

PROPOSED RULES PREAMBLE

Brief explanation of proposed rule

The Texas Higher Education Coordinating Board proposes amendments to Chapter 17, subchapter C, section 17.20, concerning project approval criteria for capital projects. The cost of higher education is a primary concern not only in the State of Texas, but nationally as well. A significant portion of the cost to students is in the form of student fees. Many institutions finance capital projects using student fees, which can remain in place for many years. Therefore, the short and long term impact of the increased cost related to capital construction must be subject to the scrutiny of the Texas Higher Education Coordinating Board to fulfill its role as identified in Chapter 61, Texas Education Code. Specifically, this amendment creates a standard which limits the direct financial impact on students to seventy-five percent of the total project cost for any given project. In doing so, this simply creates the circumstance where increased scrutiny is placed on any project for which the students will directly be assessed a fee.

Fiscal note and estimated cost to state and local government (or estimated reduction in costs to state and local government, and/or estimated loss of increase in revenue to state and local government)

Susan Brown, Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board (THECB) has 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 this change to the rules.

Public Benefit and local employment impact

Susan Brown, Assistant Commissioner, Texas Higher Education Coordinating Board (THECB) has 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 more efficient and effective administration of the capital project approval process. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Request for comments

Comments on the proposal may be submitted to Gary Johnstone, Deputy Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board (THECB), 1200 East Anderson Lane, Austin, TX, 78752 gary.johnstone@thehb.state.tx.us . Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Statutory basis for amendment (or new rule)

The amendment is proposed under the Texas Education Code, Sections §61.0572 and §61.058.

Statutes, articles, codes affected by the proposed action

The amendment affects the following Texas Education Code, Sections §61.0572 and §61.058.

CHAPTER 17. Resource Planning

Subchapter C. Rules Applying to All Projects

Section

- 17.20. Criteria for Approval of Projects
- 17.21 Application Procedures
- 17.22 Emergency Approval of Projects

17.20 Criteria for Approval of Projects

Projects considered for approval shall meet the following criteria:

(1) The project shall meet all applicable Board standards as described in §§17.30 - 17.51 of this title (relating to Rules Applying to New Construction and Addition Projects, Repair and Renovation Projects, and Real Property Acquisition Projects).

(2) If the project financing involves private gift or grant funds, these funds are either in-hand or the governing board shall commit an alternative source of funds, or if the private gift or grant funds are not received, the governing board agrees to forego the project.

(3) If any [the] project causes an increase in student fees, under no circumstances shall student fees account for more than seventy-five percent of the total project cost and the institution must certify such increases are executed in accordance with the applicable laws concerning approval by the student body.

(4) If the project involves construction of a dormitory, bookstore, food service facility, or other facility for which privatization may be a viable alternative, the governing board shall have considered the feasibility of privatization of both construction and operation of the facility.

(5) If applicable, the project complies with the minimum flood plain management standards established by the Texas Commission on Environmental Quality (TCEQ) and the Federal Emergency Management Agency (FEMA).

(6) If the project includes the acquisition of real property, the governing board shall have given appropriate consideration to the effect of the acquisition on residential neighborhoods.

(7) If the project includes the acquisition of real property, the acquisition shall be included in the institution's long-range campus master plan.

(8) The project shall be included in the institution's most recently submitted Facilities Development Plan (MP1 report) or the institution shall certify that the project represents an opportunity or emergency that could not be foreseen.

(9) If applicable, the project complies with Texas Government Code, §§469.001 - 469.105, concerning the elimination of restrictive barriers.

(10) The project shall comply with Life Safety Standards adopted by the State Fire Marshal.

(11) The institution verifies that the project complies with Texas Government Code, §447.004, regarding energy efficiency and shall provide a Certificate of Compliance to the State Energy Conservation Office prior to occupancy. If the project involves energy savings or conservation, the governing board shall have considered the feasibility of an Energy Savings Performance Contract as a viable alternative.

(12) The institution shall verify that it will comply with Texas Government Code, §§2161.252 - 2161.253, concerning Historically Underutilized Business Subcontracting Plans.

17.21 – 17.22 (No change.)