NO. D-1-GN-17-001385

	§	IN THE DISTRICT COURT OF
LA FERIA ISD, JOAQUIN ISD and	§	
EQUITY CENTER	§	
Plaintiffs,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
MIKE MORATH, TEXAS	§	
COMMISSIONER OF EDUCATION;	§	
TEXAS EDUCATION AGENCY; and	§	
TEXAS STATE BOARD OF	§	
EDUCATION	§	
Defendants.	§	261st JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Plaintiffs, La Feria ISD, Joaquin ISD and the Equity Center, and file this First Amended Original Petition for Declaratory and Injunctive Relief against Defendants Mike Morath, in his official capacity as Commissioner of the Texas Education Agency, the Texas Education Agency and the State Board of Education. Plaintiffs ask the Court to declare that Defendants' new amendment to an existing rule, announced in Defendant's Mike Morath and the Texas Education Agency's February 1, 2017 statement to all districts (herein "new rule"), and later in its proposed rule amending Rule § 62.1071, Manual for Districts Subject to Wealth Equalization (herein "proposed rule amendment"), is invalid and issued outside of rulemaking authority under the Texas Administrative Procedures Act. Plaintiffs further seek to permanently enjoin Defendants from further implementing the new rule. Plaintiffs also ask the Court to declare that Defendants' proposed rule amendment, published in the Texas Register

on April 21, 2017, does not comply with the mandatory requirement that proposed rules contain a fiscal note and enjoin Defendants from continuing the rule-making process and enforcing the new rule until Defendants have complied with the statutory requirement to issue a notice containing a fiscal note and appropriately complete the rule-making process. In support, Plaintiffs would show the Court as follows:

DISCOVERY CONTROL PLAN

1. In accordance with TEX. R. CIV. P. 190.3, Plaintiffs request that Discovery Control Plan Level 3 control this matter.

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court under TEX. CONST. Art. V, § 8, Texas Government Code §§ 24.011, 2001.038 and Texas Civil Practice and Remedies Code §§ 65.021, 65.023, 15.002.

PARTIES

3. Plaintiff La Feria ISD (hereinafter "La Feria") is a duly organized independent school district under the laws of the State of Texas.

4. Plaintiff Joaquin ISD (hereinafter "Joaquin") is a duly organized independent school district under the laws of the State of Texas.

5. Plaintiff Equity Center is a duly organized non-profit corporation that represents property-poor school districts in the State of Texas.

6. Defendant Mike Morath, Texas Commissioner of Education (hereinafter "Commissioner"), is sued in his official capacity and is charged with administering the

Texas school finance system under Subtitle I of the Texas Education Code and may be served with citation at 1701 North Congress Avenue, Austin, Texas 7870 1.

7. Defendant Texas Education Agency (the "TEA") is a governmental agency organized under the laws of the State of Texas and can be served with citation through Mike Morath, Texas Commissioner of Education, at 1701 North Congress Avenue, Austin, Texas 78701.

8. Defendant Texas State Board of Education is a governmental agency organization under the laws of the State of Texas and can be served through its Chairwoman, Donna Bahorich, at 1701 North Congress Avenue, Austin, Texas 78701.

BACKGROUND

9. The single most important factor in determining the educational funds available to a school district in Texas is the property value available for taxation in that district. In 1995, the Texas Legislature enacted Senate Bill 1, which recodified the school finance system that had been originally adopted in 1993 in Senate Bill 7. Under this system property poor districts ("Chapter 42 districts") were provided with additional state educational funding, while the property wealthy districts ("Chapter 41 districts") would have to reduce local revenue by transferring some of their property to one or more property poor school districts or by purchasing attendance credits. These transactions produce funds which are then used as a source of revenue for the Foundation School Program (FSP). The FSP delivers funding to property poor school districts based on a series of formulas that, in conjunction with recapture, are designed

to rectify decades of unconstitutional underfunding of student education in Chapter 42 districts.

10. Senate Bill 1 also recodified the statutory requirement that the Texas Comptroller of Public Accounts determine the total taxable value of all property in each school district in the state and report that amount to the Commissioner. This requirement, which was added to section 403.302 of the Texas Government Code, defines the taxable value as the total market value of all property in the district less a particular portion of the value of certain properties that have been exempted from taxation. The taxable property values determined by the Comptroller are used by the Commissioner to administer the FSP program, including the provisions of Chapters 41, 42, and 46 of the Texas Education Code.

11. Since 1983, section 11.13(n) of the Texas Tax Code has permitted school districts the option to grant local optional homestead exemptions ("LOHEs") that exempt up to 20% of the value of a residential homestead from taxation. Upon information and belief, prior to the passage of Senate Bills 7 and 1 in 1995, the Comptroller reported taxable property values to the Commissioner that included the value of property that had been exempted by LOHEs. Following the passage of Senate Bills 7 and 1 in 1995, the Comptroller continued the practice of reporting taxable property values to the Commissioner that included the value of property that had been exempted by LOHEs.

12. In 1999 the Legislature passed Senate Bill 4, which contained provisions relating to LOHEs. For the first time, the Legislature provided that the Texas Education

Agency ("TEA") could partially fund the loss of revenue for districts with LOHEs under some specific circumstances. Senate Bill 4 amended portions of Texas Government Code § 403.302 and added Texas Education Code §42.2522.

13. These amendments to portions of Texas Government Code § 403.302 and the addition of Texas Education Code § 42.2522 authorized TEA to recognize the LOHE-reduced property values when determining the taxable property value of school districts in the FSP computations. Recognition of the LOHE-reduced property values produces additional funding for districts that have LOHEs. Because there is a cost to the state associated with the recognition of the LOHE-reduced property values, the authority to incorporate the reduced property values is limited to these circumstances:

a. funds are specifically appropriated for the purpose, or;

b. there is a surplus in the Foundation School Program in the current fiscal year.

14. These provisions were part of Senate Bill 4's comprehensive plan for providing tax relief to school districts. TEA interpreted this legislative policy as applying to all FSP computations, including those set forth in Chapters 41, 42, and 46, only when one of the two conditions set out in the bill were met. This interpretation was applied beginning with the first school year after Senate Bill 4 became effective and such interpretation has been in effect from 1999 through the start of the current school year.

15. The Legislative Budget Board ("LBB") agreed with TEA's interpretation of this legislative policy found in Senate Bill 4. In its official fiscal note provided to the legislature, the LBB stated:

> The bill would allow the commissioner of education to increase state aid based on district property values that would be reduced by one-half of the local optional homestead exemption. The commissioner would not be able to authorize additional state aid unless it is determined that surplus Foundation School Program funding is available for the first and second years of a fiscal biennium. It is estimated that state aid would increase by approximately $110 million per year, effectively reducing any balance which might be available by that amount. State aid due to this provision could increase significantly if school districts increase their local exemptions to take advantage of the opportunity for greater state funding.

16. TEA has consistently interpreted the new provisions in Senate Bill 4 as applying to all FSP computations in Chapters 41, 42, and 46, beginning with the 1999-2000 school year.

17. In 2011, the Commissioner formally adopted this interpretation in the "Manual for Districts Subject to Wealth Equalization 2010-2011 School Year," which was TEA's manual for Chapter 41 districts. The rule stated that: "If your district offers an optional homestead exemption as authorized by the Texas Tax Code, § 11.13(n), an adjustment to your district's taxable value **may** be granted **if** there is an appropriation or excess FSP funds are available." The proposed rule was published in the Texas Register on or about February 25, 2011 at 36 Texas Register 1214 and adopted by TEA on or about May 6, 2011 at 36 Texas Register 2831.

18. TEA adopted its most recent Chapter 41 manual in September 2016 for the 2016-2017 school year, and it contains the exact same language related to the effect of LOHEs on the calculation of a district's property values. *See* 19 TEX. ADMIN CODE § 62.1071. (Exhibit A attached). The proposed rule was published in the Texas Register on or about June 24, 2016 at 41 Texas Register 4579 and adopted by TEA on or about September 23, 2016 at 41 Texas Register 7481.

19. On February 1, 2017, however, the Commissioner issued a statement to school districts unilaterally changing TEA's long-standing rule. (Exhibit B attached). Through the statement the Commissioner attempts to implement an interpretation and practice that is exactly the opposite of its current rule by recognizing only the LOHEs of Chapter 41 districts' and only for the purposes of determining the amount of recapture that Chapter 41 districts with a LOHE will be required to pay even though the LOHE was not recognized for any other purpose, including the determination of the wealth status of these or any other district. The statement mandates that this interpretation and practice will occur regardless of the existence of an appropriation or a surplus in the Foundation School Program, thereby providing only Chapter 41 districts with LOHEs additional maintenance and operation (M&O) funds for educating their students.

20. On information and belief, it appears that the TEA is interpreting the Commissioner's statement regarding this new rule to mean that not all Chapter 41 districts with LOHEs will receive the benefit of additional M&O funds for educating

their students but *only* those Chapter 41 districts with LOHEs *that pay recapture* will receive the benefit of additional M&O funds for educating their students.

21. Because TEA did not go through any rule-making procedures before adopting this amendment to its rule contained in 19 TEX. ADMIN. CODE § 62.1071, the present suit was filed against Defendants seeking to enjoin the implementation of the new rule amendment. After the lawsuit was filed, on April 21, 2017 TEA published a proposed amendment to Rule § 62.1071 that would amend the 2016-2017 Chapter 41 manual by eliminating any reference in the manual to the effects of the adoption of a LOHE by a Chapter 41 district. (Attached as Exhibit C).

22. Through this invalid proposed rule amendment, the Commissioner is attempting to change the statutory calculation of school funding for Chapter 41 districts that has been accepted and relied upon by the legislature since Senate Bill 4 was passed. Neither in the 1999 session nor in any subsequent legislative session has any appropriations bill or fiscal note considered that any district's LOHE-reduced taxable value would apply to any computations that would have an effect on the amount of education funds flowing under the State's school finance system absent a surplus or specific appropriation.

23. The invalid rule amendment will result in a de facto increase in the equalized wealth level that is set forth in statute, thereby reducing the amount of funds available to the FSP and creating a deficit in the appropriation that funds the program. As a result, the Commissioner will be required to prorate FSP state aid under the provisions of § 42.253(h), Texas Education Code.

24. Implementation of this invalid rule will directly cut the amount of state funds that Plaintiffs would otherwise receive. In the event each of the Chapter 41 districts who currently have a LOHE are reimbursed for one-half of the total dollar amount of their LOHE, which results in lower tax collections and thus less recapture being paid; La Feria will lose a minimum of two hundred twenty-eight thousand one hundred ninety dollars ($228,190.00), or forty-seven dollars ($47.00) per student in weighted average daily attendance (WADA) and one thousand four hundred thirty-five dollars ($1,435.00) per classroom. Joaquin will lose a minimum of forty-eight thousand two hundred ninety dollars ($48,290.00), or forty-five dollars ($45.00) per WADA and one thousand five hundred forty-eight dollars ($1,548.00) per classroom. These losses will directly and negatively impact the ability of La Feria and Joaquin to address the educational needs of their student populations.

25. Similarly, implementation of this invalid rule will result in proration that will result in the Equity Center member districts receiving less funds for the 2016-2017 school year than they would had TEA simply kept its long-standing interpretation. For example, Equity Center members Manor Independent School District and Pflugerville Independent School District will lose over $168,000 and $368,000, respectively, in maintenance and operation funds that they otherwise would have received for the 2016-2017 school year had TEA not changed its interpretation of the statute as found in its current rule.

26. If all Chapter 41 districts adopted a twenty (20) percent LOHE for the next biennium (FY 18-19), and maximized their "golden pennies" to offset their loss due to

the decrease in their taxable property value as a result of adopting a LOHE, La Feria would lose an estimated seven hundred seventy-five thousand six hundred sixty-five dollars ($775,665.00), or one hundred and sixty dollars ($160.00) per WADA and four thousand eight hundred seventy-nine dollars ($4,879.00) per classroom. Joaquin would lose one hundred sixty-four thousand one hundred forty-six dollars ($164,146.00), or one hundred fifty-two ($152.00) per WADA and five thousand two hundred sixty-three dollars ($5,263.00) per classroom.

27. While the numbers in the preceding paragraphs reflect the losses of La Feria and Joaquin and certain of the Equity Center member districts, those districts are representative of the losses all Chapter 42 districts in the state would experience. The estimated cost to the State of Texas in implementing this newly amended rule is overwhelming. If the state reimburses all of the Chapter 41 districts who currently have a LOHE for one-half of the total dollar amount of their LOHE, it would cost the State at least two hundred ninety-one million dollars ($291,000,000) for the remainder of the current biennium and the next biennium. If all Chapter 41 districts adopted a twenty (20) percent LOHE for the next biennium (FY 18-19), the cost to the State could go as high as nine hundred sixty million dollars ($960,000,000). The State of Texas cannot afford this expense, which will only continue to rise each year with property values and additional homesteads.

28. The new amendment to an existing rule provides a strong incentive to Chapter 41 districts to adopt or increase their LOHEs; and it is reasonable to assume that most if not all would do so. If all Chapter 41 districts were to adopt a twenty (20)

percent exemption, the cost to the state would be approximately four hundred and eighty million dollars ($480,000,000) per year or nine hundred and sixty million dollars ($960,000,000) for the two-year cycle.

29. In sum, after almost twenty years, without proper notice, without fiscal impact consideration, and without required public input, the Commissioner, according to the LBB's analysis, is blowing an eighty million dollar ($80,000,000) hole in the State's education funding system for the current school year that will require cuts in M&O state funding for property poor districts while increasing M&O funds available to wealthy districts with LOHEs.

30. As part of the process for validly adopting a rule amendment, an agency must publish a notice in the Texas Register. TEX. GOV'T CODE § 2001.023. The "notice of a proposed rule must include," among other things, a fiscal note that states, *inter alia*, the additional estimated cost to the state and the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule for each year of the first five years that the rule will be in effect. TEX. GOV'T CODE § 2001.024(a)(4)(A), (C).

31. The fiscal note for the proposed rule amendment states that it will result in "no fiscal implications to state or local government, including local school districts." However, this is clearly untrue. By changing the rule interpreting how LOHEs affect Chapter 41 districts who have adopted them, Defendants will cause either additional funds to be sent to these districts, a cost to the state, or reduce the amount of recapture these districts will send to the state, a loss of state revenue. In either event, these

additional costs or lost revenues will leave the FSP with less money than it needs to fund the amounts due to all other districts in the State. Accordingly, school district Plaintiffs and districts who are members of the Equity Center will see the amount of funds they are entitled to under the FSP cut through proration as Defendants will need to make up for the new funds going to the Chapter 41 districts with LOHEs.

32. It is precisely because Defendants have made a change in their interpretation contained in § 62.1071, as previously contained in the February 1st letter, that these adverse fiscal impacts to the State treasury and school districts will occur.

33. For Defendants to state that their proposed rule amendment will result in no fiscal impact to either the State or local school districts is a clear failure by Defendants to comply with the mandatory requirements for publishing the notice of their proposed rule amendment. This failure is particularly egregious in the present situation in that the lack of a fiscal note is intentionally misleading to the Legislature, which has a statutory duty to review all proposed agency rules and the right to make their support or opposition known on such rules. TEX. GOV'T CODE § 2001.032.

34. All conditions precedent have been performed or have occurred.

CAUSES OF ACTION

Texas Administrative Procedures Act

35. Plaintiffs fully incorporate the allegations in paragraphs number 1 to 34.

36. Defendants have proposed for adoption the aforementioned amendment to Rule § 62.1071 without Texas statutory authority and Plaintiffs request relief under the Texas Administrative Procedures Act, TEX. GOV'T CODE Ch. 2001, Subchapter B.

In Rule § 62.1071, Defendants provide tax relief to Chapter 41 districts that is contrary to the plain reading and historical interpretation of Texas statutes as found in Chapter 41 of the Texas Education Code and Subchapter M of Chapter 403 of the Texas Government Code.

37. Plaintiffs challenge the validity of TEA's amendment to Rule § 62.1071 on the grounds that the rule interferes with and impairs Plaintiffs' ability to address the educational needs of their student populations, as it will effectively eliminate hundreds of thousands of dollars from their school budgets each year as a result of the reduction of recapture. The Texas Legislature has provided in statute that the TEA should not provide a LOHE adjustment unless there is an appropriation or surplus to account for the reduction in recapture. Thus, Defendants' attempt to provide LOHE adjustments to Chapter 41 districts without an appropriation or a surplus runs directly contrary to the controlling state law.

38. Defendants acted arbitrarily and capriciously because they applied their interpretation of § 42.2522 to Chapter 41 districts to the detriment of Chapter 42 districts without considering whether there was a surplus or appropriation, and despite knowledge that such an interpretation would eliminate hundreds of millions of dollars in revenue for school districts. Defendants failed to consider factors the legislature has directed it to consider, and either considered irrelevant factors or considered relevant factors but still reached a completely unreasonable result. Defendants have not and are unable to identify any unusual circumstances for departing from their longstanding practice of applying 42.2522 to both Chapter 41 and Chapter 42 districts, and only

recognizing one-half the value of a Districts' LOHE when an appropriation or surplus exists.

Declaratory Judgment

39. Plaintiffs fully incorporate the allegations in paragraphs number 1 to 34.

40. Pursuant to Texas Government Code § 2001.038 and Texas Civil Practice and Remedies Code §§ 37.003-.004, Plaintiffs seek a declaration that in attempting to amend rule § 62.1071 by their February 1, 2017 letter, Defendants have failed to follow mandatory rule-making procedures under the Texas Administrative Procedures Act and the February 1, 2017 letter is an invalid attempt at rulemaking.

41. Pursuant to Texas Government Code § 2001.038 and Texas Civil Practice and Remedies Code §§ 37.003-.004, Plaintiffs seek a declaration that Defendants are without authority to alter their long-standing interpretation of what constitutes taxable value under subchapter M, Chapter 403 of the Texas Government Code for use in calculating the equalized wealth level under Chapter 41 of the Texas Education Code, because such interpretation has been accepted by the Texas Legislature and therefore requires a legislative amendment to alter such interpretation.

42. Pursuant to Texas Government Code § 2001.038 and Texas Civil Practice and Remedies Code §§ 37.003-.004, Plaintiffs seek a declaration that in publishing notice of their proposed amendment of rule § 62.1071, Defendants have failed to follow the mandatory requirement of including a fiscal note with the estimated costs and revenue losses. TEX. GOV'T CODE § 2001.024(a)(4).

Injunctive Relief

43. An attempt to adopt a rule in contravention of the controlling statutes or in a manner that is arbitrary or capricious is in violation of law and is a legal nullity. Accordingly, Plaintiffs request that the Court enter a temporary restraining order, a temporary injunction and a permanent injunction that enjoins Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with them from implementing or continuing to implement the new interpretation contained in Defendants February 1, 2017 letter and from continuing with their proposed amendment to 19 TEX. ADMIN. CODE § 62.1071 published on April 21, 2017 in the Texas Register.

44. An attempt to adopt a rule amendment without the required fiscal note is not a valid exercise of Defendants' rule-making authority. TEX. GOV'T CODE § 2001.035(a) ("A rule is voidable unless a state agency adopts it in substantial compliance with Sections 2001.0225 through 2001.034."). Accordingly, Plaintiffs require that the Court enter a temporary restraining order, a temporary injunction and a permanent injunction that enjoins Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with them from implementing or continuing to implement the new interpretation contained in Defendants February 1, 2017 letter and from continuing with their proposed rule amendment to 19 TEX. ADMIN. CODE § 62.1071 published on April 21, 2017; unless and until an accurate fiscal note is lawfully published in accordance with law, the 30-day comment period is restarted and they have validly completed the required rule-making process.

45. School district plaintiffs and Equity Center member districts will be irreparably harmed and without an adequate legal remedy if Defendants are permitted to continue this illegal attempt to exercise their rule-making authority by adopting and enforcing a rule in contravention of law. If the school district plaintiffs and Equity Center member districts have their state educational aid unlawfully reduced through proration by an invalid rule, their recourse would be to the Legislature to appropriate the necessary funds, without any assurance that the unlawfully prorated funds would ever be restored. This would adversely affect the ability of Plaintiff school districts and Equity Center member districts to adequately educate their students.

PRAYER

Plaintiffs therefore request this Court to:

A. Issue a temporary restraining order, which will remain in force until a hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with them who receive actual notice of the Order from implementing or continuing to implement the new interpretation contained in Defendants February 1, 2017 letter and from continuing with their proposed amendment to 19 TEX. ADMIN. CODE § 62.1071 published on April 21, 2017 in the Texas Register;

B. In the alternative, issue a temporary restraining order, which will remain in force until a hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with them who receive actual notice of the Order from implementing or

continuing to implement the new interpretation contained in Defendants February 1, 2017 letter and from continuing with their proposed rule amendment to 19 TEX. ADMIN. CODE § 62.1071 published on April 21, 2017 in the Texas Register; unless and until an accurate fiscal note is lawfully published in accordance with law, the 30-day comment period is restarted and they have validly completed the required rule-making process;

C. Set a date and time for hearing Plaintiffs' request for a temporary injunction;

D. Upon hearing of same issue a temporary injunction, which will remain in force until Plaintiffs' claims are finally determined, enjoining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with them who receive actual notice of the Order from implementing or continuing to implement the new interpretation contained in Defendants February 1, 2017 letter and from continuing with their proposed amendment to 19 TEX. ADMIN. CODE § 62.1071 published on April 21, 2017 in the Texas Register. Upon final hearing of this cause, issue a judgment declaring that Defendants' notice of amended rule is unlawful or in the alternative enjoining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any persons in active concert or participation with them who receive actual notice of the Order from implementing or continuing to implement the new interpretation contained in Defendants February 1, 2017 letter and from continuing with their proposed rule amendment to 19 TEX. ADMIN. CODE § 62.1071 published on April 21, 2017 in the Texas Register; unless and until an accurate fiscal note is lawfully published in accordance

with law, the 30-day comment period restarted and they have validly completed the required rule-making process;

E. Upon final judgment grant Plaintiffs the declaratory and injunctive relief they have requested; and

F. Grant Plaintiffs such other relief to which they may be entitled.

Respectfully submitted,

GRAY & BECKER, P.C.
900 West Ave.
Austin, Texas 78701
Telephone: (512) 482-0061
Fax: (512) 482-0924

By: _____
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State Bar No. 08328300
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By: _____ Digitally signed by Robin Ryan DN: cn=Robin Ryan, o, ou, email=rryan@raywoodlaw.com, c=US Date: 2017.04.26 08:20:44 -05'00'
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Attorneys for Plaintiffs

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Ray Freeman, Executive Director of the Equity Center, who being by me duly sworn on his oath deposed and said that he is duly qualified and authorized in all respects to make this affidavit; that he has read the above and foregoing Plaintiffs' First Amended Original Petition and that every factual statement contained therein is within his personal knowledge and true and correct.

Ray Freeman

SUBSCRIBED AND SWORN TO BEFORE ME on this 25th day of April 2017, to certify which witness my hand and official seal.

Notary Public, in and for
The State of Texas

Stamp:

SUSAN E. JENNINGS
My Notary ID # 1487698
Expires November 25, 2017

CERTIFICATE OF SERVICE

I certify that on April 26, 2017, a true copy of the above was served on counsel of record for Defendants in accordance with Texas Rule of Civil Procedure 21a.

Kimberly Fuchs
Assistant Attorney General
Administrative Law Division
Adam Arthur Biggs
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Via e-service: kimberly.fuchs@oag.texas.gov;
Adam.biggs@oag.texas.gov

Richard E. Gray, IV

Section 5: Taxation

This section discusses taxation as it relates to Chapter 41.

Unless otherwise noted, *your district* refers to a Chapter 41 district.

How does being a Chapter 41 district affect tax rate adoption?

The TEC, §41.004(c), **prohibits a Chapter 41 district from adopting an M&O tax rate until the commissioner has certified that wealth reduction has been achieved. Certification that wealth reduction has been achieved will take into account any outstanding balances from prior school years.** As a Chapter 41 district, your district is required to submit a District Intent/Choice Selection form via the Chapter 41 subsystem of the online FSP System before adopting its M&O tax rate. This form indicates whether your district charges tuition to nonresident students and which option your district intends to use to reduce its property wealth per WADA. After receiving the District Intent/Choice Selection form, the commissioner provides a letter authorizing your district to proceed with adopting a tax rate. **Tax rate adoption may not proceed until your district has received the letter certifying that the district has achieved wealth equalization.** If your district is in default for recapture payments, the commissioner will not certify that wealth reduction has been achieved, and your district will not be permitted to adopt an M&O tax rate.

Your district must mail its signed contract by the January 16, 2017, deadline, or the contract will be considered delinquent. A request for approval of a delinquent contract will not be honored.

What if our district experiences a decline in its tax base between the prior tax year and the current tax year?

Because of a lack of funding, the adjustment of taxable value for a rapid decline in a district's tax base is not available for the 2016–2017 school year.

What if our district offers an optional homestead exemption?

If your district offers an optional homestead exemption as authorized by the Texas Tax Code, §11.13(n), an adjustment to your district's taxable value **may** be granted if there is an appropriation or excess FSP funds are available. No appropriation has been made, and no excess FSP funds are anticipated for the 2016–2017 school year. The adjustment, if granted, would reduce your district's taxable value by no more than one-half the total dollar amount of optional exemption. The provisions related to this adjustment are found in the TEC, §42.2522(a).

EXHIBIT A

Texas Education Agency

Commissioner Mike Morath

1701 North Congress Avenue • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • tea.texas.gov

February 1, 2017

TO THE ADMINISTRATOR ADDRESSED (TAA):

Subject: Recognition of property value loss for 50 percent of the local optional homestead exemption (LOHE) for the 2016-17 school year (and state fiscal year (FY) 2017)

This letter addresses a change in practice that will impact the calculation of recapture amounts owed under Chapter 41, Texas Education Code (TEC) and facilities funding allotments under Chapter 46, TEC. Previously, TEA only recognized 50 percent of the value loss due to the LOHE for purposes of calculating recapture under Chapter 41 and facilities funding allotments under Chapter 46 when there was a specific appropriation or a surplus in the FSP. Starting with the 2016-17 school year (and state FY2017), TEA will recognize 50 percent of the value loss due to the LOHE for purposes of calculating recapture under Chapter 41 and facilities funding allotments under Chapter 46, regardless of the existence of an appropriation or a surplus in the FSP.

TEA will recalculate recapture amounts owed and Instructional Facilities and Existing Debt Allotments (IFA and EDA) for the 2016-17 school year (and state FY2017) as soon as possible. **This change is effective for the 2016-17 school year (and state FY2017) only and forward and will not be applied retroactively to prior fiscal years.** If you have any questions about this letter, please contact a state funding consultant at (512) 463-9238.

Regards,

Leo Lopez, RTSBA
Associate Commissioner for School Finance /
Chief School Finance Officer

EXHIBIT B

North Congress Avenue, Austin, Texas 78701, in accordance with instructions on the application.

(2) Information required for first year of tax credit. A school district's initial request for additional state aid under the TEC, §42.2515, must include:

(A) a completed Request for Additional State Aid for Ad Valorem Tax Credit application form, including the template that comprises a component of the application showing requested and projected additional state aid for each agreement under the Texas Tax Code, Chapter 313;

(B) a copy of the taxpayer's application to the school district for the tax credit, together with all required attachments to the application;

(C) a copy of the school board's resolution or other proof that the school district has approved the taxpayer's application for the tax credit;

(D) a copy of the tax bill sent to the taxpayer (showing the taxes imposed are net of the tax credit) [~~or other proof that the school district has reimbursed the tax credit to the taxpayer~~] ; and

(E) confirmation that, as of the date of the tax credit approval, the taxpayer has not relocated its business outside of the school district.

(3) Information required for subsequent years of tax credit. For each year subsequent to the year in which the initial request for the tax credit was approved, the request for additional state aid under the TEC, §42.2515, must include:

(A) a completed Request for Additional State Aid for Ad Valorem Tax Credit application form, including the template that comprises a component of the application showing requested and projected additional state aid for each agreement under the Texas Tax Code, Chapter 313;

(B) a copy of the tax bill sent to the taxpayer (showing the taxes imposed are net of the tax credit) [~~or other proof that the school district has reimbursed the tax credit to the taxpayer~~] ; and

(C) confirmation that, as of the date of the tax credit approval, the taxpayer has not relocated its business outside of the school district.

(c) Forms. The division of the TEA responsible for state funding will make available the application form, including the template, required under subsections (d)(2) and (d)(3) of this section.

(f) Limitation of tax credit. In the fourth through the tenth years in which the agreement described in subsection (b)(2) of this section is in effect, the tax credit is limited to 50% of the total maintenance and operations and interest and sinking fund taxes imposed on the qualified property for the tax year for which the credit applies.

(g) Determination of additional state aid. For any tax year for which additional state aid authorized by the TEC, §42.2515, is approved, additional state aid will be limited to the amount of the tax credit due to the taxpayer for a qualified property that is receiving a limitation on appraised value for that year as determined in the Texas Tax Code, §313.104, as that section existed prior to the repeal of the Texas Tax Code, Chapter 313, Subchapter D, by HB 3390, 83rd Texas Legislature, Regular Session, 2013 .

(h) Erroneous tax credits and recovery of state aid for erroneous tax credits. If the comptroller of public accounts or the governing body of the school district determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the school district must provide a notification of the facts to the commissioner within 30 days of the official action. If the TEA determines that an entity that received a tax credit was ineligible to have received it or received more credit than the entity should have received, the commissioner will notify the school district within 30 days of the determination. Any overpayment of additional state aid provided to the school district based on issuance of an erroneous tax credit by the school district will be fully recovered by the TEA pursuant to the TEC, §42.258.

(i) Timeline for submission of application requests. The school district must submit its application for additional state aid for ad valorem tax credits on or before May 31 each year for which the tax credit is due.

[~~(1) For tax credits earned under the TEC, §42.2515, for taxes that became due and payable on January 31, 2009, or at any time before that date, the school district must submit its application for additional state aid for ad valorem tax credits on or before May 31, 2009.~~]

[~~(2) For tax credits earned under the TEC, §42.2515, for taxes that become due and payable on January 31, 2010, or at any time after that date, the school district must submit its application for additional state aid for ad valorem tax credits on or before May 31 each year for which the tax credit is due.~~]

(j) Payment to the school district. On approval of a school district's application for additional state aid for ad valorem tax credits by the commissioner, the amount of the credit will be applied to the entitlement due to the school district (as soon as practicable after the application is approved) [under the ~~Foundation School Program as follows~~].

[~~(1) State aid payments for tax credits on taxes that become due and payable after January 31, 2009, will be applied to the school district entitlement as prescribed by the TEC, §42.2516(b-2)(1). Payments for this credit will be incorporated into the payments made under the schedule prescribed by the TEC, §42.259.~~]

[~~(2) State aid payments for tax credits on taxes that were due and payable on January 31, 2009, or at any time before that date will be paid on or before August 31, 2009. This paragraph expires on September 1, 2009.~~]

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 April 10, 2017.

TRD-201701506
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 21, 2017
For further information, please call: (512) 475-1497

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CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure

EXHIBIT C

in 19 TAC §62.1071 is not included in the print version of the Texas Register. The figure is available in the on-line version of the April 21, 2017, issue of the Texas Register.)

The Texas Education Agency (TEA) amends §62.1071, concerning the equalized wealth level. The amendment adopts as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year, Revised April 2017*. The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

The TEA has adopted the procedures contained in each yearly manual for districts subject to wealth equalization as part of the TAC since 2011. The earlier version of 19 TAC §62.1071, Administration of Wealth Equalization, adopted effective June 11, 1998, and subsequently amended several times, was repealed effective May 9, 2011, and replaced with the wealth equalization manual to remove outdated and obsolete provisions from rule. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, adopts in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year, Revised April 2017* as Figure: 19 TAC §62.1071(a).

Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

Two changes to the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year, Revised April 2017* from the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year* are as follows.

Administrative Procedures

TEC, §41.001, requires a district's designation under this chapter to be determined based on the taxable value of property, as determined under Texas Government Code, Chapter 403, Subchapter M. The language incorrectly referring to property values used for state funding purposes under the TEC, Chapter 42, is repealed.

Taxation

The subsection titled, "What if our district offers an optional homestead exemption?" is repealed because the TEC, §42.2522(a), only applies to the TEC, Chapter 42.

The amendment places the specific procedures contained in the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year, Revised April 2017* in the TAC. The TEA administers the wealth equalization provisions of the TEC, Chapter 41, according to the procedures specified in each yearly manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System.

The amendment has no locally maintained paperwork requirements.

FISCAL NOTE. Leo Lopez, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications to state or local government, including local school districts and open-enrollment charter schools, required to comply with the amendment because statute unambiguously requires the agency to use taxable value of property as defined under Texas Government Code, Chapter 403. There is no effect on local economy for the first five years that the amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Lopez has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of an annual publication specifying requirements for school districts subject to wealth equalization. There is no anticipated economic cost to persons who are required to comply with the amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period begins April 21, 2017, and ends May 22, 2017. Comments may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov*.

A public hearing on the amendment will be held from 1:30 p.m. until the conclusion of testimony or not later than 2:30 p.m. on May 1, 2017, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Questions about the hearing should be directed to the Division of State Funding at (512) 463-9238.

STATUTORY AUTHORITY. The amendment is authorized under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41, Equalized Wealth Level; TEC, §41.013(c), which provides that Texas Government Code, Chapter 2001, is inapplicable to decisions of the commissioner under TEC, Chapter 41; and TEC, §41.013(d), which authorizes the commissioner to request the Secretary of State to publish rules adopted under TEC, Chapter 41.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §41.006 and §41.013(c) and (d).

§62.1071. Manual for Districts Subject to Wealth Equalization.

(a) The processes and procedures that the Texas Education Agency (TEA) uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet are described in the official TEA publication Manual for Districts Subject to Wealth Equalization 2016-2017 School Year, Revised April 2017, provided in this subsection.
Figure: 19 TAC §62.1071(a) [~~Figure: 19 TAC §62.1071(a)~~]

(b) The specific processes, procedures, and requirements used in the manual for districts subject to wealth equalization are established

annually by the commissioner of education and communicated to all school districts.

(c) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts subject to wealth equalization with respect to those years.

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 April 10, 2017.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 21, 2017
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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER B. DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

22 TAC §203.24

The Texas Funeral Service Commission (Commission) proposes to amend 22 TAC §203.24, concerning Display of License. The rule currently requires licenses issued by the Commission to be originals on display or available for inspection. Requiring original licenses protects the public by allowing them to ensure the person with whom they are interacting is licensed. The Commission believes a copy of the license could be altered to deceive the public.

However, since the rule has been implemented, the Commission has been made aware of situations where funeral homes need to employ contract funeral directors and embalmers. This occurs when the regular funeral directors or embalmers employed by the funeral home cannot be present - emergencies, vacations, weekends. Requiring the original license of a temporary employee to be displayed can be problematic for funeral homes.

The Commission has determined in these instances a copy of the funeral director and/or embalmer license who worked on a case is acceptable. Under this rule change, the copy of the license must be maintained in the funeral establishment for inspection.

Janice McCoy, Executive Director, has determined for the first five-year period the amendment is in effect there will be no fiscal implications for state or local governments, or local economies.

Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendment, as proposed.

There is no anticipated economic cost to individuals who are required to comply with the amendment, as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. McCoy has determined for the first five-year period the amendment is in effect, the public benefit anticipated as a result of the amendment will be the Commission and consumers will be able to ensure only licensed funeral directors and embalmers are providing funeral services.

The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the Commission is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to *info@tfsc.texas.gov*. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Occupations Code §651.261, which requires license holders to conspicuously display their licenses at each workplace.

No other statutes, articles, or codes are affected by this proposal.

§203.24. Display of License.

(a) The funeral establishment license shall be conspicuously displayed in an area of the establishment open and accessible to the general public.

(b) If a license holder is in contact with the public during the course of his or her job, the funeral establishment shall conspicuously display the holder's license in each place of business at which the license holder practices.

(c) If a license holder is not in contact with the public during the course of his or her job, the funeral establishment shall make the license available for inspection in each place of business at which the license holder practices.

(d) A license is conspicuously displayed when it is placed in an area of the funeral establishment generally accessed by a consumer making funeral arrangements.

(e) The displayed license must be an original license issued by the Commission.

(f) In the event the license holder who assists the public and/or embalms a dead human body is not a regular full or part time employee of the funeral establishment, the funeral establishment shall maintain a copy of the license holder's original license for inspection by a customer or prospective customer. The copy of the license holder's original license shall be maintained for a period of two years after the temporary employment occurred.

(g) If a regular full or part time employee is no longer employed by the funeral establishment, the funeral establishment shall maintain a copy of the license holder's original license for a period of two years after the employment ends.

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 April 5, 2017.

Section 5: Taxation

This section discusses taxation as it relates to Chapter 41.

Unless otherwise noted, *your district* refers to a Chapter 41 district.

How does being a Chapter 41 district affect tax rate adoption?

The TEC, §41.004(c), **prohibits a Chapter 41 district from adopting an M&O tax rate until the commissioner has certified that wealth reduction has been achieved. Certification that wealth reduction has been achieved will take into account any outstanding balances from prior school years.** As a Chapter 41 district, your district is required to submit a District Intent/Choice Selection form via the Chapter 41 subsystem of the online FSP System before adopting its M&O tax rate. This form indicates whether your district charges tuition to nonresident students and which option your district intends to use to reduce its property wealth per WADA. After receiving the District Intent/Choice Selection form, the commissioner provides a letter authorizing your district to proceed with adopting a tax rate. **Tax rate adoption may not proceed until your district has received the letter certifying that the district has achieved wealth equalization.** If your district is in default for recapture payments, the commissioner will not certify that wealth reduction has been achieved, and your district will not be permitted to adopt an M&O tax rate.

Your district must mail its signed contract by the January 16, 2017, deadline, or the contract will be considered delinquent. A request for approval of a delinquent contract will not be honored.

What if our district experiences a decline in its tax base between the prior tax year and the current tax year?

Because of a lack of funding, the adjustment of taxable value for a rapid decline in a district's tax base is not available for the 2016–2017 school year.

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

AFFIDAVIT OF RAY FREEMAN

1. "My name is Ray Freeman, I am the Executive Director of the Equity Center, I am competent to make this affidavit and the information contained in this affidavit is within my personal knowledge and is true and correct.

2. On April 21, 2017, the Texas Education Agency ("TEA") published a proposed amendment to 19 TEX. ADMIN. CODE § 62.1071 in the Texas Register. The proposed amendment to the rule is to formally adopt a change in statutory interpretation that the TEA had already announced in a February 1, 2017 letter. The proposed amendment changes TEA's historical and long-standing interpretation of how to calculate the taxable value of property within school districts subject to Chapter 41 of the Texas Education Code. From the 1999-2000 school year until the February 1st letter, TEA had consistently construed the statutes as not reducing a Chapter 41 district's taxable value as a result of a district adopting a local optional homestead exemption ("LOHE") (by one-half of the amount of any taxable value subject to the LOHE) unless there existed a surplus or a special appropriation. The proposed rule, as stated in the February 1st letter, would now reduce a Chapter 41 district's taxable value by one-half of the amount of any taxable value subject to a LOHE regardless of the existence of a surplus or special appropriation.

3. In its preamble to the proposed rule TEA claims that the newly proposed policy change will result in no cost or loss of revenue to the state or to local school

EXHIBIT D

districts. This is simply untrue. This change to TEA's historical interpretation of the statutes will result in enormous costs to the State and local school districts.

4. What this change in policy does is substantially reduce recapture for certain wealthy school districts that have adopted LOHEs. Recapture, which has been accepted by the Texas Supreme Court as a constitutionally acceptable measure to allow the state to access all its wealth in an efficient system of free public schools, requires Chapter 41 districts to reduce their wealth through either transferring property to another district or, as most districts choose, to transfer funds to the State for the purchase of attendance credits. Recapture has become an integral part of the State's school finance system. The State builds its budget for public education every two years in part by projecting the amount of recapture as part of the revenue stream necessary to fund that budget. For fiscal years 2017, 2018 and 2019 those amounts were $2,069,900,000, $2,143,900,000, and $2,453,000,000, respectively. This process has been consistent for many years.

5. As a result of the agency arbitrarily changing that process, after nearly two decades without legislative action, it will cost the state at least $290,000,000 over those three years and, according to school finance experts, could cost as much as $740,000,000 in lost revenues if all Chapter 41 districts were to adopt the maximum 20% LOHE. That is lost revenue from the state budget, and purposely reducing revenues does come at a cost to the State and school districts. As a result of the lost revenues, the State will be forced to either increase revenues elsewhere to cover the loss or reduce its

overall budget, but it cannot be said that there will be no fiscal implications to state or local governments, including school districts, as a result of TEA's actions.

6. For the 2016-2017 school year alone, the State's lost revenue due to reduced recapture from administering TEA's proposed rule are reported to be $80,000,000. Currently, according to LBB budget documents there is already a $50,000,000 shortfall in the amounts appropriated by the legislature in 2015 to fund the school finance program. This means that under the existing appropriation TEA would have to reduce, or prorate, the amount of funding that would otherwise go to all other school districts to make up for the lost $130,000,000 in revenue. For example, this means that Equity Center members Manor Independent School District and Pflugerville Independent School District will lose over $168,000 and $368,000, respectively, in maintenance and operation funds that they otherwise would have received for the 2016 -2017 school year had TEA not changed its interpretation of the statute as found in its current rule.

7. For Chapter 42 school districts (property-poor school districts), Chapter 41 school districts that do not offer LOHEs, and all public charter schools, this change in policy will result in lower funding in the future also. It could result in proration, whereby TEA lowers promised funding to all districts in the second year of a biennium because of a shortfall in the budget due to increased costs in the first part of the biennium (or the second year in the prior biennium if the shortfall occurs in the first year of a new biennium). In the event of proration, this action will cause an estimated loss, at a minimum, of over $290,000,000 or possibly as much as $960,000,000 if all

Chapter 41 districts were to adopt the maximum 20% LOHE. This event of proration would be the result of the state receiving less recapture revenue than they budgeted for as a result of TEA's arbitrary policy change. The cost does not stop there. This change in the overall recapture amount will result in benefitting some districts (lowering their property values and therefore resulting in less being paid in taxes to the State) at the expense of all other districts (who would receive the benefit of the increased recapture payments). As a direct result, fewer funds are then available to fund the formula (a minimum of over $270,000,000 or as much as $896,000,000 if all Chapter 41 districts were to adopt the maximum 20% LOHE), the Basic Allotment and/or other areas of the formula system which will be funded on a lower level than they otherwise would have been had those funds remained available to fund the educational needs of *all* children.

8. Regardless of how you characterize the fiscal implications of this amendment, there will be a cost to all Chapter 42 districts (673), Chapter 41 districts that do not adopt a LOHE (currently 239) and public charter schools. It is important to note that it is a virtual guarantee that all Chapter 41 districts who have not currently adopted a LOHE will do so as it is squarely against their economic interest not to make such an adoption. The more districts with a LOHE, the less money the state collects in recapture and the greater the loss to the remaining school districts in the state. To make this change in policy is tantamount to a gift of public funds to certain property-wealthy districts at the expense of all others.

9. To calculate the cost of the new statutory interpretation contained in the TEA's proposed rule, the following were used:

a. the law appropriate for the year being analyzed;

b. TEA's own student projections (updated in March 2017);

c. Fiscal Year 2017 property values and collections as reported by TEA;

d. Property values and collections for the 2018 and 2019 fiscal years, based on the Legislative Budget Board's (LBB) assumptions and methodology;

e. Models programmed in SAS, the same software TEA uses.

10. In calculating the minimum amount of revenue that would be lost due to administering the proposed rule; existing LOHE percentages and loss to LOHE amounts were used as reported by TEA.

11. In calculating the potential maximum amount of revenue that would be lost due to administering the proposed rule if all Chapter 41 districts were to adopt the maximum 20% LOHE, the model uses the market value of homestead properties, which provides a close approximation to the information that TEA already reports for districts that currently have a LOHE. This methodology uses the average percent loss for all existing 20% LOHE districts across the state to compute a LOHE percentage at market value of homesteads and then applies this percentage to any districts without an existing LOHE and adjusts collections accordingly. In the case of existing LOHEs below 20%, the model adjusts the value lost up to 20%, and adjusts collections accordingly. The model also assumes that these Chapter 41 districts would maximize Tier 2, Level 1

pennies ("golden pennies") by raising their tax rates to take advantage of the six golden pennies if they were not already accessing them and adjusted collections accordingly.

12. The adverse economic affects to the State and to local school districts from administering TEA's proposed rule are immediate and severe. For the current school year, according to legislative budget estimates, it will create an additional $80,000,000 budget shortfall based upon the current estimated appropriation and will result in this money being withheld pro-rata (proration) from the funds that other school districts would otherwise receive."

Ray Freeman

SUBSCRIBED AND SWORN TO BEFORE ME on this 24th day of April 2017, to certify which witness my hand and official seal.

Notary Public, in and for
The State of Texas

Stamp:

SUSAN E. JENNINGS
My Notary ID # 1487698
Expires November 25, 2017