



Districts of Innovation

What is a “District of Innovation”?

A District of Innovation is a concept passed by the 84th Legislative Session in House Bill 1842, effectively immediately, that gives traditional independent school districts most of the flexibilities available to Texas’ open enrollment charter schools. To access these flexibilities, a school district must adopt an innovation plan, as set forth in Texas Education Code chapter 12A.

What school districts are eligible to be Districts of Innovation?

To be eligible for designation as a District of Innovation, a school district’s most recent academic performance rating must be at least acceptable.

Why would a school district choose to pursue this option?

A local school district may want to pursue specific innovations in curriculum, instruction, governance, parent or community involvement, school calendar, budgeting, or other ideas. An innovation plan also allows a school district to gain exemption from many Texas Education Code requirements.

Essentially, innovation plans will be about local control. Each district will pursue designation as a District of Innovation for different reasons, and no two plans may look the same. Community members should note that each innovation plan will be unique to the local school district. The experiences of other school districts may be informative, but may not directly relate to the purpose or progress of a plan in another location.

What legal requirements could a school district avoid by becoming a District of Innovation?

A District of Innovation may adopt a plan that includes exemptions from most of the same state laws that are not applicable to open enrollment school districts. These laws could include:

- Site-based decision making processes (to the extent required by state law)
- Uniform school start date
- Minimum minutes of instruction
- Class size ratio
- The 90 percent attendance rule (but compulsory attendance still applies)

- Student discipline provisions (with some key exceptions, like the requirement to have a code of conduct and restrictions on restraint and seclusion)
- Teacher certification (except as required by federal law)
- Teacher contracts
- Teacher benefits, including state minimum salary schedule, duty-free lunch, and planning periods
- Teacher appraisal system

TEA has rulemaking authority regarding Districts of Innovation. The agency anticipates publishing draft rules in February 2016, and these rules will include as an appendix a list of legal provisions from which a District of Innovation may seek exemption. Districts that are interested in pursuing an innovation plan are encouraged to begin work on formulating ideas and perhaps creating a committee, but before adopting a final plan, districts will likely want to review the agency's rules.

What legal requirements will continue to apply to all school districts, including Districts of Innovation?

An innovation plan cannot seek exemption from a state or federal requirement applicable to open enrollment charter schools, certain parts of Chapter 11, state requirements for curriculum and graduation, and academic and financial accountability. Laws from which a District of Innovation cannot be exempt include statutes regarding:

- Elected boards of trustees
- Powers and duties of school boards, superintendents, and principals
- PEIMS
- Criminal history record checks and educator misconduct reporting
- Curriculum and graduation requirements
- Bilingual education
- Special education
- Prekindergarten
- Academic accountability, including student assessments
- Financial accountability and related reporting
- Open meetings
- Public records
- Public purchasing under the Texas Local Government Code and conflicts of interest
- Nepotism

- Other state and federal laws outside of the Texas Education Code

What impact could innovations have on school funding?

School district funding will remain substantially the same for Districts of Innovation. Unlike innovation zones in other states, this statutory option in Texas was not created to provide additional grant funding to participating districts. Depending on a district's innovation plan, the district may have some flexibility in the use of compensatory education funds. Districts are encouraged to think about how their flexibility choices, especially with respect to the school calendar and attendance, could impact funding calculations.

What impact could innovations have on school personnel?

Possibly none. But depending on the choices a district includes in its local innovation plan, an innovation plan could provide for substantial changes to key employment policies related to employment contracts and benefits of employment. Districts of Innovation transitioning to plans that include changes to employment practices will need to work with their school attorneys to honor existing contracts.

Can a District of Innovation be created to respond to needs or opportunities at a particular subset of campuses?

Chapter 12A does not specifically permit or prohibit adopting an innovation plan that proposes innovations at only a subset of district campuses. In other states, however, innovation zones have started at a small number of campuses (like a single feeder pattern) before expanding to other campuses. TEA rules may address this question. In the alternative, a district may consider the option of a campus conversion charter for a single campus or group of campuses.

What process is required to adopt an innovation plan?

The process is initiated by either:

- a resolution of the board of trustees; or
- a petition signed by a majority of the members of the district-level advisory committee.

Promptly after the resolution or petition, the board must hold a public hearing to consider whether the district should develop an innovation plan. At the conclusion of the hearing or soon thereafter, the board may:

- decline to pursue the designation as a District of Innovation; or
- appoint a committee to develop a plan.

The membership of the committee is not specified in statute, but as a practical matter, the members of the committee must be able to write a comprehensive plan with the elements specified below, clearly articulate the purpose of the plan, and persuade the school community of the value of the plan.

The plan must:

- provide for a comprehensive educational program for the district which may include innovations in curriculum, instructional methods, community and parent involvement, campus governance, modifications to the school day or year, budgeting and sustainable funding, local accountability, and other innovations prescribed by the board; and
- identify the Texas Education Code provisions from which the District of Innovation should be exempted, within the parameters described above.

The board cannot approve the plan until the final plan has been posted online for 30 days, the commissioner has been notified, the district-level advisory committee (DAC) has held a public meeting to consider the final plan, and the DAC has approved the plan by a majority vote. The public hearing and vote of the DAC may occur at the same meeting.

The board of trustees may then vote to approve the plan. The vote must pass by a two-thirds majority vote. The district may then function in accordance with the plan and be exempt from the specified Education Code mandates.

The commissioner of education does not approve districts' innovation plans, per se, but he does have rulemaking authority regarding districts of innovation. The commissioner will also have reporting obligations to the Legislature about the use of this statutory option and what laws districts have selected for exemption.

Districts are encouraged to use an abundance of caution throughout the adoption process to adhere to Chapter 12A, TEA rules, and state laws regarding open meetings and open records. Questions will inevitably arise about the application of the Texas Open Meetings Act to committee meetings and meetings of the DAC. School districts should consult their school attorneys regularly and keep the process as transparent as possible to avoid legal challenges that could delay the implementation of an innovation plan.

How long does an innovation plan stay in effect?

The plan may have a term of up to five years, and it may be amended, rescinded, or renewed by a majority vote of the DAC or a comparable committee if the District of Innovation is exempt from having a DAC, and the board of trustees in the same manner required for initial adoption. Districts may want to review the plan more frequently, perhaps on the biennium to consider new legislation.

If a District of Innovation receives unacceptable academic and/or financial performance ratings for two consecutive years, the commissioner may terminate the innovation plan or require the district to amend its plan. If a District of Innovation receives unacceptable academic and/or financial performance ratings for three consecutive years, the commissioner must terminate the innovation plan.

What impact could designation as a District of Innovation have on district policy?

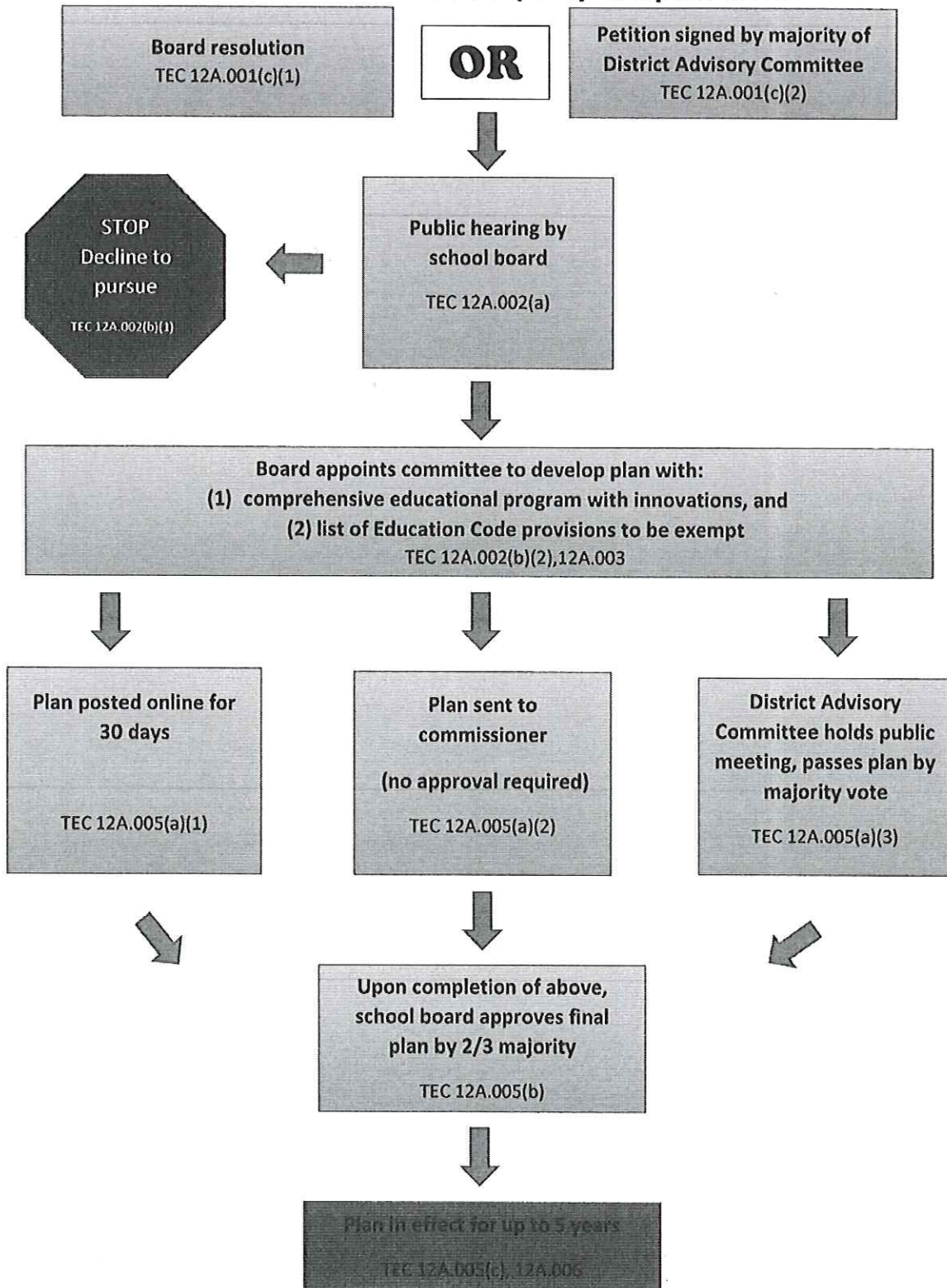
A District of Innovation will likely need to make changes to LOCAL policies and may need adjustments to LEGAL policies to reflect that some legal provisions may be affected by the district's innovation plan. After TEA publishes rules and the list of legal provisions from which a District of Innovation may seek an exemption, TASB Policy Service will be able to help each District of Innovation evaluate necessary changes to the district's policy manual, which could vary greatly from district to district, depending on the extent of the district-wide exemptions included in the innovation plan.

For more information on this and other school law topics,
visit TASB School Law eSource online at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

Updated January 2016

Process to Become a District of Innovation Texas Education Code (TEC) Chapter 12A





[Home](#) / [About TEA](#) / [Laws and Rules](#) / [Commissioner's Rules](#)

16_03 Proposed New 19 TAC Chapter 102, Subchapter JJ

Commissioner's Rules

Proposed New 19 TAC Chapter 102, Educational Programs, Subchapter JJ, Innovation District

Attachments:

[I. Statutory Citations](#) (PDF)

[II. Text of Proposed New 19 TAC Chapter 102, Educational Programs, Subchapter JJ, Innovation District \(including Figure: 19 TAC §102.1307\(d\)\)](#) (PDF)

SUMMARY: The rule action presented in this item was filed as proposed with the *Texas Register* under the commissioner's rulemaking authority. This item proposes new 19 TAC Chapter 102, Educational Programs, Subchapter JJ, Innovation District. The proposed new rules would outline the applicable processes and procedures related to an Innovation District to reflect the changes in statute made by House Bill (HB) 1842, 84th Texas Legislature, 2015.

STATUTORY AUTHORITY: Texas Education Code (TEC), §§12A.001-12A.009, as added by HB 1842, 84th Texas Legislature, 2015.

TEC, §12A.001, authorizes districts to be designated as a district of innovation if the district's most recent performance rating under TEC, §39.054, is at least acceptable performance. The designation as a district of innovation may be initiated by a resolution adopted by the board of trustees or a petition signed by a majority of the members of the district-level committee established under TEC, §11.251.

TEC, §12A.002, requires a board of trustees to hold a public hearing to consider if the district should develop a plan for the designation as a district of innovation after adopting a resolution or receiving a petition.

TEC, §12A.003, requires the development of a plan prior to a designation as a district of innovation. This section requires the local innovation plan to provide for a comprehensive educational program and to identify requirements of the TEC that inhibit the plan's goals and from which the district should be exempted. The section provides specific examples of the

considerations the plan may include.

TEC, §12A.004, prohibits a district of innovation from being exempt from requirements that apply to open-enrollment charters; from certain sections of the TEC, Chapter 11; from state curriculum and graduation requirements adopted under the TEC, Chapter 28; and from academic and financial accountability and sanctions under the TEC, Chapter 39. The section requires the commissioner to maintain a list of the exempted provisions and provide notice to the legislature of provisions where districts enrolling a majority of students are exempt.

TEC, §12A.005, imposes requirements related to the local innovation plan that must be met prior to a board of trustees' vote on adopting the proposed innovation plan.

TEC, §12A.006, limits the term of designation as an innovation district to no more than five years.

TEC, §12A.007, authorizes a local innovation plan to be amended, rescinded, or renewed if approved by vote of the district-level committee and board of trustees.

TEC, §12A.008, authorizes the commissioner to terminate an innovation district designation or permit the district to amend its innovation plan after two consecutive years of unacceptable academic or financial performance ratings. The section requires termination after three consecutive years of unacceptable academic or financial performance ratings, or any combination of the two rating systems. This provision makes the commissioner's decision final and not appealable.

TEC, §12A.009, authorizes the commissioner to adopt rules to implement districts of innovation.

EARLIEST POSSIBLE DATE OF ADOPTION: May 2, 2016.

PROPOSED EFFECTIVE DATE: June 9, 2016.

BACKGROUND INFORMATION AND JUSTIFICATION: The 84th Texas Legislature, Regular Session, 2015, passed HB 1842, which amended the TEC by adding Chapter 12A, Districts of Innovation, authorizing an eligible school district to be designated as a district of innovation following adoption of a local innovation plan that exempts the district from certain TEC requirements that inhibit the goals of the plan. The local innovation plan must be reported to the Texas Education Agency (TEA). The proposed new rule would provide the applicable processes and procedures related to innovation districts. The proposed rules include a non-comprehensive list of allowable exemptions. A list of prohibited exemptions is also included. TEC, §12A.009, authorizes the commissioner to adopt rules to implement the entire chapter.

Proposed new 19 TAC §102.1301, Definitions, would define terms for implementation of the subchapter. In accordance with the TEC, §§12A.001, 12A.005, and 12A.007, paragraph (1) would define the district-level committee as the committee established under the TEC, §11.251. TEC, Chapter 12A, does not define the composition of the committee to develop the local innovation plan so proposed new paragraph (2) would address the composition of that committee. TEC, Chapter 12A, does not define what constitutes a "public hearing" but

does distinguish between a public hearing and a public meeting. Proposed new paragraph (3) would define a public hearing as an open meeting that allows the public an opportunity to provide comments and opinions. Accordingly, proposed new paragraph (4) would define a public meeting as an open meeting that provides the public an opportunity to hear facts about a proposed plan. TEC, Chapter 12A, focuses on unacceptable performance for both academic and financial accountability purposes. Proposed new paragraphs (5) and (6) would clarify the meaning of "unacceptable performance" by linking with the corresponding ratings adopted by the TEA under the accountability statutes.

Proposed new 19 TAC §102.1303, Eligibility, would clarify that a district cannot be designated as a district of innovation if it receives either a preliminary or final rating of below "acceptable performance." TEC, §12A.001, authorizes districts to be designated as a district of innovation only if the district's most recent performance rating under TEC, §39.054, is at least "acceptable performance."

Proposed new 19 TAC §102.1305, Process Timeline, would recognize the statutory methods for designating a district of innovation and the requirement that the district hold a public hearing if one of those methods is realized in accordance with the TEC, §12A.001 and §12A.002. As the statutory provisions lack a requisite timeline for action and to ensure a timely review process, proposed new subsection (b) would require the board of trustees to either decline to pursue a district of innovation or to appoint an innovation committee to develop an innovation plan not later than 30 days after the public hearing. Proposed new subsection (c) would require a district's innovation plan to meet the requirements imposed by the TEC, §12A.003.

Statutory provisions under the TEC, §12A.005, authorize the board of trustees to adopt or reject the plan after meeting certain procedural requirements. However, statutory provisions do not define a planning committee's authority when pursuing the creation of a plan; therefore, the proposed new rule would make clear that when pursuing a district of innovation plan, the board of trustees may establish parameters in which the planning committee must operate. As various statutory provisions, including TEC, §§12A.002, 12A.004 and 12A.005, emphasize public awareness and the necessity for the commissioner to maintain a list of exempted provisions and report to the legislature, proposed new subsection (d) would require the district to clearly post the innovation plan on the district website for the term of the designation as an innovation district in order to promote transparency to the public.

Proposed new 19 TAC §102.1307, Adoption of Local Innovation Plan, would implement the requirements imposed by the TEC, §12A.005, which include actions necessary prior to a board of trustee's vote on adopting the proposed innovation plan, voting requirement for adoption, status of the district once the plan is adopted, and the extent of the exemptions should future requirements be amended or redesignated.

As the TEC, §12A.003(b)(2), requires a district to identify the requirements from which it seeks to be exempted and the TEC, §12A.004(b), requires the commissioner to maintain a list of TEC provisions from which innovation districts are exempt and to notify the legislature of these provisions for districts enrolling a majority of students, proposed new 19 TAC §102.1307 would require, in addition to the notification of the commissioner of approval of the plan as required by the TEC, §12A.005, that the district report exemptions to the

commissioner using a form developed by the commissioner. The reporting form, adopted as Figure: 19 TAC §102.1307(d), would emphasize the non-exclusive major TEC items from which an innovation district may exempt itself and would also provide a method to include items not specifically designated on the form.

Proposed new 19 TAC §102.1309, Prohibited Exemptions, would provide clarity regarding the statutory provisions from which districts of innovation may not exempt themselves in accordance with the TEC, §12A.004, and the commissioner's rulemaking authority. Prohibited exemptions are as follows.

19 TAC §§102.1309(a)(1), (4), (7), (8), (9), (10), (14), and (15)

TEC, §12A.004(a)(1), prohibits exemption of a district of innovation from any state or federal requirement applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D, which, among others, prohibits exemption from statutory sections imposed on an open-enrollment charter under the TEC, Chapter 12, including the requirements listed in the TEC, §§12.104(b), 25.001, 25.002, 25.0021, 25.0031, and 25.004; Chapter 30, Subchapter A; §30.104; Chapter 34; §§37.006(l), 37.007(e), and 37.020; §§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; and 45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, and 45.203. This list is not comprehensive; several additional statutes reference charters.

19 TAC §§102.1309(a)(3), (10), (12), (13), (14), (15), and (16)

TEC, §12A.004(a)(1), establishes a floor for exemptions for a district seeking to be a district of innovation. Several provisions of the TEC are inapplicable to an open-enrollment charter school, not because the legislature has intentionally limited the requirement, but because the inherent nature of an open-enrollment charter school makes application of the provision nonsensical. As the legislature clearly intended a floor to apply to the exemptions, consequently, districts may not seek an exemption from certain statutory provisions that lack a charter analog. As such, a district seeking to be a district of innovation may not seek an exemption from:

- TEC, Chapter 13, as open-enrollment charters have no exclusive boundaries vis-à-vis other charter schools nor are open-enrollment charters as a group required to cover all geographic boundaries of the state;
- TEC, §§37.011, 37.012, and 37.013, because a district must allow an open-enrollment charter school student to be served at a Juvenile Justice Alternative Education program;
- TEC, Chapters 41 and 42, because open-enrollment charters have no taxing capacity, and HB 1842 contained no textual indication or legislative intent demonstrating that the legislature intended to alter current funding mechanisms;
- TEC, §§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;
- TEC, §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, 45.203; and
- TEC, Chapter 46, as open-enrollment charters have no taxing capacity for interest and sinking purposes and, therefore, have no access to facility assistance.

19 TAC §102.1309(a)(2)

TEC, §12A.004(a)(2), prohibits an exemption from a requirement imposed by the TEC, Chapter 11, Subchapters A, C, D, and E, with exception of §11.1511(b)(5) and (14) and §11.162.

19 TAC §102.1309(a)(5)

TEC, §12A.004(a)(3), prohibits an exemption from a provision regarding state curriculum and graduation requirements adopted under the TEC, Chapter 28. A district of innovation may not seek an exemption from the TEC, §§28.002, 28.0021, 28.023, 28.005, 28.0051, 28.006, 28.016, 28.0211, 28.0213, 28.0217, 28.025, 28.0254, 28.0255, 28.0258, 28.0259 and 28.026, as those provisions constitute a state curriculum and graduation requirement under the TEC, Chapter 28. A district may not seek an exemption from the TEC, §30.104, because this provision implements the graduation requirements adopted under the TEC, Chapter 28.

19 TAC §102.1309(a)(6)

Some provisions of the TEC supersede the provisions of the TEC, Chapter 12A, and a district of innovation may not seek an exemption from those provisions. TEC, §29.201, applies the provisions of the TEC, Chapter 29, Subchapter G, notwithstanding any other law, which prohibits a district from seeking an exemption from the TEC, Chapter 29, Subchapter G.

19 TAC §102.1309(a)(11)

TEC, §12A.004(a)(4), prohibits an exemption from provisions of academic and financial accountability and sanctions under the TEC, Chapter 39. A district of innovation may not be exempt from any provision of the TEC, Chapter 39.

19 TAC §102.1309(b)(1)

TEC, §12A.004(a)(1), prohibits exemption from any state or federal requirement applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D. TEC, §12.104(d), imposes a requirement on open-enrollment charters to comply with all requirements of a state program in which the charter voluntarily participates. Consequently, a school district may not seek an exemption from a requirement of a grant or other voluntary benefit.

19 TAC §102.1309(b)(2)

TEC, §12A.003(b)(2), requires a district to identify requirements imposed by the TEC from which the district should be exempt on adoption of an innovation plan. Several provisions of the TEC do not impose a requirement on districts but authorize discretionary participation by a district. However, a district that chooses to participate must meet certain conditions imposed by statute on the operation of that authority. As those provisions only apply if a district chooses to operate under those provisions, those provisions do not constitute a requirement from which the district may seek an exemption under the TEC, Chapter 12A.

19 TAC §102.1309(b)(4)

TEC, §12A.003(b)(2), limits an innovation district to identifying requirements of the TEC. Requirements imposed by provisions outside the TEC may not be exempted, including requirements under the Texas Government Code, Chapter 822.

Proposed new 19 TAC §102.1311, Term, would implement the TEC, §12A.006, requirement that the term of designation as an innovation district may not exceed five years. As various provisions discuss a local innovation plan as singular, and the plan, under the TEC, §12A.003, must be "comprehensive," and multiple innovation plans would thwart the necessity for amendments under the TEC, §12A.007, proposed new 19 TAC §102.1311 would, therefore, limit a district to one innovation plan at a time. In accordance with the TEC, §12A.007, changes to a plan shall be handled through the amendment process rather than adopting multiple plans.

Proposed new 19 TAC §102.1313, Amendment, Rescission, or Renewal, would implement the TEC, §12A.007, which authorizes a local innovation plan to be amended, rescinded, or renewed if approved by vote of the district-level committee and board of trustees. The proposed new rule would clarify that the requirement of the TEC, §12A.007, stating "in the same manner as required for initial adoption" imposes a two-thirds voting requirement of the board of trustees. As statute authorizes an amendment process but does not impose a requirement for total plan review, proposed new paragraph (1) would clarify in rule that exemptions already approved need not be reviewed during an amendment. To ensure proper notice and orderly return to statutory compliance and to allow the TEA to accurately comply with reporting requirements, proposed new paragraph (2) would require a district that rescinds its plan to notify the TEA of the rescission within five business days of the approved vote and provide a date for compliance with the TEC provisions, which may not be later than the following school year. To ensure orderly transition and ensure proper public notice, proposed new paragraph (3) would clarify in rule that a plan may be renewed within six months of expiration and that all sections of the plan must be reviewed during renewal.

Proposed new 19 TAC §102.1315, Termination, would reflect the statutory authorization under the TEC, §12A.008, for the commissioner to terminate an innovation district designation or permit a district to amend its innovation plan after two consecutive years of unacceptable academic or financial performance ratings. The proposed new rule would require the commissioner to terminate an innovation district designation after three consecutive years of unacceptable academic or financial performance ratings, or any combination of the two rating systems. The proposed new rule would also implement the statutory provision making the related commissioner decision final and not appealable.

FISCAL IMPACT: The TEA has determined that there are no fiscal implications for persons required to comply with the proposed new rules; however, there are implications for state and local government. The TEA will incur additional personnel costs to fulfill the reporting requirements of statute. The estimated cost is \$100,000 each year for fiscal years 2016 and 2017. School districts could potentially save money depending upon the exemptions claimed and how they would be implemented, but the estimated savings cannot be determined at this time.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

PUBLIC AND STUDENT BENEFIT: The proposed new rules would provide school districts with flexibilities that allow for district innovation based on their local innovation plans.

PROCEDURAL AND REPORTING IMPLICATIONS: As required by statute, the proposed new rules would require innovation districts to report a list of district-approved TEC exemptions to the TEA.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: The proposed new rules would require innovation districts to maintain the approved plan, available on the district website for public review.

PUBLIC COMMENTS: The public comment period on the proposal begins April 1, 2016, and ends May 2, 2016.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: 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 April 1, 2016.

Staff Members Responsible:

Sally Partridge, Associate Commissioner, Accreditation and School Improvement

Mark Baxter, Director, School Improvement

Leah Martin, Director, Accreditation and Waivers

For more information, email rules@tea.texas.gov.

