,050 square feet for each science laboratory/classroom.
 - (B) For science laboratories identified as stand-alone laboratories, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,550 square feet for each stand-alone science laboratory.
 - (3) For a renovation project, the grant amount is limited to not more than \$100 per square foot of the science laboratory to be renovated.
 - (A) For science laboratories identified as combination science laboratories/classrooms, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,640 square feet for each science laboratory/classroom.
 - (B) For science laboratories identified as stand-alone laboratories, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,240 square feet for each stand-alone science laboratory.
 - (4) The maximum number of science laboratories/classrooms eligible for funding for each campus under this grant program is determined by subtracting the number of existing laboratories/classrooms on the campus from the number of laboratories/classrooms needed. The number of laboratories/classrooms needed on a campus is calculated using the formula "E x LC" where:
 - (A) "E" is the campus enrollment;
 - (B) "LC" is the laboratories/classrooms calculation factor, which is equal to 0.007353; and
 - (C) any resulting fractional number of laboratories/classrooms needed is rounded up to the next whole number.
 - (5) The maximum number of science stand-alone laboratories eligible for funding for each campus under this grant program is determined by subtracting the number of existing stand-alone laboratories on the campus from the number of stand-alone laboratories needed. The number of stand-alone laboratories needed on a campus is calculated using the formula "E x SAL" where:
 - (A) "E" is the campus enrollment;
 - (B) "SAL" is the stand-alone laboratories calculation factor, which is equal to 0.003676; and
 - (C) any resulting fractional number of stand-alone laboratories needed is rounded up to the next whole number.
 - (6) The following additional limitations and requirements apply to the science laboratory grant program.
 - (A) For a project to be eligible for the grant program, a contract for construction or renovation cannot have been entered into by a school district at the time of the application deadline.
 - (B) Renovations to existing science laboratories/classrooms or to existing science stand-alone laboratories are not eligible for this grant program.

- (C) Eligibility is limited to construction or renovation projects at high school campuses.
 - (D) A school district that received funds under this grant program for a campus in a prior application cycle is not eligible to apply for additional funds under this grant program for that same campus until three subsequent cycles have passed.
 - (E) All projects must comply with the applicable school facilities standards adopted under this subchapter.
- (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 and §48.004.

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; amended to be effective July 20, 2021, 46 TexReg 4301.

§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, §48.005.
- (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 46, 48, and 49, 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 Texas Student Data System Public Education Information Management System (TSDS 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.
- (c) 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 TSDS 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, §48.266(f), 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, §48.266, 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), 45.263, 45.302, 45.303, and 45.308.

Source: The provisions of this §61.1038 adopted to be effective March 7, 2011, 36 TexReg 1492; amended to be effective December 6, 2020, 45 TexReg 8516.

§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 the laws of Texas and the United States of America, 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, §48.005.
 - (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: $(\text{Excess of revenues over expenses} + \text{interest expense} + \text{depreciation expense} + \text{amortization expense}) / \text{Maximum annual debt service}$.
- (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 46, 48, and 49, 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 §100.1001 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 §100.1001 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 §100.1001 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 the laws of Texas and the United States of America, 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, provided that an entity that does not operate a charter school in Texas is subject to this subparagraph only to the extent that it has received state funds from the open-enrollment charter holder;
- (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 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, §§45.261(b), 45.263, 45.302, 45.303, and 45.308.

Source: The provisions of this §61.1039 adopted to be effective March 7, 2011, 36 TexReg 1498; amended to be effective December 6, 2020, 45 TexReg 8516.

§61.1040. School Facilities Standards for Construction on or after November 1, 2021.

- (a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings.

- (1) Adjusted maximum instructional capacity--The maximum number of students who can be served at an instructional facility at any point in time as adjusted from the maximum instructional capacity based on the implementation of innovative instructional or operational practices.
- (2) Architect--A person registered as an architect under Texas Occupations Code (TOC), Chapter 1051, and responsible for compliance with the architectural design requirements of TOC, Chapter 1051.
- (3) Authority having jurisdiction--A state, local, or other regional department or an individual such as a fire marshal, building official, electrical inspector, or other individuals having statutory authority or authority assigned contractually by the school district to enforce specified building codes in accordance with subsection (j) of this section.
- (4) Capital improvement project--Any school facility project consisting of new construction, major renovation, or minor renovation for which construction services are procured under Texas Government Code (TGC), Chapter 2269, in accordance with Texas Education Code (TEC), §44.031(a)(5).
- (5) Contractor--A sole proprietorship, partnership, corporation, or other legal entity that:
 - (A) provides construction services and assumes the risk for constructing, rehabilitating, altering, or repairing all or part of a school facility at the contracted price;
 - (B) serves as the general contractor as defined in TGC, Chapter 2269;
 - (C) serves as a construction manager-at-risk as defined in TGC, Chapter 2269, Subchapter F;
 - (D) serves as a construction manager agent as defined in TGC, Chapter 2269, Subchapter E; or
 - (E) serves as a prime subcontractor for a project where the school district has contracted with a construction manager agent.
- (6) Design guidelines or standards--A written document comprised of standardized information developed by the school district, possibly in partnership with consultants, often adopted by a school district board of trustees and provided to the design professional of record for reference on capital improvement projects. It includes, but is not limited to:
 - (A) the instructional programs, grade configuration, and types of facilities in the school district;
 - (B) a schedule of the estimated number and approximate size of all instructional and support spaces included in each facility and extracurricular activities;
 - (C) provisions for outdoor instruction;
 - (D) adjacencies diagram(s) defining relationships between functions at the facilities; and
 - (E) technical standards related to functional requirements, systems, manufacturers, products, and finishes.
- (7) Design professional--An architect or engineer as defined in this subsection.
- (8) Designated representative--A person designated by a school district board of trustees to act as the official representative of the district, in accordance with TEC, §44.0312, and TGC, §2269.053, who has the express authority to act and bind the school district, to the extent and for the purposes described in the contract for school facility design and construction services, including responsibilities for general administration of the contract and required school district certifications for educational adequacy, space, and construction quality.
- (9) Engineer--A person registered as an engineer under TOC, Chapter 1001, and responsible for compliance with engineering design requirements and other applicable requirements of TOC, Chapter 1001.

- (10) Hazardous chemical--This term has the meaning assigned in Texas Health and Safety Code, §502.003(13).
- (11) Inclusive design--Design that considers the broad spectrum of human diversity with respect to ability, age, culture, gender, language, and other forms of human difference.
- (12) Instructional facility--This term has the meaning assigned in TEC, §46.001, and includes any real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching curriculum under TEC, §28.002.
- (13) Instructional space--All interior general learning spaces, including general classrooms, collaboration spaces, specialized classrooms, and laboratories. Outdoor instructional space may be provided at an instructional facility but may not be used to meet minimum aggregate space requirements in either method of compliance in subsections (h) and (i) of this section. Certain major support spaces may be classified as instructional space for purposes of complying with subsection (i) of this section.
- (14) Major renovation--A project for the construction, addition, rehabilitation, alteration, or repair of an existing school facility that exceeds \$50,000 and requires the school district to hire an architect and an engineer.
- (15) Maximum instructional capacity--The maximum number of students who can be served by an instructional facility at any point in time.
- (16) Maximum student enrollment--The maximum number of students a school district expects to enroll at an instructional facility. For the quantitative method of compliance, maximum student enrollment must equal the maximum instructional capacity. For the qualitative method of compliance, maximum student enrollment is allowed to be higher than the maximum instructional capacity.
- (17) Minor renovation--A project for the construction, addition, rehabilitation, alteration, or repair of an existing school facility that exceeds \$50,000 and for which a school district is required to hire an engineer but not an architect. If the scope of work for the minor renovation project expands in the type and way that requires the hiring of an architect, the project must be reclassified as a major renovation. If the scope of work for the minor renovation requires that additional safety and security standards under subsection (k)(2) of this section be included in the scope of work of the project and those additional safety and security standards require the hiring of an architect, the project does not require reclassification as a major renovation.
- (18) Modular, portable building--An industrialized building as defined by TOC, §1202.002 and §1202.003; any relocatable educational facility as defined by TOC, §1202.004, regardless of the location of construction of the facility; or any other manufactured or site-built building that is capable of being relocated and is used as a school facility.
- (19) New construction--A project for the design and construction of a new school facility to be used for administrative, assembly, educational, or other occupancy for which a school district board of trustees is required to hire an architect, or the installation of a modular building regardless of whether an architect is required.
- (20) Non-designated entry--A door that is not operable from the exterior and is designed to only allow for emergency egress.
- (21) Non-instructional assembly facility--A non-instructional facility where large populations of occupants congregate such as arenas, performing arts centers, and stadiums.
- (22) Non-instructional facility--Administrative buildings, transportation centers, and other support facilities that are not used predominately for teaching curriculum.
- (23) Open-enrollment charter school--This term has the meaning assigned in §100.1001(3) of this title (relating to Definitions).
- (24) Primary entrance--

- (A) the main entrance to an instructional facility that is closest to or directly connected to the reception area;
 - (B) any exterior door the school district intends to allow visitors to use to enter the facility during school hours either through policy or practice; or
 - (C) any exterior door the school district intends to allow to remain unlocked during school hours.
- (25) Prime design professional--The registered design professional engaged by a school district or school district's authorized agent to coordinate certain aspects of the project requiring review by the building official or third-party code compliance officer for compatibility of the design of the building or structure with applicable building codes, including the coordination of submittal documents prepared by others, deferred submittal documents, and phased submittal documents.
- (26) Project construction budget--The total aggregate dollars to be spent to execute the design and construction of a capital improvement project, as approved by the school district at the completion of design development to establish the compliance thresholds under subsection (k) of this section in accordance with the requirements of subsection (k)(2) of this section.
- (27) School district--The board of trustees of an independent school district or its designated representative, as permitted.
- (28) School facility--Any instructional facility, specialized instructional facility, non-instructional assembly facility, non-instructional facility, or any other facility owned or operated by a school district.
- (29) School level--
- (A) elementary school level--an instructional facility or specialized instructional facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;
 - (B) middle school level--an instructional facility or specialized instructional facility that includes some or all grades from Grade 6 through Grade 8 or Grade 9, or only includes Grade 6;
 - (C) high school level--an instructional facility or specialized instructional facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or only includes Grade 9; and
 - (D) secondary level--an instructional facility or specialized instructional facility that includes some or all grades from Grade 6 through Grade 12.
- (30) Secondary entrance--Any exterior door that is not one of the following:
- (A) a primary entrance; or
 - (B) a door that is not operable from the exterior and is designed to allow only for emergency egress.
- (31) Specialized instructional facility--An instructional facility with a specialized educational purpose such as agricultural barns.
- (32) Square feet per room--The net square footage of a space, including exposed storage space such as cabinets or shelving, but not including 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.
- (33) 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 period of time during school hours.
- (34) Third-party code compliance officer--A person who a school district has contracted with and designated to have all of the duties and powers of a building official, as defined by required

construction codes, to the extent allowable by state law, to enforce compliance of any required construction code provision that is not enforced by a state or local authority having jurisdiction.

(b) Applicability.

- (1) The school facilities standards established in this section shall apply to all school district capital improvement projects as follows, regardless of the type of school facility or the type of construction delivery method used by the district.
 - (A) A school district capital improvement project of any type or size relating to a school facility subject to this section must comply with applicable requirements established in subsections (d), (e), (f), (j), and (k) of this section.
 - (B) A project for new construction or major renovation at an instructional facility must comply with the requirements established in subsections (d), (e), (f), (g), (j), and (k) of this section and one of the methods required to demonstrate compliance with minimum space requirements established in subsections (h) and (i) of this section.
 - (C) A project for minor renovation at an instructional facility must comply with applicable requirements established in subsections (d)(1), (e), (f), (j), and (k) of this section.
 - (D) A project for new construction, major renovation, or minor renovation at a specialized instructional facility, non-instructional facility, or non-instructional specialized assembly facility must comply with applicable requirements established in subsections (d)(1), (e), (f), (j), and (k) of this section.
 - (E) A project for major renovation that includes minor scopes of work in an area of a school facility that is separate and distinct from the project scope of the major renovation may be performed as a part of a construction services contract for the major renovation without the minor scope of work becoming subject to the standards in subsections (g), (h), or (i) of this section if:
 - (i) the minor scopes of work would not, on a stand-alone basis, be considered a major renovation project; and
 - (ii) the cost of the minor scopes of work is included in the total cost of the project construction budget to determine the appropriate scope of work to be included in the project, as specified in subsection (k)(1)(B) of this section.
- (2) A capital improvement project for an instructional facility of an open-enrollment charter school is subject to subsection (k) of this section and all applicable laws for an open-enrollment charter school facility but is not subject to subsections (c)-(j) of this section.

(c) Implementation.

- (1) The school facilities standards established in this section shall apply to a capital improvement project for which at least one of the following has occurred on or after November 1, 2021:
 - (A) a board of trustees adopts a fiscal year maintenance and operations budget where a capital improvement project title and a design or design and construction budget are delineated;
 - (B) a board of trustees calls a bond election where one or more capital improvement project titles and design or design and construction budgets are delineated; or
 - (C) a new contract or amendment to an existing contract for architectural services for new construction or a major renovation project or a contract for engineering services for a major renovation or minor renovation has been agreed to and signed and dated by both parties to the agreement.
- (2) A school district board of trustees may elect to treat a capital improvement project, for which an action listed in paragraph (1) of this subsection was taken prior to November 1, 2021, under standards established in §61.1036 of this title (relating to School Facilities Standards for Construction before November 1, 2021) or under the standards established in this section. If an election to comply with this section is made by a board of trustees, the school district and architect

may mutually agree that the contract for design services may be adjusted and then must signify in writing that the project will become subject to the facilities standards established in this section through an affirmative indication on the required certification form for the project or through some other written document or addendum to the contract signifying election under this section and any modifications to the contract terms agreed to by the parties.

- (3) If a school district board of trustees makes an election to comply with §61.1036 of this title under paragraph (2) of this subsection, it may still elect to comply with subsection (k) of this section.
 - (4) A school district shall consider implementing the safety and security standards under subsection (k) of this section for any safety and security upgrades to an existing instructional facility that does not require compliance with this section.
- (d) Educational adequacy.
- (1) Long-range facility plan. A school district shall ensure that a capital improvement project subject to this section complies with the requirements and standards as follows.
 - (A) Elements. The long-range facility plan shall include all of the following elements that apply to the facility and project and must also be updated prior to commencement of construction to include the access control document required in subsection (k)(1)(B) of this section:
 - (i) existing and proposed instructional programs at the project campus, including special education, dual language, course offerings, and partnerships;
 - (ii) the age and condition of all buildings and systems at the project campus;
 - (iii) history of completed capital improvement projects at the facility;
 - (iv) site evaluation of the project campus, including, but not limited to, overall site; shape; useable land; suitability for intended use as well as planned improvements; adequate vehicular, pedestrian, and emergency access; queuing; parking; and site amenities;
 - (v) the school district's educational specifications;
 - (vi) the school district's enrollment projections, maximum student enrollment of the facility, and the facility's maximum instructional capacity, if applicable; and
 - (vii) the noncompliance, partial compliance, or full compliance with each of the safety and security standards required in subsection (k) of this section.
 - (B) Process. The process of developing the long-range facility plan shall consider input from teachers, students, parents, taxpayers, and other school district stakeholders.
 - (C) Compliance. The requirement for a long-range facility plan is met when a school district completes the long-range facility plan, presents it to the school district board of trustees, and makes it available to the prime design professional for a capital improvement project. The long-range facility plan expires after five years from the date of the final plan presented to the school district board of trustees and must be updated prior to commencement of a subsequent capital improvement project. A long-range facility plan developed as part of a district-wide long-range facilities plan may be used to satisfy this requirement.
 - (2) Educational specifications. A school district shall ensure that a project for new construction and major renovation subject to this section complies with the requirements and standards as follows.
 - (A) Elements. Educational specifications are a written document prepared by the school district and approved by the school district board of trustees and shall include all of the following:
 - (i) the school district mission, vision, goals, and pedagogy;

- (ii) preliminary details related to facility type, grades served, and maximum student enrollment;
 - (iii) pertinent provisions of the multi-hazard emergency operations plan that may inform the functionality of the built environment, including how the district complies with TEC, §37.108;
 - (iv) a written statement that includes:
 - (I) inclusive design goals and considerations supported by the school district; and
 - (II) how inclusive design should be addressed in new and renovated facility designs;
 - (v) minimum total square footage required to comply with the quantitative method of compliance; and
 - (vi) innovative teaching or operational practices intended for implementation at the instructional facility that may lead to the use of the qualitative method of compliance.
- (B) **Schedule.** An educational specification shall be created for each campus type. If the design and construction of a new campus or major renovation of an existing campus differs substantially from an educational specification that exists for the same campus type, a separate educational specification must be developed. Educational specifications shall be initiated upon the first proposed project of its type and must be completed prior to initiating the planning or programming phase of a project. Each educational specification must be updated after five years from the date of approval.
- (C) **Compliance.** The requirement for educational specifications is met when a school district delivers the approved document to the architect.
- (3) **Exceptions.** A school district is exempt from the requirements of this subsection:
- (A) if a school facility experiences catastrophic damage and the school district board of trustees approves a capital improvement project in accordance with TEC, §44.0312(c); or
 - (B) in a situation deemed urgent by action of the school district board of trustees that warrants immediate action because, if left unresolved, it would impair the conduct of classes.
- (e) **Administration.**
- (1) **Administration of construction quality standards.**
 - (A) This subsection establishes standards for the administration and procurements of design professional services and other professional services and for the administration of competitive bids and contracting requirements for construction services. A school district shall comply with requirements in this subsection and with all applicable requirements, restrictions, and responsibilities established in state law, administrative code, or by a local authority having jurisdiction.
 - (B) A school district shall comply with the administrative and procedural requirements established in this subsection and with the standards established in subsection (j) of this section to promote construction quality and best value for a capital improvement project subject to this section.
 - (C) A standard in this section that incorporates by reference a key statutory provision or administrative rule is established as a compliance requirement for a school district seeking to procure, obtain a competitive bid, or administer a contract for construction services, construction-related services, design professional services, or any other professional service required for a capital improvement project. The requirements establish a method by which a school district shall demonstrate compliance with the

requirements in this subsection and with the construction quality standards and construction code requirements in subsection (j) of this section. Any express reference to, or omission of, an applicable statutory provision in this subsection may not be construed to diminish, alter, or abate a provision of law applicable to a school district or to a school district capital improvement project subject to this section.

- (2) School district requirements and responsibilities.
 - (A) In accordance with TEC, §46.003(g), the board of trustees and voters of a school district shall determine district needs concerning construction, acquisition, renovation, or improvement to instructional facilities. School district funding is entrusted to the district by the taxpayers, and a district must ensure procurement processes and procedures are transparent and provide the best value to the district by complying with applicable laws governing procurement of professional design services and construction services and with the standards established in this subsection to promote construction quality.
 - (B) In accordance with TEC, §11.201, a superintendent shall oversee and ensure compliance with the standards for school facilities established in this section pursuant to TEC, §46.008, and shall ensure board consideration for any action specified as being required to be made by the board of trustees, whether by statute, board rule, or other applicable requirement.
 - (C) In accordance with TEC, §44.0312(b), a board of trustees may not delegate the authority to act regarding an action authorized or required by TEC, Chapter 44, Subchapter B, to be taken by a board of trustees of a school district.
 - (D) In accordance with TEC, §44.0312(a), a board of trustees of a school district may, as appropriate, delegate its purchasing and contracting authority under TEC, Chapter 44, Subchapter B, regarding an action authorized or required to be taken by a school district or a designated person, representative, or committee.
 - (E) In accordance with TEC, §44.0312(a), when procuring construction services for a capital improvement project, a school district board of trustees shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. If the school district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board of trustees in an open public meeting is advisory only.
 - (F) A superintendent shall ensure that a requirement to specify the level of delegation of authority is included in the bid specifications when procuring construction services to select a contractor, in accordance with TEC, §44.0312.
 - (G) In accordance with TEC, §44.0312(c), in the event of a catastrophe, an emergency, or a natural disaster affecting a school district, the board of trustees of the district has all authority to delegate to the superintendent or designated representative the authority to contract for the replacement, construction, or repair of school equipment or facilities under TEC, Chapter 44, Subchapter B, if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.
 - (H) In accordance with TEC, §44.031(d), and TGC, §2269.051, a school district may adopt rules as necessary to implement the management responsibilities and duties established for school district procurement and delivery of professional design and construction services for a capital improvement project.
- (3) Requirements for construction services.
 - (A) In accordance with TEC, §44.031, the award of a school district contract for construction services or construction-related services valued at \$50,000 or more must be made by competitive bid or by the construction delivery contracting method established in TGC, Chapter 2269, that provides the best value for the district.

- (B) In accordance with TGC, §2269.056(a), a school district that is considering a construction contract using a method of procuring construction services other than by competitive bid must first, before advertising, determine which contracting method for construction services contained in TGC, Chapter 2269, provides the best value to the school district for the project.
 - (C) A school district is required to consider certain factors established in TGC, §2269.056(b), if the district engages in consideration of a construction delivery contracting method other than competitive bidding to evaluate best value for the district, and the district must adhere to the requirements specified for each type of construction delivery contracting method established in TGC, Chapter 2269, Subchapters D, E, F, and G, and must determine, prior to utilization, the best value for the district. A school district shall comply and adhere in full to the requirements specified for each construction delivery contracting method.
 - (D) A school district shall ensure a contract for construction services required to be procured by a method in TGC, Chapter 2269, specifies the contractor's responsibilities for site safety and requires compliance with the requirement to provide workers' compensation insurance in accordance with Texas Labor Code, §406.096.
 - (E) In accordance with TGC, §2252.063 and §2252.064, a school district shall ensure that a contract with a general contractor requires the contractor to provide to the district annual payment statements derived from sales tax reports and to execute a bond issued by a surety company authorized to do business in the state of Texas in an amount determined by the school district, which may not exceed the contract price. The bond must be payable to the school district and conditioned on the faithful performance of the terms of the contract.
 - (F) If a school district selects the design build method of construction delivery, the district shall procure a design professional, independent of the contractor, to act as the school district's representative for the procurement process and for the duration of the construction in accordance with TGC, §2269.355.
 - (G) In accordance with TGC, §2269.408(a), if a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture or engineering, the school district shall select or designate an architect or engineer, in accordance with TGC, Chapter 2254, to prepare the construction documents for the project. In accordance with TGC, §2269.408(b), TGC, §2269.408(a), does not apply to a job order contract or an order issued under the contract for industrialized buildings or relocatable educational facilities subject to and approved under TOC, Chapter 1202, if the contractor employs the services of an architect or engineer who approves the documents for the project.
- (4) Requirements for design professional services.
- (A) In accordance with TGC, §2269.102, a school district seeking to issue a request for competitive bids for construction services shall first select or designate an architect or engineer, in accordance with TOC, Chapter 1051 or Chapter 1001, as applicable, to prepare the construction documents required for a capital improvement project to be awarded by competitive bid.
 - (B) A capital improvement project that contains architectural or engineering services, as defined by TOC, Chapter 1051 or Chapter 1001, as applicable, must use the professional services of an architect or engineer, or both, as required by the scope of the project.
 - (C) When architectural or engineering services are required, a school district shall procure architectural or engineering services from a design professional in accordance with TGC, §2254.004. A design professional may subcontract another design professional to perform architectural or engineering services as part of the scope of services that the subcontracting design professional is providing to a school district. A school district shall

- require that an architect perform architectural services in accordance with TOC, Chapter 1051, to prepare construction documents required for a new construction or major renovation project for a school facility. A school district shall require that an engineer perform engineering services in accordance with TOC, Chapter 1001, to prepare engineering plans and specifications documents required for a minor renovation, major renovation, or a new construction project for a school facility.
- (D) A school district shall designate one design professional to be the prime design professional for a capital improvement project and shall contractually engage the prime design professional to review and coordinate the design of the project, allowing the prime design professional to rely on and contract for other design professionals where appropriate.
- (E) A school district shall ensure a contract for professional design services for a capital improvement project contains the scope of services defined with reasonable specificity, including contractual time parameters, milestones, or deadlines and shall ensure that contract terms conform to the standard of care established in Local Government Code, §271.904, which requires architectural and engineering services to be provided with the professional skill and care ordinarily provided by competent architects or engineers practicing under same or similar circumstances and professional license.
- (F) In accordance with TOC, §1051.703(d), designation as the "prime design professional" does not expand, limit, or otherwise alter the scope of a design professional's practice nor does it allow a design professional to fulfill the requirements of a professional license for which they have not been lawfully granted.
- (5) Requirements for professional services of third-party consultants.
- (A) When procuring the professional services of a third-party consultant for a capital improvement project, a school district must adhere to the requirements established in TGC, Chapter 2269.058, and this section. A school district is required to select a qualified provider of a professional service for which it contracts under this subsection in accordance with TGC, Chapter 2254.
- (B) A school district shall require any design professional contractually engaged to procure professional design services from any other design professional as a subconsultant to select and subcontract the professional design services based on the qualification-based selection process established in TGC, Chapter 2254.
- (C) A school district shall ensure, through confirmation from a local or state building official or a third-party code compliance officer as provided for in subsection (j)(2) of this section, that all required inspections, testing, or permits required for a capital improvement project have been performed in accordance with contractual terms and in accordance with all applicable building code specifications.
- (D) In accordance with TGC, §2269.058, a school district shall, independently of the contractor, construction manager-at-risk, or design-build firm, provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district.
- (E) A school district shall ensure, through confirmation from a local or state building official or a third-party code compliance officer, that all code compliance issues and requirements for a capital improvement project have been addressed or performed, including inspections, testing, and permits that are required.
- (F) Any contract with a third-party code compliance officer shall be in accordance with terms and requirements specified by the International Code Council and shall be procured in accordance with TGC, Chapter 2254, as required by TGC, §2269.058.
- (G) A building permit or local government fee for code compliance, a contract with a third-party code compliance officer, a third-party inspector, or consultant shall be the

obligation and responsibility of the school district, procured in accordance with TGC, Chapter 2254, as required by TGC, §2269.058, and consistent with the terms of subsection (j) of this section.

- (H) In accordance with TEC, §44.901 and §44.902, a school district may contract for energy or water conservation measures and must procure the services for energy or water savings performance contracts according to the procedures established for professional services in TGC, §2254.004.
- (6) Contract compliance and construction quality control assurances. A school district shall ensure that services sought by or provided to the district for a school facility capital improvement project, including, but not limited to, professional design services, construction services, construction administration services, third-party inspection services, third-party testing services, or third-party code compliance services, are provided through a project-specific written agreement that:
- (A) conforms to applicable state laws and any requirements, standards, or codes adopted by a local authority having jurisdiction;
 - (B) contains all services required to be provided in the agreement, prohibits the school district from waiving any services or directing any changes where recommended by an applicable design professional, and requires all changes to the construction documents to be documented in writing and signed by the prime design professional, the contractor, and the school district;
 - (C) specifies the level of observation, testing, and documentation required to be conducted through the agreement to determine and certify conformance and completion of services provided;
 - (D) requires the use of a prime design professional to coordinate and prepare a proposed statement of any special inspections or testing required in accordance with the required construction codes, customizing the proposed statement based on knowledge about the project regardless of whether the statement requires testing and inspection to be less than the default requirements of the required construction codes, including materials testing, project-specific requirements for special inspections and testing, specific wind and seismic requirements, frequency of the special inspections, or tests to be performed in accordance with the referenced standard defining the inspection;
 - (E) ensures that construction documents are of sufficient clarity to indicate the timing, location, nature, and extent of specific inspections and tests required to be performed by the school district through the local authority having jurisdiction, the third-party code compliance officer, any third-party special inspector or inspection agency, or the prime design professional if qualified as a special inspector and specified as a contractual term;
 - (F) ensures that a building permit is issued by a local authority having jurisdiction or a third-party code compliance officer in which a building permit shall be considered by the school district to indicate that the proposed statement of special inspections is approved and constitutes the code-required inspections and tests;
 - (G) requires the contractor, before beginning construction, to submit to the school district, prime design professional, and the building official or third-party code compliance officer an acknowledgement of the contractor's responsibility to notify quality assurance personnel that will be performing inspections and tests when the project is ready for those specific inspections and tests and the contractor's responsibility to request and obtain a final report from each quality control person performing the code-required inspections and tests before requesting a certificate of occupancy;
 - (H) requires third-party inspectors to perform the code-required inspections and tests, to submit inspection and testing reports to the school district and the prime design professional, and to submit a final report to the school district, prime design professional, building official or third-party code compliance officer, and contractor, upon request by

the contractor, indicating any known deficiencies discovered during the project that have not yet been addressed at the time of the request;

- (I) requires special inspection and testing reports to be submitted to the building official and the prime design professional and any discrepancies to be brought to the attention of the contractor, and if not corrected, to be brought to the attention of the building official, the prime design professional, and the school district;
 - (J) specifies treatment for timely performance and documentation required in response to requests for information, change documents, or change orders;
 - (K) specifies payment certification provisions requiring notarized contractor signature on the application for Certificate of Substantial Completion and specifies that the school district must provide certification of payment for any of the school district's separate consultants or contractors;
 - (L) requires clear indication of the date of substantial completion on the payment certification, specifies the punch list provided by the contractor to address all remaining areas of the project, and documents all known school district accepted nonconforming work;
 - (M) limits required certifications of work requested or required by the school district to work required under the issuing party's services agreement;
 - (N) ensures that contract terms for design professional services are consistent and aligned and do not conflict or overlap with regard to contractual responsibilities assigned to the prime design professional, any design professional of record, the contractor, any prime subcontractors, a third-party building code compliance officer, or a third-party special inspector or consultant; and
 - (O) ensures appropriate specifications or treatment for the school district's acceptance or acknowledgement of a contractor's final completion as the owner of the facility.
- (f) Certification of compliance with the school facilities standards.
- (1) A school district, design professional, contractor, and prime subcontractors, if applicable, shall certify compliance with all applicable standards required in subsections (d) and (g)-(k) of this section as follows.
 - (A) School district certifications.
 - (i) Certifications related to educational adequacy under subsection (d) of this section.
 - (I) To provide an educationally adequate school facility, the school district shall certify compliance that the long-range facility plan was developed, presented to the school district board of trustees, and provided in a timely manner to the prime design professional.
 - (II) To provide an educationally adequate instructional facility or specialized instructional facility, the school district shall certify compliance that the educational specifications were developed, approved by the school district board of trustees, and provided in a timely manner to the architect.
 - (III) To provide an educationally adequate school facility, the school district shall certify compliance that a capital improvement project has been designed by the design professional of record in reasonable accordance to meet the goals and expectations established in the long-range facility plan and, if applicable, educational specifications.
 - (ii) Certifications related to standards for space for instructional facilities under subsection (g) of this section and standards associated with the method of

compliance for instructional facility space approved by the school district board of trustees under the quantitative method of compliance in subsection (h) of this section or the qualitative method of compliance in subsection (i) of this section.

- (I) To provide adequate instructional spaces, where required, the school district shall certify compliance with applicable provisions of subsection (g) of this section.
 - (II) To provide adequate space in instructional facilities, the school district shall certify that the most appropriate method of compliance was presented to and approved by the school district board of trustees prior to commencement of design development.
 - (iii) Certifications related to safety and security standards under subsection (k) of this section. To continue to provide a safe and secure environment, the school district shall certify compliance with the applicable safety and security standards in subsection (k) of this section approved by the school district and provided as directives in a timely manner to the prime design professional and to other design professionals of record, contractors, and prime subcontractors.
- (B) Design professional certifications.
- (i) Certifications related to educational adequacy under subsection (d) of this section. The design professional of record for a capital improvement project shall certify compliance that the project has been designed in reasonable accordance with the long-range facility plan and educational specifications, if applicable.
 - (ii) Certifications related to standards for space for instructional facilities under subsection (g) of this section and to standards associated with the method of compliance approved by the school district board of trustees for instructional facility space under subsection (h) of this section related to the quantitative method of compliance or under subsection (i) of this section related to the qualitative method of compliance. To provide adequate instructional spaces and adequate space in instructional facilities, the architect of record shall certify compliance that the project has been designed in reasonable accordance with the standards for space in subsection (g) of this section and with the standards associated with the method of compliance approved by the school district board of trustees under subsection (h) or (i) of this section.
 - (iii) Certifications related to safety and security standards under subsection (k) of this section. A design professional of record shall certify compliance that the project has been designed in reasonable accordance with any required safety and security directives approved by the school district in accordance with subsection (k) of this section.
- (C) Contractor certifications.
- (i) Process certifications. To ensure construction quality and performance of contract terms, the contractor and prime subcontractors, if applicable, shall certify compliance that the project has been built in conformance with the contract documents.
 - (ii) Certifications related to construction quality standards under subsection (j) of this section.
 - (I) To ensure compliance with construction quality standards, the contractor and prime subcontractors, if applicable, shall certify compliance at the completion of a capital improvement project that the project has been built in conformance with the contract terms and performance standards specified by the contract documents for the

general contractor and for any of its subcontractors or subconsultants of any tier, which shall include certification of compliance with any subsequent change order documents approved by the owner and the design professional of record.

- (II) Where a third-party code compliance officer is required by subsection (j) of this section, to ensure that a third-party code compliance officer does not find any violations of the provisions of the required construction codes identified in subsection (j)(1) of this section that are not enforced by a state or local authority having jurisdiction, a school district shall require that a third-party code compliance officer issue a third-party certificate of occupancy. Where a local authority having jurisdiction enforces some of the required construction codes, a third-party code compliance officer shall not issue a third-party certificate of occupancy until either the local authority having jurisdiction has issued a certificate of occupancy or the local authority having jurisdiction indicates in writing to the third-party code compliance officer that the local authority having jurisdiction does not issue certificates of occupancy.
 - (iii) Certifications related to safety and security standards under subsection (k) of this section. To provide a safe and secure environment, the contractor and prime subcontractors, if applicable, shall certify compliance that the project has been built in reasonable accordance with the safety and security directives provided by the school district and reflected in the contract documents prepared by the design professional.
 - (iv) Special provisions for a construction manager agent. For projects that use the construction manager agent contracting method established in TGC, Chapter 2269, Subchapter E, the construction manager agent and each construction prime contractor must provide certification in accordance with clause (i) of this subparagraph, and each shall certify the scope of work for which they are contractually responsible.
- (2) General provisions.
- (A) For projects that use the construction manager agent contracting method established in TGC, Chapter 2269, Subchapter E, the construction manager agent and each construction prime contractor must provide certification in accordance with paragraph (1)(C)(i) of this subsection, and each shall certify the scope of work for which they are contractually responsible.
 - (B) The certification requirements specified for a school facility capital improvement project in this subsection shall be expressed on a form developed by the Texas Education Agency that identifies the appropriate certifications required for a capital improvement project based on the facility, project type, and method of contracting established in TGC, Chapter 2269, for the procurement of construction services approved by the school district board of trustees for the project. The form must include written certification requirements for a design professional of record, a general contractor, construction manager-at-risk, a design build firm, a construction manager agent, a prime contractor or subcontractor.
- (g) Standards for space for instructional facilities.
- (1) Minimum standards for common areas.
 - (A) Library.
 - (i) A school district shall consider the School Library Standards and Guidelines as adopted under TEC, §33.021, when developing, implementing, or expanding library services.

- (ii) The sum total square footage of all library-related areas shall meet the following minimum square feet (SF) requirements based on maximum instructional capacity and may be contiguous or dispersed:
 - (I) for 100 students or fewer, a minimum of 1,400 SF;
 - (II) for 101-500 students, 1,400 SF plus an additional 4 SF for each student in excess of 100;
 - (III) for 501-2,000 students, a minimum of 3,000 SF plus an additional 3 SF for each student in excess of 500; and
 - (IV) for 2,001 or more students, a minimum of 7,500 SF plus an additional 2 SF for each student in excess of 2,000.
 - (B) Gymnasium. Primary gymnasiums or physical education space, if required by the school district's educational program, shall have a minimum of 3,000 SF at the elementary school level, 4,800 SF at the middle school level, and 7,500 SF at the high school level.
- (2) Minimum standards for special spaces.
- (A) Combination science classroom/laboratory.
 - (i) A combination science classroom/laboratory for Kindergarten-Grade 5 must provide a minimum of 50 SF per student. The room may have an established maximum of 22 students but must not exceed 25. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) must be provided at student laboratory benches, and an additional 3 linear feet (LF) per student of horizontal laboratory countertop support space must be provided for equipment and materials for investigations, activities, or student projects.
 - (ii) A combination science classroom/laboratory for Grades 6-8 must provide a minimum of 58 SF per student. The room may have an established maximum of 24 students but must not exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) must be provided at student laboratory benches, and an additional 3 LF per student of horizontal laboratory countertop support space must be provided for equipment and materials for investigations, activities, or student projects.
 - (iii) A combination science classroom/laboratory for Grades 9-12 must provide a minimum of 58 SF per student. The room may consider a maximum of 24 students but must not exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) must be provided at student laboratory benches, and an additional 3 LF per student of horizontal laboratory countertop support space must be provided for equipment and materials for investigations, activities, or student projects.
 - (B) Science laboratory.
 - (i) The separate science laboratory and classroom configuration is not permissible at the elementary level.
 - (ii) A science laboratory for Grades 6-8 must be a minimum of 42 SF per student. The room must consider a maximum of 24 students but must not exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) must be provided at student laboratory benches, and an additional 3 LF per student of horizontal laboratory countertop support space must be provided for equipment and materials for investigations, activities, or student projects.
 - (iii) A science laboratory for Grades 9-12 shall be a minimum of 42 SF per student. The room must consider a maximum of 24 students but must not exceed 28.

Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF per student of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

- (C) Science classrooms. Science classrooms shall be provided at a ratio not to exceed 2:1 of science classrooms to science laboratories at the secondary level and must meet the requirements of subsection (h)(3) of this section. The science laboratories must be located in close proximity to the science classrooms they serve.
- (D) Fume hoods.
 - (i) Each of the following shall have one built-in fume hood:
 - (I) at least one middle school prep room per grade level served in the school facility;
 - (II) high school level chemistry or Advanced Placement (AP) chemistry combination classroom/laboratory or laboratory; and
 - (III) prep room serving chemistry, AP chemistry, or integrated physics and chemistry (IPC) combination classroom/laboratory or laboratory.
 - (ii) A double-sided fume hood may be provided to satisfy chemistry or AP chemistry fume hood requirements.
 - (iii) The exhaust shall be vented to the outside, above the roof and away from air vents.
- (E) Preparation/storage rooms. One preparation/storage room at a minimum 10 SF per student shall be provided adjacent to each combination science classroom/laboratory. One preparation/storage room at a minimum of 10 SF per student shall be provided per science classroom and be located adjacent to its partner science laboratory. Preparation/storage rooms may be combined, but the combination of more than one preparation/storage room shall not reduce the minimum square feet or quantity of built-in fume hoods required if they were not combined.
- (F) Chemical storage room. If hazardous or vaporous chemicals are to be used in a science laboratory or combination science classroom/laboratory, 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 or non-authorized adults. One chemical storage room may be shared among multiple laboratories or classrooms/laboratories. Refer to National Fire Protection Association (NFPA), International Fire Code (IFC), and Occupational Safety and Health Administration (OSHA) for additional requirements.
- (G) Eye/face wash. A built-in eye/face wash that can wash both eyes simultaneously shall be provided in each room serving Grades 5-12 where hazardous chemicals or eye irritants are used by instructors and/or students. The eye/face wash shall comply with the American National Standards Institute (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 shall consider a tepid water system with a heated source.
- (H) Safety shower. A built-in safety shower shall be provided in each combination classroom/laboratory, laboratory, or prep room where a built-in fume hood is required or voluntarily provided. Where a safety shower is required in both the laboratory and corresponding prep room, a safety shower may be provided in only the prep room to

satisfy this requirement. 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 shall consider a tepid water system with a heated source.

- (I) Exhaust fan and ventilation system. Refer to International Mechanical Code, ANSI, OSHA, and NFPA for project requirements.
 - (J) Emergency shut-off controls. 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. It shall not be located at any doorway leading to a corridor or hallway.
 - (K) Special education. Specialized classrooms shall be a minimum of 45 SF per student.
- (h) Quantitative method of compliance for instructional facility space requirements. A school district board of trustees shall approve compliance with this method or the method of compliance described in subsection (i) of this section before the commencement of design development for a capital improvement project for an instructional facility.
- (1) To satisfy this method of compliance, the capital improvement project shall meet the minimum aggregate square footage based on the campus's flexibility level as specified in paragraph (2) of this subsection, the SF per student as specified in paragraph (3) of this subsection, and the maximum instructional capacity of the campus included in the project's educational specifications. Cafeterias, gymnasiums, and library space may not be used to satisfy this method of compliance. The minimum aggregate square footage required may be comprised of the following:
 - (A) mathematics, English/language arts, and history/social studies classrooms;
 - (B) combination science classrooms/laboratories;
 - (C) science classrooms, if the separate science classroom and laboratory layout is used;
 - (D) special education classrooms;
 - (E) collaboration areas; and
 - (F) elective classrooms or laboratories under the following circumstances:
 - (i) if the elective program necessitates a SF per student in excess of the value specified in subsection (h)(3) of this section, a maximum of total square feet for the space shall be used that is equal to the value specified in (h)(3) of this section multiplied by the maximum number of students that shall be safely served in that classroom or laboratory at a time;
 - (ii) if the elective classroom or laboratory is used between 51-100% of the school day, at a factor of 1; and
 - (iii) if the elective classroom or laboratory is used between 0-50% percent of the school day, at a factor of .5.
 - (2) The level of flexibility of a facility must be selected by a school district in order to calculate the minimum aggregate square footage under paragraph (3) of this subsection.
 - (A) Flexibility Level 1 (L1). Single, fixed teacher presentation space; compact organization of spaces makes access to outdoor space limited and challenging; furniture is exclusively attached student desk/chair with an expectation of very infrequent rearrangement; minimal multipurpose functionality for walls with no capability of reconfiguration; teacher-centric digital instruction with partial access to mobile devices.
 - (B) Flexibility Level 2 (L2). Single, fixed teacher presentation space; compact organization of spaces makes access to outdoor space limited and challenging, but outdoor spaces may be visible from classrooms; furniture includes detached student desk/chair with an

expectation of very infrequent rearrangement; moderate multipurpose functionality for walls with no capability of reconfiguration; teacher-centric digital instruction with moderate access to mobile devices.

- (C) Flexibility Level 3 (L3). Multiple student/teacher presentation spaces; organization of spaces allows for proximal outdoor access that is visible from classrooms; flexible and mobile furniture that is easily rearranged; high use of multipurpose walls, including digital touchscreen and other functionalities; learner-centric digital instruction with high levels of access to a range of mobile devices.
 - (D) Flexibility Level 4 (L4). Multiple student/teacher presentation spaces that are likely mobile; organization of spaces allows for direct outdoor access that is visible from classrooms; highly flexible and mobile furniture that is easily rearranged by students independently or collectively; maximized inclusion of multipurpose walls, including digital capabilities and reconfiguration; learner-centric digital instruction with high levels of access to a range of mobile devices incorporating an "anytime/anywhere" instructional philosophy.
- (3) The minimum aggregate square footage shall be determined based on the minimum square footage per student by campus type and the selected flexibility level approved under paragraph (2) of this subsection.
- (A) Elementary schools (prekindergarten-Grade 5):
 - (i) L1 36 SF per pupil (pp);
 - (ii) L2 36 SF pp;
 - (iii) L3 42 SF pp; and
 - (iv) L4 42 SF pp.
 - (B) Middle schools (Grades 6-8):
 - (i) L1 32 SF pp;
 - (ii) L2 32 SF pp;
 - (iii) L3 36 SF pp; and
 - (iv) L4 36 SF pp.
 - (C) High schools (Grades 9-12):
 - (i) L1 32 SF pp;
 - (ii) L2 32 SF pp;
 - (iii) L3 36 SF pp; and
 - (iv) L4 36 SF pp.
- (i) Qualitative method of compliance for instructional facility space standards. A school district board of trustees shall approve compliance with this method or the method of compliance described in subsection (h) of this section before the commencement of design development for a capital improvement project for an instructional facility. A school district may use the qualitative method of compliance for a capital improvement project only if the board of trustees has prior documented approval of one or more instructional or operational practices for the proposed project that distributes or manages student capacity in an innovative or non-traditional manner. Prior to approving the qualitative method of compliance, all instructional and operational practices applicable to the proposed project must have been documented and approved by the school district board of trustees to demonstrate compliance with the requirements in this subsection.
- (1) To satisfy this method of compliance, the project shall meet the minimum total square footage based on the campus's flexibility level as specified in subsection (h)(2) of this section, the SF per

student as specified in subsection (h)(3) of this section, and the adjusted maximum instructional capacity of the campus. The minimum aggregate square footage required may be comprised of the following:

- (A) mathematics, English/language arts, and history/social studies classrooms;
 - (B) combination science classrooms/laboratories;
 - (C) science classrooms, if the separate science classroom and laboratory layout is used;
 - (D) special education classrooms;
 - (E) collaboration areas; and
 - (F) elective classrooms or laboratories under the following circumstances:
 - (i) if the elective program necessitates a SF per student in excess of the value specified in subsection (h)(3) of this section, a maximum of total square feet for the space shall be used that is equal to the value specified in subsection (h)(3) of this section multiplied by the maximum number of students that shall be safely served in that classroom or laboratory at a time;
 - (ii) if the elective classroom or laboratory is used between 51-100% of the school day, at a factor of 1; and
 - (iii) if the elective classroom or laboratory is used between 0-50% of the school day, at a factor of .5.
- (2) Gymnasiums may not be used to satisfy this method of compliance. Cafeterias and library space may be used to satisfy this method of compliance and shall be treated like an elective space under paragraph (1)(F) of this subsection.
- (j) Construction quality standards.
- (1) Construction code requirements. A capital improvement project for a school facility must reasonably comply with the following construction code requirements.
- (A) Projects located outside of a municipal jurisdiction in the unincorporated area of a county must reasonably comply with the following requirements.
 - (i) Where projects are located in a county that does not have an adopted general building code, projects must reasonably comply with the International Building Code and the Existing Building Code, as published by the International Code Council, as they existed on May 1, 2003. Where projects are located in a county that has an adopted general building code, projects must reasonably comply with the adopted general building code and any chapters that were not adopted or removed entirely by amendment from the adopted model building code. Where a project is located in an area that is designated as a catastrophe area according to the Texas Department of Insurance, a project must also reasonably comply with any applicable amendments to the building code that have been adopted by the Texas Department of Insurance in accordance with Texas Insurance Code, Chapter 2210.
 - (ii) Where projects are located in a county that does not have an adopted mechanical code, projects must reasonably comply with the International Mechanical Code, as published by the International Code Council, as it existed on the same date that the applicable International Building Code was published. Where projects are located in a county that has an adopted mechanical code, projects must reasonably comply with the adopted mechanical code.
 - (iii) Where projects are located in a county that does not have an adopted fire code, projects must reasonably comply with the NFPA 101 Life Safety Code and NFPA 1 Fire Code standards adopted by the State Fire Marshal in accordance with TGC, §417.008, and in accordance with 28 TAC §34.301 (relating to

- Purpose). Where projects are located in a county that has an adopted fire code, projects must reasonably comply with the adopted fire code.
- (iv) Where projects are located in a county that does not have an adopted plumbing code, projects must reasonably comply with the International Plumbing Code and referenced International Fuel Gas Code, as published by the International Code Council, as adopted by the Texas Board of Plumbing Examiners as established in 22 TAC §367.2(a) (relating to Code Requirements) in accordance with TOC, Chapter 1301. Where projects are located in a county that has an adopted plumbing code, projects must reasonably comply with the adopted plumbing code.
 - (v) Where projects are located in a county that does not have an adopted electric code, projects must reasonably comply with the National Electric Code, as published by the NFPA, as adopted by the Texas Department of Licensing and Regulation in accordance with TOC, Chapter 1305. Where projects are located in a county that has an adopted electric code, projects must reasonably comply with the adopted electric code.
 - (vi) Projects must reasonably comply with the International Energy Conservation Code, as published by the International Code Council, as adopted by the State Energy Conservation Office of Texas in accordance with Texas Health and Safety Code, Chapter 388.
 - (vii) Projects must reasonably comply with the International Swimming Pool and Spa Code, as published by the International Code Council, as it existed on May 1, 2019.
 - (viii) Projects must reasonably comply with the industrialized housing and building rules as adopted by the Texas Commission of Licensing and Regulation in accordance with TOC, Chapter 1202.
- (B) Projects located inside of a municipal jurisdiction must reasonably comply with the following requirements.
- (i) Where projects are located in a municipality that does not have an adopted general building code, projects must reasonably comply with the International Building Code and the International Existing Building Code, as published by the International Code Council, as they existed on May 1, 2003, in accordance with Local Government Code, §214.216. Where projects are located in a municipality that has an adopted general building code, projects must reasonably comply with the adopted general building code. Where a project is located in an area that is designated as a catastrophe area according to the Texas Department of Insurance, a project must also comply with any applicable amendments to the building code that have been adopted by the Texas Department of Insurance in accordance with Texas Insurance Code, Chapter 2210.
 - (ii) Where projects are located in a municipality that does not have an adopted mechanical code, projects must comply with the International Mechanical Code, as published by the International Code Council, as it existed on May 1, 2003. Where projects are located in a municipality that has an adopted mechanical code, projects must reasonably comply with the adopted mechanical code.
 - (iii) Where projects are located in a municipality that does not have an adopted fire code, projects must reasonably comply with the NFPA 101 Life Safety Code and NFPA 1 Fire Code standards adopted by the State Fire Marshal in accordance with TGC, §417.008, and in accordance with 28 TAC §34.301. Where projects are located in a municipality that has an adopted fire code, projects must reasonably comply with the adopted fire code.

- (iv) Where projects are located in a municipality that does not have an adopted plumbing code, projects must reasonably comply with the International Plumbing Code and referenced International Fuel Gas Code, as published by the International Code Council, as adopted by the Texas Board of Plumbing Examiners as established in 22 TAC §367.2(a) in accordance with TOC, Chapter 1301. Where projects are located in a municipality that has an adopted plumbing code, projects must reasonably comply with the adopted plumbing code.
 - (v) Where projects are located in a municipality that does not have an adopted electric code, projects must reasonably comply with the National Electric Code, as published by the NFPA, as adopted by the Texas Department of Licensing and Regulation in accordance with TOC, Chapter 1305. Where projects are located in a municipality that has an adopted electric code, projects must reasonably comply with the adopted electric code.
 - (vi) Where projects are located in a municipality that does not have an adopted energy conservation code, projects must reasonably comply with the International Energy Conservation Code, as published by the International Code Council, as adopted by the State Energy Conservation Office of Texas in accordance with Texas Health and Safety Code, Chapter 388. Where projects are located in a municipality that has an adopted energy conservation code, projects must reasonably comply with the adopted energy conservation code.
 - (vii) Where projects are located in a municipality that does not have an adopted swimming pool code, projects must reasonably comply with the International Swimming Pool and Spa Code, as published by the International Code Council, as it existed on May 1, 2019. Where projects are located in a municipality that has an adopted swimming pool code, projects must reasonably comply with the adopted swimming pool code.
 - (viii) Projects must reasonably comply with the industrialized housing and building rules as adopted by the Texas Commission of Licensing and Regulation in accordance with TOC, Chapter 1202.
- (2) Third-party code compliance requirements.
- (A) A school district shall require the prime design professional of a capital improvement project to submit to the school district a report identifying any construction code requirements that the prime design professional believes, to the best of their knowledge after performing research, will not be enforced by a state or local authority having jurisdiction.
 - (B) A school district shall contract with a third-party code compliance officer to enforce any construction code requirement identified by a prime design professional pursuant to subparagraph (A) of this paragraph as not enforced by a state or local authority having jurisdiction and shall adjust the scope of services provided by the third-party code compliance officer if an error is discovered in the prime design professional's report.
 - (C) A school district shall hire a third-party code compliance officer to have all of the duties and powers of a building official, as defined by the required construction codes and to the extent allowable by state law, to ensure compliance with any required construction code provisions identified as not enforced by a state or local jurisdiction with authority pursuant to subparagraphs (A) and (B) of this paragraph.
 - (D) In the manner specified by TGC, §2269.058, a school district shall procure the services of a third-party code compliance officer required by subsection (j) of this section as a professional service in accordance with the Texas Professional Services Procurement Act, as established in TGC, Chapter 2254.

- (E) A third-party code compliance officer must not be a design professional responsible for the design of any portion of the project, anyone employed by a design professional responsible for the design of any portion of the project, a contractor responsible for constructing any portion of the project, or anyone employed by a contractor responsible for constructing any portion of the project. A third-party code compliance officer may be a peer reviewer that performs a peer review required for any storm shelters that are part of the project.
- (F) A third-party code compliance officer must have a Certified Building Official designation from the International Code Council (ICC). A third-party code compliance officer must also have at least ten years of experience or equivalent experience as an architect, engineer, inspector, contractor or superintendent of construction, or any combination of these, at least five years of which have been supervisory experience.
- (G) A plan review performed by or under the supervision of a third-party code compliance officer must be performed by a qualified design professional or an independent third party qualified to certify plans through the ICC for the appropriate building, mechanical, electrical, or plumbing trade. Plan reviews performed under the supervision of a third-party code compliance officer must be performed by a person with at least five years of experience as an engineer or an architect.
- (H) The following shall apply to a storm shelter where a required construction code has a provision requiring a storm shelter for certain projects.
 - (i) For the purposes of determining if a storm shelter is required for a specific building area, a school district shall require a third-party code compliance officer to accept, as a modification of the code in lieu of meeting the requirement to provide a storm shelter for that specific area, any written justification submitted by the school district that purports that the intended use of the specific building area that would be served by a storm shelter is not used for educational purposes during normal school hours when attendance is mandatory.
 - (ii) Where a storm shelter is required for new construction, a school district shall require a third-party code compliance officer to allow the occupant load for storm shelter design to be 110% of maximum instructional capacity, as stated by the designated representative of the school district in writing, even if this is significantly less than the total occupant load used for other purposes such as fire egress.
 - (iii) Where a storm shelter is required for additions, a school district shall require a third-party code compliance officer to allow the occupant load for storm shelter design to be based on, prorating where only a portion of the school facility is considered, 110% of maximum instructional capacity, as stated by the designated representative of the school district in writing, even if this is significantly less than the total occupant load used for other purposes such as fire egress.
 - (iv) For the purposes of determining if a storm shelter can serve the occupants of a building that is located at a distance from the storm shelter that is greater than a code-required maximum distance, a school district shall require a third-party code compliance officer to accept, as a modification of the code in lieu of meeting the specific distance requirement, any written emergency operations plan submitted by the school district that purports to provide early notification to those occupants. School districts may use protections provided in TEC, §37.108, to protect sensitive information.
 - (v) For the purposes of determining if a storm shelter is required to be constructed at a school facility where applicable construction codes require a storm shelter and a modular building be installed as part of the project, a school district shall

require a third-party code compliance officer to consider as new construction any modular building that is installed as part of the project, regardless of whether it is relocatable.

- (3) Other requirements.
 - (A) A capital improvement project for a school facility subject to the standards in this section must comply with the 2010 Americans with Disabilities Act Standards for Accessible Design as well as the Texas Accessibility Standards of 2012.
 - (B) A school district shall notify a design professional in writing of any construction-related standard or expectation of the school district for the project that is not otherwise established or required by an applicable construction code as required in this subsection. Where a school district contracts with a design professional and that design professional subcontracts another design professional, the school district need only notify the design professional that has a contract with the school district.
 - (C) A school district shall consider as part of a capital improvement project the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. A school district may use the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services under Texas Health and Safety Code, Chapter 385; the "Indoor Air Quality Tools for Schools" program administered by the U.S. Environmental Protection Agency; or some other updated state approved guidelines or standards for indoor air quality in response to communicable disease related public health issues.
 - (D) A school district shall consider as part of a capital improvement project 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.
- (k) Safety and security standards.
 - (1) Compliance requirements applicable to all instructional facilities campus-wide. A capital improvement project of a school district or an open-enrollment charter school must include campus-wide implementation of the following provisions.
 - (A) Communications infrastructure. In accordance with TEC, §37.108, a school district or an open-enrollment charter school shall:
 - (i) develop a multi-hazard plan that provides measures to ensure that school district communications technology and infrastructure are adequate to allow for communication during an emergency;
 - (ii) implement measures to ensure every classroom and portable classroom provides district employees, including substitute teachers, access to a telephone, cellular telephone, or other electronic communications device to allow immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments; and
 - (iii) develop site plans and floor plans for a school facility in accordance with TEC, §37.108(f).
 - (B) Access control. A school district or an open-enrollment charter school shall develop a document that designates each exterior door of each instructional facility campus-wide as either primary, secondary, or non-designated entrances and shall ensure that the documented designation of all exterior doors becomes part of the long-range facility plan prior to commencement of construction of a capital improvement project.
 - (2) Additional standards based on the project construction budget. A school district shall approve a project construction budget for a capital improvement project at completion of the design development phase of the project and prior to commencement of the construction documents phase. The project construction budget approved by the school district shall determine how many

of the additional safety and security standards established in paragraph (3) of this subsection are required for the project. A school district shall designate in writing which of the additional safety and security standards in paragraph (3) of this subsection have been approved by the school district board of trustees for a capital improvement project and shall provide to the prime design professional and each design professional of record written documentation of the approved safety and security standards for the proposed facility prior to commencement of the construction documents phase of a capital improvement project. The following standards shall apply to a capital improvement project for an instructional facility until all instructional facilities campus-wide fully comply with all of the additional safety and security standards specified in this subsection.

- (A) If a project construction budget is \$1 million to \$5 million, the facility is required to comply with at least one additional safety and security standard specified in paragraph (3) of this subsection.
 - (B) If a project construction budget is \$5 million to \$10 million, the facility is required to comply with at least two additional safety and security standards specified in paragraph (3) of this subsection.
 - (C) If a project construction budget is over \$10 million, the facility is required to comply with all of the additional safety and security standards specified in paragraph (3) of this subsection.
 - (D) For a capital improvement project that includes new construction, the new construction of an instructional facility is required to comply with all three of the additional safety and security standards specified in paragraph (3) of this subsection.
- (3) Additional safety and security standards applicable to all instructional facilities campus-wide. A school district or an open-enrollment charter school must include campus-wide implementation of the following standards in accordance with terms and requirements of paragraph (2) of this subsection.
- (A) Exterior door numbering. All instructional facilities campus-wide, including portable, modular buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location. The characters may be installed on the door, or on at least one door at locations where more than one door leads from the exterior to the same room inside the facility, or on the wall immediately adjacent to or above the door location. Characters shall comply with the IFC, §505. The primary entrance of an instructional facility, as defined by subsection (a)(23)(A) of this section, shall always be the first in the entire sequence and is the only door location that does not require numbering. The numbering sequence shall be clockwise and may be sequenced for the entire campus or for each facility individually. The design professional of record shall coordinate with school district personnel and local emergency response personnel prior to incorporating exterior door numbering characters and locations into the contract documents for the facility or facilities specified to be included in a capital improvement project. The design professional of record shall coordinate this requirement with any and all accessibility requirements related to signage.
 - (B) Visitor management. All primary entrances of instructional facilities campus-wide must include the following:
 - (i) an unobstructed line of sight of approaching visitors through physical or digital means;
 - (ii) a physical barrier that prevents unassisted access to the facility by a visitor; and
 - (iii) a location for a visitor check-in and check-out process.
 - (C) Security cameras. All primary and secondary entrances of instructional facilities campus-wide must include a security camera.

- (4) Exceptions to additional standards based on cost. A school district may opt out of the requirements specified in paragraph (2) of this subsection if:
 - (A) the facility is scheduled to, according to the long-range facilities plan, cease operations as an instructional facility within three years of the project; and
 - (B) the five-year long-range facility plan clearly states that, prior to the end date of the plan, the facility will be compliant with at least two additional safety and security standards specified in paragraph (2) of this subsection if ceasing operation does not occur or operation resumes. The long-range facility plan must specify which two additional safety and security standards will be implemented.
- (5) Public disclosure process. A school district board of trustees or open-enrollment charter school governing body shall ensure information or documents collected, developed, or produced by the district as part of a capital improvement project are reviewed to ensure that any project-specific safety and security information is adjusted for disclosure if necessary to accommodate the requirement for a district to use protections provided in TEC, §37.108, which directs the school district to protect sensitive information, while also providing general information to the public indicating district compliance commitments made in accordance with this subsection.

Statutory Authority: The provisions of this §61.1040 issued under the Texas Education Code, §§7.061, 46.001, 46.002, and 46.008.

Source: The provisions of this §61.1040 adopted to be effective October 12, 2021, 46 TexReg 6915.