

Item 7:

Consider and Take Appropriate Action on Proposed Review of 19 TAC Chapter 250, Administration

DISCUSSION AND ACTION

SUMMARY: Texas Government Code, §2001.039, establishes a four-year rule review cycle for all state agency rules, including State Board for Educator Certification (SBEC) rules. This item presents for SBEC approval the review of 19 TAC Chapter 250, Administration. The rules being reviewed establish procedures for SBEC purchasing and for handling petitions for the adoption of rules that the SBEC receives.

STATUTORY AUTHORITY: Statutory authority for the rule review is Texas Government Code, §2001.039. The statutory authority for 19 TAC Chapter 250 is the Texas Education Code (TEC), §§21.035(b), 21.040(6), and 21.041(a) and (b)(1), and Texas Government Code, §§2155.076, 2161.003, and 2260.052(c), for Subchapter A; and the TEC, §21.035 and §21.041(b)(1), and Texas Government Code, §2001.021, for Subchapter B.

PREVIOUS BOARD ACTION: The SBEC last adopted the review of 19 TAC Chapter 250 in May 2014, finding that the reasons for initially adopting the rules continue to exist.

FUTURE ACTION EXPECTED: The review of 19 TAC Chapter 250, Administration, is scheduled to be presented to the SBEC for adoption at the March 2018 meeting. Any rule changes resulting from the rule review process will also be presented to the SBEC for consideration.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 250 are currently organized as follows: Subchapter A, Purchasing, and Subchapter B, Rulemaking Procedures. These subchapters provide for rules that

ATTACHMENT I

Statutory Citations Relating to Review of 19 TAC Chapter 2 50, Administration
Rule ReviewTexas Government Code, §2001.039, Agency Review of Existing Rules:

- (a) A state agency shall review and consider for readoption each of its rules in accordance with this section.
- (b) A state agency shall review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The adoption of an amendment to an existing rule does not affect the dates on which the rule must be reviewed except that the effective date of an amendment is considered to be the effective date of the rule if the agency formally conducts a review of the rule in accordance with this section as part of the process of adopting the amendment.
- (c) The state agency shall readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.
- (d) The procedures of this subchapter relating to the original adoption of a rule apply to the review of a rule and to the resulting repeal, readoption, or readoption with amendments of the rule, except as provided by this subsection. Publishing the Texas Administrative Code citation to a rule under review satisfies the requirements of this subchapter relating to publishing the text of the rule unless the agency readopts the rule with amendments as a result of the review.
- (e) A state agency's review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist.

19 TAC Chapter 2 50, AdministrationTexas Education Code, §21.035, Administration by Agency :

- (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:

- (6) 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 (excerpt s):

- (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

ATTACHMENT II
Text of 19 TAC

Chapter 250. Administration

Subchapter A. Purchasing

Statutory Authority: The provisions of this Subchapter A issued under the Texas Education Code, §§21.035, 21.040(6), and 21.041(a) and (b)(1), and Texas Government Code, §2155.076, §2161.003, and Chapter 2260.

§250.1. Historically Underutilized Business (HUB) Program.

In accordance with the Texas Government Code, §2161.003, the State Board for Educator Certification adopts by reference the rules of the Comptroller of Public Accounts, found at Title 34 Texas Administrative Code, §§20.11-20.22 and §§20.24-20.28, concerning the Historically Underutilized Business (HUB) Program.

Source: The provisions of this §250.1 adopted to be effective March 14, 1999, 24 TexReg 1617; amended to be effective March 30, 2005, 30 TexReg 1771; amended to be effective August 19, 2010, 35 Tex Reg 7067.

§250.3. Procedures for Protests, Dispute Resolution, and Appeals Relating to Purchasing and Contract Issues.

- (a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract under the jurisdiction of the State Board for Educator Certification (SBEC) may formally protest to the director of the Texas Education Agency (TEA) division responsible for purchasing and contracts. Such protests must be in writing and received in the purchasing and contracts director's office within ten working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested, unless the director finds that good cause for delay is shown or determines that a protest or appeal raises issues significant to the TEA's procurement practices or procedures.
- (b) Formal protests must conhecurece o 0.9(pr(m)21(iitpmus)9.5(t)6.8(ct (04 Tc -0507(o)-7.(lu)5(a)e2.4(-)-4(ct (.e)-7.8(a

Subchapter B. Rulemaking Procedures

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

- (a) Any interested person may petition for the adoption, amendment, or repeal of a rule of the State Board for Educator Certification (SBEC) by filing a petition on 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 proposal to determine whether to recommend that rulemaking proceedings be initiated or that the petition be denied.
- Figure: 19 TAC §250.20(a)
- (b) In accordance with 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 SBEC agenda, and the SBEC shall act on the petition within 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 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 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.
- (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.

Statutory Authority: The provisions of this §250.20 issued under the Texas Education Code, §21.035 and §21.041(b)(1), and the Texas Government Code, §2001.021.

Source: The provisions of this §250.20 adopted to be effective August 19, 2010, 35 TexReg 7067; amended to be effective October 27, 2014, 39 TexReg 8403.

