

Item 9:**Consider and Take Appropriate Action on Proposed Amendments to 19 TAC Chapter 250, Administration, Subchapter A, Purchasing, §250.1, Historically Underutilized Business (HUB) Program, and Subchapter B, Rulemaking Procedures, §250.20, Petition for Adoption of Rules or Rule Changes****DISCUSSION AND ACTION**

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to discuss and propose amendments to 19 TAC Chapter 250, Administration, Subchapter A, Purchasing, §250.1, Historically Underutilized Business (HUB) Program, and Subchapter B, Rulemaking Procedures, §250.20, Petition for Adoption of Rules or Rule Changes. The proposed amendment to §250.1 would reflect a technical change that would update in rule relevant cross references to the state's Historically Underutilized Business (HUB) program. The proposed amendment to §250.20 would implement legislation from the 84th Texas Legislature, 2015, to update the petition form for adoption of rules or rule changes to require the petitioner to indicate that the petitioner meets one of the four definitions of an *interested person*.

STATUTORY AUTHORITY: The statutory authority for 19 TAC Chapter 250, Subchapter A, §250.1, is the Texas Education Code (TEC), §§21.035(b), 21.040(6), and 21.041(a), and Texas Government Code (TGC), §2161.003. The statutory authority for Subchapter B, §250.20, is the TEC, §21.035(b) and §21.041(a) and (b)(1), and TGC, §2001.021, as amended by House Bill 763, 84th Texas Legislature, 2015.

TEC, §21.035(b), requires the Texas Education Agency (TEA) to provide the SBEC's administrative functions and services.

TEC, §21.040(6), requires the SBEC to develop and implement policies that clearly define the respective responsibilities of the SBEC and TEA staff.

TEC, §21.041(a), authorizes the SBEC to adopt rules as necessary to implement its procedures.

TEC, §21.041(b)(1), requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B.

TGC, §2001.021, authorizes a state agency to prescribe by rule the form for a petition and the procedure for the submission, consideration, and disposition.

TGC, §2161.003, requires the SBEC to adopt the Comptroller's rules under §2161.002, as the SBEC's own rules regarding the purchase of goods or services paid for with appropriated money.

EFFECTIVE DATE: If approved for filing as proposed in May 2018 and if adopted, subject to State Board of Education (SBOE) review, at the August 2018 SBEC meeting, the proposed effective date of the proposed amendments to §250.1 and §250.20 would be October 21, 2018 (20 days after filing as adopted with the *Texas Register*). The proposed effective date is also based on the SBEC and SBOE meeting schedules.

PREVIOUS BOARD ACTION: The SBEC last amended §250.1 effective August 19, 2010, and last amended §250.20 effective October 27, 2014.

BACKGROUND INFORMATION AND JUSTIFICATION: TGC, §2161.003, requires state agencies to adopt the Comptroller of Public Accounts' rules under TGC, §2161.002, as the SBEC's own rules regarding the purchases of goods or services paid for with appropriated money. Section 250.1, Historically Underutilized Business (HUB) Program, states that the SBEC adopts the rules of the Comptroller of Public Accounts found in Title 34 concerning the HUB Program. The section numbers in 34 TAC cross-referenced in §250.1 have been renumbered; therefore, a technical change is required to update relevant cross references in rule. The proposed amendment to §250.1 in Attachment II would replace the current cross references to §§20.11-20.22 and §§20.24-20.28, and update the rule with the correct, renumbered sections, §§20.281-20.298.

Section 250.20, Petition for Adoption of Rules or Rule Changes, provides the process for interested persons to petition the SBEC for changes to rules, in accordance with the TGC, §2001.021.

House Bill 763, 84th Texas Legislature, 2015, amended the TGC, §2001.021, to define the term *interested person* for the purposes of petitioning a rule change. The statute states that an *interested person* must be one of the following: (1) a resident of Texas; (2) a business entity located in Texas; (3) a governmental subdivision located in Texas; or (4) a public or private organization located in Texas that is not a state agency.

The proposed amendment to Figure: 19 TAC §250.20(a) in Attachment II would implement House Bill 763 to update the petition form in rule by adding the four definitions of an *interested person* and requiring the petitioner to indicate all applicable definitions.

FISCAL IMPACT: The TEA staff has determined that there is no additional fiscal impact on state and local governments and there are no additional costs to entities required to comply with the proposed amendments. In addition, there is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required. There is no effect on local economy; therefore, no local employment impact statement is required under TGC, §2001.002. The proposed amendments do not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, are not subject to TGC, §2001.0045.

GOVERNMENT GROWTH IMPACT: The 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 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 expand, 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 AND STUDENT BENEFIT: The public and student benefit of the proposed amendments would be correctly citing cross references in rule and aligning the rule with statute by including the four definitions of *interested person* in the petition form. The proposed amendments do not impose a cost on persons required to comply with the rules.

PROCEDURAL AND REPORTING IMPLICATIONS: The proposed amendment to §250.1 would have no procedural and reporting implications. The proposed amendment to §250.20 would require a petitioner to select on the petition form all the definitions of *interested person* that are applicable.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: The proposed amendments would have no locally maintained paperwork requirements.

PUBLIC COMMENTS: The public comment period on the proposal begins June 22, 2018, and ends July 23, 2018. The SBEC will take registered oral and written comments on this item at the August 3, 2018 meeting in accordance with the SBEC Board operating policies and procedures.

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

Approve the proposed amendments to 19 TAC Chapter 250, Administration, Subchapter A, Purchasing, §250.1, Historically Underutilized Business (HUB) Program, Subchapter B, Rulemaking Procedures, §250.20, Petition for Adoption of Rules or Rule Changes, to be published as proposed in the *Texas Register*.

Staff Members Responsible:

Christie Pogue, SBEC Manager, Educator Leadership and Quality
Cristina De La Fuente-Valadez, Director, Rulemaking

Attachments:

- I. Statutory Citations
- II. Text of Proposed Amendments to 19 TAC Chapter 250, Administration, Subchapter A, Purchasing, §250.1, Historically Underutilized Business (HUB) Program, Subchapter B, Rulemaking Procedures, §250.20, Petition for Adoption of Rules or Rule Changes (including Figure: 19 TAC §250.20(a))

ATTACHMENT I**Statutory Citations Relating to Proposed Amendments to 19 TAC Chapter 250, Administration, Subchapter A, Purchasing, §250.1, Historically Underutilized Business (HUB) Program, Subchapter B, Rulemaking Procedures, §250.20, Petition for Adoption of Rules or Rule Changes****Texas Education Code, §21.035, Administration by Agency (excerpt):**

- (b) The 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. If a state agency requires signatures for a petition under this section, at least 51 percent of the total number of signatures required must be of residents of this state.
- (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.
- (d) For the purposes of this section, an interested person must be:
 - (1) a resident of this state;
 - (2) a business entity located in this state;
 - (3) a governmental subdivision located in this state; or
 - (4) a public or private organization located in this state that is not a state agency.

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.

ATTACHMENT II
Text of Proposed Amendments to 19 TAC

Chapter 250. Administration

Subchapter A. Purchasing

§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, §§20.281-20.298 [~~§§20.11-20.22 and §§20.24-20.28~~], concerning the Historically Underutilized Business (HUB) Program.

Subchapter B. Rulemaking Procedures

§250.20. Petition for Adoption of Rules or Rule Changes.

- (a) Any interested person as defined in Texas Government Code, §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 a 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 proposal to determine whether to recommend that rulemaking proceedings be initiated or that the petition be denied.

Figure: 19 TAC §250.20(a) [~~Figure: 19 TAC §250.20(a)~~]

- (b) In accordance with the Texas Government Code, §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 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 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 direct the TEA staff to begin the rulemaking process or deny the petition, giving reasons for the denial. 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; 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.

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 Leadership and Quality
Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Name:

Affiliation/Organization (if applicable):

Address:

Telephone:

Date:

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):

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