The Texas Education Agency (TEA) proposes amendments to §102.1309 and §102.1315, concerning innovation districts. The proposed amendments would implement changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by reflecting the recodification of Texas Education Code (TEC), Chapters 41 and 42, and specifying additional reasons the commissioner may terminate a district's designation as a district of innovation.

BACKGROUND INFORMATION AND JUSTIFICATION: Chapter 102, Subchapter JJ, establishes provisions relating to the applicable processes and procedures for innovation districts.

The proposed amendment to §102.1309, Prohibited Exemptions, would update statutory references to align with HB 3, 86th Texas Legislature, 2019, which recodified sections of TEC, Chapter 41, into TEC, Chapter 49, and recodified sections of TEC, Chapter 42, into TEC, Chapter 48.

The proposed amendment to §102.1315, Termination, would also reflect changes in statute made by HB 3. TEC, §12A.008(b-1), was amended by HB 3 to extend the commissioner's authority to terminate a district's designation as a district of innovation for failure to comply with the duty to discharge or refuse to hire certain employees or applicants (1) for employment under TEC, §12.1059; (2) convicted of certain offenses under TEC, §22.085; or (3) not eligible for employment in public schools under TEC, §22.092, as added by HB 3. The proposed amendment to §102.1315(a)(3) would add these provisions to the rule.

FISCAL IMPACT: Jeff Cottrill, deputy commissioner for governance and accountability, has determined that for the first five-year period the proposal is in effect there would be no fiscal impact to state or local government, including school districts and open-enrollment charter schools, 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 Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §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 Texas Government Code, §2001.0045.

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

GOVERNMENT GROWTH IMPACT: 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, it would expand an existing regulation. The proposed amendment to §102.1315 would implement HB 3, 86th Texas Legislature, 2019, by adding criteria that are used to determine if a district's innovation plan may be terminated. Specifically, the commissioner would be allowed to terminate a district's designation as a district of innovation if the district fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under TEC, §§12.1059, 22.085, or 22.092.

The proposed amendments 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: Mr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law. The amendment to §102.1309 would update the sections of statute that are prohibited from exemption based on recently passed legislation. In addition, the amendment to §102.1315 would
provide school districts with clarification on commissioner authority to terminate a district's designation as a district of innovation. 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 data or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that 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 October 25, 2019, and ends November 25, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on October 25, 2019. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §12A.008(b-1), as added by House Bill 3, 86th Texas Legislature, 2019, which allows the commissioner of education to terminate a district's designation as a district of innovation if it fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment; and TEC, §12A.009, which authorizes the commissioner to adopt rules to implement districts of innovation.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §12A.008(b-1) and §12A.009.

§102.1309. Prohibited Exemptions.

(a) An innovation district may not be exempted from the following sections of the Texas Education Code (TEC) and the rules adopted thereunder:

(1) a state or federal requirement, imposed by statute or rule, applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D, including, but not limited to, the requirements listed in the TEC, §12.104(b), and:

(A) TEC, Chapter 22, Subchapter B;

(B) TEC, Chapter 25, Subchapter A, §§25.001, 25.002, 25.0021, 25.0031, and 25.004;


(D) TEC, Chapter 29, Subchapter G;

(E) TEC, Chapter 30, Subchapter A;

(F) TEC, §30.104;

(G) TEC, Chapter 34;

(H) TEC, Chapter 37, §§37.006(l), 37.007(e), 37.011, 37.012, 37.013, and 37.020; and

(I) TEC, Chapter 39;

(2) TEC, Chapter 11, Subchapters A, C, D, and E, except that a district may be exempt from the TEC, §11.1511(b)(5) and (14) and §11.162;
(3) TEC, Chapter 13;
(4) TEC, Chapter 41;
(5) TEC, Chapter 42;
(6) TEC, Chapter 44, §§44.0011, 44.002, 44.003, 44.004, 44.0041, 44.005, 44.0051, 44.006, 44.007, 44.0071, 44.008, 44.009, 44.011, 44.0312, 44.032, 44.051, 44.052, 44.053, and 44.054;
(7) TEC, Chapter 45, §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, 45.203; [and]
(8) TEC, Chapter 46; [.
(9) TEC, Chapter 48; and
(10) TEC, Chapter 49.

(b) In addition to the prohibited exemptions specified in subsection (a) of this section, an innovation district may not be exempted from:

(1) a requirement of a grant or other state program in which the district voluntarily participates;
(2) duties that the statute applies to the execution of that power if a district chooses to implement an authorized power that is optional under the terms of the statute; and
(3) requirements imposed by provisions outside the TEC, including requirements under the Texas Government Code, Chapter 822.

§102.1315. Termination.

(a) The commissioner of education may:

(1) terminate a district's designation as a district of innovation if, beginning with its ratings in the year of designation, the district is assigned for two consecutive school years:

(A) a final unacceptable academic performance rating under the Texas Education Code (TEC), §39.054;

(B) a final unacceptable financial accountability rating under the TEC, §39.082; or

(C) a final unacceptable academic performance rating under the TEC, §39.054, for one of the school years and a final unacceptable financial accountability rating under the TEC, §39.082, for the other school year; [or]

(2) permit the district to amend the district's local innovation plan to address concerns specified by the commissioner in lieu of terminating the designation as described in paragraph (1) of this subsection; or [.

(3) terminate a district's designation as a district of innovation if the district:

(A) fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment under the TEC, §12.1059;

(B) fails to comply with the duty to discharge or refuse to hire certain employees or applicants convicted of certain offenses under the TEC, §22.085; or

(C) fails to comply with the duty to discharge or refuse to hire certain employees or applicants not eligible for employment in public schools under the TEC, §22.092.

(b) The commissioner shall terminate a district's designation as a district of innovation if, beginning with its ratings in the year of designation, the district is assigned for three consecutive school years:

(1) a final unacceptable academic performance rating under the TEC, §39.054;

(2) a final unacceptable financial accountability rating under the TEC, §39.082; or

(3) any combination of one or more unacceptable ratings under paragraph (1) of this subsection and one or more unacceptable ratings under paragraph (2) of this subsection.
(c) Upon termination of an innovation plan, a district must return to compliance with all specified areas of the TEC by a date to be determined by the commissioner.

(d) A decision by the commissioner under this section is final and may not be appealed.