

Item 9:

Adoption of 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 adoption of 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, 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 April 2010, finding that the reasons for initially adopting the rules in Subchapters A and B continue to exist and that the reasons for adopting Subchapters C and D do not continue to exist. As a result of the 2010 review, the SBEC adopted an amendment to 19 TAC §250.1, new §250.3 and §250.20, and the repeal of SBEC rules in Subchapters C and D effective August 19, 2010.

The review of 19 TAC Chapter 250, Administration, was presented to the SBEC for discussion in February 2014.

BACKGROUND INFORMATION AND SIGNIFICANT ISSUES: 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 establish procedures for SBEC purchasing and SBEC rulemaking. Section 250.20, Petition for Adoption of Rules or Rule Changes, provides procedures for interested persons to file a petition seeking to propose or amend an SBEC rule, as authorized by the Texas Government Code, §2001.021.

An amendment is recommended to 19 TAC §250.20, Petition for Adoption of Rules or Rule Changes, and is presented for discussion and action as a separate item in this agenda.

The rules currently in effect in 19 TAC Chapter 250 are shown in Attachment II.

RULE REVIEW: The notice of proposed review of 19 TAC Chapter 250, Administration, was filed with the *Texas Register* following the February 2014 SBEC meeting. If authorized by the SBEC, the notice of adopted review will be filed with the *Texas Register* following the May 2014 SBEC meeting. The notice of adopted review will state that the SBEC finds the reasons for adopting 19 TAC Chapter 250, Subchapters A and B, continue to exist. Any public comments received during the review of 19 TAC Chapter 250 will also be addressed.

The filing of the notice of adopted review stating that the reasons for adoption continue to exist would not preclude any amendments that may be proposed at different dates through a separate rulemaking process.

FISCAL IMPACT: None.

PUBLIC AND STUDENT BENEFIT: The review of 19 TAC Chapter 250 will result in the continuation of rules reflecting current law.

PROCEDURAL AND REPORTING IMPLICATIONS: None.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: None.

PUBLIC COMMENTS: Following the February 2014 SBEC meeting, notice of the proposed review of 19 TAC Chapter 250 was filed with the *Texas Register*, initiating the official public comment period for the review. At the time this item was prepared, no comments had been received regarding this review. Any public comments received will be provided to the SBEC during the May 2014 meeting, along with any proposed responses.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: A separate item is presented for discussion and action in this agenda to propose an amendment to 19 TAC §250.20, Petition for Adoption of Rules or Rule Changes.

ASSOCIATE COMMISSIONER'S RECOMMENDATION: I recommend that the State Board for Educator Certification:

Adopt the review of 19 TAC Chapter 250, Administration.

Respectfully submitted,

Michele Moore
Associate Commissioner
Educator Leadership and Quality

Staff Member Responsible: Von Byer, Deputy General Counsel
Legal Services

Attachments: I. Statutory Citations
II. Text of 19 TAC Chapter 250, Administration

ATTACHMENT I

Statutory Citations Relating to Review of 19 TAC Chapter 250, Administration

Rule Review

Texas 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 250, Administration**Texas Education Code, §21.035, Administration by Agency:**

The Texas Education 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 (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.
- (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.

Texas Government Code, §2155.076, Protest Procedures:

- (a) The commission and each state agency by rule shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the commission's rules. The rules must include standards for maintaining documentation about the purchasing process to be used in the event of a protest.
- (b) A state agency that is not subject to Chapter 2001 shall provide public notice of its proposed and adopted protest rules and provide a procedure for public comment on the proposed rules.

Texas Government Code, §2161.003, Agency Rules:

A state agency, including an institution of higher education, shall adopt the commission's rules under Section 2161.002 as the agency's or institution's own rules. Those rules apply to the agency's construction projects and purchases of goods and services paid for with appropriated money without regard to whether a project or purchase is otherwise subject to this subtitle.

Texas Government Code, §2260.052, Negotiation (excerpt):

- (c) Each unit of state government with rulemaking authority shall develop rules to govern the negotiation and mediation of a claim under this section. If a unit of state government does not have rulemaking authority, that unit shall follow the rules adopted by the attorney general. A model rule for negotiation and mediation under this chapter shall be provided for voluntary adoption by units of state government through the coordinated efforts of the State Office of Administrative Hearings and the office of the attorney general.

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 conform to the requirements of this subsection and subsection (d) of this section, and shall be resolved in accordance with the procedure set forth in subsections (e)-(f) of this section. Copies of the protest must be mailed or delivered by the protesting party to the TEA and to the other interested parties. For the purposes of this section, "interested parties" means all respondents who have submitted bids, proposals, or offers for the contract involved. Names and addresses of all interested parties may be obtained by sending a written request for this information to the purchasing and contracts director.
- (c) In the event of a timely protest or appeal under this section, the TEA shall not proceed further with the solicitation or with the award of the contract unless the commissioner of education or the commissioner's designee, in consultation with the purchasing and contracts director, makes a written determination that the expeditious award of the contract is necessary to protect substantial interests of the state. A copy of this determination shall be mailed to the protesting party.
- (d) A formal protest petition must be sworn and must contain:
 - (1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
 - (2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;
 - (3) a precise statement of the relevant facts;
 - (4) an identification of the issue or issues to be resolved;
 - (5) argument and authorities in support of the protest; and
 - (6) a statement that copies of the protest have been mailed or delivered to the TEA and other identifiable interested parties.

- (e) The purchasing and contracts director shall have the authority to settle and resolve the dispute concerning the solicitation or award of a contract. The director may solicit written responses to the protest petition from other interested parties, and if he or she makes such a request, the protesting party shall be given notice of the director's request and of any written responses to the request that the director receives. The director may consult with the TEA office of legal services concerning the dispute.
- (f) If the protest is not resolved by mutual agreement, the purchasing and contracts director will issue a written determination on the protest.
 - (1) If the director determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and other interested parties by a letter which sets forth the reasons for the determination.
 - (2) If the director determines that a violation of rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.
 - (3) If the director determines that a violation of rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by a letter which sets forth the reasons for the determination. In such a case, the director has the authority to declare the contract void. If he or she declares the contract void, this fact shall be included in the determination letter.
- (g) The purchasing and contracts director's determination on a protest may be appealed by the protesting party to the commissioner of education or the commissioner's designee. An appeal of the director's determination must be in writing and must be received in the commissioner's office no later than ten working days after the date of the director's determination. An appeal of the determination shall be limited to those issues raised in the protest petition and the determination letter. Copies of the appeal must be mailed or delivered by the appealing party to the TEA and other interested parties and must contain a sworn statement that such copies have been provided.
- (h) The commissioner or the commissioner's designee shall review the protest petition, the purchasing and contracts director's requests for written responses to the protest petition, any written responses received from other interested parties, the determination, and the appeal.
- (i) The commissioner or the commissioner's designee may, in his or her discretion, issue a written decision on the protest or refer the matter to the SBEC for consideration at a regularly scheduled open meeting.
- (j) A decision issued either by the SBEC in an open meeting or in writing by the commissioner or the commissioner's designee shall be the final administrative action of the TEA.

Source: The provisions of this §250.3 adopted to be effective August 19, 2010, 35 TexReg 7067.

Subchapter B. Rulemaking Procedures

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

§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 Texas Education Agency (TEA). The TEA 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 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 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 to begin the rulemaking process or deny the petition, giving reasons for the denial. The TEA 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.

Source: The provisions of this §250.20 adopted to be effective August 19, 2010, 35 TexReg 7067.

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.

Petitions should be signed and submitted to:

Office of Educator Certification and Standards
Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Name:

Affiliation/Organization (if applicable):

Address:

Telephone:

Date:

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