

The Texas Education Agency (TEA) proposes amendments to §§102.1307, 102.1309, and 102.1313, concerning innovation districts. The proposed amendments would clarify reporting requirements for designated districts of innovation, update the list of prohibited exemptions, and clarify requirements for renewal of a local innovation plan.

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

The proposed amendment to Figure: 19 TAC §102.1307(d) would clarify the instructions and add specific fields for the district's county district number and month, day, and year for the term of the district's plan, which may not exceed five years. The proposed amendment to the figure would also add a specific checkbox for Texas Education Code (TEC), §21.102, Probationary Contract, which was not originally included in the figure but for which a specific exemption is claimed. Additionally, the proposed amendment to the figure would remove TEC, Chapter 21, Educators, Subchapter D, Continuing Contracts, and Subchapter E, Term Contracts. Districts may still claim exemptions for specific provisions in those subchapters. The figure would also remove TEC, §44.903, Energy Efficient Light Bulbs in Instructional Facilities, which was repealed by Senate Bill (SB) 668 and SB 1376, 86th Texas Legislature, 2019, and is no longer available for exemption.

The proposed amendment to §102.1307(g) would require the district to provide to TEA a link to the local innovation plan as posted on the district's website not later than the 15th day after the date on which the board of trustees finalizes a local innovation plan either through adoption, amendment, or renewal. Currently, the rule requires districts to submit a copy of the plan rather than a link. This change would facilitate the confirmation that, pursuant to TEC, §12A.0071, and 19 TAC §102.1305(e), the plan is clearly posted on the district's website for the term of the designation as an innovation district and would enable TEA to fulfill its requirement under TEC, §12A.0071, to post the current local innovation plan on TEA's Internet website.

The proposed amendment to §102.1309(a)(1)(H) would clarify that TEC, §37.005, Suspension, is prohibited from exemption. If a district elects to suspend a student pursuant to TEC, §37.005, it must comply with the requirements in that section. New subsection (a)(1)(J) would be added to include TEC, Chapter 39A, as a prohibited exemption to reflect the prohibition in TEC, §12A.004(a)(4). Additionally, the proposed amendment would add new subsection (a)(3) and (4) to clarify that TEC, Chapter 12, Subchapter C, and TEC, Chapter 12A, respectively, are prohibited from exemption. References to TEC, Chapter 41 and Chapter 42, would be removed from subsection (a) to reflect the repeal of those chapters from the TEC.

The proposed amendment to §102.1309 would also add new subsection (b)(3) to clarify that exemption from a requirement that would otherwise qualify the district for participation in a grant or program in the TEC is prohibited.

The proposed amendment to §102.1313(a)(3) would clarify that the district is no longer required to notify the commissioner of the board's intention to vote on the adoption of the renewal of a local innovation plan. Additionally, the proposed amendment would add new subsection (a)(3)(A) and (B). New subparagraph (A) would require the district to meet eligibility requirements under 19 TAC §102.1303 in order to be eligible to renew a local innovation plan, and new subparagraph (B) would clarify that a board of trustees that chooses to renew its local innovation plan must vote on the adoption of the renewal of the plan no later than the date on which the term of the current plan ends.

FISCAL IMPACT: Ashley Jernigan, associate commissioner for governance, has determined that for the first five-year period the proposal is in effect, there are no additional costs 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, or 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 existing regulations. The proposed amendment to §102.1309 provides clarity by adding specific chapters, subchapters, and sections of the TEC from which a district of innovation may not be exempt. The proposed amendment to §102.1313 adds eligibility criteria for the purposes of renewing a local innovation plan and clarifies the final date on which a local innovation plan may be renewed by a board of trustees.

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: Ms. Jernigan 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 updates to Figure: 19 TAC §102.1307(d) that would clarify the instructions, add specific fields for district identification number and dates (M/D/YY) for the term of the plan, and remove a specific field to align with current law. Additionally, the proposed amendments would provide clarification regarding prohibited exemptions and the eligibility and timeline with respect to the renewal process and ensure 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 existing rule. The statutory citations being added are already prohibited pursuant to §102.1309(b); however, the addition specifically cites them in the rule under subsection (a). Additionally, the amendment to §102.1309 mirrors recently passed legislation, removes recodified chapters of code, and clarifies limitations of permissible exemptions. The amendment to §102.1313 specifies that the eligibility requirements for initial adoption of local innovation plan are applicable to renewal of a local innovation plan and clarifies the latest date on which the board of trustees may finalize the renewal of a local innovation plan. 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 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 July 15, 2022, and ends August 15, 2022. 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 July 15, 2022. 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/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code, §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.009.

<rule>

§102.1307. Adoption of Local Innovation Plan.

- (a) The board of trustees may not vote on adoption of a proposed local innovation plan unless:
 - (1) the final version of the proposed plan has been available on the district's website for at least 30 days;
 - (2) the board of trustees has notified the commissioner of education of the board's intention to vote on adoption of the proposed plan; and
 - (3) the district-level committee established under ~~the~~ Texas Education Code (TEC), §11.251, has held a public meeting to consider the final version of the proposed plan and has approved the plan by a majority vote of the committee members. This public meeting may occur at any time, including up to or on the same date at which the board intends to vote on final adoption of the proposed plan.
- (b) A board of trustees may adopt a proposed local innovation plan by an affirmative vote of two-thirds of the membership of the board.
- (c) On adoption of a local innovation plan, the district:
 - (1) is designated as a district of innovation under this subchapter for the term specified in the plan but no longer than five calendar years, subject to ~~the~~ TEC, §12A.006;
 - (2) shall begin operation in accordance with the plan; and
 - (3) is exempt from state requirements identified under ~~the~~ TEC, §12A.003(b)(2).
- (d) The district shall notify the commissioner of approval of the plan along with a list of approved TEC exemptions by completing the agency form provided in the figure in this subsection.
~~Figure: 19 TAC §102.1307(d)~~ ~~Figure: 19 TAC §102.1307(d)~~
- (e) A district's exemption described by subsection (c)(3) of this section includes any subsequent amendment or redesignation of an identified state requirement, unless the subsequent amendment or redesignation specifically applies to an innovation district.
- (f) The district shall ensure that a copy of the local innovation plan is posted on the district's website in accordance with ~~the~~ TEC, §12A.0071, for the term of the designation as an innovation district.
- (g) Not later than the 15th day after the date on which the board of trustees finalizes a local innovation plan either through adoption, amendment, or renewal, the district shall provide a link to the local innovation plan as posted on the district's website ~~copy of the current local innovation plan~~ to the Texas Education Agency for posting on the agency website.

§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;
 - (C) TEC, Chapter 28, §§28.002, 28.0021, 28.0023, 28.005, 28.0051, 28.006, 28.016, 28.0211, 28.0213, 28.0217, 28.025, 28.0254, 28.02541, 28.0255, 28.0258, 28.0259, and 28.026;
 - (D) TEC, Chapter 29, Subchapter G;
 - (E) TEC, Chapter 30, Subchapter A;

- (F) TEC, §30.104;
 - (G) TEC, Chapter 34;
 - (H) TEC, Chapter 37, §§ 37.005, 37.006(l), 37.007(e), 37.011, 37.012, 37.013, and 37.020; [and]
 - (I) TEC, Chapter 39; and
 - (J) TEC, Chapter 39A.
- (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 12, Subchapter C;
 - (4) TEC, Chapter 12A;
 - (5) ~~(4)~~ 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;
 - (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) a requirement of a grant or other state program authorized in the TEC that would otherwise entitle the district to participation in that program; and
 - (4) ~~(3)~~ requirements imposed by provisions outside the TEC, including requirements under [the] Texas Government Code, Chapter 822.

§102.1313. Amendment, Rescission, or Renewal.

- (a) A district innovation plan may be amended, rescinded, or renewed if the action is approved by a majority vote of the district-level committee established under [the] Texas Education Code (TEC), §11.251, or a comparable committee if the district is exempt from that section, and a two-thirds majority vote of the board of trustees.
- (1) Amendment. An amendment to an approved plan does not change the date of the term of designation as an innovation district. Exemptions that were already formally approved are not required to be reviewed.
 - (2) Rescission. A district must notify the Texas Education Agency within five business days of rescission and provide a date at which time it will be in compliance with all sections of the TEC, but no later than the start of the following school year.
 - (3) Renewal. During renewal, all sections of the plan and exemptions shall be reviewed and the district must follow all components outlined in §102.1307 of this title (relating to Adoption of Local Innovation Plan) , except that a district is not required to notify the commissioner of

education of the board's intention to vote on the adoption of the proposed plan under §102.1307(a)(2) of this title .

(A) A district must meet eligibility requirements under §102.1303 of this title (relating to Eligibility) in order to renew an innovation plan.

(B) The board of trustees may vote on adoption of the renewal of the innovation plan no later than the date on which the term of the current plan ends, subject to §102.1311 of this title (relating to Term).

(b) The district shall notify the commissioner [~~of education~~] of any actions taken pursuant to subsection (a) of this section along with the associated TEC exemptions and local approval dates.