The State Board of Education (SBOE) proposes an amendment to §30.1, concerning petitioning for the adoption of rule changes. The proposed amendment would update the SBOE petition procedures to allow for electronic submission of a petition authorized under Texas Government Code (TGC), §2001.021.

**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 SBOE adopted §30.1 effective December 5, 2004. Prior to the adoption of §30.1, procedures to petition for the adoption of changes to SBOE rules were included as part of the SBOE's operating rules. Effective April 26, 2009, an amendment adopted in rule the petition form to be used to submit a petition. Effective May 23, 2017, an amendment updated the petition form adopted in rule to require the petitioner to indicate that the petitioner meets one of the four definitions of an interested person specified in statute and added language to specify the reasons the SBOE may deny a petition for rulemaking.

The proposed amendment to §30.1 would update the SBOE's petition procedures, including the petition form included as Figure: 19 TAC §30.1(a), to improve efficiency by ensuring that an interested person can submit the petition for rulemaking electronically. In addition, the proposed amendment to Figure: 19 TAC §30.1(a) would specify one Texas Education Agency (TEA) division as the collection point for all petitions submitted to the SBOE. This would ensure timely acknowledgement and reviewing of a petition by TEA staff for consideration by the SBOE at a future meeting.

The proposed amendment to §30.1(b) would add "calendar" to the phrase 60 days to clarify the timeline for responding to a petition.

The proposed amendment to §30.1(a), (b)(1) and (2), and (c) would replace "commissioner" with "TEA staff" to reflect that the initial review of the merits of the petition is conducted by TEA staff for recommendation to the SBOE.

In addition, the proposed amendment to §30.1(d)(4)(A) would clarify that the SBOE may deny a petition if the petition is filed within one year of the SBOE denying a petition on a similar rule or the same subject matter. This change would address similar or duplicate petitions submitted within one year. The time period of one year is already established in rule and not proposed to be changed.

The proposed amendment would also include technical edits throughout §30.1 to improve readability.

The SBOE approved the proposed amendment for first reading and filing authorization at its January 29, 2021 meeting.

**FISCAL IMPACT:** Megan Aghazadian, deputy commissioner for operations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government 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: 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 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: Ms. Aghazadian 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 providing another means by which an interested person can file a petition for rulemaking, creating a more efficient process, and reflecting 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: 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 March 5, 2021, and ends at 5:00 p.m. on April 9, 2021. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_StateBoard_of_Education_Rules/. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2021 in accordance with the SBOE board operating policies and procedures. 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 March 5, 2021.

STATUTORY AUTHORITY. The amendment is proposed under Texas Government Code, §2001.021, which authorizes a state agency to prescribe by rule the form for a petition and the procedure for the submission, consideration, and disposition.


<rule>

§30.1. Petition for Adoption of Rule Changes.

(a) Any interested person as defined in Texas Government Code (TGC) , §2001.021(d), may petition for the adoption, amendment, or repeal of a rule of the State Board of Education (SBOE) by filing a petition on the [a form provided in this subsection. The petition shall be signed and submitted to the Texas Education Agency (TEA) [commissioner of education] . The TEA staff [In consultation with the persons in the Texas Education Agency who are responsible for the area with which the rule is concerned [the commissioner] 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 §30.1(a) [Figure: 19 TAC §30.1(a)]

(b) In accordance with TGC [the Texas Government Code] , §2001.021, the TEA staff [agency] must respond to the petitioner within 60 calendar days of receipt of the petition.

(1) Where possible, the TEA staff [commissioner's] recommendation concerning the petition shall be placed on the next SBOE agenda, and the SBOE shall act on the petition within 60 calendar days [the 60-day time limit] .
(2) Where the time required to review the petition or the scheduling of SBOE meetings will not permit the SBOE to act on the petition within the required 60 calendar days, the TEA staff [commissioner or a designee] shall respond to the petitioner within the required 60 calendar days, notifying the petitioner of the date of the SBOE meeting at which the TEA staff recommendation will be presented to the SBOE for action.

(c) The SBOE will review the petition and the TEA staff recommendation [of the commissioner] and will either deny the petition, giving reasons for the denial, or direct the TEA staff [commissioner] to begin the rulemaking process [or deny the petition, giving reasons for the denial]. The TEA staff [commissioner or designee] will notify the petitioner of the SBOE’s action related to the petition.

(d) The SBOE may deny a petition on the following grounds:

(1) the SBOE does not have jurisdiction or authority to propose or adopt the petitioned rule;
(2) the petitioned rule conflicts with a statute, court decision, another rule proposed or adopted by the SBOE, or other law;
(3) the SBOE 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 [inappropriately using the opportunity to file a rulemaking petition under this section, as evidenced by filing] a petition:
   (A) within one year of the SBOE denying a [having the] petition on a similar rule or the same subject matter [denied]; or
   (B) to amend a rule proposed or adopted by the SBOE that has not yet become effective; or
(5) any other reason the SBOE determines is grounds for denial.

(e) If the SBOE initiates rulemaking procedures in response to a petition, the rule text which the SBOE proposes may differ from the rule text proposed by the petitioner.