

Item 15:
Proposed Amendment to 19 TAC Chapter 250,
Administration, Subchapter B, Rulemaking Procedures,
§250.20, Petition for Adoption of Rules or Rule Changes

DISCUSSION AND ACTION

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to discuss and propose an amendment to 19 Texas Administrative Code (TAC) Chapter 250, Administration, Subchapter B, Rulemaking Procedures, §250.20, Petition for Adoption of Rules or Rule Changes. The proposed amendment would update the SBEC's petition procedures to allow for increased ease in submitting a petition for rulemaking for the SBEC's consideration.

STATUTORY AUTHORITY: The statutory authority for Chapter 250, Subchapter B, §250.20, is the Texas Education Code (TEC), §21.035(b) and §21.041(a) and (b)(1), and Texas Government Code (TGC), §2001.021.

TEC, §21.035(b), requires the Texas Education Agency (TEA) to provide the SBEC's administrative functions and services.

TEC, §21.041(a), authorizes the SBEC to adopt rules as necessary to implement its procedures.

TEC, §21.041(b)(1), requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B.

TGC, §2001.021, authorizes a state agency to prescribe by rule the form for a petition and the procedure for the submission, consideration, and disposition.

EFFECTIVE DATE: If approved for filing as proposed in February 2022, and if adopted, subject to State Board of Education (SBOE) review, at the April 29, 2022 SBEC meeting, the proposed effective date of the proposal would be July 21, 2022 (20 days after filing as adopted with the *Texas Register*). The proposed effective date is based on the SBEC and SBOE meeting schedules.

PREVIOUS BOARD ACTION: The SBEC last amended 19 TAC §250.20 effective October 18, 2018.

BACKGROUND INFORMATION AND JUSTIFICATION: TGC, §2001.021, requires that procedures to petition for the adoption of rule changes be adopted by rule. To comply with statute, the SBEC rules in 19 TAC Chapter 250, Subchapter B, establish procedures for SBEC petition for rulemaking in §250.20, Petition for Adoption of Rules or Rule Changes.

The proposed amendment to §250.20(a) would update the SBEC's petition procedures, including the petition form included as Figure: 19 TAC §250.20(a), to improve efficiency by ensuring that an interested person can submit the petition electronically. In addition, the proposed amendment to the Figure: 19 TAC §250.20(a) would specify one TEA division as the collection point for all petitions submitted to the SBEC and would allow the petitioner to provide an email address on the petition form. This would ensure timely acknowledgement, communication, review, status, and final decision of a petition by TEA staff for consideration by the SBEC at a future meeting.

The proposed new §250.20(d)(5) would allow the SBEC the opportunity to deny a petition for any other reason the SBEC determines is grounds for denial. This would clarify that SBEC has the authority to deny for any reasons not specified in the enumerated list in subsection (d).

The proposed amendment to §250.20 would also include technical edits to improve readability.

FISCAL IMPACT: The TEA staff has determined that there is no additional fiscal impact on state or local governments and that there are no additional costs to entities required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, the proposed amendment would expand an existing regulation by allowing for a petition for rulemaking to be submitted via electronic means.

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

PUBLIC BENEFIT AND COST TO PERSONS: The public benefit anticipated as a result of the proposal would be providing another means by which an interested person can file a petition for

rulemaking, create a more efficient process, and reflect current procedures. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins March 18, 2022, and ends April 18, 2022. The SBEC will take registered oral and written comments on the proposal at the April 29, 2022 meeting in accordance with the SBEC board operating policies and procedures.

ASSOCIATE COMMISSIONER'S RECOMMENDATION:

Approve the proposed amendment to 19 TAC Chapter 250, Administration, Subchapter B, Rulemaking Procedures, §250.20, Petition for Adoption of Rules or Rule Changes, to be published as proposed in the *Texas Register*.

Staff Members Responsible:

Christie Pogue, Director, SBEC Policy Development and Support
Cristina De La Fuente-Valadez, Director, Rulemaking
Lynette Smith, Program Specialist, Rulemaking

Attachments:

- I. Statutory Citations
- II. Text of 19 TAC Chapter 250, Administration, Subchapter B, Rulemaking Procedures
- III. Text of Proposed Figure: 19 TAC §250.20(a)

ATTACHMENT I

Statutory Citations Relating to Proposed Amendment to 19 TAC Chapter 250, Administration, Subchapter B, Rulemaking Procedures, §250.20, Petition for Adoption of Rules or Rule Changes**Texas Education Code, §21.035, Delegation Authority; Administration by Agency (excerpt):**

- (b) The agency shall provide the board's administrative functions and services.

Texas Education Code, §21.040, General Powers and Duties of Board (excerpt):

The board shall:

- (4) develop and implement policies that clearly define the respective responsibilities of the board and the board's staff; and

Texas Education Code, §21.041, Rules; Fees (excerpts):

- (a) The board may adopt rules as necessary for its own procedures.
- (b) The board shall propose rules that:
 - (1) provide for the regulation of educators and the general administration of this subchapter in a manner consistent with this subchapter;

Texas Government Code, §2001.021, Petition for Adoption of Rules:

- (a) An interested person by petition to a state agency may request the adoption of a rule.
- (b) A state agency by rule shall prescribe the form for a petition under this section and the procedure for its submission, consideration, and disposition. If a state agency requires signatures for a petition under this section, at least 51 percent of the total number of signatures required must be of residents of this state.
- (c) Not later than the 60th day after the date of submission of a petition under this section, a state agency shall:
 - (1) deny the petition in writing, stating its reasons for the denial; or
 - (2) initiate a rulemaking proceeding under this subchapter.
- (d) For the purposes of this section, an interested person must be:
 - (1) a resident of this state;
 - (2) a business entity located in this state;
 - (3) a governmental subdivision located in this state; or
 - (4) a public or private organization located in this state that is not a state agency.

ATTACHMENT II
Text of Proposed Amendment to 19 TAC

Chapter 250. Administration

Subchapter B. Rulemaking Procedures

§250.20. Petition for Adoption of Rules or Rule Changes.

- (a) Any interested person, as defined in Texas Government Code (TGC) , §2001.021, may petition for the adoption, amendment, or repeal of a rule of the State Board for Educator Certification (SBEC) by filing a petition on the [a] form provided in this subsection. The petition shall be signed and submitted to the designated Texas Education Agency (TEA) office. The TEA staff shall evaluate the merits of the petition [proposal] to determine whether to recommend that rulemaking proceedings be initiated or that the petition be denied.
- Figure: 19 TAC §250.20(a) [Figure: 19 TAC §250.20(a)]
- (b) In accordance with TGC [~~the Texas Government Code~~] , §2001.021, the TEA staff must respond to the petitioner within 60 calendar days of receipt of the petition.
- (1) Where possible, the recommendation concerning the petition shall be placed on the next SBEC agenda, and the SBEC shall act on the petition within 60 calendar days [the 60 calendar day time limit].
- (2) Where the time required to review the petition or the scheduling of SBEC meetings will not permit the SBEC to act on the petition within the required 60 calendar days, the TEA staff shall respond to the petitioner within the required 60 calendar days, notifying the petitioner of the date of the SBEC meeting at which the recommendation will be presented to the SBEC for action.
- (c) The SBEC will review the petition and the recommendation and will either deny the petition, giving reasons for the denial, or direct the TEA staff to begin the rulemaking process [~~or deny the petition, giving reasons for the denial~~] . The TEA staff will notify the petitioner of the SBEC's action related to the petition.
- (d) Without limitation to the reasons for denial in this subsection, the SBEC may deny a petition on the following grounds:
- (1) the SBEC does not have jurisdiction or authority to propose or to adopt the petitioned rule;
- (2) the petitioned rule conflicts with a statute, court decision, another rule proposed or adopted by the SBEC, or other law;
- (3) the SBEC determines that a different proceeding, procedure, or act more appropriately addresses the subject matter of the petition than initiating a rulemaking proceeding; [~~or~~]
- (4) the petitioner files [is inappropriately using the opportunity to file a rulemaking petition under this section, as evidenced by filing] a petition:
- (A) before the fourth anniversary of the SBEC's having previously considered and rejected a similar rule on the same subject matter; or
- (B) to amend a rule proposed or adopted by the SBEC that has not yet become effective ; or [~~]~~
- (5) any other reason the SBEC determines is grounds for denial.
- (e) If the SBEC initiates rulemaking procedures in response to a petition, the rule text which the SBEC proposes may differ from the rule text proposed by the petitioner.

ATTACHMENT III

Figure: 19 TAC §250.20(a) [~~Figure: 19 TAC §250.20(a)~~]

STATE BOARD FOR EDUCATOR CERTIFICATION
Petition for Adoption of a Rule

The Texas Government Code, §2001.021, provides that any interested person may petition an agency requesting the adoption of a rule.

The petition [~~Petitions~~] should be signed and submitted [~~to~~]:

by mail to Rulemaking Division, Texas Education Agency, 1701 North Congress Avenue, Austin Texas 78701-1494; or [Office of Educator Leadership and Quality]

[Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701 1494]

by using the email button at the bottom of this petition form or by emailing directly to sbecrules@tea.texas.gov.

Name:

Affiliation/Organization (if applicable):

Address:

Email Address:

Telephone:

Date:

Texas Government Code, §2001.021, specifies that an interested person must meet one of the following criteria. Please check all of the following that apply to you.

- resident of Texas
- business entity located in Texas
- governmental subdivision located in Texas
- public or private organization located in Texas that is not a state agency

Proposed rule text (indicate words to be added or deleted from the current text):

Statutory authority for the proposed rule action:

Why is this rule action necessary or desirable?

(If more space is required, attach additional sheets.)

Petitioner's Signature

(Typing your name in the field above serves as your signature for the purposes of this petition.)

[Click here to submit petition form](#)