

1 **CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS**

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3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF SECRETARY OF**
6 **STATE.**

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8 **ON DECEMBER 19, 2023, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
9 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

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11 Estimated Publication Date of the Proposal in the *Texas Register*: **January 5, 2024** Estimated
12 End of Comment Period: **February 19, 2024**

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14 The Texas Workforce Commission (TWC) proposes amendments to the following section of
15 Chapter 801, relating to Local Workforce Development Boards:

16
17 Subchapter A. General Provisions, §801.1

18
19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 The purpose of the proposed Chapter 801 rule change is to address changes in Texas
21 Government Code §2308.256(a) and (g) because of the passage of House Bill (HB) 1615 by the
22 88th Texas Legislature, Regular Session (2023). Regarding Local Workforce Development
23 Board (Board) composition, the bill removes the requirement that a Board member must have
24 expertise in child care or early childhood education and adds the requirement that a Board must
25 have representatives from the child care workforce.

26
27 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

28 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
29 therefore, are not discussed in the Explanation of Individual Provisions.)

30
31 **SUBCHAPTER A. GENERAL PROVISIONS**

32 TWC proposes the following amendments to Subchapter A:

33
34 **§801.1. Requirements for Formation of Local Workforce Development Boards**

35 Section 801.1 is amended by amended Texas Government Code §2308.256(a) to add that a
36 Board must include a representative from the child care workforce and subsection §2308.256(g)
37 subsequently removes the requirement that at least one Board member shall have expertise in
38 child care or early childhood education by amending §801.1 as follows:

39
40 --Section 801.1(g)(2)(C)(vi) is removed because of the amended Texas Government Code
41 §2308.256(a) requirement. The subsequent clause is renumbered.

42
43 --Section 801.1(g)(2)(D)(i) and (ii) are also removed and the language in §801.1(g)(2)(D)(ii) is
44 merged into §801.1(g)(2)(D).

45
46 **PART III. IMPACT STATEMENTS**

1 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
2 rules will be in effect, the following statements will apply:

3
4 There are no additional estimated costs to the state and to local governments expected as a result
5 of enforcing or administering the rules.

6
7 There are no estimated cost reductions to the state and to local governments as a result of
8 enforcing or administering the rules.

9
10 There are no estimated losses or increases in revenue to the state or to local governments as a
11 result of enforcing or administering the rules.

12
13 There are no foreseeable implications relating to costs or revenue of the state or local
14 governments as a result of enforcing or administering the rules.

15
16 There are no anticipated economic costs to individuals required to comply with the rules.

17
18 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
19 communities as a result of enforcing or administering the rules.

20
21 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
22 that the requirement to repeal or amend a rule, as required by Texas Government Code
23 §2001.0045, does not apply to this rulemaking.

24
25 Takings Impact Assessment

26 Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects
27 private real property, in whole or in part or temporarily or permanently, in a manner that requires
28 the governmental entity to compensate the private real property owner as provided by the Fifth
29 and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19,
30 Article I, or restricts or limits the owner's right to the property that would otherwise exist in the
31 absence of the governmental action, and is the producing cause of a reduction of at least 25
32 percent in the market value of the affected private real property, determined by comparing the
33 market value of the property as if the governmental action is not in effect and the market value of
34 the property determined as if the governmental action is in effect. TWC completed a Takings
35 Impact Assessment for the proposed rulemaking action under Texas Government Code
36 §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in
37 this preamble, is to address changes in Texas Government Code §2308.256(a) and (g) as a result
38 of the passage of HB 1615 by the 88th Texas Legislature, Regular Session (2023). Regarding
39 Board composition, the bill adds the requirement that a Board must have at least one
40 representative from the child-care workforce.

41
42 The proposed rulemaking action will not create any additional burden on private real property or
43 affect private real property in a manner that would require compensation to private real property
44 owners under the US Constitution or the Texas Constitution. The proposal also will not affect
45 private real property in a manner that restricts or limits an owner's right to the property that

1 would otherwise exist in the absence of the governmental action. Therefore, the proposed
2 rulemaking will not cause a taking under Texas Government Code Chapter 2007.

3
4 Government Growth Impact Statement

5 TWC has determined that during the first five years the rules will be in effect, they:

- 6 -- will not create or eliminate a government program;
- 7 -- will not require the creation or elimination of employee positions;
- 8 -- will not require an increase or decrease in future legislative appropriations to TWC;
- 9 -- will not require an increase or decrease in fees paid to TWC;
- 10 -- will not create a new regulation;
- 11 -- will not expand, limit, or eliminate an existing regulation;
- 12 -- will not change the number of individuals subject to the rules; and
- 13 -- will not positively or adversely affect the state's economy.

14
15 Economic Impact Statement and Regulatory Flexibility Analysis

16 TWC has determined that the rules will not have an adverse economic impact on small
17 businesses or rural communities, as the proposed rules place no requirements on small businesses
18 or rural communities.

19
20 Mariana Vega, Director, Labor Market Information, has determined that there is not a significant
21 negative impact upon employment conditions in the state as a result of the rules.

22
23 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
24 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
25 the proposed rules will be to expand Board membership to ensure that Boards have adequate
26 representation from the child care workforce and that such child care representatives are able to
27 influence local policymaking.

28
29 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
30 within TWC's legal authority to adopt.

31
32 **PART IV. COORDINATION ACTIVITIES**

33 During the Workforce Call on July 21, 2023, Board executive directors and Board staff were
34 informed of the upcoming changes to the rule. The call was made at the beginning of the
35 rulemaking process and an additional Workforce Call was made prior to the Commission
36 approving the rule for public comment.

37
38 **PART V. PUBLIC COMMENTS**

39 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov
40 and must be received no later than February 19, 2024.

41
42 **PART VI. STATUTORY AUTHORITY**

43 The rules are proposed under the specific authority of House Bill 1615, 88th Texas Legislature,
44 Regular Session (2023), which amended Texas Government Code §2308.256 to require that
45 Boards include a representative of the child care workforce.

1 The rules are proposed under the general authority of Texas Labor Code §301.0015 and
2 §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it
3 deems necessary for the effective administration of TWC services and activities.

4
5 The proposed rules affect Texas Government Code Chapter 2308.

1 **CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS**

2
3 **SUBCHAPTER A. GENERAL PROVISIONS**

4
5 **§801.1. Requirements for Formation of Local Workforce Development Boards.**

6
7 (a) Purpose of Rule.

8
9 (1) Upon application by the chief elected officials (CEOs) and approval of the
10 Commission, the Commission shall forward an application to form a Local
11 Workforce Development Board (Board) to the Governor.

12
13 (2) Before an application may be submitted to the Governor, all requirements of
14 this section shall be met.

15
16 (b) State Law. The formation of Boards is governed by Texas Government Code,
17 Chapter 2308.

18
19 (c) Chief Elected Official Agreement. Creation of a Board requires agreement by at least
20 three-fourths of the CEOs in the local workforce development area (workforce area)
21 who represent units of general local government, including all of the CEOs who
22 represent units of general local government having populations of at least 200,000.
23 The elected officials agreeing to the creation of the Board shall represent at least 75
24 percent of the population of the workforce area.

25
26 (d) Chief Elected Officials. The CEOs may, and are encouraged to, consult with local
27 officials other than the ones delineated below. The following officials are designated
28 as the CEOs for the purpose of establishing agreements to form Boards:

29
30 (1) Mayors.

31
32 (A) The mayor of each city with a population of at least 100,000;

33
34 (B) or, if there is no city with a population of greater than 100,000, the mayor
35 of each city with a population greater than 50,000;

36
37 (C) or, if there are no cities with a population of greater than 50,000, the
38 mayor of the largest city in the workforce area.

39
40 (D) For purposes of this section, municipal population will be determined by
41 the figure last reported by the Texas Demographic Center at the time of
42 submission of the application to the Commission.

43
44 (2) All county judges included in a workforce area as designated by the Governor.
45

- 1 (e) Time of Application. CEOs in a workforce area may not establish a Board until the
 2 Governor has designated that area as a workforce area as provided in Texas
 3 Government Code, Chapter 2308.
 4
- 5 (f) Applications shall meet all Governor-approved criteria for the establishment of
 6 Boards.
 7
- 8 (g) Procedures for Formation of a Board. The CEOs shall comply with the following
 9 procedures to form a Board.
 10
- 11 (1) Public process procedure. If three-fourths of the CEOs, as defined in
 12 subsection (d) of this section, agree to initiate procedures to establish a Board,
 13 they shall conduct a public process, including at least one public meeting, to
 14 consider the views of all affected organizations before making a final decision
 15 to form a Board. This public process may include, but is not limited to, notices
 16 published in various media and surveys for public comment.
 17
- 18 (2) Application procedure.
 19
- 20 (A) The CEOs shall submit an application to the Commission. This
 21 application shall include evidence of the actions required by paragraph
 22 (1) of this subsection. As a part of the application, each CEO who is in
 23 agreement regarding the formation of a Board, shall execute the
 24 following documents:
 25
- 26 (i) An interlocal agreement delineating:
 27
- 28 (I) the purpose of the agreement;
 29
- 30 (II) the process that will be used to select the CEO who will act on
 31 behalf of the other CEOs and the name of such CEO if the
 32 person has been selected;
 33
- 34 (III) the procedure that will be followed to keep those CEOs
 35 informed regarding Board activities;
 36
- 37 (IV) the initial size of the Board;
 38
- 39 (V) how resources allocated to the workforce area will be shared
 40 among the parties to the agreement;
 41
- 42 (VI) the process to be used to appoint the Board members, which
 43 shall be consistent with applicable federal and state laws; and
 44
- 45 (VII) the terms of office of the members of the Board.
 46

1 (ii) An acknowledgment in the following form: We, the chief elected
2 officials of the Workforce Development Area, acknowledge that the
3 following are responsibilities and requirements pursuant to the
4 formation of the Board:
5

- 6 (I) The Board will assume the responsibilities for the following
7 committees and councils that will be replaced by the Board
8 unless otherwise provided in Texas Government Code; ~~;~~
9 Chapter 2308: private industry council, quality workforce
10 planning committee, job service employer committee, and
11 local general vocational program advisory committee;
12
- 13 (II) At least one Workforce Solutions Office shall be established
14 within 180 days of Board certification;
15
- 16 (III) The Board shall have its own independent staff and not be a
17 provider of workforce services, unless the Board secures a
18 waiver of these provisions;
19
- 20 (IV) The CEOs shall enter into a partnership agreement with the
21 Board to designate a grant recipient to receive, be accountable
22 for, and be liable for any misuse of block grant funds;
23
- 24 (V) The partnership agreement shall also specify the entity that
25 will administer the programs, which may be separate from the
26 entity that receives the funds from the state;
27
- 28 (VI) The partnership agreement shall define the process through
29 which the Boards and CEOs will develop the strategic and
30 operational plans, including the training plan required under
31 the Workforce Innovation and Opportunity Act; and
32
- 33 (VII) The strategic plan shall be reviewed by both the Commission
34 and the Texas Workforce Investment Council and approved
35 by the Governor before block grants will be available to the
36 workforce area.
37

38 (B) The application shall include evidence that any affected existing Board
39 has been notified and agrees that its functions and responsibilities will be
40 assumed by the proposed Board upon the proposed Board's final
41 certification by the Governor.
42

43 (C) The application shall include the names and affiliations of individuals
44 recommended for Board membership, with documentation that CEOs
45 followed the nomination process specified in applicable state and federal
46 law, including Texas Government Code; ~~;~~ §2308.255 and §2308.256.

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- (i) Private sector members shall be owners of business concerns, chief executives, chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. To be eligible to represent the private sector, at least 51 percent of an individual's annual income shall be from private sector sources.
 - (ii) Private sector membership should represent the composition of the local pool of employers. The private sector membership should include representatives of the region's larger employers and emerging growth industries. Primary consideration should be given to private sector employers who do not directly provide employment and workforce training services to the general public. CEOs shall develop a profile of the workforce area's major industries using locally obtained information and state-published data. The Agency shall provide relevant labor market information, including data that identifies employment trends, emerging high-growth, high-demand industries, the size of local employers, and other data needed to assist CEOs in developing the employer profile. Documentation submitted with the application shall show how the regional employer profile is reflected in the Board membership.
 - (iii) Board membership shall include representatives of local organized labor organizations, community-based organizations, educational agencies, vocational rehabilitation agencies, public assistance agencies, economic development agencies, the public employment service, local literacy councils, ~~and~~ adult basic and continuing education organizations, and the child care workforce as required by law.
 - (iv) Representatives of local organized labor organizations shall be nominated by local labor federations unless no employees in the workforce area are represented by such organizations, in which case nominations may be made by other representatives of employees. A labor federation is defined as an alliance of two or more organized labor unions for the purpose of mutual support and action.
 - (v) Board nominees shall be actively engaged in the organization, enterprise, or field that they are nominated to represent. Board nominees shall have an existing relationship with the workforce area through residence or employment within the workforce area.
 - ~~(vi) At least one of the members of a Board appointed under Texas Government Code, §2308.256(a) shall, in addition to the~~

1 ~~qualifications required for the members under that subsection, have~~
2 ~~expertise in child care or early childhood education.~~

3
4 (vi)~~(vii)~~ At least one of the members of a Board appointed under Texas
5 Government Code, §2308.256(a) shall, in addition to the
6 qualifications required for the members under that subsection:

7
8 (I) be a veteran as defined in Texas Government Code,
9 §2308.251(2); and

10
11 (II) have an understanding of the needs of the local veterans'
12 population and willingness to represent the interests and
13 concerns of veterans in the workforce area.

14
15 (D) No individual member shall be a representative of more than one sector
16 or category described in this section, except as statutorily permitted for
17 one or more members having the qualifications set forth in subparagraph
18 (C)(vi) of this paragraph.

19
20 ~~(i) expertise in child care or early childhood education; or~~

21
22 ~~(ii) the qualifications set forth in subparagraph (C)(vii) of this paragraph.~~

23
24 (E) The application shall include documentary evidence substantiating
25 compliance with the application procedure, including but not limited to,
26 written agreements, minutes of public meetings, copies of
27 correspondence, and such other documentation as may be appropriate.