PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [Square brackets and strikethrough] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 3. RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES; AMNESTY

SUBCHAPTER A. REQUIREMENTS FOR CERTAIN INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING AT CERTAIN PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION; AUTHORIZING ADMINISTRATIVE PENALTIES

19 TAC §3.30

The Texas Higher Education Coordinating Board proposes new §3.30. Required Transcript Notation When a Student is Ineligible to Reenroll due to Non-academic or Non-financial Reason, in Chapter 3, Subchapter A, concerning Requirements for Certain Incidents of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at Certain Public and Private Institutions of Higher Education; Authorizing Administrative Penalties.

The new section was originally proposed as §3.16 in the October 18, 2019, issue of the Texas Register (44 TexReg 5988). However, allowing for newly adopted rules for Chapter 3, Subchapter A, §§3.1 - 3.10 and 3.16 - 3.20, concerning required reporting rules and policies regarding certain incidents of sexual harassment, sexual assault, dating violence, and stalking at postsecondary educational institutions, this proposed section has been renumbered as §3.30.

The new section requires transcript notation when a student is ineligible to reenroll due to non-academic or non-financial reasons. The intent of the proposed rules is to update existing rules to align with new and current statute and rule references regarding notations on transcripts. The proposed rules will affect students ineligible to reenroll in a Public or Private or Independent Institution of Higher Education in Texas.

Specifically, these additions provide instruction to public institutions of higher education and private or independent institutions of higher education regarding transcript notations for students ineligible to reenroll for a reason other than academic or financial. The addition also adds guidelines for transcript notation removal.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules. It is further determined that (1) the rule will not create or eliminate a government program; (2) implementation of the rule will not require the creation or elimination of employee positions; (3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency; (4) the rule will not require an increase or decrease in fees paid to the agency; (5) the rules will create a new rule; (6) the rule will not limit an existing rule; and (7) the rule will not change the number of individuals subject to the rule. The rule will not affect the state's economy.

Dr. Silverman 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 tougher public security and higher awareness of potential personal risks at institutions of higher education. There is no additional effect on small businesses that grant postsecondary degrees. There is no impact on other small businesses, micro businesses, or rural communities.

Comments on the proposal may be submitted to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for seven days following publication of the proposal in the Texas Register.

The rules are proposed under the Texas Education Code, §51.9364, which provides for certain notations required on student transcripts.

The new sections affect the implementation of Texas Education Code, Chapter 51.

§3.30. Required Transcript Notation When a Student is Ineligible to Reenroll due to Non-academic or Non-financial Reason.

(a) Each postsecondary educational institution as defined by Texas Education Code §51.9364 will publish its process for transcript notations. "Ineligible to reenroll" will be defined by the notating postsecondary educational institution.

(b) For students ineligible to reenroll in a postsecondary educational institution for a reason other than academic or financial, including, but not limited to disciplinary actions, each postsecondary educational institution must include on the student's transcript a notation stating the student is ineligible to reenroll in the postsecondary educational institution for a reason other than academic or financial. The postsecondary educational institution must use language to indicate the
student is ineligible to reenroll in the institution, regardless of instructional modality. The postsecondary educational institution is neither required nor prohibited from stating the specific reason for ineligibility.

(c) If a student withdraws from the postsecondary educational institution prior to final resolution of the postsecondary educational institution's published disciplinary process that may result in the student becoming ineligible to reenroll for a reason other than an academic or financial reason, the postsecondary educational institution:

(1) may not end the disciplinary process until the postsecondary educational institution makes a final determination of responsibility, including, if applicable, a determination of whether the student will be ineligible to reenroll in the postsecondary educational institution for a reason other than an academic or financial reason; and

(2) shall include on the student's transcript the notation required under subsection (b) of this section if, as a result of the disciplinary process, the student is ineligible to reenroll in the postsecondary educational institution for a reason other than an academic or financial reason.

(d) Upon request by a student, a postsecondary educational institution may remove from a student's transcript a notation required under subsection (b) of this section if:

(1) the student becomes eligible to reenroll in the postsecondary educational institution; or

(2) the postsecondary educational institution determines that good cause exists to remove the notation.

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

Filed with the Office of the Secretary of State on January 7, 2020.

TRD-202000048
William Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: February 16, 2020
For further information, please call: (512) 427-6223

PART 2.  TEXAS EDUCATION AGENCY
CHAPTER 61.  SCHOOL DISTRICTS
SUBCHAPTER AA.  COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1000

The Texas Education Agency (TEA) proposes new §61.1000, concerning maximum compressed tax rate calculation and data collection. The proposed new section would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will collect data and calculate and make available the maximum tier one tax rate for each district on an annual basis.

Proposed new §61.1000, Maximum Compressed Tax Rate Calculation and Data Collection, would clarify the data collection necessary for TEA to calculate and make available school districts' maximum maintenance and operations compressed tax rates using locally certified values to make calculations under TEC, §48.2551.

Proposed new subsection (a) would establish that the new rule is made pursuant to TEC, §48.011 and §48.004, to address calculations in TEC, §48.2551.

Proposed new subsection (b) would set forth the method used to calculate the MCR.

Proposed new subsections (c) - (h) would describe the method that TEA would use to collect data from districts as well as the timeframes and processes for data collection, release of preliminary MCRs, and submission of appeals, as follows.

TEA will initiate a data collection annually in May to collect school district property value growth estimates using the estimates districts receive from their county appraisal districts. TEA will convert the local values into projected property values used for state funding ("Estimated T2" values) and then collect the MCRs. TEA will calculate districts' compressed tax rates based on the greater of the statewide average growth rate or the individual district growth rate. TEA will publish each district's preliminary maximum compressed tier one tax rate in June and final maximum compressed tier one tax rate on July 31.

TEA will issue a list of preliminary maximum compressed tier one tax rates to school districts on or around the second Monday in June of each year. The proposed new rule would include an appeal process for districts regarding the preliminary maximum compressed tier one tax rates.

TEA will only consider appeals that would result in a change of the preliminary tax rate.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking
would be in effect, it would create a new regulation because it imposes the requirements of a recently enacted statute.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: The proposal would ensure that rule language is based on current law and provide school districts with clarifications on the maximum compressed M&O tax rates that their boards of trustees may adopt without a fiscal impact to local taxpayers. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have data and reporting impact.

In accordance with TEC, §48.2551(d), TEA is required to calculate and make available school districts’ maximum compressed tier one tax rates. In order to comply with statute, TEA will collect data from school districts. TEA will initiate a data collection annually in May to collect school district property value growth estimates using the estimates districts receive from their county appraisal districts. TEA will use the local values to estimate comptroller certified values used for state funding (“T2” values) and then TEA will compute the local property value growth rate and MCRs. TEA will calculate districts’ compressed tax rates based on the greater of the statewide average growth rate or the individual district growth rate. TEA will publish each district’s preliminary maximum compressed tier one tax rate in June and final maximum compressed tier one tax rates on July 31.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 17, 2020, and ends February 18, 2020. A public hearing to solicit testimony and input on the proposal will be held at 8:30 a.m. on February 5, 2020, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at the hearing must sign in between 8:15 a.m. and 9:00 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Forecasting and Fiscal Analysis at (512) 463-8891.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §48.2551, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires TEA to calculate and make available school districts’ maximum maintenance and operations compressed tax rates; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and office of the governor.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§48.2551, 48.004, and 48.011, as added by House Bill 3, 86th Texas Legislature, 2019.

§61.1000. Maximum Compressed Tax Rate Calculation and Data Collection.

(a) This section, made pursuant to Texas Education Code (TEC), §48.011 and §48.004, addresses calculations in TEC, §48.2551.

(b) School districts’ maximum compressed maintenance and operations (M&O) tax rates, as determined by TEC, §§48.2551 and 48.2552, and relevant rules, shall be calculated using locally certified property values and adjusted to estimate for exclusions under Texas Government Code, §403.302(d).

(c) The Texas Education Agency (TEA) will open a data collection from May 1 through May 31 to school districts. School districts must submit the following data:

1. April County Appraisal District (CAD) Preliminary Certified Property Values for the preceding tax year;
2. July CAD Certified Property Values for the preceding tax year;
3. April CAD Preliminary Certified Property Values for the current tax year;
4. Local exemption changes for the preceding tax year, including, but not limited to, the following exemptions:
   (A) Tax Code, Chapter 313, Texas Economic Development Act (expiring or new);
   (B) Local option General Residence Homestead;
   (C) Local option Age 65 or Older or Disabled;
   (D) Local option Historic or Archeological Sites; and
   (E) Local option Freeport;
5. Local exemption changes for the current tax year, including, but not limited to, the following exemptions:
   (A) Tax Code, Chapter 313, Texas Economic Development Act (expiring or new);
   (B) Local option General Residence Homestead;
   (C) Local option Age 65 or Older or Disabled;
   (D) Local option Historic or Archeological Sites; and
   (E) Local option Freeport; and
6. District contact information.

(d) TEA will calculate and make available a list of preliminary maximum compressed tier one tax rates to school districts on or around the second Monday in June of each year.

(e) If TEA receives an appeal of a preliminary maximum compressed tax rate (MCR), TEA will issue a final determination to the school district no later than 30 calendar days after the deadline for submitting appeals.

(f) If TEA does not receive an appeal of a preliminary MCR, the preliminary MCR automatically becomes a final tax rate on July 31.

(g) A school district may appeal its preliminary MCR through the following process.
(1) The TEA division responsible for MCRs must receive a written appeal no later than 10 calendar days after TEA's release of the preliminary MCRs. The appeal must include evidence and additional information that supports the position of the school district. Appeals received 11 calendar days or more after TEA issues a preliminary tax rate will not be considered.

(2) TEA will only consider appeals that would result in a change of the preliminary MCR.

(b) TEA will use any available data to calculate MCR absent data collection submissions from a school district.

(i) The commissioner of education may waive a provision of this section if necessary to ensure the appropriate MCR calculation.

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

Filed with the Office of the Secretary of State on January 6, 2020.
TRD-202000024
Cristina de la Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: February 16, 2020
For further information, please call: (512) 475-1497

19 TAC §61.1001
The Texas Education Agency (TEA) proposes new §61.1001, concerning prior year maximum compressed tax rate. The proposed new section would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available maximum compressed tax rates for the 2020-2021 school year to account for statewide tax compression implemented by the legislature in the 2019-2020 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, enacted Texas Education Code (TEC), §48.2551, Maximum Compressed Tax Rate, which provides the calculation to develop the maximum compressed tax rates (MCRs) for school districts. TEA will calculate and make available the maximum tier one tax rate for each district on an annual basis.

Proposed new §61.1001, Prior Year Maximum Compressed Tax Rate, would provide that, for purposes of determining a district's MCR under TEC, §48.2551(b), for the 2020-2021 school year, the value of the district's prior year MCR is $0.93.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance/Chief school finance officer, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural commu-

nities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation because it imposes the requirements of a recently enacted statute.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand or alter existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: The proposal would ensure that rule language is based on current law and provide school districts with clarifications on the maximum compressed maintenance and operations tax rates that their boards of trustees may adopt without a fiscal impact to local taxpayers. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 17, 2020, and ends February 18, 2020. A public hearing to solicit testimony and input on the proposal will be held at 8:30 a.m. on February 5, 2020, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at the hearing must sign in between 8:15 a.m. and 9:00 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Forecasting and Fiscal Analysis at (512) 463-8891.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §48.2551, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires TEA to calculate and make available school districts' maximum maintenance and operations compressed tax rates; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and office of the governor.
CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§48.2551, 48.004, and 48.011, as added by House Bill 3, 86th Texas Legislature, 2019.

§61.1001. Prior Year Maximum Compressed Tax Rate.

(a) This section, made pursuant to Texas Education Code (TEC), §48.011 and §48.004, addresses calculations in TEC, §48.2551.

(b) For purposes of determining a district’s maximum compressed tax rate (MCR) under TEC, §48.2551(b), for the 2020-2021 school year, the value of the district’s prior year MCR is $0.93.

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

Filed with the Office of the Secretary of State on January 6, 2020.

TRD-202000025
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency

Earliest possible date of adoption: February 16, 2020
For further information, please call: (512) 475-1497

19 TAC §61.1002

The Texas Education Agency (TEA) proposes new §61.1002, concerning maximum compressed tax rate limitations. The proposed new rule would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available maximum tier one compressed tax rates when compression would otherwise result in a tax compression below the allowable threshold.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, enacted Texas Education Code (TEC), §48.2551, Maximum Compressed Tax Rate, which provides the calculation to develop the maximum compressed tax rates (MCRs) for school districts. TEA will calculate and make available the maximum tier one tax rate for each district on an annual basis.

Proposed new §61.1002, Maximum Compressed Tax Rate Limitations, would provide that, for purposes of determining a district’s MCR for a given tax year under TEC, §§48.2551(b)(1)(B), 48.2551(c), and 48.2552(b), if the calculation of a school district’s maximum compressed maintenance and operations (M&O) tax rate for that year would result in an MCR less than 90% of the highest district’s maximum compressed M&O tax rate, the district’s maximum compressed M&O tax rate is 90% of the highest maximum compressed M&O tax rate for that year.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural commu-

nities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation because it imposes the requirements of a recently enacted statute.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: The proposal would ensure that rule language is based on current law and provide school districts with clarifications on the maximum compressed M&O tax rates that their boards of trustees may adopt without a fiscal impact to local taxpayers. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 17, 2020, and ends February 18, 2020. A public hearing to solicit testimony and input on the proposal will be held at 8:30 a.m. on February 5, 2020, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at the hearing must sign in between 8:15 a.m. and 9:00 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Forecasting and Fiscal Analysis at (512) 463-8891.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §48.2551, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires TEA to calculate and make available school districts’ maximum maintenance and operations compressed tax rates; TEC, §48.2552, as added by HB 3, 86th Texas Legislature, 2019, which requires TEA each year to evaluate the difference between school districts’ maximum compressed tax rates, as determined under TEC, §48.2551, to provide for a limitation on maximum compressed tax rate; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School
Program; and TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and office of the governor.


§61.1002. Maximum Compressed Tax Rate Limitations.

(a) This section, made pursuant to Texas Education Code (TEC), §48.011 and §48.004, addresses calculations in TEC, §48.2551 and §48.2552.

(b) For purposes of determining a district's maximum compressed tax rate (MCR) for a given tax year under TEC, §§48.2551(b)(1)(B), 48.2551(c), and 48.2552(b), if the calculation of a school district's maximum compressed maintenance and operations (M&O) tax rate for that year would result in an MCR less than 90% of the highest district's maximum compressed M&M tax rate, the district's maximum compressed M&M tax rate is 90% of the highest maximum compressed M&M tax rate for that year.

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

Filed with the Office of the Secretary of State on January 6, 2020.
TRD-202000029
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: February 16, 2020
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS
PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS
CHAPTER 1. ARCHITECTS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.29

The Texas Board of Architectural Examiners (the board) proposes the amendment of 22 TAC §1.29 (Registration of a Military Service Member, Military Veteran, or Military Spouse).

This proposed rulemaking action would implement Senate Bill 1200 (86th Regular Session, 2019), which provides a path for certain military spouses licensed in other states to engage in a business or occupation without getting a license in Texas. Under newly adopted Tex. Occ. Code §55.0041(a), a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military spouse seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a license to an individual who qualifies to practice their profession under Tex. Occ. Code §55.0041(a).

As a state agency that issues occupational licenses, the board is required to adopt rules to implement Tex. Occ. Code §55.041. Previously, the board adopted 22 TAC §1.29, which, in part, addresses the registration of military spouses. The board proposes to implement SB 1200 by adopting subsection (c) to §1.29, which would include the following provisions. First, the proposed rule would provide for temporary registration for qualifying military spouses, rather than providing "authorization" to practice. Under newly adopted Tex. Occ. Code §55.0041(f), the board has discretion to issue a registration to a military spouse who meets the requirements to engage in a business or occupation under Tex. Occ. Code §55.041(a). The board's proposed rule would do so. Issuing registrations rather than "authorizing" practice will help to ameliorate issues that arise from the centrality of sealing documents in the practice of architecture. Military spouses who qualify to practice under Tex. Occ. Code §55.0041 are required to comply with the laws and regulations applicable to the profession, including the requirements in statute and rule relating to the use of an official seal of a Texas architect. For example, under Tex. Occ. Code §1051.654, a seal used by an architect in Texas is required to contain the words, "Registered Architect, State of Texas." Additionally, under 22 TAC §1.103(a), all architectural drawings and other documents issued by an architect for regulatory approval, permitting, or construction are required to be sealed. However, if a military spouse is not registered in Texas, it would be inappropriate for the board to issue a seal to the military spouse indicating that the spouse is a Texas registered architect. Furthermore, without a seal, the military spouse would be unable to comply with 22 TAC §1.103 and related rules. Potential solutions to these issues could include the board authorizing the use of the military spouse's out-of-state seal in Texas, or the development of a separate seal for military spouses "authorized" to practice under Tex. Occ. Code §55.0041, but there are drawbacks to each. For example, building officials or clients may be unwilling to accept a document that bears an out-of-state seal. Likewise, creation of a separate seal for "authorized" military spouses could result in similar confusion or rejection by building officials and clients. After consideration of these issues, the board has determined that the simplest solution is to exercise the board's discretion to issue a registration to qualifying military spouses. The issuance of a registration will not add any time to the board's consideration of a military spouse's eligibility to practice under Tex. Occ. Code §55.0041(a) and will result in greater ease for the military spouse in practicing as an architect.

Additionally, the proposed rule identifies the factors the board will consider in determining whether the military spouse is licensed in a state with licensing requirements that are substantially equivalent to Texas registration requirements; identifies the documentation that a military spouse must provide to the board prior to consideration for registration; adopts a three year registration period with no possibility for renewal and waives all fees for military spouses who qualify for registration under the proposed rule (as required under Tex. Occ. Code §55.0041(f)); and identifies the grounds for revocation of a registration issued under the proposed rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amend-
ments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners. Any potential adverse fiscal impact to the state, local government, or the board would be based on a loss of revenue otherwise payable to the board by qualifying military spouses in the form of registration and renewal fees that would be waived under proposed 22 TAC §1.29(c)(7). However, the agency expects that the number of fee waivers realized under the proposed rule will be minimal and will not result in any adverse fiscal impact. This conclusion is based on a review of the impact of the board's previous adoption of a related rule under 22 TAC §7.10(h), which in part waives license application and examination fees for a military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. Since the adoption of this rule on March 22, 2016, no military spouse who would qualify for a fee waiver under the rule has sought such a waiver. Given the lack of reliance upon this preexisting provision by military spouses in the past three-plus years, the agency forecasts that few if any military spouses will seek a waiver of registration fees over the next five years under the proposed rule. Any such waivers that are granted will have no fiscal impact on state or local government or the board.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules modify or eliminate existing regulations as opposed to creating new ones. The legislature's adoption of Senate Bill 1200 has resulted in a potential alternative path to registration for qualifying military spouses, as well as a waiver of fees for such individuals. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that action. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. However, this action could result in a minimal decrease in fees that would otherwise be paid to the board. However, any such potential decrease in revenues would not result in a need to increase revenue from other sources. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in Senate Bill 1200. Under this enactment, the regulatory burden on military spouses who seek to engage in a business or occupation in Texas has been decreased, which constitutes a potential economic benefit to these individuals and their families. Additionally, the enactment could result in a benefit to the state resulting from increased economic activity by military spouses who might otherwise not participate in a business or occupation due to licensure barriers. While the board expects that any such impact resulting from registration of military spouse architects under the proposed rule will be minimal, any result will be a net positive to military spouses, their families and economic activity.

Compliance with the proposed amendment is expected to result in decreased economic costs compared to the existing rules, because qualifying military spouses will benefit from the elimination of registration and renewal costs for the three-year registration period.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, microbusinesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rule will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT


CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

STATUTORY AUTHORITY

The amendment to 22 TAC §1.29 is proposed under Texas Occupations Code §1051.202, which provides the Texas Board of Architectural Examiners authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

The amendment implements Texas Occupations Code §55.0041, which requires the board to adopt rules to implement a process to allow a military spouse to engage in a business or occupation if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements.

§1.29. Registration of a Military Service Member, Military Veteran, or Military Spouse.

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

(c) Alternative temporary registration procedure for military spouses:

(1) A military spouse may qualify for a temporary architectural registration if the spouse:

PROPOSED RULES  January 17, 2020  45 TexReg 457
(A) holds a current architectural license or registration in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements for architectural registration in this state;

(B) notifies the Board in writing of the spouse's intent to practice Architecture in this state;

(C) submits to the Board required information to demonstrate eligibility for temporary architectural registration; and

(D) receives a verification letter from the Board that:
   (i) the Board has verified the spouse's license or registration in the other jurisdiction; and
   (ii) the spouse is issued a temporary architectural registration.

(2) The Board will review and evaluate the following criteria when determining whether another state's licensing requirements are substantially equivalent to the requirements for an architectural registration in Texas:

   (A) whether the other state requires an applicant to pass the Architect Registration Examination (ARE);

   (B) any experience qualifications required by the state to obtain the license or registration; and

   (C) any education credentials required by the state to obtain the license or registration.

(3) The military spouse must submit the following information to the Board to demonstrate eligibility for temporary architectural registration:

   (A) a written request for the Board to review the military spouse's eligibility for temporary architectural registration;

   (B) sufficient documentation to verify that the military spouse is currently licensed or registered in good standing in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;

   (C) proof of residency in this state;

   (D) a copy of the military spouse's identification card; and

   (E) proof the military service member is stationed at a military installation in Texas.

(4) A temporary architectural registration issued under this subsection expires three years from the date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever occurs first. The registration may not be renewed.

(5) Except as provided under the subsection, a military spouse who receives a temporary architectural registration under this subsection is subject to and shall comply with all applicable laws, rules, and standards governing the Practice of Architecture in this state.

(6) A temporary architectural registration issued under this subsection may be revoked if the military spouse:

   (A) fails to comply with paragraph (5) of this subsection; or

   (B) the military spouse's license or registration required under paragraph (1)(A) of this subsection expires or is suspended or revoked.

(7) The Board shall not charge a fee for the issuance of a temporary architectural registration under this subsection.

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

Filed with the Office of the Secretary of State on January 6, 2020.

TRD-202000026

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: February 16, 2020

For further information, please call: (512) 305-8519

CHAPTER 3. LANDSCAPE ARCHITECTS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.29

The Texas Board of Architectural Examiners (the board) proposes the amendment of 22 Texas Administrative Code (TAC) §3.29, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse.

This proposed rulemaking action would implement Senate Bill 1200 (86th Regular Session, 2019), which provides a path for certain military spouses licensed in other states to engage in a business or occupation without getting a license in Texas. Under newly adopted Tex. Occ. Code §55.0041(a), a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military spouse seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a license to an individual who qualifies to practice their profession under §55.0041(a).

As a state agency that issues occupational licenses, the board is required to adopt rules to implement §55.041. Previously, the board adopted 22 TAC §3.29, which, in part, addresses the registration of military spouses. The board proposes to implement SB 1200 by adopting subsection (c) to §3.29, which would include the following provisions. First, the proposed rule would provide for temporary landscape architectural registration for qualifying military spouses, rather than providing "authorization" to practice. Under newly adopted Tex. Occ. Code §55.0041(f), the board has discretion to issue a registration to a military spouse who meets the requirements to engage in a business or occupation under Tex. Occ. Code §55.041(a). The board's proposed rule would do so. Issuing registrations rather than "authorizing" practice will help to ameliorate issues that arise from the centrality of sealing documents in the practice of landscape architecture. Military spouses who qualify to practice under §55.0041 are required to comply with the laws and regulations applicable to the profession, including the requirements in statute and rule relating to the use of an official seal of a Texas landscape architect. For example, under Tex. Occ. Code §1052.056, a seal
used by a landscape architect in Texas is required to contain the words, "Registered Landscape Architect, State of Texas." Additionally, under 22 TAC §3.103(a), all drawings and other documents issued by a landscape architect for regulatory approval, permitting, or construction are required to be sealed. However, if a military spouse is not registered in Texas, it would be inappropriate for the board to issue a seal to the military spouse indicating that the spouse is a Texas registered landscape architect. Furthermore, without a seal, the military spouse would be unable to comply with §3.103 and related rules. Potential solutions to these issues could include the board authorizing the use of the military spouse's out-of-state seal in Texas, or the development of a separate seal for military spouses "authorized" to practice under §55.0041, but there are drawbacks to each. For example, building officials or clients may be unwilling to accept a document that bears an out-of-state seal. Likewise, creation of a separate seal for "authorized" military spouses could result in similar confusion or rejection by building officials and clients. After consideration of these issues, the board has determined that the simplest solution is to exercise the board's discretion to issue a registration to qualifying military spouses. The issuance of a registration will not add any time to the board's consideration of a military spouse's eligibility to practice under Tex. Occ. Code §55.0041(a) and will result in greater ease for the military spouse in practicing as a landscape architect.

Additionally, the proposed rule identifies the factors the board will consider in determining whether the military spouse is licensed in a state with licensing requirements that are substantially equivalent to Texas registration requirements; identifies the documentation that a military spouse must provide to the board prior to consideration for registration; adopts a three year registration period with no possibility for renewal and waives all fees for military spouses who qualify for registration under the proposed rule (as required under Tex. Occ. Code §55.0041(f)); and identifies the grounds for revocation of a registration issued under the proposed rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners. Any potential adverse fiscal impact to the state, local government, or the board would be based on a loss of revenue otherwise payable to the board by qualifying military spouses in the form of registration and renewal fees that would be waived under proposed §3.29(c)(7). However, the agency expects that the number of fee waivers realized under the proposed rule will be minimal and will not result in any adverse fiscal impact. This conclusion is based on a review of the impact of the board's previous adoption of a related rule under 22 Tex. Admin Code §7.10(h), which in part waives license application and examination fees for a military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. Since the adoption of this rule on March 22, 2016, no military spouse who would qualify for a fee waiver under the rule has sought such a waiver. Given the lack of reliance upon this preexisting provision by military spouses in the past three-plus years, the agency forecasts that few, if any, military spouses will seek a waiver of registration fees over the next five years under the proposed rule. Any such waivers that are granted will have no fiscal impact on state or local government or the board.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules modify or eliminate existing regulations, as opposed to create new ones. The legislation's adoption of Senate Bill 1200 has resulted in a potential alternative path to registration for qualifying military spouses, as well as a waiver of fees for such individuals. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that action. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. However, this action could result in a minimal decrease in fees that would otherwise be paid to the board. However, any such potential decrease in revenues would not result in a need to increase revenue from other sources. Finally, the proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in Senate Bill 1200. Under this enactment, the regulatory burden on military spouses who seek to engage in a business or occupation in Texas has been decreased, which constitutes a potential economic benefit to those individuals and their families. Additionally, the enactment could result in a benefit to the state resulting from increased economic activity by military spouses who might otherwise not participate in a business or occupation due to licensure barriers. While the board expects that any such impact resulting from registration of military spouse landscape architects under the proposed rule will be minimal, any result will be a net positive to military spouses, their families and economic activity.

Compliance with the proposed amendment is expected to result in decreased economic costs compared to the existing rules, because qualifying military spouses will benefit from the elimination of registration and renewal costs for the three-year registration period.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, microbusinesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner’s rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

LOCAL EMPLOYMENT IMPACT STATEMENT
The agency has determined that the proposed rule will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

CROSS REFERENCE TO STATUTE
The proposed amendment does not affect any other statute.

PUBLIC COMMENT
Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78771-2337.

STATUTORY AUTHORITY
The amendment to §3.29 is proposed under Texas Occupations Code §1051.202, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

The amendment implements Texas Occupations Code Section 55.0041, which requires the board to adopt rules to implement a process to allow a military spouse to engage in a business or occupation if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements.

§3.29. Registration of a Military Service Member, Military Veteran, or Military Spouse.
(a) - (b) (No change.)
(c) Alternative temporary registration procedure for military spouses:
(1) A military spouse may qualify for a temporary landscape architectural registration if the spouse:
   (A) holds a current landscape architectural license or registration in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements for landscape architectural registration in this state;
   (B) notifies the Board in writing of the spouse's intent to practice Landscape Architecture in this state;
   (C) submits to the Board required information to demonstrate eligibility for temporary landscape architectural registration; and
   (D) receives a verification letter from the Board that:
      (i) the Board has verified the spouse's license or registration in the other jurisdiction; and
      (ii) the spouse is issued a temporary landscape architectural registration.
(2) The Board will review and evaluate the following criteria when determining whether another state's licensing requirements are substantially equivalent to the requirements for a landscape architectural registration in Texas:
   (A) whether the other state requires an applicant to pass the Landscape Architect Registration Examination (LARE);
   (B) any experience qualifications required by the state to obtain the license or registration; and
   (C) any education credentials required by the state to obtain the license or registration.
(3) The military spouse must submit the following information to the Board to demonstrate eligibility for temporary landscape architectural registration:
   (A) a written request for the Board to review the military spouse's eligibility for temporary landscape architectural registration;
   (B) sufficient documentation to verify that the military spouse is currently licensed or registered in good standing in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;
   (C) proof of residency in this state;
   (D) a copy of the military spouse's identification card; and
   (E) proof the military service member is stationed at a military installation in Texas.
(4) A temporary landscape architectural registration issued under this subsection expires three years from the date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever occurs first. The registration may not be renewed.
(5) Except as provided under the subsection, a military spouse who receives a temporary landscape architectural registration under this subsection is subject to and shall comply with all applicable laws, rules, and standards governing the practice of Landscape Architecture in this state.
(6) A temporary landscape architectural registration issued under this subsection may be revoked if the military spouse:
   (A) fails to comply with paragraph (5) of this subsection; or
   (B) the military spouse's license or registration required under paragraph (1)(A) of this subsection expires or is suspended or revoked.
(7) The Board shall not charge a fee for the issuance of a temporary landscape architectural registration under this subsection.

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

Filed with the Office of the Secretary of State on January 6, 2020.
TRD-202000027
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: February 16, 2020
For further information, please call: (512) 305-8519

CHAPTER 5. REGISTERED INTERIOR DESIGNERS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION
22 TAC §5.39
The Texas Board of Architectural Examiners (the board) proposes the amendment of 22 Texas Administrative Code (TAC) §5.39, concerning Registration of a Military Service Member, Military Veteran, or Military Spouse.

This proposed rulemaking action would implement Senate Bill 1200 (86th Regular Session, 2019), which provides a path for certain military spouses licensed in other states to engage in a business or occupation without getting a license in Texas. Under newly adopted Tex. Occ. Code §55.0041(a), a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military spouse seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a license to an individual who qualifies to practice their profession under §55.0041(a).

As a state agency that issues occupational licenses, the board is required to adopt rules to implement §55.041. Previously, the board adopted 22 TAC §5.39, which, in part, addresses the registration of military spouses. The board proposes to implement SB 1200 by adopting subsection (c) to §5.39, which would include the following provisions. First, the proposed rule would provide for temporary interior design registration for qualifying military spouses, rather than providing "authorization" to practice. Under newly adopted Tex. Occ. Code §55.0041(f), the board has discretion to issue a registration to a military spouse who meets the requirements to engage in a business or occupation under Tex. Occ. Code §55.041(a). The board's proposed rule would do so. Issuing registrations rather than "authorizing" practice will help to ameliorate issues that arise from the centrality of sealing documents in the practice of registered interior design. Military spouses who qualify to practice under §55.0041 are required to comply with the laws and regulations applicable to the profession, including the requirements in statute and rule relating to the use of an official seal of a Texas registered interior designer. For example, under Tex. Occ. Code §1053.058, a seal used by a registered interior designer in Texas is required to contain the words, "Registered Interior Designer, State of Texas." Additionally, under 22 TAC §5.113(a), all drawings and other documents issued by a registered interior designer for regulatory approval, permitting, or construction are required to be sealed. However, if a military spouse is not registered in Texas, it would be inappropriate for the board to issue a seal to the military spouse indicating that the spouse is a Texas registered interior designer. Furthermore, without a seal, the military spouse would be unable to comply with §5.113 and related rules. Potential solutions to these issues could include the board authorizing the use of the military spouse's out-of-state seal in Texas, or the development of a separate seal for military spouses "authorized" to practice under §55.0041, but there are drawbacks to each. For example, building officials or clients may be unwilling to accept a document that bears an out-of-state seal. Likewise, creation of a separate seal for "authorized" military spouses could result in similar confusion or rejection by building officials and clients. After consideration of these issues, the board has determined that the simplest solution is to exercise the board's discretion to issue a registration to qualifying military spouses. The issuance of a registration will not add any time to the board's consideration of a military spouse's eligibility to practice under Tex. Occ. Code §55.0041(a) and will result in greater ease for the military spouse in practicing as a registered interior designer.

Additionally, the proposed rule identifies the factors the board will consider in determining whether the military spouse is licensed in a state with licensing requirements that are substantially equivalent to Texas registration requirements; identifies the documentation that a military spouse must provide to the board prior to consideration for registration; adopts a three year registration period with no possibility for renewal and waives all fees for military spouses who qualify for registration under the proposed rule (as required under Tex. Occ. Code §55.0041(f)); and identifies the grounds for revocation of a registration issued under the proposed rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners. Any potential adverse fiscal impact to the state, local government, or the agency would be based on a loss of revenue otherwise payable to the agency by qualifying military spouses in the form of registration and renewal fees that would be waived under proposed §5.39(c)(7). However, the agency expects that the number fee waivers realized under the proposed rule will be minimal and will not result in any adverse fiscal impact. This conclusion is based on a review of the impact of the board's previous adoption of a related rule under 22 TAC §7.10(h), which in part waives license application and examination fees for a military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. Since the adoption of this rule on March 22, 2016, no military spouse who would qualify for a fee waiver under the rule has sought such a waiver. Given the lack of reliance upon this preexisting provision by military spouses in the past three-plus years, the agency forecasts that few, if any, military spouses will seek a waiver of registration fees over the next five years under the proposed rule. Any such waivers that are granted will have no fiscal impact on state or local government or the board.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules modify or eliminate existing regulations, as opposed to create new ones. The legislature's adoption of Senate Bill 1200 has resulted in a potential alternative path to registration for qualifying military spouses, as well as a waiver of fees for such individuals. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that action. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. However, this action could result in a minimal decrease in fees that would otherwise be paid to the board. However, any such potential decrease in revenues would not result in a need to increase revenue from other sources. Finally, the proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE
Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board’s rules and the legislature’s mandate enacted in Senate Bill 1200. Under this enactment, the regulatory burden on military spouses who seek to engage in a business or occupation in Texas has been decreased, which constitutes a potential economic benefit to those individuals and their families.

Compliance with the proposed amendment is expected to result in decreased economic costs compared to the existing rules, because qualifying military spouses will benefit from the elimination of registration and renewal costs for the three year registration period.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, microbusinesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner’s rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rule will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT


CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

STATUTORY AUTHORITY

The amendment to §5.39 is proposed under Occupations Code §1051.202, Texas, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code. The amendment implements Texas Occupations Code Section 55.0041, which requires the board to adopt rules to implement a process to allow a military spouse to engage in a business or occupation if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements.

§5.39. Registration of a Military Service Member, Military Veteran, or Military Spouse.

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

(c) Alternative temporary registration procedure for military spouses.

(1) A military spouse may qualify for a temporary Interior Design registration if the spouse:

(A) holds a current interior design license or registration in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements for Interior Design registration in this state;

(B) notifies the Board in writing of the spouse’s intent to practice Interior Design in this state;

(C) submits to the Board required information to demonstrate eligibility for temporary Interior Design registration; and

(D) receives a verification letter from the Board that:

(i) the Board has verified the spouse’s license or registration in the other jurisdiction; and

(ii) the spouse is issued a temporary Interior Design registration.

(2) The Board will review and evaluate the following criteria when determining whether another state’s licensing requirements are substantially equivalent to the requirements for an Interior Design registration in Texas:

(A) whether the other state requires an applicant to pass the Council for Interior Design Qualification (CIDQ) examination;

(B) any experience qualifications required by the state to obtain the license or registration; and

(C) any education credentials required by the state to obtain the license or registration.

(3) The military spouse must submit the following information to the Board to demonstrate eligibility for temporary Interior Design registration:

(A) a written request for the Board to review the military spouse's eligibility for temporary Interior Design registration;

(B) sufficient documentation to verify that the military spouse is currently licensed or registered in good standing in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;

(C) proof of residency in this state;

(D) a copy of the military spouse's identification card; and

(E) proof the military service member is stationed at a military installation in Texas.

(4) A temporary Interior Design registration issued under this subsection expires three years from the date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever occurs first. The registration may not be renewed.

(5) Except as provided under the subsection, a military spouse who receives a temporary Interior Design registration under this subsection is subject to and shall comply with all applicable laws, rules, and standards governing the practice of Interior Design in this state.
(6) A temporary Interior Design registration issued under this subsection may be revoked if the military spouse:
   (A) fails to comply with paragraph (5) of this subsection; or
   (B) the military spouse's license or registration required under paragraph (1)(A) of this subsection expires or is suspended or revoked.

(7) The Board shall not charge a fee for the issuance of a temporary Interior Design registration under this subsection.

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