

**ROBSTOWN INDEPENDENT SCHOOL DISTRICT
AGENDA ACTION SHEET**

Date: April 19, 2022

Subject: **DISCUSSION AND POSSIBLE ACTION TO ADOPT UPDATES TO BOARD POLICY (CCGB)
LOCAL RELATED TO AD VALOREM TAXES AND ECONOMIC DEVELOPMENT**

Administrator Responsible: Dr. Jose Moreno / Vanessa Riggs

Position: Superintendent of Schools / Chief Financial Officer

A. Purpose of Agenda Item:

Information Only Action Needed

B. Authority for this Action:

Local Policy _____ Law or Rule CCGB (LOCAL) / Tax Code Ch. 313

C. Strategic Objective, Goal, or Need Addressed:

Gain approval for updates to Board Policy CCGB (LOCAL) as recommended by legal counsel.

D. Summary:

Legal counsel is recommending changes to Board Policy CCGB (Local) that establishes policy and procedures related to the Texas Economic Development Act. Attached is the current policy as well as the draft of the updated policy that is being recommended. The biggest modification in policy comes from the Application Fee Schedule. Depending on the size of the project, the applicant will be required to pay the district a fee greater than \$75,000 which is the current fee.

E. Alternatives Considered:

F. Comments Received:

G. Administrative Recommendation:

Administration recommends the Board of Trustees adopt the updated Board Policy CCGB (LOCAL) as presented with such changes to Board Policy becoming effective immediately.

H. Fiscal Impact and Cost:

I. Monitoring and Reporting Time-Line:

**Texas Economic
Development Act**

Purpose

These provisions outline the District's procedures for accepting, reviewing, and considering applications and amendments to applications, and, when necessary, enforcing agreements under the Texas Economic Development Act (the Act), as set forth in Tax Code Chapter 313. [See CCGB(LEGAL)]

Definitions

In addition to the definitions set out in CCGB(LEGAL), the following definitions apply in this policy:

"Application review period" means the period during which the Board will consider and act on an application. The application review period begins on the application review start date and ends on the 151st day thereafter, unless the application review period is extended by Board action prior to the expiration date.

"Appraisal district" means each county appraisal district that appraises property that is the subject of an application.

"Large project application" means an application for which the qualified investment exceeds \$500,000,000.

Filing an Application

In the form and formats required by the comptroller, an applicant shall file with the Superintendent the original and copies of the completed application along with a searchable electronic copy certified to contain information identical to the original hard copy. [See CCGB(LEGAL) at Required Contents and Format]

The Superintendent shall hold any incomplete applications or applications submitted without the full application fee until the application is properly completed and the application fee is paid. The Superintendent's determination of whether an application is complete shall be final.

Confidentiality of
Applicant
Information

If the Board decides to consider an application, information provided in connection with an application will not be considered confidential except as allowed by law. [See CCGB(LEGAL) at Confidential Business Information]

Amending an
Application

An applicant may seek to amend an application at any time prior to final Board action on the application. If an amended application is filed within 60 days of the end of the application review period, the application review period shall be extended automatically to the 61st day after the date on which the last amended application is filed, unless the Board takes action to extend the application review period otherwise.

The Superintendent shall review and forward to the comptroller any amended application or supplemental information on receipt.

**Standard
Application Fee**

An applicant shall pay a standard application fee of \$75,000 to the District to cover the District's costs in processing and considering the application. This fee is nonrefundable except as set forth in this policy:

1. For large project fees after the initial fee submission; or
2. If the application is rejected after an initial Board review.

The standard application fee does not include any amount charged by the comptroller to the applicant for the comptroller's economic impact evaluation.

***Large Project
Application Fee***

For a large project application, the Board may set an application fee higher than the standard application fee if the analysis or evaluation of the application warrants a higher fee. In this case, the applicant shall initially submit the standard application fee. If the Board sets a higher fee, the applicant may withdraw its application and any fee submitted if the applicant disagrees with the higher fee.

***Application
Amendment Fee***

In the event that an applicant or agreement holder seeks to amend an application or an agreement at any time after the comptroller has issued an economic impact analysis on the application pursuant to 34 TAC 9.1055(d), an application amendment fee of \$25,000 shall be charged.

**Processing an
Application**

Upon receipt of an application and application fee, the Superintendent shall:

**Before Initial Board
Review**

1. Send the applicant written confirmation of receipt of the application and application fee.
2. Review the application and, as necessary, require the applicant to submit additional and/or supplementary information, including all required schedules.
3. Within seven days of receipt of a completed application, submit the application to the comptroller, together with any economic analysis of the proposed project submitted by the applicant.
4. Obtain necessary conflict of interest disclosures. [See BBFA(LEGAL)]

Initial Board Review

As soon as practical after an application is filed, the Board shall conduct an initial review of the application during which the Board may consider the Superintendent's recommendation and written or oral presentations concerning the application.

If, after the initial review, the Board determines that the application is not in the best interests of the District, the Board shall reject the

application and return to the applicant the application fee, less any necessary and reasonable costs of the initial review.

If the Board accepts a large project application for further consideration, the Board may set an appropriate fee in accordance with this policy.

After Initial Board
Review

If the Board elects to consider the completed application, the Superintendent shall:

1. Deposit the application fee and provide required written notice to the applicant and comptroller, with a copy to the appraisal district, that the District has received and will consider the completed application;
2. Deliver to the comptroller a copy of the application and required material along with a request for an economic impact evaluation;
3. Accept on behalf of the Board any amendments or supplements submitted by the applicant, and transmit copies to the comptroller within seven days of receipt;
4. Direct appropriate District personnel to create a link from the District's website to the location on the comptroller's website where copies of applications are posted;
5. Within the time allowed by law, provide all required supplemental information necessary to assist the comptroller and the Texas Education Agency (TEA) with the required analyses;
6. On receipt, provide the applicant and District consultants with a copy of the economic impact evaluation and the school facilities impact analysis;
7. Work with the applicant and District consultants to provide the District and the comptroller with copies of the proposed agreement in a timely manner [see CCGB(LEGAL) at Continued Eligibility];
8. Take all action necessary or required to process the application;
9. Not later than 151 days after the application review start date, present to the Board an agreement for final approval or a request for extension of the application review period;
10. If an extension of the application review period is requested, report each such request to the comptroller within seven days of the decision to grant the extension; and

11. After Board action on the application, if any, transmit all necessary and required information to the comptroller, the applicant, and the appraisal district.

District Consultants On retention by the Board, District consultants, including legal counsel, shall review the application to ensure it includes all required information. District consultants shall also begin an analysis of the application, consider any legal implications of the application, draft and negotiate an appropriate revenue protection agreement, and evaluate the analyses from the comptroller and TEA on receipt.

District consultants shall be paid for services from the application fee and shall complete their analyses in time to assist the Board, as appropriate, in its initial review or final determination on the application.

Board Action on Application

Completed applications may be considered for approval by the Board only after completion of the economic impact evaluation and the school facilities impact analysis and receipt of the comptroller's certification, as required by the Act.

Public Hearing

The Board's final determination on an application shall be made after a public hearing at which the Superintendent, District consultants, the applicant, and members of the public may provide input and information concerning the proposed application. The comptroller's certification shall be disclosed at the public hearing.

The public hearing shall be held at a time that allows the Board to approve or disapprove an application before the expiration of the application review period, unless the deadline has been extended.

Findings of Fact

After the public hearing, the Board shall make specific written findings as required by law. [See CCGB(LEGAL) at Approval]

Adoption of Agreement

After considering the comptroller's certification, the economic impact evaluation, the school facilities impact analysis, information from District consultants, and any other relevant information, the Board may approve the application and enter into an agreement that complies with all legal requirements. [See CCGB(LEGAL) at Agreement] The Board shall also consider and adopt an agreement with the applicant to provide protection from or compensation for any financial risks undertaken by the District in accepting the application.

Waiver of Jobs Requirement

The Board may waive the new jobs creation requirement in accordance with the law. [See CCGB(LEGAL) at Waiver of New Jobs Creation Requirement] If an applicant makes a waiver request sub-

sequent to the original application, the Board may charge the applicant a fee to cover the costs of any consultant required by the Board in making the requisite finding.

**Superintendent
Responsibilities
After Agreement**

During the term of any agreement, the Superintendent shall ensure that all reporting requirements are met in a timely manner by the District and the applicant. The Superintendent is authorized to delegate this function to District consultants.

**Statements
Regarding Conflicts
of Interest**

Each Board member and any District employee who is a local government official under Local Government Code Chapter 176 shall submit a conflict of interest statement confirming or denying the existence of a conflict of interest or a substantial business interest in each project that is the subject of an application, agreement, or amendment to an agreement with the District. Within 60 days after each Board election or the appointment of a Board member, each new Board member shall complete a statement. The completed statements shall be retained by the District with each affected application or agreement. If a conflict or substantial interest exists, the appropriate disclosure forms shall be completed and filed as required by law. [See BBFA(LEGAL)]

**Texas Economic
Development Act**

Purpose

These provisions outline the District's procedures for accepting, reviewing, and considering applications and amendments to applications, and, when necessary, enforcing agreements under the Texas Economic Development Act (the Act), as set forth in Tax Code Chapter 313. [See CCGB (LEGAL)]

Definitions

In addition to the definitions set out in CCGB (LEGAL), the following definitions apply in this policy:

"Application review period" means the period during which the Board will consider and act on an application. The "application review period" begins on the application review start date and ends on the 151st day thereafter, unless the application review period is extended by Board action prior to the expiration date.

"Appraisal district" means each county appraisal district that appraises property that is the subject of an application.

Filing an Application

In the form and format required by the Texas Comptroller of Public Accounts ("Comptroller"), an applicant shall file with the Superintendent the original and copies of the completed application along with a searchable electronic copy certified to contain information identical to the original hard copy. [See CCGB (LEGAL) at Required Contents and Format]

The Superintendent shall hold any incomplete applications or applications submitted without the full application fee until the application is properly completed and the application fee is paid. The Superintendent's determination of whether an application is complete shall be final.

Confidentiality of
Applicant
Information

If the Board decides to consider an application, information provided in connection with an application will not be considered confidential except as allowed by law. [See CCGB (LEGAL) at Confidential Business Information]

Amending an
Application

An applicant may seek to amend an application at any time prior to final Board action on the application. If an amended application is filed within 60 days of the end of the application review period, the application review period shall be extended automatically to the 61st day after the date on which the last amended application is filed, unless the Board takes action to extend the application review period otherwise.

The Superintendent shall review and forward to the Comptroller an amended application or any supplemental information upon receipt.

**Application Fee
Schedule**

The Board finds that the complexity of the review process is greater for larger projects, and the following application fee schedule represents the anticipated necessary or reasonable cost to the District of reviewing, processing, and acting on an application:

- \$85,000 for projects valued up to \$500 million total anticipated investment.
- \$115,000 for projects valued over \$500 million to \$1 billion total anticipated investment.
- \$165,000 for projects valued over \$1 billion total anticipated investment.

The application fee shall not be refundable except in the event that the application is denied consideration after initial Board review. The Board of Trustees may reduce application fees for subsequent applications submitted by the same Applicant related to the same project. However, the Board of Trustees shall not reduce an application fee to an amount less than the anticipated necessary or reasonable cost to the District of reviewing, processing, and acting on an application.

The application fee does not include any amount charged by the Comptroller of Public Accounts for its economic impact study, if such a fee is charged.

***Application
Amendment Fee***

In the event that an applicant or agreement holder seeks to amend an application or agreement at any time after the Comptroller has issued an economic impact analysis on the application pursuant to 34 Texas Administrative Code § 9.1055(d), an application amendment fee of \$25,000 shall be charged, subject to the limitations set forth in Section 313.072(i) of the Texas Tax Code regarding supplemental payments.

***Agreement
Assignment Fee***

In the event that an applicant or agreement holder seeks to assign an agreement to another entity at any time, the following fee schedule represents the anticipated necessary or reasonable cost to the District of reviewing, processing, and acting on such an assignment, subject to the limitations set forth in Section 313.072(i) of the Texas Tax Code regarding supplemental payments:

- \$10,000 for projects valued up to \$500 million total anticipated investment.
- \$20,000 for projects valued over \$500 million to \$1 billion total anticipated investment.
- \$30,000 for projects valued over \$1 billion total anticipated investment.

**Processing an
Application**

Upon receipt of an application and application fee, the Superintendent shall:

Before Initial Board
Review

1. Send the applicant written confirmation of receipt of the application and application fee.
2. Review the application and, as necessary, require the applicant to submit additional and/or supplementary information, including all required schedules.
3. Obtain necessary conflict of interest disclosures, as applicable. [See BBFA (LEGAL)]

Initial Board Review

The Board shall conduct an initial review of the application during which the Board may consider the Superintendent's recommendation and written or oral presentations concerning the application.

If, after the initial review, the Board determines that the application will not be considered as not in the best interests of the District, the Board shall reject the application and return to the applicant the application fee, less any necessary and reasonable costs of the initial review.

If the Board accepts a large project application for further consideration, the Board may set an appropriate fee in accordance with this policy.

After Initial Board
Review

If the Board elects to consider the completed application, the Superintendent shall:

1. Deposit the application fee;
2. Deliver to the Comptroller a copy of the application and required material along with a request for an economic impact evaluation with a copy to applicant and the appraisal district;
3. Accept on behalf of the Board any amendments or supplements submitted by the applicant, and transmit copies to the Comptroller within seven days of receipt;
4. Direct appropriate District personnel to create a link from the District's website to the location on the Comptroller's website where copies of applications are posted;
5. Within the time allowed by law, provide all required supplemental information necessary to assist the Comptroller and the Texas Education Agency (TEA) with the required analyses;
6. On receipt, provide the applicant and District consultants with a copy of the economic impact evaluation and the school facilities impact analysis;

7. Work with the applicant and District consultants to provide the District and the Comptroller with copies of the proposed agreement in a timely manner [see CCGB (LEGAL) at Continued Eligibility];
8. Take all action necessary or required to process the application;
9. Not later than 151 days after the application review start date, present to the Board an agreement for final approval or a request for extension of the application review period;
10. If an extension of the application review period is requested by the Applicant, the Superintendent is delegated authority to approve the extension request and shall submit notice of the approval decision to the comptroller within seven days and also inform the Board; and
11. After Board action on the application, if any, transmit all necessary and required information to the Comptroller, the applicant, and the appraisal district.

District Consultants

District consultants, including legal counsel and financial consultants, shall assist the district to:

1. Review any applications for completeness;
2. Advise the Board and Superintendent or designee regarding the application;
3. Engage with the applicant and the Comptroller of Public Accounts during its review of the application;
4. Provide supplemental and amended applications and materials as requested by the Comptroller of Public Accounts;
5. Review the financial impact of the application to the District; recommend, negotiate and finalize a proposed agreement and draft findings for Board consideration; and
6. Take further action as needed in the application process.

The District shall pay its retained consultants from the application fee.

Board Action on Application

Completed applications may be considered for approval by the Board only after completion of the economic impact evaluation and the school facilities impact analysis and receipt of the Comptroller's certification, as required by the Act.

Public Hearing

The Board's final determination on an application shall be made after a public hearing at which the Superintendent, District consultants, the applicant, and members of the public may provide input and information concerning the proposed application. The Comptroller's certification shall be disclosed at the public hearing.

The public hearing shall be held at a time that allows the Board to approve or disapprove an application before the expiration of the application review period, unless the deadline has been extended.

Findings of Fact

After the public hearing, the Board shall make specific written findings as required by law. [See CCGB (LEGAL) at Approval]

Adoption of Agreement

After considering the Comptroller's certification, the economic impact evaluation, the school facilities impact analysis, information from District consultants, and any other relevant information, the Board may approve the application and enter into an agreement that complies with all legal requirements. [See CCGB (LEGAL) at Agreement] The Board shall also consider and adopt an agreement with the applicant to provide protection from or compensation for any financial risks undertaken by the District in accepting the application.

Waiver of Jobs Requirement

The Board may waive the new jobs creation requirement in accordance with the law. [See CCGB (LEGAL) at Waiver of New Jobs Creation Requirement] If an applicant makes a waiver request subsequent to the original application, the Board may charge the applicant a fee to cover the costs of any consultant required by the Board in making the requisite finding.

Superintendent Responsibilities After Agreement

During the term of any agreement, the Superintendent shall ensure that required reports are submitted in a timely manner by the District and the applicant. The Superintendent is authorized to delegate this function to District consultants.

Statements Regarding Conflicts of Interest

If applicable, a Board member and any District employee who is a local public official under Local Government Code Chapter 171, Texas Local Government Code, shall submit a conflict of interest affidavit and abstain from deliberations or voting with regard to the project application under circumstances described in Policy BBFA.

Under Chapter 176, Texas Local Government Code, local government officers, including a Board member may be required to file a conflict of interest disclosure statement and abstain from consideration and voting on the matter. Further information on this process can be found in Policy BBFA.

New Board members shall review Policy BBFA to ensure appropriate filings and actions are taken as soon as practicable after election or appointment.

DATE ISSUED: _____

ADOPTED:

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