

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER K. FORMULA ADVISORY COMMITTEE - COMMUNITY AND TECHNICAL COLLEGES

19 TAC §§1.156 - 1.163

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter K, §§1.156 - 1.163, concerning the Community and Technical Colleges Formula Advisory Committee (CTCFAC).

The Coordinating Board adopts the repeal on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, the Coordinating Board plans to repeal this subchapter and replace it with new language establishing the Standing Advisory Committee for Public Junior Colleges, in accordance with changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board also intends to adopt new rules continuing the representation of technical colleges and state colleges in a different advisory committee and transferring the Report of Fundable Operating Expenses provision to a different chapter of Texas Administrative Code (TAC).

Rules 1.156 - 1.163 concern the establishment of the CTCFAC, including the authority and purpose for the committee and its membership, duration, meetings, assigned tasks, and other matters related to formula funding for the community and technical colleges sector.

Statute charges the Coordinating Board with establishing committees composed of representatives from each institutional grouping to study and recommend changes in the funding formulas for each institutional group (Texas Education Code (TEC), §61.059(b)-(b-1)). Currently, the Coordinating Board organizes this obligation in three advisory committees: one for community and technical colleges (encompassing public junior colleges, public technical colleges, and public state colleges), one for general academic institutions, and one for health-related institutions.

As part of the changes enacted by H.B. 8, statute no longer includes public junior colleges funded under TEC, Chapter 130A,

on these formula advisory committees (Section 22, H.B. 8, 88th Leg., R.S. (2023)). Instead, these functions will move to a different committee: the public junior college sector will now give advice and counsel on funding through a standing advisory committee established under TEC, §130.001(b) (Section 33, H.B. 8, 88th Leg., R.S. (2023)).

The Coordinating Board intends to repeal Chapter 1, Subchapter K, relating to the CTCFAC, in order to adopt a new chapter establishing the Standing Advisory Committee for Public Junior Colleges. Certain functions currently contained in Chapter 1, Subchapter K, will move to other sections of TAC: the Coordinating Board will ensure that technical colleges and state colleges have continued representation in this process by amending 19 TAC, Part 1, Chapter 1, Subchapter L, to include them within the current formula advisory committee framework. The Coordinating Board also intends to continue the Report of Fundable Operating Expenses in another subchapter of TAC specifically relating to reporting and data requirements for the community college formula funding process.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is updating TAC to reflect statutory changes to the constitution of the formula advisory committees. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;

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

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

The repeal is adopted on an emergency basis under Texas Education Code, Section 61.059(b)-(b-1), which provides the Coordinating Board with the authority to establish advisory committees consisting of cross-institutional representatives to study and recommend changes in formula funding.

The repeal affects Texas Education Code, Sections 61.059(b)-(b-1) and 130.001(b).

§1.156. *Authority and Specific Purposes of the Community and Technical Colleges Formula Advisory Committee.*

§1.157. *Definitions.*

§1.158. *Committee Membership and Officers.*

§1.159. *Duration.*

§1.160. *Meetings.*

§1.161. *Tasks Assigned to the Committee.*

§1.162. *Report of Fundable Operating Expenses.*

§1.163. *Report to the Board; Evaluation of Committee Costs and Effectiveness.*

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

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SUBCHAPTER K. STANDING [FORMULA] ADVISORY COMMITTEE: PUBLIC JUNIOR [- COMMUNITY AND TECHNICAL] COLLEGES

19 TAC §§1.156 - 1.162

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter K, §§1.156 - 1.162, concerning the Standing Advisory Committee for Public Junior Colleges.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, these new sections will establish the Standing Advisory Committee for Public Junior Colleges, in accordance with statutory changes made by Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 1.156 establishes the statutory authority for the new standing advisory committee, which comes from legislative changes in Section 33, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code (TEC), §130.001(b)(5)). It also states the purposes of the new standing advisory committee are to provide advice and counsel regarding the funding of public junior colleges, as required by H.B. 8, as well as regarding financial incentives to achieve the goals of the state's higher education plan, as described in TEC, §61.051. The committee may also perform other duties as assigned by the Board or Commissioner, in keeping with TEC, §61.026.

Rule 1.157 contains definitions for common terms used in this subchapter. These definitions parallel definitions used in the TEC and in other parts of the Texas Administrative Code and provide clarity to the reader by distinguishing between the governing board and the agency as a whole.

Rule 1.158 states the membership requirements of the new standing committee and appointment process. The membership requirements are designed to ensure the committee consists of members who have appropriate subject-matter knowledge and who can represent the interests of a broad cross-section of the public junior college sector. The rule caps the number of members on the advisory committee at 12, below the maximum number required by Texas Government Code, §2110.002.

Rule 1.159 states that the committee may continue until September 1, 2027, a four-year period consistent with requirements for the duration of advisory committees contained in Texas Government Code, §2110.008.

Rule 1.160 states that the committee shall meet at least once per quarter and that the presiding officer may call special meetings.

Rule 1.161 stipulates the tasks assigned to the committee, which include providing counsel to the Board and Commissioner on the administration of the public junior college finance program as enacted in TEC, Chapter 130A; studying and making recommendations for the modifications of formula funding or other components of the finance program; identifying funding incentives to accomplish the objectives in the state's strategic plan for higher education; and other charges as devised by the Board or Commissioner.

Rule 1.162 requires the committee to provide an annual report to the Commissioner on May 15 of each year, and states that the Commissioner shall review and provide recommendations during the Board's regular July board meeting. The timing of this report ensures that the Board may adopt finance recommendations at an appropriate point during the state fiscal cycle, to help inform deliberations prior to legislative session and the development of the appropriations bill.

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

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

Emily Cormier, Assistant Commissioner for Funding, has determined that the public benefit anticipated as the result of adopting this rule is establishing a forum for public junior colleges to provide the Coordinating Board with advice and counsel with respect to the funding of that sector, aligning Coordinating Board rules with recent statutory changes. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

The new sections are adopted on an emergency basis under Texas Education Code, Section 130.001(b), which provides the Coordinating Board with the authority to establish a standing advisory committee composed of representatives of public junior colleges to provide advice and counsel with respect to the funding of public junior colleges.

The new sections affect Texas Education Code, §§61.026 and 130.001(b), and Texas Government Code, Chapter 2110.

§1.156. Authority and Specific Purposes of the Standing Advisory Committee for Public Junior Colleges.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §130.001(b).

(b) Purposes. The Standing Advisory Committee for Public Junior Colleges is created to provide the Commissioner and Board with advice and counsel with respect to the funding of public junior colleges and financial incentives to achieve the goals of the state's higher education plan and carry out the purposes of Texas Education Code, Chapter 130A, implementing the Public Junior College Finance Program. The committee also performs other duties related to funding that the Board or Commissioner assign to the committee.

§1.157. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

- (1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.
- (2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.
- (3) Coordinating Board--Unless context indicates otherwise, the agency known as the Texas Higher Education Coordinating Board and staff employed by the agency to carry out assigned duties of the agency.

§1.158. Committee Membership and Officers.

(a) Membership shall consist of senior administrators and representatives of Texas public junior colleges with knowledge of the current funding formulas and the educational goals of the state.

(b) Membership on the committee should include:

- (1) Representatives of each accountability group;
- (2) Presidents or Chancellors;
- (3) Chief Financial or Academic Officers; and

(4) Institutional Research or other expert campus representatives.

(c) The number of committee members shall not exceed twelve (12).

(d) The Commissioner shall recommend members to the Board for appointment.

(e) The Commissioner shall select the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board and the Commissioner.

(f) Each member shall serve a three-year staggered term, unless otherwise provided by the Commissioner. A member may serve more than one term.

(g) The committee may appoint subcommittees or workgroups as necessary to complete the work.

§1.159. Duration.

The committee shall continue until September 1, 2027, and may be re-established by the Board.

§1.160. Meetings.

The committee shall meet on a regular basis not less than once a quarter. Special meetings may be called as deemed appropriate by the presiding officer.

§1.161. Tasks Assigned to the Committee.

Tasks assigned to the committee include:

(1) Provide counsel to the Board and Commissioner on the administration of the Public Junior College Finance Program;

(2) Study and make recommendations for modification to the formulas and other components of the Public Junior College Finance Program that will increase effectiveness and efficiencies of the programs delivered;

(3) Identify funding incentives that would support the achievement of the state's goals outlined in the long-term master plan for higher education authorized in the Texas Education Code, §61.051(a-1); and

(4) Any other charges issued by the Board or Commissioner of Higher Education.

§1.162. Report.

The committee shall provide an annual report on its activities and recommendations to the Commissioner not later than May 15 of each year. The Commissioner shall review and provide funding recommendations to the Board annually at the July Board meeting. The Commissioner may modify these timelines as needed to implement the Public Junior College Finance Program.

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

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For further information, please call: (512) 427-6548



SUBCHAPTER L. FORMULA ADVISORY COMMITTEE - GENERAL ACADEMIC INSTITUTIONS

19 TAC §§1.164 - 1.167

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amended rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter L, §§1.164 - 1.167, concerning the General Academic Institutions Formula Advisory Committee (GAIFAC).

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

This amendment adds public technical colleges and public state colleges to the existing GAIFAC, ensuring that those institutions will continue to have representation on formula advisory committees established under Texas Education Code (TEC), §61.059(b)-(b-1), following their removal from the committee for community colleges.

Rules 1.164 - 1.167 make conforming changes to the Texas Administrative Code reflecting the decision to include the technical colleges and state colleges in the existing GAIFAC.

Statute charges the Coordinating Board with establishing committees composed of representatives from each institutional grouping to study and recommend changes in the funding formulas for each institutional group (TEC, §61.059(b)-(b-1)). Currently, the Coordinating Board organizes this obligation in three advisory committees: one for community and technical colleges (encompassing public junior colleges, public technical colleges, and public state colleges), one for general academic institutions, and one for health-related institutions.

As part of the changes enacted by H.B. 8, statute no longer includes public junior colleges funded under TEC, Chapter 130A, on these formula advisory committees (Section 22, H.B. 8, 88th Leg., R.S. (2023)). Instead, these functions will move to a different committee: the public junior college sector will now give advice and counsel on funding through a standing advisory committee established under TEC, §130.001(b) (Section 33, H.B. 8, 88th Leg., R.S. (2023)).

The Coordinating Board intends to establish a new advisory committee solely for public junior colleges. To ensure that public technical colleges and public state colleges continue to have representation on the formula advisory committees, the Coordinating Board proposes including their representatives on the GAIFAC.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be ensuring the continued representation of public technical colleges and public state colleges in the formula funding policymaking process, in accordance with TEC, §61.059(b)-(b-1). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

The amendment is adopted on an emergency basis under Texas Education Code, Section 61.059(b)-(b-1), which provides the Coordinating Board with the authority to establish advisory committees consisting of cross-institutional representatives to study and recommend changes in formula funding.

Statutory authority for this subchapter is provided in the Texas Education Code, §61.059(b) and (b-1).

The amendment affects Texas Education Code, Sections 61.059(b)-(b-1) and 130.001(b).

§1.164. Authority and Specific Purposes of the General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.059(b) and (b-1).

(b) Purposes. The General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee is created to provide the Board with advice and recommendation(s) regarding a set of formulas that provide appropriate funding levels and financial incentives necessary to best achieve the goals of the state's higher education plan. The committee also performs other duties related to formula funding that the Board finds to be appropriate.

(b) Purposes. The General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee is created to provide the Board with advice and recommendation(s) regarding a set of formulas that provide appropriate funding levels and financial incentives necessary to best achieve the goals of the state's higher education plan. The committee also performs other duties related to formula funding that the Board finds to be appropriate.

§1.165. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Interested persons--Persons who attend committee meetings as representatives of stakeholder entities and any other persons who have made their interest in the work of the committee known to its presiding officer. Such interested persons may participate in committee discussions, as invited by the presiding officer to do so, but do not have the authority to cast votes.

(4) Public state colleges--Lamar State College - Port Arthur, Lamar State College - Orange, and Lamar Institute of Technology.

§1.166. Committee Membership and Officers.

(a) Membership shall consist of representatives of Texas public general academic institutions, public state colleges, and Texas State Technical College with knowledge of the current funding formulas and the educational goals of the state.

(b) Membership on the committee should include representatives of each accountability group and at least one individual each to represent the public state colleges and Texas State Technical Colleges.

(c) Interested persons, such as legislative and governmental relations staff shall be regularly advised of committee meetings.

(d) The number of committee members shall not exceed twenty-four (24).

(e) The committee may appoint subcommittees or workgroups as necessary to complete its work. The subcommittees or workgroups may include members from the formula advisory committees and other institutional representatives as appropriate.

(f) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(g) Members shall serve six-year staggered terms with one-third of the membership expiring every other year. A member can be re-appointed to serve another term.

§1.167. Duration.

Not later than September 1 of each odd-numbered year, the Board shall appoint an advisory committee to review the funding formulas for the use of the Governor and the Legislative Budget Board in making appropriations recommendations to the legislature for general academic institutions, technical colleges, and state colleges.

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

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For further information, please call: (512) 427-6548



CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §9.28, §9.29

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter B, §9.28 and §9.29, concerning the certification of public community colleges as eligible to receive state appropriations.

The Coordinating Board adopts the repeal on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, the Coordinating Board plans to repeal these rules and replace them with a new certification process as a result of changes in statute to certification made by Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 9.28 reiterates the requirements that were in the statute that community colleges had to meet to be eligible to receive state appropriations. This list was modified in Texas Education Code, §130.003, by Section 34 of Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 9.29 governs how the Coordinating Board receives and transmits those certifications to the Comptroller and State Auditor to affirm their eligibility to receive state appropriations. The required date and process to transmit these certifications was amended in Texas Education Code, §61.063, by Section 24 of Tex. H.B. 8, 88th Leg., R.S. (2023). Concurrent with other changes made by Tex. H.B. 8, 88th Leg., R.S. (2023), the certification process is being updated in alignment with statutory changes and moved to a new subchapter.

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

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

The public benefit anticipated as the result of adopting this rule is updating Texas Administrative Code to be consistent with statutory changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). There

are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

The repeal is adopted on an emergency basis under Texas Education Code, Section 61.063, which provides the Coordinating Board with the authority to certify what public junior colleges are eligible to receive state appropriations.

The repeal affects Texas Education Code, Sections 61.063 and 130.003.

§9.28. Appropriations.

§9.29. Certification.

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

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For further information, please call: (512) 427-6548



SUBCHAPTER N. BACCALAUREATE DEGREE PROGRAMS

19 TAC §9.677

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amended rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter N, §9.677, concerning the funding of baccalaureate degree programs at community colleges.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, this amendment will remove text on funding for baccalaureate degrees that is rendered obsolete by H.B. 8, 88th Leg., R.S. (2023) or moved to a different rule.

The deletion of §9.677(a) and (b) removes language on funding of baccalaureate degree programs at community colleges due to changes made by H.B. 8, 88th Leg., R.S. (2023). This language is repetitive of language in Texas Education Code (TEC), Section 130.310(a), that was amended in Section 42 of H.B. 8, 88th Leg., R.S. (2023) and is no longer needed to be expressed via rule.

The deletion of §9.677(c) removes language on funding of baccalaureate degree programs at community colleges that will instead be incorporated in a new rule the Coordinating Board plans to adopt simultaneously related to the new community college finance system.

The deletion of §9.677(d) and (e) removes obsolete language on funding of certain pilot project baccalaureate degree programs at community colleges that is no longer applicable under changes made by H.B. 8, 88th Leg., R.S. (2023). The deletion reflects Section 52, H.B. 8, 88th Leg., R.S. (2023), which repeals TEC, Section 130.310(b), requiring the Coordinating Board to submit funding recommendations to the Legislature related to the junior- and senior-level baccalaureate degree courses offered by public junior colleges. Previously, pilot project baccalaureate degree programs operated under a separate funding structure from other degrees offered by community colleges. These degrees will now be funded under the performance tier authorized under H.B. 8, 88th Leg., R.S. (2023); therefore, the text deleted is no longer necessary.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is that the Texas Administrative Code will accurately reflect statute related to the funding of Bachelor of Applied Technology programs at community colleges. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;

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

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

The amendment is adopted on an emergency basis under Texas Education Code, Section 130A.005(b), which provides the Coordinating Board with the general rulemaking authority to take actions consistent with Texas Education Code, Chapters 61, 130, and 130A.

The amendment affects Texas Education Code, Section 130.310.

§9.677. Limitations on Tuition [Funding].

{(a) Except as provided by subsection (b) of this section, a degree program created under this subchapter may be funded solely by a public junior college's proportionate share of state appropriations under §130.003, local funds, and private sources.}

{(b) This subchapter does not require the legislature to appropriate state funds to support a degree program created under this subchapter. Nor does this subsection prohibit the legislature from directly appropriating state funds to support junior-level and senior-level courses to which this subsection applies.}

{(c) The coordinating board shall weigh contact hours attributable to students enrolled in a junior-level or senior-level course offered under this subchapter used to determine a public junior college's proportionate share of state appropriations under Section 130.003 in the same manner as a lower division course in a corresponding field unless the college participated in a pilot project to offer baccalaureate degree programs as defined in §9.672(10) of this subchapter.}

{(d) Notwithstanding subsection (c) of this section, in its recommendations to the legislature relating to state funding for public junior colleges, the coordinating board shall recommend that a public junior college that participated in a pilot project to offer baccalaureate degree programs as defined in §9.672(10) of this subchapter receive substantially the same state support for junior-level and senior-level courses in the fields of applied science, applied technology, dental hygiene, and nursing offered under this subchapter as that provided to a general academic teaching institution for substantially similar courses.}

{(e) In determining the contact hours attributable to students enrolled in a junior-level or senior-level course in the field of applied science, applied technology, dental hygiene, or nursing offered under this section used to determine a public junior college's proportionate share of state appropriations under §130.003, the coordinating board shall weigh those contact hours as necessary to provide the junior college the appropriate level of state support to the extent state funds for those courses are included in the appropriations.}

{(f)} A public junior college may not charge a student enrolled in a baccalaureate degree program offered under this subchapter tuition and fees in an amount that exceeds the amount of tuition and fees charged by the junior college to a similarly situated student who is enrolled in an associate degree program in a corresponding field. This subsection does not apply to tuition and fees charged for a baccalaureate degree program in the field of applied science or applied technology previously offered as part of a pilot project to offer baccalaureate degree programs as defined in §9.672(10) of this subchapter.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER A. DEFINITIONS

19 TAC §13.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis amended rules in Texas Administrative Code (TAC), Title 19, Part 1, Chapter 13, Subchapter A, §13.1, concerning finance-related definitions.

The Coordinating Board adopts these amended rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

This amendment will add greater specificity and clarity to the definitions applying to finance-related rules. To implement H.B. 8, which makes significant changes to the funding system for community colleges, the Coordinating Board has determined the need for greater precision in the terminology used for financial rules broadly.

Rule 13.1(4), (7), and (8) specifies three distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board; "Coordinating Board," meaning the state agency as a whole; and "Coordinating Board Staff or Board Staff," meaning the staff of the agency. Separating these terms improves the readability and precision of the rules contained in Chapter 13 and allows the Coordinating Board to make a distinction between actions taken by the governing body, agency staff, and the agency as a whole.

Rule 13.1(5) defines the census date, which is the deadline for institutions to submit data relating to students in attendance for the purposes of formula funding. This definition implements Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (codified under Texas Education Code, §§130A.006 and 130A.008), which requires the Coordinating Board to stipulate data reporting requirements in rule.

Rule 13.1(25)-(28) separates a single definition for public two-year colleges into three different component sectors: public junior colleges, public technical institutes, and public state colleges. Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) codifies a formula funding system for public community colleges distinct from the formula funding systems for public technical institutions and public state colleges implemented in the General Appropriations Act. The revised definitions allow for greater drafting clarity and align finance terms in Chapter 13 with Texas Education Code, §61.003, and with institutional categories used by state appropriators.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect

there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be establishing greater clarity and precision in the definitions used in Title 19, Part 1, Chapter 13, relating to Financial Planning. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

The amendment is adopted on an emergency basis under Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023), to be codified under Texas Education Code, Section 130A.005, allowing the Coordinating Board to adopt rules necessary to implement and administer the Public Junior College State Finance Program.

The amendment affects Texas Education Code Section 61.003.

§13.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise or the relevant subchapter specifies a different definition.

- (1) Auxiliary Enterprise--Activities providing a service to students, faculty, or staff for a fee directly related to, although not necessarily equal to, the cost of the service.
- (2) Available University Fund (AUF)--A fund established in Article 7, §18, of the Texas Constitution to receive all interest and earnings of the Permanent University Fund and used to pay the debt service on PUF-backed bonds.
- (3) Base Year--The semesters comprising the year of contact hours used for applying the formula funding distribution to the colleges and universities (usually the summer and fall of even years and the spring of odd years).
- (4) Board [or Coordinating Board]--The governing body of the agency known as the [The] Texas Higher Education Coordinating Board.

(5) Census Date--The date upon which an institution may report a student in attendance for the purposes of formula funding as specified in the Coordinating Board Management (CBM) manual for the year in which the funding is reported.

(6) [~~5~~] Contact Hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

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

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

(9) [~~6~~] Current Operating Funds--Unrestricted (appropriated) funds, designated funds, restricted funds, and auxiliary enterprise funds.

(10) [~~7~~] Developmental Coursework--Non-degree-credit courses designed to address a student's deficiencies.

(11) [~~8~~] Developmental Education--Courses, tutorials, laboratories, or other efforts to bring student skills in reading, writing, and mathematics to entering college level. English as a Second Language (ESL) courses may be considered developmental education, but only when they are used to bring student skill levels in reading or writing to entering college level. The term as used in this chapter does not include courses in study skills or thinking skills.

(12) [~~9~~] Formula Funding--The mathematical method used to allocate appropriated sources of funds among institutions of higher education.

(13) [~~10~~] Functional categories (as defined by National Association of College [e]College and University Business Officers)--Instruction, research, public service, academic support, student service, institutional support, operation and maintenance of plant, scholarships and fellowships, depreciation, auxiliary enterprises, and hospital.

(14) [~~11~~] General Academic Teaching Institution--Any college, university, or institution so classified in Texas Education Code, §61.003(3), or created and so classified by law.

(15) [~~12~~] General Revenue (GR)--State tax revenue.

(16) [~~13~~] Governmental Accounting Standards Board (GASB)--An entity created by the Financial Accounting Foundation to set accounting standards for governmental entities including public institutions of higher education.

(17) [~~14~~] Higher Education Fund (HEF)--A fund established in Article 7, §17, of the Texas Constitution to fund capital improvements and capital equipment for institutions not included in the Permanent University Fund.

(18) [~~15~~] Independent institution of higher education--A private or independent college or university as defined in Texas Education Code, §61.003(15), that is:

- (A) organized under the Texas Non-Profit Corporation Act;
- (B) exempt from taxation under Article VIII, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and
- (C) accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(19) [~~16~~] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or

other agency of higher education as defined in Texas Education Code, §61.003.

(20) [(17)] Institutional Expenditures--All costs of activities separately organized and operated in connection with instructional departments primarily for the purpose of giving professional training to students as a necessary part of the educational work of the related departments.

(21) [(18)] Institutional Funds--Fees, gifts, grants, contracts, and patient revenue, not appropriated by the legislature.

(22) [(19)] Local Funds--Tuition, certain fees, and other educational and general revenue appropriated by the legislature.

(23) [(20)] National Association of College and University Business Officers (NACUBO)--Provides guidance in business operations of higher education institutions.

(24) [(21)] Permanent University Fund (PUF)--A fund established in Article 7, §11, of the Texas Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

[(22) Public Junior College, Public Technical Institute, Public State College, or Public Two-Year College--Any public junior college, public community college, public technical college, or public state college as defined in Texas Education Code, §61.003.]

(25) Public Junior College--A public institution of higher education as defined in Texas Education Code, §61.003(2).

(26) Public State College--Any public state college as defined in Texas Education Code, §61.003(16).

(27) Public Technical Institute--Any public technical institute as defined in Texas Education Code, §61.003(7), excluding Lamar Institute of Technology.

(28) Public Two-year College--Any public junior college, public community college, public technical institute, or public state college.

(29) [(23)] Semester Credit Hour (SCH)--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER D. FINANCIAL REPORTING

19 TAC §13.62

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter D,

§13.62, concerning updates to a manual for community college annual financial reports.

The Coordinating Board adopts the repeal on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning September 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, the Coordinating Board plans to repeal this rule and replace it with a new consolidated community college data reporting rule in coordination with changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board also intends to adopt new rules pertaining to community college financial reporting.

Rule 13.62 concerns annual updates to the community college annual financial report manual and its content. Concurrent with other changes made to the Texas Administrative Code related to H.B. 8, 88th Leg., R.S. (2023), the provisions of this rule are being merged with others pertaining to financial reporting by community colleges in a different subchapter.

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

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

The public benefit anticipated as the result of adopting this rule is updating the Texas Administrative Code to have topically consistent organization in relation to the adoption of Tex. H.B. 8, 88th Leg., R.S. (2023). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

The repeal is adopted on an emergency basis under Texas Education Code, Section 61.065, that provides the Coordinating Board with the authority to prescribe uniform financial reporting guidelines.

The repeal affects Texas Education Code, Section 61.065.

§13.62. Community Colleges.

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

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19 TAC §13.63

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amended rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter D, §13.63, concerning requirements for community college financial reporting.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning September 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, the Coordinating Board plans to amend this rule and move community college-related provisions to a new consolidated community college data reporting rule in coordination with changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board also intends to adopt new rules pertaining to community college financial reporting.

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

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

The public benefit anticipated as the result of adopting this rule is updating the Texas Administrative Code to have topically consistent organization in relation to the adoption of Tex. H.B. 8, 88th Leg., R.S. (2023). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

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

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

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

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

The amendment is adopted on an emergency basis under Texas Education Code, Section 61.065, that provides the Coordinating Board with the authority to proscribe uniform financial reporting guidelines.

The amendment affects Texas Education Code, §61.065.

§13.63. Additional Financial Information Reporting.

(a) Each university system, general academic institution, technical or state college, and health-related institution shall provide to the Board financial data related to the operation of each system office and institution. This information should be reported in the Board's annual report of financial activity by fund group.

~~[(b) Each community college shall continue to provide to the Board financial data related to the operation of each community/junior college reflecting restricted and non-restricted operating revenues and operating expenses as directed by the Board.]~~

(b) ~~[(c)]~~ Each system office and institution of higher education, except public junior colleges, shall provide the report no later than January 1 of each year using the specific content and format prescribed by the Board.

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

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**SUBCHAPTER P. COMMUNITY COLLEGE
FINANCE PROGRAM**

19 TAC §§13.470 - 13.477

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter P, §§13.470 - 13.477, concerning the new community college finance system established by H.B. 8.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the

agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, this new sections will implement the new community college finance system established by Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 13.470, Purpose, establishes the purpose of subchapter P to govern the implementation of the community college finance system.

Rule 13.471, Authority, establishes the portions of Texas Education Code (TEC) that authorize the Coordinating Board to adopt rules pertaining to community college finance.

Rule 13.472, Definitions, lists definitions pertinent to the community college finance system.

Paragraphs (1), (2), and (13) define student weights as required by Sections 130A.054 and 130A.101 of H.B. 8 for use in the calculation of the base and performance tier. Economic disadvantage is based on the student's receipt of federal Pell grant funding due to that program's need-based design, which includes rigorous documentation of student needs and family resources, and academic disadvantage is based on the student's determination of college readiness, as measured through the Texas Success Initiative assessments. Adult learners are defined as students aged 25 years or older, in accordance with H.B. 8 requirements.

Paragraphs (7) - (9), (15), (21), and (26) provide definitions for terms (base year, basic allotment, census date, full-time student equivalent (FTSE), local share, weighted FTSE used in the calculation of the base tier, defined in paragraph (6), which measures a college's instruction and operations (I&O) needs based on their weighted FTSEs and the number of contact hours they delivered in the most recent academic terms (the "base year").

Paragraph (27) defines weighted outcome completions as the count of designated student outcomes that have been weighted by student characteristics. This provides the basis for the allocation of funding under the performance tier, which is further refined by the below definition paragraphs.

Paragraphs (3) - (5), (11), (18) - (20), and (23) provide definitions of credential types, or associated requirements, that may be eligible for purposes of performance tier funding. The definitions tie to paragraph (16), fundable credentials, which further refines what credential types, including associate, baccalaureate degrees, certain certificates, Occupational Skills Awards (OSAs), and Institutional Credential Leading to Licensure or Certification (ICLC) may receive funding. In alignment with H.B. 8, all fundable credentials will meet the definition of credential of value. The determination of "credential of value" for ICLCs is refined to provide semester credit hour (SCH) thresholds for the credential as these are new credential types collected from the community colleges and providing thresholds ensures the Coordinating Board is prioritizing credentials that are producing graduates who meet the state's workforce needs. The determination of "credential of value" for OSAs is aligned to the definition of OSA, which includes requirements that the credential meet workforce needs.

Paragraph (10) defines a credential of value as credentials that will provide a positive return-on-investment within 10 years (on average), such that cumulative earnings exceed initial investment, for baccalaureate, associate, and certificate degree programs. This definition is aligned with and implements the Coordinating Board's long range master plan for higher education by using data to determine whether a student is better off after earn-

ing the credential, inclusive of their costs of attendance, than a comparable student who earned only a high school diploma. The purpose is to incentivize institutions to strongly consider workforce needs and student's long term economic and social success in making decisions regarding program offerings, student services, and other key areas.

Paragraph (17) defines high demand fields in alignment with the recommendations of the last Community and Technical College Formula Advisory Committee. This list derives from an analysis of state and regional workforce trends based on higher education regions in the state. This list includes fields associated with an occupation on 7 of 10 regional lists of the top 25 occupations by projected 10-year growth and the fields associated with every region's top 5 occupations by projected 10-year growth. The list also includes any field previously funded as a "critical field" by the legislature in the fiscal year 2022-23 success point formula to help transition community colleges to the new methodology.

Paragraph (12) defines eligibility for a dual credit or dual enrollment fundable outcome to receive funding through the performance tier. The definition provides that all statutorily fundable SCHs of dual credit or dual enrollment may count towards the achievement of 15 SCHs applicable to an academic or workforce requirement at the postsecondary level. Aligning with statutory funding eligibility requirements increases the likelihood that these courses will result in meaningful progress towards postsecondary credentials while encouraging community colleges to transition to a system in which dual credit/enrollment students take a structured sequence of courses that enhances timely progress towards an academic or workforce credential. The Coordinating Board anticipates that this definition will be further refined as additional data become available in future years.

Paragraphs (24) and (25) define eligibility for a student's achievement of a structured co-enrollment or transfer fundable outcome. These outcomes may receive funding through the performance tier and the definitions align with the requirements in Section 130A.101, as added by H.B. 8.

Paragraphs (14) and (22) define formula and non-formula support, respectively, based on the method of determining the funding provided to the community college.

Rule 13.473, Base Tier Allotment, establishes the calculations used to determine Base Tier funding that the legislature entitled community colleges to receive under TEC, Sections 130A.051 - 130A.056. To summarize, Base Tier funding is calculated as Instruction and Operations (I&O) minus Local Share. If Local Share is greater than Instruction and Operations, then Base Tier funding is zero.

Specifically, Rule 13.473(b) establishes the Instruction and Operations funding amount, corresponding to TEC, Section 130A.052, as Contact Hour Funding plus the product of the Weighted Full Time Student Equivalents (Weighted FTSE) multiplied by Basic Allotment. The rule explicitly defines the calculations used to derive Full Time Student Equivalents based on contact hour and SCHs reported to the Coordinating Board by community college districts. Hours reported are weighted by student characteristics as instructed by TEC, Section 130A.054, at levels based on the higher cost of educating students with certain characteristics (e.g., adult learners are weighted the highest due to the higher cost of educating the student). In accordance with TEC, Section 130A.055, the rule defines Contact Hour Funding as the Institution's reported base year contact

hours, weighted by the average cost to provide each contact hour in each discipline as defined in the Report of Fundable Operating Expenses. The Basic Allotment amount and contact hour funding amount are derived based on the Fiscal Year 2024 appropriations for the Base Tier as provided by the General Appropriations Act for the 2024-25 Biennium, in accordance with TEC, Sections 130A.053 and 130A.055.

Rule 13.473 establishes Local Share as the amount of maintenance and operations ad valorem tax revenue generated by \$0.05 per \$100 of taxable property value in a college's taxing district plus the amount of tuition and fee revenue that would be generated by charging the average amount of tuition and fees charged by community colleges districts in the state of Texas to each in-district FTSE, in accordance with TEC, Section 130A.056. Specifically, the Coordinating Board will calculate estimated tax revenue for each district as the actual amount of current tax revenue collected in Fiscal Year 2022 multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five. This estimation takes into account that not all property taxes owed are able to be collected by the institutions due to delinquent or late collections over which the institutions have no control. The Coordinating Board will estimate tuition and fee revenue by summing 1) the average of tuition and fees charged by community colleges to in-district students in fiscal year 2021, as reported by the federal Integrated Postsecondary Education Data System, multiplied by non-dual credit or dual enrollment FTSEs In FY22 and 2) the amount of tuition set per SCH for the Financial Aid for Swift Transfer (FAST) program, multiplied by dual credit or dual enrollment SCHs in FY22. Using the average tuition and fee rate specific to in-district students avoids unduly penalizing colleges that have above-average percentages of in-district students and/or that provide substantial discounts to their in-district students, Using the two different tuition rates, depending on the type of student, provides further equity in the method of estimating tuition and fee revenue across the community college districts by avoiding an undue penalty on colleges participating in the FAST program and those with higher percentages of dual credit or dual enrollment students, regardless of their participation in FAST.

Rule 13.474, Performance Tier Funding, establishes the calculations used to determine Performance Tier Funding, which the Legislature entitled community colleges to receive under TEC, Section 130A.101. The rule lists those outcomes that merit performance funding and the student characteristics that garner added funding at levels in alignment with those set for the base tier funding pursuant to TEC, Section 130A.001.

The rule establishes values for the fundable outcomes, which are derived based on appropriations made in the 2024-25 General Appropriations Act for the Performance Tier strategy.

Funding is set \$3,500 per outcome for transfer and structured co-enrollment fundable outcomes, certificates awarded in a high-demand field, and associate or baccalaureate degrees not in a high-demand field. The equal funding rate across these outcomes reflects the great benefit they confer to students and to the state as well as the importance of institutions' ability to impartially guide and assist students in pursuing different forms of valuable success.

Completion of dual credit or dual enrollment fundable outcomes are set at a lower amount, \$1,700, due to the additional funding institutions will receive via participation in the FAST program; the

fact that these outcomes do not involve conferral of a credential or enrollment in a baccalaureate program; and the tendency of these courses to be lower-division academic courses with below-average cost of delivery.

Across all credentials, high-demand fields receive higher funding rates to incentivize institutions to develop and grow programs in areas more closely aligned with the current and future workforce needs of the state.

Rule 13.475, Formula Transition Funding, establishes that after calculating the base tier and performance tier funding for each community college, the Coordinating Board shall ensure that a community college district does not receive less in formula funding in FY 2024 than it received in FY 2023 appropriations for formula funding (contact hours, success points, core operations, and bachelor's of applied technology funding) and need based supplements. The Coordinating Board judges this provision to be necessary to smooth the transition from the prior system of formula funding predominantly based on contact hour generation to the new system of performance-based funding. Including this provision ensures that no institution will experience as significant detrimental impact on its operations as the new system adjusts funding and moves to outcome-driven performance.

Rule 13.476, Payment Schedule, sets out both the payment schedule for non-formula support items and the payment schedule (three times per year) at which the Coordinating Board will make formula funding payments to each institution as authorized by TEC, Section 130.0031, as amended by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board shall pay all non-formula support item amounts to the institution by September 25th of a fiscal year, in accordance with the requirements in the 2024-25 General Appropriations Act (Article IX, Section 18.04 Contingency for House Bill 8(a)(4)). For FY24, the first payment is 50% of the total formula funding entitlement, 25% for the second payment and the final payment. Institutional stakeholders suggested that the Coordinating Board should make the first payment 50% in recognition that a college district's expenses are weighted towards the start of the fiscal year and to smooth the transition from the prior payment schedule that historically provided 48% of funding to a community college district by October 25

Rule 13.477, Close Out, establishes the final process the Coordinating Board shall undertake to finalize the prior fiscal year's formula funding for community colleges. The Coordinating Board shall review and verify distributions made to the community colleges in the prior fiscal year and, if necessary, adjust a community college's first payment of the next fiscal year to correct funding, as needed, in accordance with TEC, Section 130A.009. TEC, Section 130.0031, authorizes the Coordinating Board to make adjustments to the installment payments within the fiscal year to ensure the Coordinating Board delivers the correct funding to each institution. The Close Out process caps the final adjustment to payments that occur based on the outcomes, certified reported data, and funding made to each institution to the fiscal year. Subsequent to Close Out, the Coordinating Board will use the adjustment and overallocation process under Texas Administrative Code, subchapter R, of this chapter to make any further adjustments to funding that was owed for a Closed Out fiscal year. Specification of this process by rule ensures that each institution has notice of the Coordinating Board's determination that funding has been fully delivered for that year.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect

there may be fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the new public junior college finance system established by H.B. 8. Such ancillary fiscal implications may include the need to collect and report additional data in order to obtain additional outcome-based funding.

Fiscal implications of increased funding to institutions of higher education are funded as part of the new public junior college finance system in statute and the General Appropriations Act. The rules do not impose additional costs of compliance beyond those provided for in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the implementation of H.B. 8, which establishes a modern and dynamic finance system that ensures each public junior college has access to adequate state appropriations and local resources to support the education and training of the workforce. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will create or a government program, as required by House Bill 8;
- (2) implementation of the rules will require the creation or elimination of employee positions, as required by House Bill 8;
- (3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will affect this state's economy.

The new sections are adopted on an emergency bases under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and take other actions consistent with Texas Education Code, Chapter 61, Chapter 130, and Chapter 130A to implement Tex. H.B. 8, 88th Leg., R.S. (2023). In addition, Texas Education Code, Section 130.355, permits the Coordinating Board to establish rules for funding workforce continuing education.

The new sections affect Texas Education Code, Sections 28.0295, 61.003, 61.059, 130.003, 130.0031, 130.0034, 130.008, 130.085, 130.310, 130.352 and Chapter 130A.

§13.470. Purpose.

The purpose of this subchapter is to implement the Community College Finance Program authorized by Texas Education Code, Chapters 61, 130, and 130A.

§13.471. Authority.

The Coordinating Board adopts this subchapter pursuant to Texas Education Code, §130A.005, requiring the Coordinating Board to adopt rules to implement the Community College Finance Program created in Texas Education Code, Chapters 61, 130, and 130A.

§13.472. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Academically Disadvantaged--A designation that applies to postsecondary students who have not met the college-readiness standard in one or more Texas Success Initiative (TSI) assessments as provided by chapter 4, subchapter C, §4.57 of this title (relating to College Ready Standards), and who were not classified as either waived or exempt pursuant to chapter 4, subchapter C, §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).

(2) Adult Learner--A student aged 25 or older on September 1 of the fiscal year for which the applicable data are reported, in accordance with Coordinating Board data reporting requirements.

(3) Advanced Technical Certificate (ATC)--A certificate that has a specific associate or baccalaureate degree or junior level standing in a baccalaureate degree program as a prerequisite for admission. An ATC consists of at least 16 semester credit hours (SCH) and no more than 45 SCH and must be focused, clearly related to the prerequisite degree, and justifiable to meet industry or external agency requirements.

(4) Associate Degree--An academic associate degree as defined under Texas Education Code, §61.003(11), or an applied associate degree as defined under Texas Education Code, §61.003(12)(B).

(5) Baccalaureate Degree--A degree program that includes any grouping of subject matter courses consisting of at least 120 SCH which, when satisfactorily completed by a student, will entitle that student to an undergraduate degree from a public junior college.

(6) Base Tier Funding--The amount of state and local funding determined by the Board for each public junior college that ensures the college has access to a defined level of funding for instruction and operations.

(7) Base Year--The time period comprising the year of contact hours used for calculating the contact hour funding to public junior colleges. A base year includes certified contact hours reported in the Summer 1, Summer 2, and Fall of the prior calendar year and Spring of the current calendar year relative to September 1st of the current fiscal year.

(8) Basic Allotment--A dollar value per Weighted FTSE, as determined by the Legislature, based on appropriations made in that biennium's General Appropriations Act.

(9) Census Date--The date upon which a college may report a student in attendance for the purposes of formula funding, as specified in the Coordinating Board Management (CBM) manual for the year in which the funding is reported.

(10) Credential of Value--A credential earned by a student that would be expected to provide a positive return on investment. A positive return on investment is met when a typical student completing the credential is expected to earn cumulative wages greater than the cumulative median earnings of an average Texas high school graduate, plus recouping the net cost of attendance within ten years after earning the credential. This calculation shall include the student's opportunity cost, calculated as the difference between median earnings for a typical Texas high school graduate and typical earnings for students while

enrolled for four years for baccalaureate degree holders, two years for associate degree holders, and one year for holders of a Level 1 certificate, Level 2 certificate, or Advanced Technical Certificate. The Coordinating Board shall calculate the expected return on investment based on the data available to the agency for the funding year. The calculation shall include the most current available data for each program or a comparable program.

(11) Credentialing examination--A licensure, certification, or registration exam provided by a state or national agency or by professional organization.

(12) Dual Credit or Dual Enrollment Fundable Outcome--A student who has earned at least 15 SCH or the equivalent of state-funded dual credit or dual enrollment courses that apply toward an academic or workforce program requirement at the postsecondary level. For the purpose of this subchapter, the term "dual credit or dual enrollment fundable outcome" includes the following fundable courses taken for college credit by a high school student who has not yet received a high school diploma:

(A) Any course taken for dual credit that is within the core curriculum of the college that is providing the course;

(B) A course in a Coordinating Board-established field of study curriculum under Texas Education Code, §61.823, or program of study curriculum under Texas Education Code, §61.8235;

(C) Career and technical education courses that apply to a certificate or associate degree offered by the institution providing the credit;

(D) Foreign language courses;

(E) All courses taken by students enrolled in an approved Early College High School program, with the exception of the physical education courses taken by high school students for high school physical education credit; and

(F) A course taken for college credit only by a student who is also enrolled in high school but does not yet have a high school diploma.

(13) Economically Disadvantaged--A designation that applies to postsecondary students who received the federal Pell Grant under 20 U.S.C. §1070a.

(14) Formula Funding--The funding allocated by the Coordinating Board among all public junior colleges by applying provisions of the Texas Education Code, agency rule, and the General Appropriations Act to a sector-wide appropriation from the General Appropriations Act.

(15) Full-Time Student Equivalent (FTSE)--A synthetic measure of enrollment based on the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the time period in question.

(16) Fundable Credential--A Fundable Credential counts toward Weighted Outcome Completions as defined in paragraph (27) of this section. For the purpose of funding delivered in fiscal year 2024, a fundable credential is defined as any of the following, except that, for credentials under subparagraph (B) or (C) of this paragraph, if more than one credential that the institution awarded to a student includes the same contact hours, the institution may only submit one credential for funding under subparagraph (B) or (C) of this paragraph.

(A) Any of the following credentials awarded by an institution that meets the criteria of a credential of value as defined in paragraph (10) of this section using the methodology established for

the most current fiscal year, that is otherwise eligible for funding, and the institution reported and certified to the Coordinating Board:

(i) An associate degree;

(ii) A baccalaureate degree;

(iii) A Level 1 or Level 2 Certificate; and

(iv) An Advanced Technical Certificate.

(B) An Occupational Skills Award awarded by an institution that the institution reported and certified to the Board during fiscal year 2023; or

(C) An Institutional Credential Leading to Licensure or Certification (ICLC) not included in subparagraph (B) of this paragraph and that the institution reported and certified to the Coordinating Board during fiscal year 2023, that meets one of the following criteria:

(i) The credential includes no fewer than 144 contact hours or nine (9) semester credit hours; or

(ii) The credential is awarded in a high demand field, as defined in Board rule, and includes no fewer than 80 contact hours or five (5) semester credit hours; or

(iii) A licensure or certification earned by a student who did not receive a credential if the student:

(I) earned the licensure or certification as the result of the student's successful passage of a credentialing examination for a licensure or certification, while or after being enrolled in one of the institution's Institutional Credentials Leading to Licensure or Certification (ICLC) programs that would qualify for funding under clauses (i) or (ii) of this subparagraph; and

(II) earned the licensure or certification not later than twelve months after the student's enrollment in the ICLC program for which the student earned the licensure or certification.

(17) High-Demand Fields--An academic discipline, delineated by the federal Classification of Instructional Program (CIP) code, that the Coordinating Board has approved for inclusion on a published list of High-Demand Fields, available at <https://www.highered.texas.gov/our-work/supporting-our-institutions/community-college-finance/high-demand-fields/>, based on their satisfaction of either:

(A) Inclusion on the list of Critical Fields employed for the purpose of determining formula funding allocations under the Student Success strategy in the 2022-2023 General Appropriations Act; or

(B) Appearing on the list of CIP codes resulting from the following methodology completed in Fall 2021:

(i) Extracting the top 25 occupations for each higher education region as ranked by their ten-year projected number of new openings, after having excluded those with an average wage less than the statewide median wage and those with a typical entry credential other than "Some college, no degree", "Postsecondary non-degree award", and "Associate degree", from the texaslmi.com website maintained by the Texas Workforce Commission;

(ii) Placing occupations appearing on at least seven of the ten resulting regional lists on a statewide list;

(iii) Adding to the statewide list any occupations appearing among the top five of one or more regional list but not yet on the statewide list; and

(iv) Generating a list of CIP codes populated by each four-digit CIP code associated with an occupation on the statewide list per the crosswalk promulgated by the National Center for Edu-

ation Statistics of the U.S. Department of Education, which as of the effective date of this rule is available at the following address: <https://nces.ed.gov/ipeds/cipcode/post3.aspx?y=56>.

(18) Institutional Credentials Leading to Licensure or Certification (ICLC)--A credential awarded by an institution upon a student's completion of a course or series of courses that represent the achievement of identifiable skill proficiency and leading to licensure or certification. This definition includes a credential that meets the definition of an Occupational Skills Award in all respects except that the program did not obtain the required Workforce Development Board approval.

(19) Level 1 Certificate--A certificate designed to provide the necessary academic skills and the workforce skills, knowledge, and abilities necessary to attain entry-level employment or progression toward a Level 2 Certificate or an Applied Associate Degree, with at least 50% of course credits drawn from a single technical specialty. A Level 1 Certificate must be designed for a student to complete in one calendar year or less time and consists of at least 15 semester credit hours and no more than 42 semester credit hours.

(20) Level 2 Certificate--A certificate consisting of at least 30 semester credit hours and no more than 51 semester credit hours. Students enrolled in Level 2 Certificates must demonstrate meeting college readiness standards set forth in chapter 4, subchapter C, §4.57 of this title (relating to College Ready Standards) and other eligibility requirements determined by the institution.

(21) Local Share--The amount determined to be the institution's contribution of local funds to the Instruction and Operations (I&O) amount for each public junior college. The amount consists of estimated ad valorem maintenance and operations tax revenue and tuition and fees revenue, as determined by the Board.

(22) Non-Formula Support Item--An amount appropriated by line item in the General Appropriations Act to a single public junior college or limited group of colleges for a specific, named purpose.

(23) Occupational Skills Award--A sequence of courses that meet the minimum standard for program length specified by the Texas Workforce Commission for the federal Workforce Innovation and Opportunity Act (WIOA) program (9-14 SCH for credit courses or 144-359 contact hours for workforce continuing education courses). An OSA must possess the following characteristics:

(A) The credential is TSI-waived under chapter 4, subchapter C, §4.54 of this title;

(B) The content of the credential must be recommended by an external workforce advisory committee, or the occupation must appear on the Local Workforce Development Board's Demand Occupations list;

(C) In most cases, the credential should be composed of Workforce Education Course Manual (WECM) courses only. However, non-stratified academic courses may be used occasionally if recommended by the external committee and if appropriate for the content of the credential;

(D) The credential complies with the Single Course Delivery guidelines for WECM courses; and

(E) The credential prepares students for employment in accordance with guidelines established for WIOA.

(24) Structured Co-Enrollment Fundable Outcome--A student who earns at least 15 semester credit hours at the junior college district in a Coordinating Board-recognized program structured through a

binding written agreement between a general academic teaching institution and a community college. Under such a program, students will be admitted to both institutions and recognized as having matriculated to both institutions concurrently.

(25) Transfer Fundable Outcome--A student who enrolls in a general academic teaching institution, as defined in Texas Education Code, §61.003, after earning at least 15 semester credit hours from a single public junior college district during the period including the fiscal year in which they enroll at the general academic teaching institution and the four fiscal years prior.

(26) Weighted Full-Time Student Equivalent (Weighted FTSE or WFTSE)--A synthetic measure of enrollment equal to the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the time period in question, where the hours delivered to students with certain characteristics carry a value other than one.

(27) Weighted Outcomes Completion--A synthetic count of completions of designated student success outcomes where outcomes achieved by students with certain characteristics carry a value other than one. The synthetic count may also represent a calculation, such as an average or maximizing function, other than a simple sum.

§13.473. Base Tier Allotment.

(a) Board staff will calculate Base Tier funding for each public junior college district (district) as the greater of the Instruction and Operations (I&O) amount minus Local Share and zero.

(b) A district's I&O amount is the sum of the number of Weighted Full-Time Student Equivalents (Weighted FTSE) enrolled at the district multiplied by the Basic Allotment amount of \$1,275 and the district's total Contact Hour Funding as determined by the Coordinating Board.

(1) Weighted FTSE for each district is the sum of the district's full-time student equivalents weighted for the student characteristics under §13.473(b)(1)(B) of this section and the scale adjustment as provided in Texas Education Code, §130A.054.

(A) For purposes of determining annual Weighted FTSE as a component of Fiscal Year (FY) 2024 formula funding under this section, a district's full-time student equivalents (FTSE) is equal to the sum of:

(i) the total semester credit hours in which for-credit students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for FY 2022, divided by 30; and

(ii) the total contact hours in which continuing education students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for FY 2022, divided by 900.

(B) The Coordinating Board shall additively weight the calculation of Weighted FTSE as follows:

(i) if a student is classified as economically disadvantaged during FY 2022, FTSE generated by that student shall have an additional value of 25%;

(ii) if a student is classified as academically disadvantaged during FY 2022, FTSE generated by that student shall have an additional value of 25%; and

(iii) if a student is classified as an adult learner during FY 2022, FTSE generated by that student shall have an additional value of 50%.

(C) The Coordinating Board calculates a district's scale adjustment weight as the greater of the difference between 5,000 and the number of FTSE as defined in §13.473(b)(1)(A) of this section multiplied by .40, and zero.

(2) For the purpose of calculating FY 2024 formula funding amounts, Coordinating Board staff will calculate Contact Hour Funding for a public junior college district by first multiplying the number of reported certified fundable contact hours generated by the district in each discipline during the 2023 Base Year, consisting of the Summer I and II 2022, Fall 2022, and Spring 2023 academic terms, by the average cost of delivery per contact hour for each discipline respectively as described in the Report of Fundable Operating Expenses for FY 2022 in accordance with subchapter R, §13.524(c) of this chapter (relating to Required Reporting) and summing across all disciplines. Contact hours attributable to students enrolled in a junior-level or senior-level course are weighed in the same manner as a lower division course in a corresponding field. That sum will then be multiplied by 21.3%, which is a rate derived from appropriations made for Base Tier Funding in the 2024-2025 General Appropriations Act, to calculate the district's Contact Hour Funding.

(c) For the purpose of calculating FY 2024 formula funding amounts, the Local Share for each public junior college district equals the sum of:

(1) the estimated amount of revenue that would have been generated by the district if it had assessed a \$0.05 maintenance and operations ad valorem tax on each \$100 of taxable property value in its taxing district, as reported under subchapter R, §13.524 of this chapter, which the Coordinating Board will calculate as the district's current tax collection for FY 2022 multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five; and

(2) the amount of tuition and fee revenue calculated as the sum of:

(A) the district's FY 2022 FTSE as defined in §13.473(b)(1)(A) of this section, except for semester credit hours derived from students enrolled in dual credit or dual enrollment courses, multiplied by \$2,828, which is the FY 2021 statewide average of tuition and fees assessed to full-time students residing within the district of the public junior college they attend; and

(B) the total semester credit hours of dual credit or dual enrollment courses in which students were enrolled as of the census dates of all academic semesters or other academic terms that were reported in FY 2022, multiplied by \$55, which is the dollar amount per dual credit semester credit hour determined by the Coordinating Board pursuant to Texas Education Code, §28.0095.

§13.474. Performance Tier Funding.

(a) Each public junior college district shall receive Performance Tier funding under Texas Education Code, Chapter 130A, Subchapter C. The Coordinating Board shall calculate a district's Performance Tier funding as the sum of Weighted Outcome Completions multiplied by the respective funded values of the outcomes.

(b) For the purposes of calculating formula funding amounts for Fiscal Year (FY) 2024, the Coordinating Board shall fund the Weighted Outcome Completions described below as follows: Figure: 19 TAC §13.474(b)

(c) For the purposes of calculating formula funding amounts for FY 2024, the Coordinating Board shall additively weight the calculation of outcomes in §§13.473(b)(2), 13.473(b)(3)(D), 13.473(b)(3)(E), and 13.473(b)(3)(F) of this subchapter (relating to

Base Tier Allotment), as follows to calculate Weighted Outcome Completions.

(1) When an outcome is achieved by a student classified as economically disadvantaged, that outcome shall have an additional value of 25%.

(A) For purposes of calculating economically disadvantaged for transfer and credential fundable outcomes, the student must be classified as economically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(B) For purposes of calculating economically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as economically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at either the community college or general academic institution.

(2) When an outcome is achieved by a student classified as academically disadvantaged, that outcome shall have an additional value of 25%.

(A) For purposes of calculating academically disadvantaged for transfer and credential fundable outcomes, the student must be classified as academically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(B) For purposes of calculating academically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as academically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(3) When an outcome is achieved by a student classified as an Adult Learner, that outcome shall have an additional value of 50%.

(A) For purposes of calculating an Adult Learner for a transfer fundable outcome, the student must be classified as an Adult Learner in the year of last enrollment at the community college district prior to the transfer to a general academic institution.

(B) For purposes of calculating an Adult Learner for a fundable credential, the student must be classified as an Adult Learner in the fiscal year in which the fundable credential was awarded.

(C) For purposes of calculating an Adult Learner for Structured Co-Enrollment Fundable Outcome, the student must be classified as an Adult Learner in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(d) For the purposes of calculating Weighted Outcome Completions for formula funding amounts for FY 2024, the Coordinating Board shall calculate the funded number of Weighted Outcome Completions as the greater of the average of the district's Weighted Outcome Completion counts for FY 2020, FY 2021, and FY 2022 and the district's count for FY 2022.

§13.475. Formula Transition Funding.

In FY 2024, for purposes of transitioning to the new formula model, if the sum of a public junior college district's Base and Performance Tier funding as calculated in §§13.473(a) and 13.474(a) of this subchapter (relating to Base Tier Allotment and Performance Tier Funding, respectively) would result in the district receiving less in General Revenue formula funding than the district received through the sum of appropriations made in the core operations strategy, student success strategy, contact hour funding strategy, and, if applicable, the need-based supplement and bachelor of applied technology strategies, as provided for

FY 2023 in the 2022-23 General Appropriations Act, then the Coordinating Board will add transitional funding in the amount of the difference to the district's formula funding for FY 2024.

§13.476. Payment Schedule.

(a) Non-Formula Support Items. For the purpose of distributing state appropriations to a public junior college district in Fiscal Year (FY) 2024, the Coordinating Board shall distribute the full amounts of all FY 2024 non-formula support items to the district to which they are appropriated in accordance with the provisions of the General Appropriations Act for 2024-2025 by September 25, 2023. The Coordinating Board shall recover any overallocation or adjust any installment required to comply with state law or chapter 13 of this title (relating to Financial Planning).

(b) Formula Funding Amounts: Fall. For the purpose of distributing state appropriations to a public junior college district in FY 2024, the Coordinating Board shall distribute to each district by October 15, 2023, one-half of the formula funding amount it determines the district may be entitled to receive in FY 2024 pursuant to the provisions of the General Appropriations Act for 2024-2025, Texas Education Code, and all other pertinent statutes and rules.

(c) Formula Funding Amounts: Spring. For the purpose of distributing state appropriations to a public junior college district in FY 2024, the Coordinating Board shall distribute to each district by February 15, 2024, one-quarter of the formula funding amount it determines the district may be entitled to receive in FY 2024 pursuant to the provisions of the General Appropriations Act for 2024-2025, Texas Education Code, and all other pertinent statutes and rules.

(d) Formula Funding Amounts: Summer. For the purpose of distributing state appropriations to a public junior college district in FY 2024, the Coordinating Board shall distribute to each district by June 15, 2024, one-quarter of the formula funding amount it determines the college may be entitled to receive in FY 2024 pursuant to the provisions of the General Appropriations Act for 2024-2025, Texas Education Code, and all other pertinent statutes and rules, and in odd-numbered years shall distribute the formula funding amount likewise determined as soon as is practicable after June 15 in accordance with the appropriations process.

(e) The Coordinating Board may modify any installment under this schedule as necessary to provide an institution with the amounts to which the institution is entitled under Texas Education Code, Chapters 130 and 130A, the General Appropriations Act, or chapter 13 of this title.

§13.477. Close Out.

(a) On October 1 of each year, the Coordinating Board shall close out the prior fiscal year (FY) by reviewing, reconciling, and verifying distributions of formula funding to public junior colleges in the prior fiscal year.

(1) As applicable, the Coordinating Board shall adjust a public junior college's first payment under §13.477(b) of this section by an amount necessary to deliver the correct funding owed to the public junior college under Texas Education Code, Chapters 130 and 130A, or this subchapter for the prior fiscal year.

(2) The Coordinating Board will determine the correct funding for a public junior college based on the final certified data reported by the institution that serves as the basis of formula funding for that year, as provided by this chapter.

(3) This close out process may result in additional or reduced funding to the college based on the reported data and funding delivered for the fiscal year that is being closed out.

(b) If the Commissioner of Higher Education in his or her sole discretion determines that an adjustment under §13.477(a) of this section will have a substantial negative impact on the operations of the institution or the education of students, the Coordinating Board may correct the institution's funding by recovering payments as an overallocation pursuant to subchapter R, §13.528(d)(1) or (2) of this chapter (relating to Recovery of Overallocated Funds). For the purpose of FY24, the Coordinating Board will not adjust formula funding for a public junior college for a fiscal year subsequent to close out except as set out in this section and subchapter R of this chapter (relating to State Public Junior College Finance Program Reporting, Audit, and Overallocation).

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

Filed with the Office of the Secretary of State on August 23, 2023.

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Texas Higher Education Coordinating Board

Effective date: September 1, 2023

Expiration date: December 29, 2023

For further information, please call: (512) 427-6548



SUBCHAPTER Q. FINANCIAL AID FOR SWIFT TRANSFER (FAST) PROGRAM

19 TAC §§13.500 - 13.506

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter Q, §§13.500 - 13.506, concerning Financial Aid for Swift Transfer (FAST) Program.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, these new sections will outline the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, tuition rate, funding formula, and the handling of overallocations, which are necessary to administer the FAST Program.

Rule 13.500 indicates the specific sections of the Texas Education Code (TEC) that provide the agency with authority to issue these rules, as well as the purpose of the FAST Program.

Rule 13.501 provides definitions for words and terms within FAST rules. The definitions are adopted to provide clarity for words and terms that are integral to the understanding and administration of the FAST rules. This section is adopted based on TEC. Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Rule 13.502 outlines the requirements that institutions must fulfill to participate in the FAST Program. The requirements are adopted to: (a) gather in one place both statutory requirements,

such as the requirement that an institution must meet the definition of institution of higher education outlined in TEC, Section 61.003, and rule requirements implementing the FAST Program; (b) clarify aspects of the statutory requirements, such as the institution's responsibility to provide dual credit coursework at no cost to eligible students attending high school in Texas school districts or charter schools; and (c) provide rules specific to requirements the Coordinating Board is adopting to ensure effective administration of the FAST Program, such as the requirement that each participating institution enter into an agreement with the Coordinating Board. This section is adopted based on TEC, Section 28.0095(j), which directs the Board to adopt rules as necessary to implement the FAST Program.

Rule 13.503 outlines the eligibility requirements that students must meet to allow an institution to enroll the student in dual credit coursework at no cost to the student under the FAST Program. The requirements are adopted to: (a) gather in one place the statutory requirements for the FAST Program, including the requirements related to a student's enrollment and their prior status as educationally disadvantaged; (b) clarify aspects of the statutory requirements, such as the student needing to be enrolled in and eligible for Foundation School Program funding at a high school in a Texas school district or charter school; and (c) provide rules specific to requirements the Coordinating Board is adopting to ensure effective administration of the FAST Program, such as the requirement that school districts and charter schools will fulfill their reporting requirements for the educationally disadvantaged status through notice to the Texas Education Agency. This section is adopted based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Rule 13.504 sets the FAST maximum tuition rate for the 2023-2024 academic year. The maximum tuition rate is set for the 2023-2024 via emergency rulemaking, based on a review of average dual credit tuition rates, to allow for the FAST Program to begin in the fall 2023 semester. Future rulemaking will establish the tuition rate for the 2024-2025 academic year and beyond. TEC, Section 28.0095(d), directs the Coordinating Board to prescribe the maximum tuition rate for the FAST Program in rule.

Rule 13.505 establishes the mechanisms by which the Coordinating Board will disburse funding to each participating institution to support their participation in the FAST Program, as well as the institutions' participation in the process. The adopted rule provides the frequency of disbursements to each institution; the way the disbursement amount will be calculated for each institution; the data that will be used to complete the calculation; and the way institutions will have the opportunity to review the calculation for accuracy. This section is adopted based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Rule 13.506 references the overallocation rules for the FAST Program. The rule acknowledges that the program is one aspect of the larger effort to provide funding to support institutions in their work to successfully educate students and is thus subject to the overallocation rules outlined in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter R. This section is adopted based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the

first five years the sections are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the FAST program. However, participation in the program is voluntary for institutions of higher education. Fiscal implication of the potential for increased funding to institutions of higher education is funded as part of the FAST program in statute and the General Appropriations Act. Additional ancillary costs to institutions that choose to participate are assumed within the fiscal note for the legislation. The rules do not impose additional costs of compliance beyond those provided in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increase in the number of educationally disadvantaged students who complete post-secondary coursework during high school, thus accelerating the attainment of post-secondary credentials necessary to support the Texas economy. Students and the state may realize additional benefits as the risk of credits that will not transfer to an institution of higher education is reduced. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the FAST program is voluntary. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will create a government program required by House Bill 8;
- (2) implementation of the rules will require the creation of employee positions, as required by House Bill 8;
- (3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

The new section is adopted on an emergency basis under Texas Education Code, Section 28.0095, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the FAST Program.

The new section affects Texas Education Code, Sections 28.0095 and 48.308.

§13.500. Authority and Purpose.

(a) Unless otherwise noted in a section, the authority for these provisions is provided by Texas Education Code, §§28.0095 and 48.308.

(b) This subchapter establishes rules relating to the administration of the Financial Aid for Swift Transfer (FAST) Program. The program provides institutions with funding to support their ability to allow educationally disadvantaged students to enroll in dual credit coursework at no cost to the student.

§13.501. Definitions.

In addition to the words and terms defined in Texas Administrative Code, §13.1 of this chapter (relating to Definitions) the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In the event of conflict, the definitions in this subchapter shall control.

(1) Charter School--a public charter school authorized to operate under Texas Education Code, Chapter 12.

(2) Dual Credit Course--a course offered for joint high school and junior college credit under Texas Education Code, §130.008, or another course offered by an institution of higher education, for which a high school student may earn credit toward satisfaction of:

(A) a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree;

(B) a foreign language requirement at an institution of higher education;

(C) a requirement in the core curriculum, as that term is defined by Texas Education Code, §61.821, at an institution of higher education; or

(D) a requirement in a field of study curriculum developed by the coordinating board under Texas Education Code, §61.823.

(3) Educationally disadvantaged--as defined in Texas Education Code, §5.001(4), eligible to participate in the national free or reduced-price lunch program.

(4) Equivalent of a semester credit hour--16 contact hours.

(5) Program--the Financial Aid for Swift Transfer (FAST) Program.

§13.502. Eligible Institution.

(a) Any institution of higher education, as defined in Texas Education Code, §61.003, is eligible to participate in the Program.

(b) A participating institution may not charge students attending high school in a Texas school district or charter school tuition for dual credit courses in excess of the tuition rate outlined in §13.504 of this subchapter (relating to FAST Tuition).

(c) A participating institution must ensure that an eligible student incurs no cost for their enrollment in any dual credit course at the institution. This includes, but is not limited to, tuition, fees, books, supplies, or other course-related expenses. This subsection does not prohibit a participating institution from charging a school district for course-related expenses, other than tuition, for an eligible student.

(d) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner prior to being approved to participate in the program.

§13.503. Eligible Students.

(a) A student is eligible to enroll at no cost to the student in a dual credit course under the program if the student:

(1) is enrolled in and eligible for Foundation School Program funding at a high school in a Texas school district or charter school under the rules of the Texas Education Agency;

(2) is enrolled in a dual credit course at a participating institution of higher education; and

(3) was educationally disadvantaged at any time during the four school years preceding the student's enrollment in the dual credit course described by paragraph (2) of this subsection, as certified to the institution by the eligible student's school district or charter school, or other means authorized by rule.

(b) A school district's or charter school's notice to the institution regarding a student's status as educationally disadvantaged shall occur through the school district's or charter school's notice to the Texas Education Agency, unless otherwise provided by rule.

§13.504. FAST Tuition.

The maximum tuition rate prescribed for a dual credit course through this program is \$55 per semester credit hour or equivalent of a semester credit hour in the 2023-2024 academic year.

§13.505. FAST Funding Formula.

(a) Frequency of Disbursements. The Coordinating Board will provide each participating institution with a disbursement for each fall, spring, and summer semester upon the certification of the institution's eligible enrollments. The Coordinating Board will combine enrollment periods under this subsection when a semester includes more than one enrollment period (for example, a Summer 1 and a Summer 2 session).

(b) Disbursement Calculation. Each disbursement will equal the amount outlined in §13.504 of this subchapter (relating to FAST Tuition) for the relevant semester multiplied by the number of semester credit hours or equivalent in which students who met the eligibility criteria in §13.503 of this subchapter (relating to Eligible Students) were enrolled in dual credit courses at the institution for the relevant semester.

(c) Data Sources. The source of data for the disbursement calculation will be reports collected by Board staff and certified by the institution for the relevant semester which provide an eligible student's dual credit enrollment in semester credit hours or their equivalent and the student's PEIM identifier, combined with data regarding educationally disadvantaged students, as reported by Texas Education Agency, unless otherwise provided by rule.

(d) Verification of Data. Board staff will share each semester's calculation with the participating institution for comment and verification prior to disbursement. The institution will be given ten business days, beginning the day of the notice's distribution, and excluding State holidays, to confirm that the calculation accurately reflects the data they submitted or to advise Board staff of any inaccuracies.

§13.506. Overallocation.

Funding provided to an institution under this subchapter shall be subject to subchapter R of this chapter (relating to State Public Junior College Finance Program Reporting, Audit, and Overallocation).

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

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SUBCHAPTER R. STATE PUBLIC JUNIOR COLLEGE FINANCE PROGRAM REPORTING, AUDIT, AND OVERALLOCATION

19 TAC §§13.520 - 13.529

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter R, §§13.520 - 13.529, concerning the certification of compliance, required reporting, correction of errors, audit, and overallocation for the new State Public Junior College Finance Program.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning September 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, these new sections will establish rules that set out policies and procedures for public junior colleges to submit certifications of compliance and submit required reporting through various reporting collection mechanisms established by the Coordinating Board. The rules also describe how the Coordinating Board will conduct audits, review of required reporting for data errors, and correct those errors through either a payment of under-allocated funds or the recovery of over-allocated funds.

Rule 13.520 sets out the purpose of the subchapter, which is to establish definitions, certification of compliance, data reporting, audit, and correction of error requirements, as well as over-allocation and under-allocation procedures, necessary to implement the State Public Junior College Finance Program.

Rule 13.521 provides the authority for the chapter, which is established pursuant to Texas Education Code, §§28.0095, 61.035, 61.065, 130.003, and 130A.006-130A.009.

Rule 13.522 lists definitions used in the subchapter. These definitions establish consistent terminology within the subchapter and mirror commonly used definitions established elsewhere in the Coordinating Board's rules. The legislation establishing the State Public Junior College Finance Program permits the Coordinating Board to adopt rules as necessary to implement Texas Education Code, Chapters 61, 130, and 130A (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023), to be codified in Texas Education Code, §130A.005).

Rule 13.523 contains the policy and procedures necessary for public junior colleges to submit certifications of compliance with statute and rules. H.B. 8 requires public junior colleges to submit attestations of compliance, including compliance with all state laws and Coordinating Board rules, as a condition of receiving state funds (Sections 24 and 34, Tex. H.B. 8, 88th Leg., R.S. (2023), to be codified in Texas Education Code, §§61.063 and 130.003(b)). These sections of statute also provide for the Co-

ordinating Board to establish the manner in which public junior colleges make this attestation. Rule 13.523 therefore contains deadlines and stipulates the content of the attestation, and provides for resolution in the event of unresolved audit findings, establishing clear guidelines for institutions to comply with statute.

Rule 13.524 describes the required financial and academic reporting for institutions to submit the data necessary for the Coordinating Board to administer the State Public Junior College Finance Program. The Coordinating Board collects data through a variety of established mechanisms: the Community College Annual Reporting and Analysis Tool, Annual Financial Report Reporting, the Report of Fundable Operating Expenses, Education Data Systems reporting, and through ad hoc reporting as necessary. The data from these tools provides a cornerstone of the financial modeling necessary to determine precise funding amounts for the public junior colleges. This rule describes the uses of data from required reporting and states the standards and review processes for these reporting mechanisms. This rule implements Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §130A.006), which states that the Coordinating Board may establish reporting requirements as necessary to administer the finance program.

Rule 13.525 establishes the process for the Commissioner of Higher Education (Commissioner) to review required reporting for errors and formally establish when a data reporting error resulting in a material impact in formula funding was made. Statute permits the Coordinating Board to review the accuracy of data reported to the Coordinating Board for any errors (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §130A.007)). This section establishes parameters and expectations for the methods the Coordinating Board will use to detect data errors. In addition, this section establishes the method used by the Commissioner to make a formal determination of a data reporting error requiring a funding adjustment, an important preliminary step to start off the processes for recovering overallocated funds or disbursing under-allocated funds.

Rule 13.526 provides for compliance monitoring and auditing of funds disbursed under the new finance model for public junior colleges. Texas Education Code, §61.035, provides for the agency to conduct compliance monitoring of funds allocated to all institutions of higher education, including public junior college. This section establishes parameters and expectations of internal audit offices at institutions for data collection and examination assistance by the internal audit offices as institutional resources allow. In addition, this section contains information regarding reporting of ongoing or completed audits involving funds administered or allocated by or data reported to the Coordinating Board.

Rule 13.527 states that institutions must retain records for a period of no less than seven years for purposes of Coordinating Board review. Coordinating Board staff chose this time period to mirror the timeline of seven years in the statute, which states that the Coordinating Board may not review expenditures made by junior colleges occurring seven or more years in the past (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §130A.009(e)).

Rule 13.528 lays out the process for the Coordinating Board to recover overallocated funds in the event a public community college has received more funding than was due. This section provides how the Coordinating Board will provide notice to institutions of an error finding and lays out an appeal process for institutions. This rule implements the recovery of overallocated funds

provision of H.B. 8 (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §130A.009)).

This rule establishes a process for institutions of higher education to receive notice and have the opportunity to submit relevant information to appeal to the Commissioner in the case where the Coordinating Board may need to make an adverse funding adjustment. The procedures established for overallocation under §13.528(d) ensure the Coordinating Board is accurately disbursing appropriated funds as intended by the Legislature, while also providing flexibility for the method used to recoup the funds. This flexibility includes providing an option to recover a sum in a lump payment under §13.528(d)(1)(B), or alternatively over a five-year timespan under §13.528(d)(2), as authorized by H.B. 8. The flexibility is intended to limit extreme adverse financial impacts to public junior colleges that might detrimentally impact institutional operations, local communities, and students served by the institution, while still carrying out the Coordinating Board's obligation to disburse appropriated funds according to law.

Rule 13.529 likewise establishes how the Coordinating Board may make a financial adjustment in light of finding that an institution was allocated less in funding than was due. H.B. 8 provides for the Commissioner to adjust funds for the purpose of accuracy (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §13A.007)) and authorizes adjustment to installment under Texas Education Code, §130.0031. In addition, the General Appropriations Act provides that the Coordinating Board may make adjustments in the case of shortfall for the biennium (General Appropriations Act, Article IX, Contingency and Other Provisions, Section 18.04, Subsection 16 (2023)). The Coordinating Board intends to disburse appropriated funds with fidelity to appropriators' intent; this section allows for the agency to make institutions whole in the event of a shortfall due to a data reporting error or other error.

Paul Maeyaert, Interim Assistant Commissioner for Internal Audit and Compliance, has determined that for each of the first five years the sections are in effect there may be minimal fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the new community college finance program established by H.B. 8. The bill provides for the adjustment of funds relating to data reporting errors as well as a mechanism to recoup overallocated funds in Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §§130A.007 and 130A.009). The rules do not impose additional costs of compliance beyond those provided in statute.

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

Paul Maeyaert, Interim Assistant Commissioner for Internal Audit and Compliance, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the establishment of rules to implement changes to the certification of compliance, required reporting, correction of errors, audit, and overallocation for the new community college finance system, as established in Tex. H.B. 8, 88th Leg., R.S. (2023). This subchapter will establish a framework to ensure appropriated funds for public junior colleges are correctly spent. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will create a government program, as required by House Bill 8;

(2) implementation of the rules will require the creation of employee positions, as required by House Bill 8;

(3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;

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

(5) the rules will create a new rule;

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

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

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

The new sections are adopted on an emergency basis under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules to implement and administer the Public Junior College State Finance Program.

The new sections affect Texas Education Code §§28.0095, 61.035, 61.065, 130.003, 130A.006-130A.009, and 130.0031.

§13.520. Purpose.

The purpose of this subchapter is to establish the definitions, certification of compliance, data reporting, audit, and correction of error requirements for institutions of higher education, as well as over-allocation and under-allocation procedures, under the State Public Junior College Finance Program (the Program). The subchapter further specifies the process for recovery of overallocated funds as required by statute. These provisions additionally apply to audit and overallocation of funds under the Financial Aid for Swift Transfer (FAST) Program.

§13.521. Authority.

The Coordinating Board adopts this subchapter pursuant to its authority under Texas Education Code, §§28.0095, 61.035, 61.063, 61.065, 130.003, and 130A.006-130A.009.

§13.522. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Audit--An engagement to audit the program conducted by the Coordinating Board's Internal Auditor and internal audit or compliance monitoring staff pursuant to either Texas Education Code, §§130A.006(4) or 61.035. This term may include a site visit, desk review, or examination of the institution's use of funds allocated by the Coordinating Board and data reported to the Coordinating Board. The term includes auditing undertaken to obtain evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(2) Census Date--As defined in subchapter P, §13.472, of this chapter (relating to Definitions).

(3) Chief Audit Executive--The Internal Auditor hired by the Coordinating Board to perform internal auditing and compliance monitoring on behalf of the Coordinating Board pursuant to Texas Education Code, Chapters 61, 130, and 130A.

(4) Compliance Monitoring--A risk-based audit and compliance function conducted by the Coordinating Board pursuant to either Texas Education Code, §§130A.006(4) or 61.035, for the purpose

of reviewing and assessing programmatic, legal, and fiscal compliance. This function may include conducting audits, site visits, desk reviews, or other examinations, to ensure that funds allocated or distributed by the Coordinating Board are allocated, distributed, and used in accordance with applicable law and Coordinating Board rule. The function includes obtaining evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(5) Data Reporting Error--An error in data or other information reported and certified by a public junior college to the Coordinating Board that the Commissioner of Higher Education in his or her discretion determines may result in a material impact in the formula funding a public junior college was entitled to or received.

(6) Desk Review--An administrative review by the Coordinating Board that is based on information reported by an institution of higher education or a private or independent institution of higher education, including supplemental information required by the Coordinating Board for purposes of compliance monitoring, except that the term does not include information or accompanying notes gathered by the Coordinating Board during a site visit.

(7) Full-Time Student Equivalent (FTSE)--As defined in subchapter P, §13.472, of this chapter.

(8) Funding Adjustment--Any increase or decrease in funding by the Coordinating Board to an institution of higher education based on an over- or under-allocation of funds.

(9) Over-allocation--The over-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments beyond what the institution is due.

(10) Site Visit--An announced or unannounced in-person visit by a representative of the Coordinating Board or its agent to an institution of higher education or a private or independent institution of higher education for the purposes of conducting an audit.

(11) Under-allocation--The under-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments less than what the institution was owed for the fiscal year.

§13.523. Certification of Compliance.

(a) A public junior college is not eligible to receive funds under this subchapter unless that public junior college submits a certification of compliance with the requirements of Texas Education Code, §130.003(b), and as stated herein.

(b) A public junior college must submit an attestation via email to CTC@highered.texas.gov certifying to compliance with Texas Education Code, §130.003(b), to the Coordinating Board by August 1 of each year. The certification must be signed by the public junior college's president, or Chief Executive Officer, as applicable. The certification must certify the following:

(1) That the public junior college is currently in compliance with each provision of Texas Education Code, §130.003; and

(2) The public junior college has complied with all laws and Coordinating Board rules for the establishment and operation of a public junior college.

(c) If a junior college district has an unresolved or ongoing audit finding that the certifying official determines may preclude the district's certification under Texas Education Code, §130.003(b), the

district shall disclose the finding(s) and provide an explanation of the finding(s) and proposed resolution.

(1) The Commissioner of Higher Education shall determine whether the junior college district can demonstrate that the district will be in compliance for the purpose of receiving a scheduled payment.

(2) Any payment that the Coordinating Board makes to an institution pursuant to this subchapter is subject to recovery or recoupment if the certifying official does not make the required certification for the fiscal year for which the certification was required.

§13.524. Required Reporting.

(a) Required Reporting. A public junior college must submit data through required reporting mechanisms established by the Coordinating Board. The Coordinating Board may use information obtained through required reporting for:

(1) calculating funding disbursed under this chapter;

(2) providing timely data and analyses to inform management decisions by the governing body of each public junior college district;

(3) administering or evaluating the effectiveness of programs; or

(4) auditing the program.

(b) Financial Reporting: The Community College Annual Reporting and Analysis Tool (CARAT) and Annual Financial Report (AFR) Reporting.

(1) Standards. Each public junior college district must submit their Annual Financial Report (AFR) for the preceding fiscal year by January 1. The public junior college must submit the AFR following the requirements provided in the Coordinating Board's Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, also known as the AFR Manual, for that fiscal year, in accordance with Texas Education Code, §61.065.

(2) Format. Each public junior college must report AFR data for each completed fiscal year as prescribed in the Community College Reporting and Analysis Tool (CARAT) by January 31 of the following fiscal year.

(3) Review Process. The Commissioner of Higher Education will update the AFR Manual, as required by Texas Education Code, §61.065. The AFR Manual will conform to Governmental Accounting Standards Board (GASB) statements and guidance.

(c) Financial Reporting: Report of Fundable Operating Expenses (RFOE).

(1) Standards. Each public junior college must report all instructional expenses from each completed fiscal year for each institutional discipline and unallocated administrative expenses as defined in the RFOE by January 31 of the following fiscal year.

(2) Coordinating Board staff shall use the data provided on expenses at public junior colleges to produce a study of costs for each instructional discipline each year. This study will review all expenses made by institutions for instruction and administration from all unrestricted sources of funds, including appropriated general revenue, tuition and fees, contract instruction, other educational and general revenue, and local tax revenue.

(d) Academic Reporting: Education Data System reporting.

(1) Standards. Each public junior college must use data standards established by the Commissioner of Higher Education to sub-

mit required information relating to the delivery of educational programs. The Commissioner of Higher Education shall adopt and publish annually data standards in official Coordinating Board publications, including through the Coordinating Board Management (CBM) Reporting and Procedures Manual for Texas Community, Technical, and State Colleges. The Coordinating Board will widely disseminate this publication, which will include:

(A) descriptions of the data collections and submission requirements;

(B) descriptions of data elements and the codes used to report them, including data used to calculate Full-Time Student Equivalent enrollments, Texas Success Initiative eligibility of students, student transfer, dual credit or dual enrollment, the number and type of credentials conferred, and other relevant student characteristics;

(C) detailed responsibilities of public junior colleges in connection to the data submission process, including each deadline for submission and resubmission; and

(D) descriptions of data submission requirements, including submission record layout specifications and data edit specifications.

(2) A public junior college may report a student in attendance on the approved course census date for the purpose of funding under this subchapter, in accordance with Texas Education Code, §130A.008.

(3) Review Process. The Commissioner of Higher Education shall review the CBM Reporting and Procedures Manuals annually. The Commissioner of Higher Education may approve changes to the data and reporting standards outside of the annual review process to expedite implementation of data collections and reporting.

(4) Certification. The reporting official for each public junior college must certify the accuracy of the report by a certification statement submitted to the Coordinating Board's Educational Data Center in accordance with the template and instructions provided in the CBM Reporting and Procedures Manual.

(e) Academic Reporting: Ad Hoc Reporting Requests. As necessary to implement this chapter, the Commissioner of Higher Education may determine the need for additional, limited, supplemental requests for data and information from public junior colleges. To the extent Ad Hoc Reporting Requests may determine or influence funding disbursements under this subchapter, the Coordinating Board shall require the reporting official or another Coordinating Board designated official for each public junior college to certify the accuracy of the information contained in the report.

§13.525. Commissioner Review of Required Reporting; Data Reporting Errors.

(a) The Commissioner of Higher Education at his or her discretion or upon recommendation of the Chief Audit Executive may direct Coordinating Board staff to review the accuracy of the data reported to the Coordinating Board by public junior colleges under this subchapter using any of the following methods or combination thereof:

(1) The Chief Audit Executive or Coordinating Board staff may conduct periodic file reviews, desk-reviews, site visits, or audits of the accuracy of the data and information submitted for funding purposes, including regular reviews of submitted data carried out through standard data management, supporting data, audits conducted under this subchapter, or as a result of any other audit. Upon identifying a data reporting error that may impact formula funding, Coordinating Board staff shall notify the Commissioner of Higher Education as soon as practicable.

(2) Upon receiving a notification from the Chief Audit Executive or Coordinating Board staff of a potential data reporting error, the Commissioner of Higher Education may:

(A) direct staff to continue to gather additional information;

(B) determine that the discrepancy does not rise to the level of a data reporting error as defined in this chapter due to the materiality impact of the error; or

(C) determine that the discrepancy rises to the level of a data reporting error that requires a funding adjustment due to the materiality impact of the error or the amount of overallocation or under-allocation.

(b) The Coordinating Board may review and or require correction of a data reporting error that occurred not more than seven years prior to a review conducted by Coordinating Board staff.

(c) Upon the Commissioner of Higher Education's determination that the discrepancy constitutes a data reporting error requiring a funding adjustment, staff will notify the public junior college within 30 business days.

(d) The Commissioner of Higher Education may use any method provided in §§13.528 or 13.529 of this subchapter to make the necessary funding adjustments to correct an over- or under-allocation.

§13.526. Public Junior College Audits.

(a) A public junior college shall report financial and academic data to the Coordinating Board under §13.524 of this subchapter (relating to Required Reporting).

(b) The Chief Audit Executive may conduct compliance monitoring or audits of public junior colleges' compliance with Texas Education Code, Chapter 130A, the General Appropriations Act, and other related formula funding statutes.

(c) In conducting an audit or compliance monitoring under this section, the Coordinating Board may request the assistance of the internal audit office at an institution of higher education and private or independent institution of higher education, as institutional resources allow, to examine the institution's use of funds allocated by, and data reported to, the Coordinating Board.

(d) To avoid duplication of effort and assist the Coordinating Board in identifying risk, an internal auditor at an institution shall notify the Coordinating Board of any audits conducted by the institution's internal or external auditor involving funds allocated or administered by the Coordinating Board or data reported to the Coordinating Board.

§13.527. Records Retention.

An institution of higher education shall retain records related to financial and educational data and information reported to the Coordinating Board under Chapter 13 for a period of not less than seven years.

§13.528. Recovery of Overallocated Funds.

(a) If the Coordinating Board determines after closing out a fiscal year pursuant to subchapter P, §13.477, of this chapter (relating to Close Out), that a data reporting error or any other error resulted in an overallocation of funds to the institution, the Coordinating Board shall use any method authorized under statute or this rule to make a funding adjustment necessary to correct the over-allocation.

(b) The Coordinating Board shall notify the institution not later than 30 business days after the Commissioner of Higher Education makes a determination of a data reporting error under §13.525 of this subchapter (relating to Commissioner Review of Required

Reporting; Data Reporting Errors) or otherwise identifies an error requiring a funding adjustment to recover an overallocation. This notification must contain the amount of the overallocation and the basis for the determination.

(c) The institution may submit a written appeal to the Commissioner of Higher Education within 30 business days of receiving notification of an overallocation. The institution may attach any data or other written documentation that supports its appeal. The Commissioner of Higher Education shall review the appeal and determine in his or her sole discretion whether to affirm, deny, or modify the determination of overallocation within 30 business days of receipt. The Commissioner of Higher Education or Chief Audit Executive shall make an annual report of overallocation determinations to the Board.

(d) If the institution does not appeal or the Commissioner of Higher Education affirms the determination that an overallocation requiring a funding adjustment has occurred, the Coordinating Board shall recover an amount equal to the amount overallocated to the public junior college through one of the following methods:

(1) The Coordinating Board shall:

(A) withhold an amount equivalent to the overallocation by withholding from subsequent allocations of state funds for the current fiscal year as part of the close out of the current fiscal year; or

(B) request and obtain a refund from the public junior college during the current fiscal year an amount equivalent to the amount of the overallocation; or

(C) If the Commissioner of Higher Education in his or her sole discretion determines that the recovery of an overallocation in the current or subsequent fiscal year will have a substantial negative impact on the operations of the institution or the education of students, the Commissioner of Higher Education may instead recover the overallocation pursuant to subsection (d)(2) of this section.

(2) If the Commissioner of Higher Education in his or her sole discretion determines that an overallocation pursuant to

paragraphs (1) or (2) of this subsection was the result of exceptional circumstances reasonably caused by statutory changes to Texas Education Code, Chapters 130 or 130A, and related reporting requirements, the Coordinating Board may recover the overallocation over a period not to exceed the subsequent five fiscal years.

(e) In addition to the recovery of an over-allocation under this section, the Commissioner of Higher Education may establish a corrective action plan for a public junior college that has received an over-allocation of funds.

(f) If the public junior college fails to comply with an agreement to submit a refund established under this section, the Coordinating Board must report to the Comptroller of Public Accounts for recovery pursuant to Texas Education Code, Section 130A.009.

§13.529. Payment of Under-allocated Funds.

If the Commissioner of Higher Education determines that a data reporting error or any other error resulted in an under-allocation of funds, the Coordinating Board shall provide the funds to the institution pursuant to the close-out process in subchapter P, §13.477, of this chapter (relating to Close Out) or as otherwise authorized by law.

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

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