

DISTRICTS OF INNOVATION

WHAT THEY MAY MEAN FOR SCHOOLS, STUDENTS AND STAFF

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What is a District of Innovation?

Districts of Innovation (“DI”) were created by the Legislature in the 2015 session. Within HB 1842 is a section which amends Chapter 12 of the Texas Education Code to add Chapter 12A. The law lays out a process that results in an Innovation Plan (“IP”) within which a district may exempt itself from provisions of the Texas Education Code.

Is a DI the same as a Home-Rule School District?

No. The Home-Rule School District is also a creature of Chapter 12 of the Texas Education Code but is very different than a DI. The Home-Rule process begins either by 2/3 vote of the whole school board or the board receives a petition signed by 5% of registered voters. That begins a specific process:

- Appointment of a charter commission within 30 days with 15 members who reflect the district’s make up, four of whom must be teachers;
- Charter commission must complete charter within one year;
- Failure to do so and the process must begin again;
- Charter is submitted to Texas Secretary of State and the U.S. Department of Justice for preclearance under Voting Rights Act, then to Commissioner of Education;
- Approved in all reviews – then voted on by citizens and if it passes in an election with at least 25% turnout, the district becomes a Home Rule School District.

How does the process start to become a DI?

TEC, § 12A.001-.002

- District’s most recent performance rating under TEC 39.054 must be at least acceptable;
- Board of trustees receives a petition signed by a majority of the district level improvement team (“DIT”) (TEC 11.251); or
- A resolution is adopted by the board of trustees;
- The board “promptly” holds a public hearing to consider whether the district should develop an innovation plan;
- At the conclusion or “as soon as possible after the conclusion” of the public hearing, the board

- Declines to pursue DI; or
- Appoints a committee to develop an IP.

Proposed Rules

- *District-level committee*
- *Innovation Plan Committee*
- *Public Hearing*
- *Public Meeting*
- *Promptly*
- *As soon as possible*

What is the procedure for creating an IP?

TEC, § 12A.003-.004

- Innovation plan committee develops the IP;
- The IP must provide a comprehensive educational program for the district which *may include*
 - Innovative curriculum, instructional methods and provisions regarding community participation, campus governance and parental involvement;
 - Modifications of school day/year;
 - Provisions regarding district budget and sustainable program funding;
 - Accountability and assessment measures above and beyond state/federal law requirements;
 - Any other innovations; and
 - Parts of Texas Education Code the district should be exempt from because they inhibit the goals of the IP;
- The DIT must hold a “public meeting” to consider final version of IP and approve IP by majority vote of the DIT committee members;
- The board notifies the Commissioner of its intent to vote on adoption of the IP;
- The IP is available in final form at least 30 days on the district’s website;
- Board adopts IP by affirmative vote of 2/3 of the *membership* of the board (5/7 or 6/9);
- IP approved – begins immediately and exemptions begin;
- Notify Commissioner and send list of approved TEC exemptions – Commissioner approval is not required;
- Exemption applies to any subsequent amendment of state requirement unless it specifically applies to DI.

Are there sections of TEC a DI may not exempt itself from in the IP?

Yes, there are many TEC provisions not subject to exemption.

- State or federal requirement applicable to open enrollment charter school operating under TEC Chapter 12;

- Parts of TEC Chapter 11 (Subchapters A, C, D, and E except § 11.1511(b)(5) and (14) and 11.162;
- State curriculum and graduation requirements in Chapter 28;
- Academic and financial accountability and sanctions in Chapter 39; and
- A more specific and lengthy list in Proposed Rule 19 T.A.C. § 102.1309.

How long does DI status last?

DI designation may not exceed five years.

Can the IP be amended?

The IP can be amended, rescinded, or renewed following the same process as adoption of the initial IP. If the district has exempted itself from TEC 11.251, action must be by a “comparable committee.”

Can the IP be terminated?

Yes, the Commissioner may terminate the IP if the district receives for two consecutive years unacceptable academic and/or financial accountability rates and shall terminate the IP after three years of unacceptable ratings. (Chapter 39) The decision is final and may not be appealed. TEC 12A.008

May the Commissioner adopt rules to implement Chapter 12A?

Yes – TEC 12A.009. Proposed rules are pending.

What laws are exempted in IPs filed with the Commissioner so far?

Palmer ISD

- TEC 25.081 (EB Legal) – School start date – 3rd Monday in August
- TEC 21.203, 21.352 (DNA Legal and Local) – locally develop a teacher and principal evaluation tool
- DK Legal, Local, Exhibit – Superintendent, not TEA, may approve certified teacher to teach outside of certification and use a local teaching certificate for a CTE teacher
- DCB Legal and Local – Reduces teacher contract days from 187 (TEC Chapter 21) to 182 with no decrease in salary to align to 75,600 minutes of instruction

Mabank ISD

- EB Legal – Change school start date
- EEB Legal – Adjust class ratio in K-4th grade classes
- DK Legal and Local – Allow local decisions on teacher certification issues (not certified or teaching outside certification)

Canton ISD

- TEC 25.0811 (EB Legal) – Change school start date – no earlier than 3rd Monday in August
- TEC 25.112, 25.113 (EEB Legal) – No TEA waiver necessary for K-4th grade classes to exceed 22:1
- TEC 21.203, 21.352 (DNA Legal and Local) – Utilize locally developed teacher and principal evaluation tool
- DK Legal, Local and Exhibit – No TEA approval for teacher to teach outside certification or to approve local teaching certification for CTE teacher

Point Isabel ISD

- TEC 25.092 – Exemption from 90% rule for class credit
- TEC 25.112, 25.113 – Class size in K-4th grade determined by district with target ratio of 25:1

Victoria ISD

- Change to school start date

El Paso ISD

- TEC 25.092 – Class credit based on 90% rule
- TEC 25.0811 – School start date
- TEC 21.003, 21.053, 21.044 – Establish local qualification requirements to teach dual credit and CTE classes
- TEC 37.0012 – No campus behavior coordinator
- TEC 21.351, 21.352, 21.354, 21.3541 – Local flexibility regarding criteria for evaluating teachers and administrators

San Antonio ISD

- TEC 25.122, 25.113 – K-4th grade class size – removes 22:1 cap
- TEC 25.081, 25.082 – Length of instructional day (420 minutes or 7 hours) – need flexibility to meet 75,000 minutes of instruction
- TEC 25.0811 – School start date

The Spring Branch ISD plan

Five year Strategic Plan is foundation for IP:

- “Because SBISD’s Strategic Plan, its Local Innovation Plan, is comprehensive and touches numerous areas in the TEC, and because SBISD seeks to maximize local control

of educational decisions for students, SBISD seeks exemption from all permissible provisions of the TEC as allowed in the statute.”

- SBISD does not seek exemption from statutes listed in TEC 12A.004 and the list in proposed rules at 19 T.A.C. 102.1309
- The Strategic Plan/Innovation Plan will be phased in over time and specific exemptions from TEC implemented through policy changes adopted by 2/3 vote of board membership
- SBISD exempts itself from TEC 12A.007, the amendment process for an IP, to the extent it would affect policy development and adoption to implement exemptions from TEC

What are some possibilities for a DI?

- Structure of school day and year
- Blended learning programs – classroom, on line, working self-paced
- Teacher contracts
- Teacher certification
- Student behavior

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EDUCATION CODE

TITLE 2. PUBLIC EDUCATION

SUBTITLE C. LOCAL ORGANIZATION AND GOVERNANCE

CHAPTER 12A. DISTRICTS OF INNOVATION

Sec. 12A.001. AUTHORIZATION. (a) Subject to Subsection (b), a school district may be designated as a district of innovation in accordance with this chapter.

(b) A school district is eligible for designation as a district of innovation only if the district's most recent performance rating under Section 39.054 reflects at least acceptable performance.

(c) Consideration of designation as a district of innovation may be initiated by:

(1) a resolution adopted by the board of trustees of the district; or

(2) a petition signed by a majority of the members of the district-level committee established under Section 11.251.

Added by Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 4, eff. June 19, 2015.

Sec. 12A.002. PUBLIC HEARING. (a) Promptly after adopting a resolution under Section 12A.001(c)(1) or receiving a petition under Section 12A.001(c)(2), the board of trustees shall hold a public hearing to consider whether the district should develop a local innovation plan for the designation of the district as a district of innovation.

(b) At the conclusion of the public hearing or as soon as possible after conclusion of the public hearing, the board of trustees may:

(1) decline to pursue designation of the district as a district of innovation; or

(2) appoint a committee to develop a local innovation plan in accordance with Section 12A.003.

Added by Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 4, eff. June 19, 2015.

Sec. 12A.003. LOCAL INNOVATION PLAN. (a) A local innovation plan must be developed for a school district before the district may be designated as a district of innovation.

(b) A local innovation plan must:

(1) provide for a comprehensive educational program for the district, which program may include:

(A) innovative curriculum, instructional methods, and provisions regarding community participation, campus governance, and parental involvement;

(B) modifications to the school day or year;

(C) provisions regarding the district budget and sustainable program funding;

(D) accountability and assessment measures that exceed the requirements of state and federal law; and

(E) any other innovations prescribed by the board of trustees; and

(2) identify requirements imposed by this code that inhibit the goals of the plan and from which the district should be exempted on adoption of the plan, subject to Section 12A.004.

Added by Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 4, eff. June 19, 2015.

Sec. 12A.004. LIMITATION OF PERMISSIBLE EXEMPTIONS. (a) A local innovation plan may not provide for the exemption of a district designated as a district of innovation from the following provisions of this title:

(1) a state or federal requirement applicable to an open-enrollment charter school operating under Subchapter D, Chapter 12;

(2) Subchapters A, C, D, and E, Chapter 11, except that a district may be exempt from Sections 11.1511(b)(5) and (14) and Section 11.162;

(3) state curriculum and graduation requirements adopted under Chapter 28; and

(4) academic and financial accountability and sanctions under Chapter 39.

(b) The commissioner shall:

(1) maintain a list of provisions of this title from which school districts designated as districts of innovation are exempt under this chapter; and

(2) notify the legislature of each provision from which districts enrolling a majority of students in this state are exempt.

Added by Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 4, eff. June 19, 2015.

Sec. 12A.005. ADOPTION OF LOCAL INNOVATION PLAN; COMMISSIONER APPROVAL. (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 Internet website for at least 30 days;

(2) the board of trustees has notified the commissioner of the board's intention to vote on adoption of the proposed plan; and

(3) the district-level committee established under Section 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, provided that the meeting required by this subdivision may occur immediately before and on the same date as the meeting at which the board intends to vote on 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 chapter for the term specified in the plan, subject to Section 12A.006;

(2) shall begin operation in accordance with the plan; and

(3) is exempt from state requirements identified under Section 12A.003(b) (2).

(d) A district's exemption described by Subsection (c) (3) includes any subsequent amendment or redesignation of an identified

state requirement, unless the subsequent amendment or redesignation specifically applies to a district of innovation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 4, eff. June 19, 2015.

Sec. 12A.006. TERM. The term of a district's designation as a district of innovation may not exceed five years.

Added by Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 4, eff. June 19, 2015.

Sec. 12A.007. AMENDMENT, RESCISSION, OR RENEWAL OF LOCAL INNOVATION PLAN. A local innovation plan may be amended, rescinded, or renewed if the action is approved by a vote of the district-level committee established under Section 11.251, or a comparable committee if the district is exempt from that section, and the board of trustees in the same manner as required for initial adoption of a local innovation plan under Section 12A.005.

Added by Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 4, eff. June 19, 2015.

Sec. 12A.008. TERMINATION BY COMMISSIONER. (a) The commissioner may terminate a district's designation as a district of innovation if the district receives for two consecutive school years:

- (1) an unacceptable academic performance rating under Section 39.054;
- (2) an unacceptable financial accountability rating under Section 39.082; or
- (3) an unacceptable academic performance rating under Section 39.054 for one of the school years and an unacceptable financial accountability rating under Section 39.082 for the other school year.

(b) Instead of terminating a district's designation as authorized by Subsection (a), the commissioner may permit the district to amend the district's local innovation plan to address concerns specified by the commissioner.

(c) The commissioner shall terminate a district's designation as a district of innovation if the district receives for three consecutive school years:

(1) an unacceptable academic performance rating under Section 39.054;

(2) an unacceptable financial accountability rating under Section 39.082; or

(3) any combination of one or more unacceptable ratings under Subdivision (1) and one or more unacceptable ratings under Subdivision (2).

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

Added by Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 4, eff. June 19, 2015.

Sec. 12A.009. COMMISSIONER RULEMAKING. The commissioner may adopt rules to implement this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1046 (H.B. 1842), Sec. 4, eff. June 19, 2015.

The Texas Education Agency (TEA) proposes new §§102.1301, 102.1303, 102.1305, 102.1307, 102.1309, 102.1311, 102.1313, and 102.1315, concerning districts of innovation. The proposed new sections 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.

The 84th Texas Legislature, Regular Session, 2015, passed HB 1842, which amended the Texas Education Code (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 TEA. The proposed new section would provide the applicable processes and procedures related to innovation districts. The proposed sections 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(f), 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 non-sensical. 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 section 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 section 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 section would also implement the statutory provision making the related commissioner decision final and not appealable.

As required by statute, the proposed new sections would require innovation districts to report a list of district-approved TEC exemptions to the TEA. The proposed new sections would require innovation districts to maintain the approved plan, available on the district website for public review.

FISCAL NOTE. Sally Partridge, associate commissioner for accreditation and school improvement, has determined that for the first five-year period the proposed new sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the proposed new sections. 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.

PUBLIC BENEFIT/COST NOTE. Ms. Partridge has determined that for each year of the first five years the proposed new sections are in effect the public benefit anticipated as a result of enforcing the new sections would be providing school districts with flexibilities that allow for district innovation based on their local innovation plans. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins April 1, 2016, and ends May 2, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337. 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.

STATUTORY AUTHORITY. The new sections are proposed under the Texas Education Code (TEC), §12A.001, which 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, which 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, which 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; and TEC, §12A.004, which 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, which 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, which limits the term of designation as an innovation district to no more than five years; 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; TEC, §12A.008, which 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; and TEC, §12A.009, which authorizes the commissioner to adopt rules to implement districts of innovation.

CROSS REFERENCE TO STATUTE. The new sections implement the TEC, §§12A.001-12A.009, as added by HB 1842, 84th Texas Legislature, 2015.

<rule>

§102.1301. Definitions.

For purposes under this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

- (1) District-level committee--This term has the meaning assigned by the Texas Education Code (TEC), §11.251.
- (2) Innovation Plan committee--An innovation plan committee shall consist of members designated by the board of trustees.
- (3) Public hearing--An open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation and provides the opportunity for the public to give opinions and comments on the proposed actions.
- (4) Public meeting--An open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation.
- (5) Unacceptable academic performance rating--For the purposes of this chapter, the term "unacceptable academic" performance rating means a rating of Improvement Required or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System).
- (6) Unacceptable financial accountability rating--For the purposes of this chapter, the term "unacceptable financial" performance rating means a Financial Integrity Rating System of Texas (FIRST) rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title (relating to Financial Accountability Rating).

§102.1303. Eligibility.

- (a) A district is eligible for designation as an innovation district if the district's most recent performance rating under the Texas Education Code (TEC), §39.054, is at least acceptable performance, as indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System).
- (b) A district may not begin operations as an innovation district if the district is assigned either a final or preliminary rating below acceptable performance, as indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title.

§102.1305. Process Timeline.

- (a) If a resolution is adopted by the board of trustees or a petition is signed by a majority of the members of the district-level committee, the board of trustees shall hold a public hearing as soon as possible, but no later than the next scheduled board of trustees meeting, to consider if the district should develop a local innovation plan for the designation of the district as an innovation

district. The board resolution may outline the parameters around which the innovation committee may develop the plan.

- (b) At the conclusion of the public hearing, or within 30 days after conclusion of the public hearing, the board of trustees may:
 - (1) decline to pursue designation of the district as an innovation district; or
 - (2) appoint an Innovation Plan committee to develop a local innovation plan in accordance with the TEC, §12A.003.
- (c) Prior to the designation as an innovation district, a local innovation plan must be developed for the school district and shall meet the plan requirements as outlined in the TEC, §12A.003.
- (d) The plan must be clearly posted on the district's website for the term of the designation as an innovation district.

§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 chapter 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)
- (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.

§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);
 - (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 25, Subchapter A, §§25.001, 25.002, 25.0021, 25.0031, and 25.004;
 - (5) 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, 28.0255, 28.0258, 28.0259, and 28.026;
 - (6) TEC, Chapter 29, Subchapter G;
 - (7) TEC, Chapter 30, Subchapter A;
 - (8) TEC, §30.104;
 - (9) TEC, Chapter 34;
 - (10) TEC, Chapter 37, §§37.006(l), 37.007(e), 37.011, 37.012, 37.013, and 37.020;
 - (11) TEC, Chapter 39;
 - (12) TEC, Chapter 41;
 - (13) TEC, Chapter 42;
 - (14) 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;
 - (15) TEC, Chapter 45, §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, 45.203; and
 - (16) TEC, Chapter 46.
- (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 voluntary benefit;
 - (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;
 - (3) any other requirement from which the district of innovation cannot be exempted, as determined by the commissioner of education; and
 - (4) requirements imposed by provisions outside the TEC, including requirements under the Texas Government Code, Chapter 822.

§102.1311. Term.

The term of a district's designation as a district of innovation may not exceed five calendar years and is effective upon district approval and notification of the plan to the Texas Education Agency. A district may only have one innovation plan at any given time.

§102.1313. Amendment, Rescission, or Renewal.

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. A district may renew the district plan within six months of the expiration of the plan's term. 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).

§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.
- (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.

Innovation District

Please submit, on district letterhead, a letter to the commissioner of education stating the date that the board of trustees adopted a resolution to develop a local innovation plan for the designation of the district as an Innovation District.

A local innovation plan must be developed for a school district before the district may be designated as an Innovation District. A local plan must provide for a comprehensive educational program for the district, which may include:

- 1) Innovative Curriculum
- 2) Instructional Methods
- 3) Community Participation
- 4) Governance of Campuses
- 5) Parental Involvement

A local innovation plan must identify requirements imposed by the Education Code that inhibit the goals of the plan from which the district should be exempted on adoption of the plan. The local innovation plan should specify the manner in which a particular statute inhibits one or more goals of the plan. Please use the form below to check the statutes specifically identified in your district's local innovation plan as inhibiting a goal of the plan. Checking a specific statute does not necessarily indicate eligibility for an exemption from all subsections of the statute. The local innovation plan controls with regard to the specific exemptions adopted by a district. The form below provides a reporting mechanism to fulfill the reporting requirements of the statute. Entire sections of code may not be eligible for exemption and each district should consult its legal counsel in developing its innovation plan.

Exemptions claimed for an Innovation District apply only to the specific provision of the Texas Education Code (TEC) cited, which may or may not be governed by a separate legal requirement. The exemption does not relieve the district of any requirement imposed by other state or federal law or a duty imposed under federal regulation, grant compliance, agency rule applicable to a charter school or a local legal requirement. Each district should consult its legal counsel to ensure adoption of necessary local policies to ensure compliance with all applicable legal requirements.

Please note that this is not an exhaustive list of exemptions.

Chapter 11 – School Districts

Subchapter D. Powers and Duties of Board of Trustees of Independent School Districts

- ☐ §11.1511 (b)(5), (14) Specific Powers and Duties of Board
- ☐ §11.162 School Uniforms

Subchapter F. District-Level and Site Based Decision-Making

- ☐ §11.251 Planning and Decision-Making Process
- ☐ §11.252 District-Level Planning and Decision-Making
- ☐ §11.253 Campus Planning and Site-Based Decision-Making
- ☐ §11.255 Dropout Prevention Review

Chapter 21 – Educators

Subchapter A – General Provisions

- ☐ §21.002 Teacher Employment Contracts
- ☐ §21.003 Certification Required
- ☐ §21.0031 Failure to Obtain Certification; Contract Void

Subchapter B – Certification of Educators

- ☐ §21.051 Rules Regarding Field-Based Experience and Options for Field Experience and Internships.
- ☐ §21.053 Presentation and Recording of Certificates
- ☐ §21.057 Parental Notification

☐ **Subchapter C – Probationary Contracts**

☐ **Subchapter D – Continuing Contracts**

☐ **Subchapter E – Term Contracts**

Subchapter H – Appraisals and Incentives

- ☐ §21.352 Local Role
- ☐ §21.353 Appraisal on Basis of Classroom Teaching Performance
- ☐ §21.354 Appraisal of Certain Administrators
- ☐ §21.3541 Appraisal and Professional Development System for Principals

Subchapter I – Duties and Benefits

- ☐ §21.401 Minimum Service Required
- ☐ §21.402 Minimum Salary Schedule for Certain Professional Staff
- ☐ §21.4021 Furloughs
- ☐ §21.4022 Required Process for Development of Furlough Program or Other Salary Reduction Proposal
- ☐ §21.403 Placement on Minimum Salary Schedule
- ☐ §21.4031 Professional Staff Service Records
- ☐ §21.4032 Reductions in Salaries of Classroom Teachers and Administrators
- ☐ §21.404 Planning and Preparation Time
- ☐ §21.405 Duty-Free Lunch

- ☐ §21.406 Denial of Compensation Based On Absence for Religious Observance Prohibited
- ☐ §21.407 Requiring or Coercing Teachers to Join Groups, Clubs, Committees, or Organizations: Political Affairs
- ☐ §21.408 Right To Join or Not To Join Professional Association
- ☐ §21.409 Leave Of Absence for Temporary Disability
- ☐ §21.415 Employment Contracts
- Subchapter J – Staff Development**
- ☐ §21.451 Staff Development Requirements
- ☐ §21.452 Developmental Leaves of Absence
- ☐ §21.458 Mentors

Chapter 22 – School District Employees and Volunteers

Subchapter A – Rights, Duties, and Benefits

- ☐ §22.001 Salary Deductions for Professional Dues
- ☐ §22.002 Assignment, Transfer, or Pledge of Compensation
- ☐ §22.003 Minimum Personal Leave Program
- ☐ §22.006 Discrimination Based on Jury Service Prohibited
- ☐ §22.007 Incentives for Early Retirement
- ☐ §22.011 Requiring or Coercing Employees to Make Charitable Contributions

Chapter 25 – Admission, Transfer, and Attendance

Subchapter C – Operation of Schools and School Attendance

- ☐ §25.0811 First Day of Instruction
- ☐ §25.0812 Last Day of School
- ☐ §25.083 School Day Interruptions
- ☐ §25.092 Minimum Attendance for Class Credit or Final Grade

Subchapter D – Student/Teacher Ratios; Class Size

- ☐ §25.111 Student/Teacher Ratios
- ☐ §25.112 Class Size
- ☐ §25.113 Notice of Class Size
- ☐ §25.114 Student/Teacher Ratios in Physical Education Classes; Class Size

Chapter 37 – Discipline; Law and Order

Subchapter A – Alternative Setting for Behavior Management

- ☐ §37.0012 Designation of Campus Behavior Coordinator
- ☐ §37.002 Removal by Teacher

Chapter 44 –Fiscal Management

Subchapter B – Purchases; Contracts

- ☐ §44.031 Purchasing Contracts
- ☐ §44.0331 Management Fees Under Certain Cooperative Purchasing Contracts
- ☐ §44.0352 Competitive Sealed Proposals
- ☐ §44.042 Preference to Texas and United States Products
- ☐ §44.043 Right To Work
- ☐ §44.047 Purchase or Lease of Automated External Defibrillator

Subchapter Z – Miscellaneous Provisions

- ☐ §44.901 Energy Savings Performance Contracts
- ☐ §44.902 Long-Range Energy Plan to Reduce Consumption of Electric Energy
- ☐ §44.903 Energy-Efficient Light Bulbs in Instructional Facilities
- ☐ §44.908 Expenditure of Local Funds

Chapter 45 – School District Funds

Subchapter G – School District Depositories

- ☐ §45.205 Term of Contract
- ☐ §45.206 Bid Or Request for Proposal Notices; Bid and Proposal Forms
- ☐ §45.207 Award of Contract
- ☐ §45.208 Depository Contract; Bond
- ☐ §45.209 Investment of District Funds

Other

Please list any additional exemption required for your Innovation District Plan: