

Item 7:

**Consideration of Petition for Adoption of Rule Change
Concerning 19 TAC Chapter 250, Administration, Subchapter
B, Rulemaking Procedures**

DISCUSSION AND ACTION

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to consider a petition for rulemaking regarding 19 Texas Administrative Code (TAC) Chapter 250, Administration, Subchapter B, Rulemaking Procedures, filed pursuant to Texas Government Code, §2001.021. The petitioner requests the addition of 19 TAC §250.30, Rational Rulemaking. The SBEC must either deny the petition or direct the Texas Education Agency (TEA) staff to initiate rulemaking proceedings.

STATUTORY AUTHORITY: Texas Government Code, §2001.021.

The full text of statutory citations can be found in the statutory authority section of this agenda.

PREVIOUS BOARD ACTION: The SBEC last amended this chapter in July 2022.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC’s rules in 19 TAC 250, Administration, Subchapter B, Rulemaking Procedures, set out the requirements for an interested person to petition the SBEC for the adoption, amendment, or repeal of a rule of the SBEC.

In accordance with the Texas Government Code, §2001.021, the SBEC shall deny the petition or direct the TEA staff to initiate rulemaking proceedings.

The table below summarizes the content of the petitioner’s requests.

Petition to Adopt 19 TAC 250.30(a)
<ol style="list-style-type: none"> 1. Report the methodology, data, and results of the calculations of the fiscal impact as required by Texas Government Code, §2001.0045 of the proposed changes to the rules to the SBEC as part of the agenda. – aligned with other fiscal impact. <ol style="list-style-type: none"> a. If TEA staff claim a change is required for the health, safety, or welfare of students (Texas Government Code, §2001.0045(c)(6), they must specify the bodily injury, medical condition, or measurable welfare outcome that will be prevented by the change. 2. Identify the anticipated impact of the rule in measurable, verifiable, meaningful terms. <ol style="list-style-type: none"> a. Example: “Increase grade 5 math scores by xx%; Reduce teacher attrition by xx%.” b. Non-example: “Field supervisors will provide better support to teacher candidates.” 3. Specify the time when the anticipated impact will manifest (e.g., June 2026). 4. Specify the standards by which the rule change will be judged successful or unsuccessful.

- a. Example: “If 5th grade math scores rise by more than xx%, the rule change was successful. If less than yy%, the change was unsuccessful.”
- 5. Specify the data and methodology for measuring the impact of the rule change, and the date when they will report the results to the board.
 - a. If the research requires additional data from programs, specify how TEA will compensate programs for the cost.
- 6. Specify the required changes to rule (backup plan) if the proposed changes to rule are unsuccessful by the standards set in 4 above.

OTHER COMMENTS AND RELATED ISSUES: Under SBEC rule 19 TAC §250.20, Petition for Adoption of Rules or Rule Changes, the TEA must respond to a rule petition within 60 days even if it is not possible for the SBEC to act upon it within 60 days, as was the case with this petition. As a result, TEA staff presented this petition for rulemaking to the Educator Preparation Stakeholder Group (EPSG) on January 19, 2024 and notified the petitioner that the petition would be considered at the February 16, 2024, meeting.

ASSOCIATE COMMISSIONER’S RECOMMENDATION:

Deny the petition.

Staff Member Responsible:

Kameryn McCain, Director, EPCE Operations

Attachments:

- I. Text of 19 TAC Chapter 250, Administration, Subchapter B, Rulemaking Procedures
- II. Petition to Amend 19 TAC Chapter 250

ATTACHMENT I

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 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 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 TGC, §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.
 - (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. 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;
 - (4) the petitioner files 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.

Statutory Authority: The provisions of this §250.20 issued under the Texas Education Code, §21.035(b) and §21.041(a) and (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; amended to be effective October 21, 2018, 43 TexReg 6843; amended to be effective July 21, 2022, 47 TexReg 4330.

ATTACHMENT II

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 should be signed and submitted:
by mail to Rulemaking Division, Texas Education Agency, 1701 North Congress Avenue, Austin Texas 78701-1494; or by using the email button at the bottom of this petition form or by emailing directly to sbecrules@tea.texas.gov.

Name: Michael Vriesenga

Affiliation/Organization (if applicable): University of Texas at San Antonio

Address: One UTSA Circle, San Antonio, TX 78249

Email Address: michael.vriesenga@utsa.edu

Telephone: 210-458-5797

Date: 12/4/2023

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):

Proposed 19 TAC 250.30. Rational Rulemaking

For any proposed change to SBEC rule, TEA staff shall:

2. Report the methodology, data, and results of the calculations of the fiscal impact as required by Texas Government Code, §2001.0045 of the proposed changes to the rules to the SBEC as part of the agenda.
 - b. If TEA staff claim a change is required for the health, safety, or welfare of students (Texas Government Code, §2001.0045(c)(6), they must specify the bodily injury, medical condition, or measurable welfare outcome that will be prevented by the change.
3. Identify the anticipated impact of the rule in measurable, verifiable, meaningful terms.
 - b. Example: "Increase grade 5 math scores by xx%; Reduce teacher attrition by xx%."
 - c. Non-example: "Field supervisors will provide better support to teacher candidates."
4. Specify the time when the anticipated impact will manifest (e.g., June 2026).
5. Specify the standards by which the rule change will be judged successful or unsuccessful.
 - b. Example: "If 5th grade math scores rise by more than xx%, the rule change was successful. If less than yy%, the change was unsuccessful."

6. Specify the data and methodology for measuring the impact of the rule change, and the date when they will report the results to the board.
 - b. If the research requires additional data from programs, specify how TEA will compensate programs for the cost.
7. Specify the required changes to rule (backup plan) if the proposed changes to rule are unsuccessful by the standards set in 4 above.

Statutory authority for the proposed rule action: Texas Education Code Sec. 21.040(4).

Why is this rule action necessary or desirable?

This rule will enhance the transparency, effectiveness, and efficiency of SBEC rules.

Transparency: For example, Item 14 from the September 29, 2023 SBEC meeting asserted “The proposed repeal and new rules do not impose a cost on persons required to comply with the rules” in the Public and Student Benefit Section (page 27). However, changes in the document clearly imposed costs on regulated persons, for example, the proposed TAC 228.101(b)(5)(A) requiring three informal observations clearly involved transportation and staff time costs. By requiring TEA staff to include the data, methods, and results they use to reach the cost conclusions will increase transparency.

Effectiveness: As people interested in producing educators, we want SBEC rules to have a tangible impact. If the rules don’t make a difference, then they should not be rules. Often the impact of a rule is implied, but not explicit. Using the example of TAC 228.101(b)(5)(A) above, we can agree that an informal observation is sometimes a useful tool for improving individual candidate performance, but when those observations become a state mandate, and programs are subject to sanctions for not conducting those observations, then TEA staff should be able to state clearly what they expect the rule to produce in meaningful, measurable terms. Only if there is a specific, meaningful, measurable impact should the rule go into effect.

Efficiency: Ronald Reagan famously quipped, “Government programs, once launched, never disappear.” The proposed rule would require that TEA staff actively monitor whether changes to SBEC rule are having the desired impact, compare the actual impact to pre-determined standards of effectiveness, and then change or delete the rule if it is not having the desired impact. Rather than smothering EPPs under an ever-expanding list of unexamined rules, the proposed rule would require plans and standards for monitoring and eliminating ineffective rules.

Petitioner's Signature: Michael P. Vriesenga

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