

EDUCATION CODE

TITLE 2. PUBLIC EDUCATION

SUBTITLE I. SCHOOL FINANCE AND FISCAL MANAGEMENT

CHAPTER 44. FISCAL MANAGEMENT

SUBCHAPTER A. SCHOOL DISTRICT FISCAL MANAGEMENT

Sec. 44.001. FISCAL GUIDELINES. (a) The commissioner shall establish advisory guidelines relating to the fiscal management of a school district.

(b) The commissioner shall report annually to the State Board of Education the status of school district fiscal management as reflected by the advisory guidelines and by statutory requirements.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.0011. FISCAL YEAR. The fiscal year of a school district begins on July 1 or September 1 of each year, as determined by the board of trustees of the district. The commissioner may adopt rules concerning the submission of information by a district under Chapter 39, 39A, or 48 based on the fiscal year of the district.

Added by Acts 1999, 76th Leg., ch. 643, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(29), eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.049, eff. September 1, 2019.

Sec. 44.002. PREPARATION OF BUDGET. (a) On or before a date set by the State Board of Education, the superintendent shall prepare, or cause to be prepared, a proposed budget covering all estimated revenue and proposed expenditures of the district for the following fiscal year.

(b) The budget must be prepared according to generally accepted accounting principles, rules adopted by the State Board of Education, and adopted policies of the board of trustees.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.003. RECORDS AND REPORTS. The superintendent shall ensure that records are kept and that copies of all budgets, all forms, and all other reports are filed on behalf of the school district at the proper times and in the proper offices as required by this code.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.004. NOTICE OF BUDGET AND TAX RATE MEETING; BUDGET ADOPTION.

(a) When the budget has been prepared under Section 44.002, the president shall call a meeting of the board of trustees for the purpose of adopting a budget for the succeeding fiscal year.

(b) The president shall provide for the publication of notice of the budget and proposed tax rate meeting in a daily, weekly, or biweekly newspaper published in the district. If no daily, weekly, or biweekly newspaper is published in the district, the president shall provide for the publication of notice in at least one newspaper of general circulation in the county in which the district's central administrative office is located. Notice under this subsection shall be published not earlier than the 30th day or later than the 10th day before the date of the hearing.

(c) The notice of public meeting to discuss and adopt the budget and the proposed tax rate may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type. Subject to Subsection (d), the notice must:

(1) contain a statement in the following form:

"NOTICE OF PUBLIC MEETING TO DISCUSS BUDGET AND PROPOSED TAX RATE

"The (name of school district) will hold a public meeting at (time, date, year) in (name of room, building, physical location, city, state). The purpose of this meeting is to discuss the school district's budget that will determine the tax rate that will be adopted. Public participation in the discussion is invited." The statement of the purpose of the meeting must be in bold type. In reduced type, the notice must state: "The tax rate that is ultimately adopted at this meeting or at a separate meeting at a later date may not exceed the proposed rate shown below unless the district publishes a revised notice containing the same information and comparisons set out below and holds another public meeting to discuss the revised notice." In addition, in reduced type, the notice must state: "Visit Texas.gov/PropertyTaxes to find a link to your local property tax database on which you can easily access information regarding your property taxes,

including information about proposed tax rates and scheduled public hearings of each entity that taxes your property.";

(2) contain a section entitled "Comparison of Proposed Budget with Last Year's Budget," which must show the difference, expressed as a percent increase or decrease, as applicable, in the amounts budgeted for the preceding fiscal year and the amount budgeted for the fiscal year that begins in the current tax year for each of the following:

- (A) maintenance and operations;
- (B) debt service; and
- (C) total expenditures;

(3) contain a section entitled "Total Appraised Value and Total Taxable Value," which must show the total appraised value and the total taxable value of all property and the total appraised value and the total taxable value of new property taxable by the district in the preceding tax year and the current tax year as calculated under Section 26.04, Tax Code;

(4) contain a statement of the total amount of the outstanding and unpaid bonded indebtedness of the school district;

(5) contain a section entitled "Comparison of Proposed Rates with Last Year's Rates," which must:

(A) show in rows the tax rates described by Subparagraphs (i)-(iii), expressed as amounts per \$100 valuation of property, for columns entitled "Maintenance & Operations," "Interest & Sinking Fund," and "Total," which is the sum of "Maintenance & Operations" and "Interest & Sinking Fund":

- (i) the school district's "Last Year's Rate";
- (ii) the "Rate to Maintain Same Level of Maintenance & Operations Revenue & Pay Debt Service," which:

(a) in the case of "Maintenance & Operations," is the tax rate that, when applied to the current taxable value for the district, as certified by the chief appraiser under Section 26.01, Tax Code, and as adjusted to reflect changes made by the chief appraiser as of the time the notice is prepared, would impose taxes in an amount that, when added to state funds to be distributed to the district under Chapter 48, would provide the same amount of maintenance and operations taxes and state funds distributed under Chapter 48 per student in average daily attendance for the applicable school year that was available to the district in the preceding school year; and

(b) in the case of "Interest & Sinking Fund," is the tax rate that, when applied to the current taxable value for the district, as certified by the chief appraiser under Section 26.01, Tax Code, and as

adjusted to reflect changes made by the chief appraiser as of the time the notice is prepared, and when multiplied by the district's anticipated collection rate, would impose taxes in an amount that, when added to state funds to be distributed to the district under Chapter 46 and any excess taxes collected to service the district's debt during the preceding tax year but not used for that purpose during that year, would provide the amount required to service the district's debt; and

(iii) the "Proposed Rate";

(B) contain fourth and fifth columns aligned with the columns required by Paragraph (A) that show, for each row required by Paragraph (A):

(i) the "Local Revenue per Student," which is computed by multiplying the district's total taxable value of property, as certified by the chief appraiser for the applicable school year under Section 26.01, Tax Code, and as adjusted to reflect changes made by the chief appraiser as of the time the notice is prepared, by the total tax rate, and dividing the product by the number of students in average daily attendance in the district for the applicable school year; and

(ii) the "State Revenue per Student," which is computed by determining the amount of state aid received or to be received by the district under Chapters 43, 46, and 48 and dividing that amount by the number of students in average daily attendance in the district for the applicable school year; and

(C) contain an asterisk after each calculation for "Interest & Sinking Fund" and a footnote to the section that, in reduced type, states "The Interest & Sinking Fund tax revenue is used to pay for bonded indebtedness on construction, equipment, or both. The bonds, and the tax rate necessary to pay those bonds, were approved by the voters of this district.";

(6) contain a section entitled "Comparison of Proposed Levy with Last Year's Levy on Average Residence," which must:

(A) show in rows the information described by Subparagraphs (i)-(iv), rounded to the nearest dollar, for columns entitled "Last Year" and "This Year":

(i) "Average Market Value of Residences," determined using the same group of residences for each year;

(ii) "Average Taxable Value of Residences," determined after taking into account the limitation on the appraised value of residences under Section 23.23, Tax Code, and after subtracting all homestead exemptions applicable in each year, other than exemptions

available only to disabled persons or persons 65 years of age or older or their surviving spouses, and using the same group of residences for each year;

(iii) "Last Year's Rate Versus Proposed Rate per \$100 Value"; and

(iv) "Taxes Due on Average Residence," determined using the same group of residences for each year; and

(B) contain the following information: "Increase (Decrease) in Taxes" expressed in dollars and cents, which is computed by subtracting the "Taxes Due on Average Residence" for the preceding tax year from the "Taxes Due on Average Residence" for the current tax year;

(7) contain the following statement in bold print: "Under state law, the dollar amount of school taxes imposed on the residence of a person 65 years of age or older or of the surviving spouse of such a person, if the surviving spouse was 55 years of age or older when the person died, may not be increased above the amount paid in the first year after the person turned 65, regardless of changes in tax rate or property value.";

(8) contain the following statement in bold print: "Notice of Voter-Approval Rate: The highest tax rate the district can adopt before requiring voter approval at an election is (the school district voter-approval rate determined under Section 26.08, Tax Code). This election will be automatically held if the district adopts a rate in excess of the voter-approval rate of (the school district voter-approval rate)."; and

(9) contain a section entitled "Fund Balances," which must include the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding debt obligation, less estimated funds necessary for the operation of the district before the receipt of the first payment under Chapter 48 in the succeeding school year.

(c-1) The notice described by Subsection (c) must state in a distinct row or on a separate or individual line for each of the following taxes:

(1) the proposed rate of the school district's maintenance tax described by Section 45.003, under the heading "Maintenance Tax"; and

(2) if the school district has issued ad valorem tax bonds under Section 45.001, the proposed rate of the tax to pay for the bonds, under the heading "School Debt Service Tax Approved by Local Voters."

(c-2) The notice described by Subsection (c) must include a statement that a school district may not increase the district's maintenance and

operations tax rate to create a surplus in maintenance and operations tax revenue for the purpose of paying the district's debt service.

(d) The comptroller shall prescribe the language and format to be used in the part of the notice required by Subsection (c). A notice under Subsection (c) is not valid if it does not substantially conform to the language and format prescribed by the comptroller under this subsection.

(e) A person who owns taxable property in a school district is entitled to an injunction restraining the collection of taxes by the district if the district has not complied with the requirements of Subsections (b), (c), (c-1), (c-2), and (d), and, if applicable, Subsection (i), and the failure to comply was not in good faith. An action to enjoin the collection of taxes must be filed before the date the district delivers substantially all of its tax bills.

(f) The board of trustees, at the meeting called for that purpose, shall adopt a budget to cover all expenditures for the school district for the next succeeding fiscal year. Any taxpayer of the district may be present and participate in the meeting.

(g) The budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year covered by the budget begins.

(g-1) If the rate calculated under Subsection (c) (5) (A) (ii) (b) decreases after the publication of the notice required by this section, the president is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate.

(h) Notwithstanding any other provision of this section, a school district with a fiscal year beginning July 1 may use the certified estimate of the taxable value of district property required by Section 26.01(e), Tax Code, in preparing the notice required by this section if the district does not receive on or before June 7 the certified appraisal roll for the district required by Section 26.01(a), Tax Code.

(i) A school district that uses a certified estimate, as authorized by Subsection (h), may adopt a budget at the public meeting designated in the notice prepared using the estimate, but the district may not adopt a tax rate before the district receives the certified appraisal roll for the district required by Section 26.01(a), Tax Code. After receipt of the certified appraisal roll, the district must publish a revised notice and hold another public meeting before the district may adopt a tax rate that exceeds:

(1) the rate proposed in the notice prepared using the estimate;

or

(2) the district's voter-approval rate determined under Section 26.08, Tax Code, using the certified appraisal roll.

(j) Notwithstanding Subsections (g), (h), and (i), a school district may adopt a budget after the district adopts a tax rate for the tax year in which the fiscal year covered by the budget begins if the district elects to adopt a tax rate before receiving the certified appraisal roll for the district as provided by Section 26.05(g), Tax Code. If a school district elects to adopt a tax rate before adopting a budget, the district must publish notice and hold a meeting for the purpose of discussing the proposed tax rate as provided by this section. Following adoption of the tax rate, the district must publish notice and hold another public meeting before the district may adopt a budget. The comptroller shall prescribe the language and format to be used in the notices. The school district may use the certified estimate of taxable value in preparing a notice under this subsection.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 398, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 898, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 807 (S.B. 567), Sec. 2, eff. June 17, 2005.

Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 1.11, eff. May 31, 2006.

Acts 2009, 81st Leg., R.S., Ch. 1328 (H.B. 3646), Sec. 66, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 57.27, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 1.006, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 209 (H.B. 2723), Sec. 1, eff. June 3, 2021.

Sec. 44.0041. PUBLICATION OF SUMMARY OF PROPOSED BUDGET. (a) Concurrently with the publication of notice of the budget under Section 44.004, a school district shall post a summary of the proposed budget:

- (1) on the school district's Internet website; or
- (2) if the district has no Internet website, in the district's central administrative office.

(b) The budget summary must include:

- (1) information relating to per student and aggregate spending on:

- (A) instruction;
 - (B) instructional support;
 - (C) central administration;
 - (D) district operations;
 - (E) debt service; and
 - (F) any other category designated by the commissioner; and
- (2) a comparison to the previous year's actual spending.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 2.06, eff. May 31, 2006.

Sec. 44.005. FILING OF ADOPTED BUDGET. On or before a date set by the State Board of Education, the budget must be filed with the agency according to the rules established by the State Board of Education.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.0051. POSTING OF ADOPTED BUDGET. (a) On final approval of the budget by the board of trustees, the school district shall post on the district's Internet website a copy of the budget adopted by the board of trustees. The district's Internet website must prominently display the electronic link to the adopted budget.

(b) The district shall maintain the adopted budget on the district's Internet website until the third anniversary of the date the budget was adopted.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Transferred and redesignated from Education Code, Section 39.084 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(12), eff. September 1, 2015.

Sec. 44.006. EFFECT OF ADOPTED BUDGET; AMENDMENTS. (a) Public funds of the school district may not be spent in any manner other than as provided for in the budget adopted by the board of trustees, but the board may amend a budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses.

(b) Any amendment or supplementary budget must be prepared and filed according to rules adopted by the State Board of Education.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.007. ACCOUNTING SYSTEM; REPORT. (a) A standard school fiscal accounting system must be adopted and installed by the board of trustees of each school district. The accounting system must conform with generally accepted accounting principles.

(b) The accounting system must meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor.

(c) A record must be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year shall be filed with the agency on or before the date set by the State Board of Education.

(d) The State Board of Education shall require each district, as part of the report required by this section, to include management, cost accounting, and financial information in a format prescribed by the board and in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program.

(e) Expired.

(f) Expired.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 2.08, eff. May 31, 2006.

Sec. 44.0071. COMPUTATION OF INSTRUCTIONAL EXPENDITURES RATIO AND INSTRUCTIONAL EMPLOYEES RATIO. (a) Each fiscal year, a school district shall compute and report to the commissioner:

(1) the percentage of the district's total expenditures for the preceding fiscal year that were used to fund direct instructional activities; and

(2) the percentage of the district's full-time equivalent employees during the preceding fiscal year whose job function was to directly provide classroom instruction to students, determined by dividing the number of hours spent by employees in providing direct classroom instruction by the total number of hours worked by all district employees.

(b) At least annually a school district shall provide educators employed by the district with a list of district employees determined by the district for purposes of this section to be engaged in directly providing classroom instruction to students. The list must include the percentage of time spent by each employee in directly providing classroom instruction to students.

(c) For purposes of this section, the computation of a district's expenditures used to fund direct instructional activities shall include the salary, including any associated employment taxes, and value of any benefits provided to any district employee who directly provided classroom instruction to students, but only in proportion to the percentage of time spent by the employee in directly providing classroom instruction to students.

(d) The commissioner shall adopt rules as necessary to implement this section. To the extent possible, the rules must provide for development of the information required by this section using information otherwise compiled by school districts for reporting through the Public Education Information Management System (PEIMS).

Added by Acts 2003, 78th Leg., ch. 1269, Sec. 1, eff. Sept. 1, 2003.

Sec. 44.008. ANNUAL AUDIT; REPORT. (a) The board of school trustees of each school district shall have its school district fiscal accounts audited annually at district expense by a certified or public accountant holding a permit from the Texas State Board of Public Accountancy. The audit must be completed following the close of each fiscal year.

(b) The independent audit must meet at least the minimum requirements and be in the format prescribed by the State Board of Education, subject to review and comment by the state auditor. The audit shall include an audit of the accuracy of the fiscal information provided by the district through the Public Education Information Management System (PEIMS).

(c) Each treasurer receiving or having control of any school fund of any school district shall keep a full and separate itemized account with each of the different classes of its school funds coming into the treasurer's hands. The treasurer's records of the district's itemized accounts and records shall be made available to audit.

(d) A copy of the annual audit report, approved by the board of trustees, shall be filed by the district with the agency not later than the 150th day after the end of the fiscal year for which the audit was made. If the board of trustees declines or refuses to approve its auditor's

report, it shall nevertheless file with the agency a copy of the audit report with its statement detailing reasons for failure to approve the report.

(e) The audit reports shall be reviewed by the agency, and the commissioner shall notify the board of trustees of objections, violations of sound accounting practices or law and regulation requirements, or of recommendations concerning the audit reports that the commissioner wants to make. If the audit report reflects that penal laws have been violated, the commissioner shall notify the appropriate county or district attorney and the attorney general. The commissioner shall have access to all vouchers, receipts, district fiscal and financial records, and other school records as the commissioner considers necessary and appropriate for the review, analysis, and passing on audit reports.

(f) An open-enrollment charter school shall provide an accounting of each parcel of the school's real property, including identifying the amount of local, state, and federal funds used to purchase or improve each parcel of property.

(g) An open-enrollment charter school for which the charter has expired, been revoked, or been surrendered or an open-enrollment charter school that otherwise ceases to operate shall submit a final annual financial report to the agency. The report must verify that all state property held by the charter holder has been returned or disposed of in accordance with Section 12.128.

(h) The commissioner may adopt rules necessary to implement this section, including rules defining local funds.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 914, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 631 (S.B. 1454), Sec. 13, eff. June 10, 2019.

Sec. 44.009. FINANCIAL REPORTS TO COMMISSIONER OR AGENCY; FORMS.

(a) All financial reports made by or for school districts or by their officers, agents, or employees, to the commissioner or to the agency, shall be made on forms prescribed by the agency, subject to review and comment by the state auditor.

(b) The agency shall combine as many forms as possible to avoid multiplicity of reports. The forms shall provide for entry of all information required by law or by the commissioner and information considered necessary by the state auditor.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.010. REVIEW BY AGENCY. The budgets, fiscal reports, and audit reports filed with the agency shall be reviewed and analyzed by the staff of the agency to determine whether all legal requirements have been met and to collect fiscal data needed in preparing school fiscal reports for the governor and the legislature.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.011. FINANCIAL EXIGENCY. (a) The board of trustees of a school district may adopt a resolution declaring a financial exigency for the district. The declaration expires at the end of the fiscal year during which the declaration is made unless the board adopts a resolution before the end of the fiscal year declaring continuation of the financial exigency for the following fiscal year.

(b) The board is not limited in the number of times the board may adopt a resolution declaring continuation of the financial exigency.

(c) A board may terminate a financial exigency declaration at any time if the board considers it appropriate.

(d) Each time the board adopts a resolution under this section, the board must notify the commissioner. The commissioner by rule shall prescribe the time and manner in which notice must be given to the commissioner under this subsection.

(e) The commissioner by rule shall adopt minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 8 (S.B. 8), Sec. 19, eff. September 28, 2011.

SUBCHAPTER B. PURCHASES; CONTRACTS

Sec. 44.031. PURCHASING CONTRACTS.

(a) Except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a method provided by Chapter 2269, Government Code, for construction services;
- (6) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (7) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

(b) Except as provided by this subchapter, in determining to whom to award a contract, the district shall consider:

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the district's needs;
- (5) the vendor's past relationship with the district;
- (6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
- (7) the total long-term cost to the district to acquire the vendor's goods or services;
- (8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
 - (A) has its principal place of business in this state; or
 - (B) employs at least 500 persons in this state; and
- (9) any other relevant factor specifically listed in the request for bids or proposals.

(b-1) In awarding a contract by competitive sealed bid under this section, a school district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Section 271.9051, Local Government Code. This subsection does not apply to

the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

(c) The state auditor may audit purchases of goods or services by the district.

(d) The board of trustees of the district may adopt rules and procedures for the acquisition of goods or services.

(e) To the extent of any conflict, this subchapter prevails over any other law relating to the purchasing of goods and services except a law relating to contracting with historically underutilized businesses.

(f) This section does not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, or fiscal agent. A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.

(g) Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

Text of subsec. (h) as amended by Acts 1999, 76th Leg., ch. 922, Sec. 1

(h) If school equipment, a school facility, or a portion of a school facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the board of trustees determines that the delay posed by the contract methods required by this section would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or portion of the school facility may be made by a method other than the methods required by this section.

Text of subsec. (h) as amended by Acts 1999, 76th Leg., ch. 1225, Sec. 1

(h) If school equipment or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the board of trustees determines that the delay posed by the methods provided for in this section would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment or the part of the school facility may be made by methods other than those required by this section.

(i) A school district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources under contracts entered into in accordance with Chapter 2054 or 2157, Government Code. Before issuing an invitation for bids, the department shall consult with the agency concerning the computer and computer-related equipment needs of school districts. To the extent possible the resulting contract shall provide for such needs.

(j) Without complying with Subsection (a), a school district may purchase an item that is available from only one source, including:

- (1) an item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;
- (2) a film, manuscript, or book;
- (3) a utility service, including electricity, gas, or water; and
- (4) a captive replacement part or component for equipment.

(k) The exceptions provided by Subsection (j) do not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.

(l) Each contract proposed to be made by a school district for the purchase or lease of one or more school buses, including a lease with an option to purchase, must be submitted to competitive bidding when the contract is valued at \$20,000 or more.

(m) If a purchase is made at the campus level in a school district with a student enrollment of 180,000 or more that has formally adopted a site-based decision-making plan under Subchapter F, Chapter 11, that delegates purchasing decisions to the campus level, this section applies only to the campus and does not require the district to aggregate and jointly award purchasing contracts. A district that adopts site-based purchasing under this subsection shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1179, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 881, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 922, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1225, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 436, Sec. 7, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1409, Sec. 9, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 201, Sec. 38, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 680, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1205 (H.B. 664), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 325 (H.B. 2626), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 449 (H.B. 273), Sec. 4, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 2.02, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1081 (H.B. 2918), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(5), eff. September 1, 2013.

Sec. 44.0311. APPLICABILITY TO JUNIOR COLLEGE DISTRICTS. (a) Except as provided by Subsection (c), this subchapter applies to junior college districts.

(b) For purposes of this subchapter, "board of trustees" includes the governing board of a junior college district.

(c) This subchapter does not apply to a purchase, acquisition, or license of library goods and services for a library operated as a part of a junior college district. In this subsection, "library goods and services" has the meaning assigned by Section 130.0101(a).

Added by Acts 1999, 76th Leg., ch. 1225, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 336 (H.B. 962), Sec. 1, eff. June 19, 2009.

Sec. 44.0312. DELEGATION. (a) The board of trustees of the district may, as appropriate, delegate its authority under this subchapter regarding an action authorized or required by this subchapter to be taken by a school district to a designated person, representative, or committee. In procuring construction services, the district shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. If the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board of trustees in an open public meeting is advisory only.

(b) The board may not delegate the authority to act regarding an action authorized or required by this subchapter to be taken by the board of trustees of a school district.

(c) Notwithstanding any other provision of this code, in the event of a catastrophe, emergency, or natural disaster affecting a school district, the board of trustees of the district may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under this subchapter if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

Added by Acts 1999, 76th Leg., ch. 1225, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1006 (H.B. 4102), Sec. 6, eff. June 19, 2009.

Sec. 44.0313. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS. (a) A school district may receive bids or proposals under this chapter through electronic transmission if the board of trustees of the school district adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

(b) Notwithstanding any other provision of this chapter, an electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted under Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 2, eff. June 19, 2009.

Sec. 44.032. ENFORCEMENT OF PURCHASE PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY. (a) In this section:

(1) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(2) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(3) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(b) An officer, employee, or agent of a school district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Section 44.031(a) or (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(c) An officer, employee, or agent of a school district commits an offense if the person with criminal negligence violates Section 44.031(a) or (b) other than by conduct described by Subsection (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(d) An officer or employee of a school district commits an offense if the officer or employee knowingly violates Section 44.031, other than by conduct described by Subsection (b) or (c). An offense under this subsection is a Class C misdemeanor.

(e) The final conviction of a person other than a trustee of a school district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under this section is considered to have committed official misconduct for purposes of Chapter 87, Local Government Code, and is subject to removal as provided by that chapter and Section 24, Article V, Texas Constitution. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state. This subsection does not prohibit the payment of retirement benefits to the removed person or the payment of workers' compensation benefits to the removed person for

an injury that occurred before the commission of the offense for which the person was removed. This subsection does not make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements.

(f) A court may enjoin performance of a contract made in violation of this subchapter. A county attorney, a district attorney, a criminal district attorney, a citizen of the county in which the school district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 1225, Sec. 3, eff. Sept. 1, 1999.

Sec. 44.0331. MANAGEMENT FEES UNDER CERTAIN COOPERATIVE PURCHASING CONTRACTS. (a) A school district that enters into a purchasing contract valued at \$25,000 or more under Section 44.031(a)(5), under Subchapter F, Chapter 271, Local Government Code, or under any other cooperative purchasing program authorized for school districts by law shall document a contract-related fee, including a management fee, paid by or to the district and the purpose of each fee under the contract.

(b) The amount, purpose, and disposition of any fee described by Subsection (a) must be presented in a written report and submitted annually in an open meeting of the board of trustees of the school district. The written report must appear as an agenda item.

(c) The commissioner may audit the written report described by Subsection (b).

Added by Acts 2007, 80th Leg., R.S., Ch. 449 (H.B. 273), Sec. 5, eff. June 16, 2007.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 855 (S.B. 799), Sec. 18, eff. September 1, 2021.

Sec. 44.034. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR. (a) A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

(b) A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.

(c) This section does not apply to a publicly held corporation.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.035. ADOPTION OF UNIFORM GENERAL CONDITIONS FOR SCHOOL DISTRICT BUILDING CONSTRUCTION CONTRACTS. After reviewing the uniform general conditions adopted by the Texas Facilities Commission under Section 2166.302, Government Code, a school district may adopt uniform general conditions to be incorporated in all district building construction contracts.

Added by Acts 2021, 87th Leg., R.S., Ch. 366 (S.B. 338), Sec. 1, eff. June 7, 2021.

Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the extent prohibited by other law and to the extent consistent with this subchapter, a school district may use competitive bidding to select a vendor as authorized by Section 44.031(a)(1).

(b) Except as provided by this subsection, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process under this subchapter. Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process under this subchapter.

(c) A school district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Section 44.031(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.03, eff. September 1, 2011.

Sec. 44.0352. COMPETITIVE SEALED PROPOSALS. (a) In selecting a vendor through competitive sealed proposals as authorized by Section

44.031(a)(2), a school district shall follow the procedures prescribed by this section.

(b) The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

(c) The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(d) The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(e) In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.03, eff. September 1, 2011.

Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

(c) The district may grant general authority to an administrative official to approve the change orders.

(d) A contract with an original contract price of \$1 million or more may not be increased under this section by more than 25 percent. If a

change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.04, eff. September 1, 2011.

Sec. 44.042. PREFERENCE TO TEXAS AND UNITED STATES PRODUCTS. (a) A school district that purchases agricultural products shall give preference to those produced, processed, or grown in this state if the cost to the school district is equal and the quality is equal.

(b) If agricultural products produced, processed, or grown in this state are not equal in cost and quality to other products, the school district shall give preference to agricultural products produced, processed, or grown in other states of the United States over foreign products if the cost to the school district is equal and the quality is equal.

(c) A school district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the school district is equal and the quality is not inferior.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(11), eff. June 17, 2011.

(e) In the implementation of this section, a school district may receive assistance from and use the resources of the Texas Department of Agriculture, including information on availability of agricultural products.

(f) A school district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in this state.

(g) In this section:

(1) "Agricultural products" includes textiles and other similar products.

(2) "Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form.

Added by Acts 1999, 76th Leg., ch. 1342, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(11), eff. June 17, 2011.

Sec. 44.043. RIGHT TO WORK. (a) This section applies to a school district while the school district is engaged in:

- (1) procuring goods or services;
- (2) awarding a contract; or
- (3) overseeing procurement or construction for a public work or public improvement.

(b) Notwithstanding any other provision of this chapter, a school district:

- (1) may not consider whether a vendor is a member of or has another relationship with any organization; and
- (2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

Added by Acts 2001, 77th Leg., ch. 1409, Sec. 13, eff. Sept. 1, 2001.

Sec. 44.044. CONTRACT WITH PERSON INDEBTED TO SCHOOL DISTRICT. (a) The board of trustees of a school district by resolution may establish regulations permitting the school district to refuse to enter into a contract or other transaction with a person indebted to the school district.

(b) It is not a violation of this subchapter for a school district, under regulations adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the school district.

(c) In this section, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the school district requiring approval by the board.

Added by Acts 2003, 78th Leg., ch. 156, Sec. 3, eff. Sept. 1, 2003.

Sec. 44.047. PURCHASE OR LEASE OF AUTOMATED EXTERNAL DEFIBRILLATOR. (a) A school district or private school that purchases or leases an automated external defibrillator, as defined by Section 779.001, Health and Safety Code, shall ensure that the automated external defibrillator meets standards established by the federal Food and Drug Administration.

(b) A private school that purchases or leases an automated external defibrillator is required to comply with the requirements of this section only if the school receives funding from the agency to purchase or lease the automated external defibrillator.

Added by Acts 2007, 80th Leg., R.S., Ch. 1371 (S.B. 7), Sec. 7, eff. June 15, 2007.

SUBCHAPTER C. PENAL PROVISIONS

Sec. 44.051. INTERFERENCE WITH OPERATION OF FOUNDATION SCHOOL PROGRAM. An offense under Section 37.10, Penal Code, is a felony of the third degree if it is shown on trial of the offense that the governmental record was a record, form, report, or budget required under Chapter 48 or rules adopted under that chapter. If the actor's intent is to defraud the state or the public school system, the offense is a felony of the second degree.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.050, eff. September 1, 2019.

Sec. 44.052. FAILURE TO COMPLY WITH BUDGET REQUIREMENTS; PENALTY.

(a) Any county superintendent approving any expenditure of school funds in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget commits an offense. An offense under this subsection is a Class C misdemeanor.

(b) A person who fails to comply with the person's duties with regard to the preparation or the following of a county school budget or a budget of a school district or who violates any provision of Section 44.002 commits an offense. An offense under this subsection is a Class C misdemeanor.

(c) A trustee of a school district who votes to approve any expenditure of school funds in violation of a provision of this code, for a purpose for which those funds may not be spent, or in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget commits an offense. An offense under this subsection is a Class C misdemeanor.

(d) Charges of the violation of this section may be instituted by the proper county or district attorney or by the attorney general.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 1046 (S.B. 1365), Sec. 3.01, eff. September 1, 2021.

Sec. 44.053. FAILURE OF MUNICIPAL OFFICER TO MAKE TREASURER'S REPORT; PENALTY. Any county or municipal treasurer or treasurer of the school board of each municipality having exclusive control of its schools who fails to make and transmit any report and certified copy thereof, or either, required by law, commits an offense. An offense under this section is a Class C misdemeanor.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.054. FAILURE TO TRANSFER STUDENTS AND FUNDS. A county judge serving as ex officio county superintendent, a county, district, or municipal superintendent, or a school officer who refuses to transfer students and funds as provided by Subchapter B, Chapter 25, commits an offense. An offense under this section is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

SUBCHAPTER E. LITIGATION INVOLVING SCHOOL DISTRICT FACILITY

Sec. 44.151. ACTIONS BROUGHT FOR DEFECTIVE DESIGN, CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF SCHOOL DISTRICT FACILITY. (a) In this section:

(1) "Instructional facility" has the meaning assigned by Section 46.001.

(2) "Net proceeds" means the difference between the amount recovered by or on behalf of a school district in an action, by settlement or otherwise, and the legal fees and litigation costs incurred by the district in prosecuting the action.

(3) "State's share" means an amount equal to the district's net proceeds from the recovery multiplied by a percentage determined by dividing the amount of state assistance under Subchapter A, Chapter 46, used to pay the principal of and interest on bonds issued in connection with the instructional facility that is the subject of the action by the total amount of principal and interest paid on the bonds as of the date of the judgment or settlement.

(b) A school district that brings an action for recovery of damages for the defective design, construction, renovation, or improvement of a district facility financed by bonds shall provide the commissioner with written notice of the action by registered or certified mail, return receipt requested, not later than the 30th day after the date the action is filed. If the school district fails to comply with this subsection, the court or an arbitrator or other adjudicating authority shall dismiss the action without prejudice. The dismissal of an action under this subsection extends the statute of limitations on the action for a period of 90 days.

(b-1) The notice required under Subsection (b) must include:

- (1) a copy of the petition; and
- (2) an itemized list of the defects in the design, construction, renovation, or improvement for which the district is seeking damages under the action.

(c) In an action brought under Subsection (b) involving an instructional facility financed by bonds for which the school district receives state assistance under Subchapter A, Chapter 46, the commissioner may join in the action on behalf of the state to protect the state's share in the action.

(d) A school district that brings an action under Subsection (b) shall use the net proceeds from the action for:

- (1) the repair of the defective design, construction, renovation, or improvement of the facility on which the action is brought, including the repair of any ancillary damage to furniture and fixtures;
- (2) the replacement of the facility on which the action is brought;
- (3) the reimbursement of the district for a repair or replacement made under Subdivision (1) or (2); or
- (4) any other purpose with written approval from the commissioner.

(d-1) Section 46.008 applies to the repair.

(e) A school district shall provide to the commissioner an itemized accounting of any repairs made under Subsection (d).

(f) The state's share resulting from an action brought under Subsection (b) involving an instructional facility financed by bonds for which the school district receives state assistance under Subchapter A, Chapter 46, is state property. The district shall send to the comptroller any portion of the state's share not used by the district to repair the defective design, construction, renovation, or improvement of the instructional facility on which the action is brought or to replace the

facility. Section 48.272 applies to the state's share under this subsection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.05, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.062, eff. September 1, 2019.

Transferred, redesignated and amended from Education Code, Section 46.0111 by Acts 2019, 86th Leg., R.S., Ch. 1077 (H.B. 1734), Sec. 2, eff. September 1, 2019.

Sec. 44.152. ATTORNEY GENERAL ENFORCEMENT OF SCHOOL DISTRICT DUTIES FOLLOWING CERTAIN ACTIONS; REPORT. (a) If the attorney general believes that a school district has violated or is violating Section 44.151(d), (e), or (f), the attorney general may, after providing at least two weeks' notice to the district, bring an action on behalf of the state to enjoin the district from violating those sections.

(b) In an action brought under Subsection (a), the attorney general may request and the court may order any other appropriate relief that is in the public interest, including payment of:

- (1) a civil penalty in an amount not to exceed \$20,000 for each violation of Section 44.151(d), (e), or (f);
- (2) the attorney general's reasonable costs for investigating and prosecuting the violation; or
- (3) if applicable, the amount of the state's share under Section 44.151(f).

(c) Not later than December 1 of each year, the attorney general shall submit to the governor, the lieutenant governor, the members of the legislature, and the commissioner a report on any actions brought under this section during the preceding year. The report must include the following information for each action:

- (1) the filing date;
- (2) the cause number;
- (3) the school district that is the subject of the action; and
- (4) the court in which the action was brought.

Added by Acts 2019, 86th Leg., R.S., Ch. 1077 (H.B. 1734), Sec. 3, eff. September 1, 2019.

Sec. 44.901. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) In this section, "energy savings performance contract" has the meaning assigned by Section 302.001, Local Government Code.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1347, Sec. 5, eff. June 19, 2009.

(c) Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Subsection (a), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

(d) The board may enter into energy savings performance contracts only with persons who are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond relating to the installation of the measures in accordance with Chapter 2253, Government Code. The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

(f) An energy savings performance contract may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(f-1) Notwithstanding other law, the board may use any available money to pay the provider of the energy or water conservation measures under this section, and the board is not required to pay for such costs solely out of the savings realized by the school district under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(g) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the school district under the contract. If the term of an energy savings performance contract exceeds one year, the school district's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the school district in this subsection, divided by the number of years in the contract term.

(h) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section 2254.004, Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(i) Before entering into an energy savings performance contract, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply to work performed under the contract.

(j) Chapter 2269, Government Code, does not apply to this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1142, Sec. 1, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 361, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 1, 2, 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 5, 121(1), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 3.03, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 1, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1347 (S.B. 300), Sec. 5, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. 1728), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 3.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(6), eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 258 (H.B. 1571), Sec. 1, eff. May 29, 2017.

Sec. 44.902. LONG-RANGE ENERGY PLAN TO REDUCE CONSUMPTION OF ELECTRIC ENERGY. (a) The board of trustees of a school district shall establish a long-range energy plan to reduce the district's annual electric consumption by five percent beginning with the 2008 state fiscal year and consume electricity in subsequent fiscal years in accordance with the district's energy plan.

(b) The plan required under Subsection (a) must include:

(1) strategies for achieving energy efficiency that:

(A) result in net savings for the district; or

(B) can be achieved without financial cost to the district;

and

(2) for each strategy identified under Subdivision (1), the initial, short-term capital costs and lifetime costs and savings that may result from implementation of the strategy.

(b-1) For purposes of Subsection (b), a strategy for achieving energy efficiency includes facility design and construction.

(c) In determining under Subsection (b) whether a strategy may result in financial cost to the district, the board of trustees shall consider the total net costs and savings that may occur over the seven-year period following implementation of the strategy.

(d) The board of trustees may submit the plan required under Subsection (a) to the State Energy Conservation Office for the purposes of determining whether funds available through loan programs administered by the office or tax incentives administered by the state or federal government are available to the district. The board may not disallow any proper allocation of incentives.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1347 (S.B. 300), Sec. 4, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. 1728), Sec. 2, eff. September 1, 2011.

Sec. 44.904. PAY FOR SUCCESS PROGRAMS. (a) In this section, "pay for success program" means a program involving private financing under which payments are dependent on achievement of measurable outcomes.

(b) The commissioner may:

(1) structure and approve pay for success programs for use by a school district or open-enrollment charter school;

(2) evaluate and approve the following participants in a pay for success program:

(A) a private investor;

(B) an education service provider; and

(C) a third-party evaluator; and

(3) require an approved participant to comply with the objectives, metrics, and other pay for success program requirements prescribed by the commissioner.

(c) In evaluating a potential participant under Subsection (b)(2), the commissioner may:

(1) verify the availability and liquidity of the investment funds of a private investor;

(2) evaluate the credentials and effectiveness of an education service provider; and

(3) evaluate the credentials and independence of a third-party evaluator.

(d) Notwithstanding any other law, a school district or open-enrollment charter school that uses a pay for success program approved by the commissioner is not subject to state procurement requirements that would otherwise apply to the activity funded through the program.

(e) The commissioner, the agency, and agency employees are immune from liability for actions associated with the structuring, approval, or implementation of a pay for success program.

(f) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 424 (S.B. 1318), Sec. 2, eff. September 1, 2017.

Sec. 44.908. EXPENDITURE OF LOCAL FUNDS. (a) A school district shall adopt a policy governing the expenditure of local funds from vending machines, rentals, gate receipts, or other local sources of revenue over which the district has direct control.

(b) A policy under this section must:

(1) require discretionary expenditures of local funds to be related to the district's educational purpose and provide a commensurate benefit to the district or its students; and

(2) meet the standards of Section 52, Article III, Texas Constitution, regarding expenditure of public funds.

Added by Acts 2009, 81st Leg., R.S., Ch. 1328 (H.B. 3646), Sec. 67, eff. September 1, 2009.