

1 **CHAPTER 839. APPRENTICESHIP PROGRAMS - ADDITIONAL**

2
3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT**
5 **TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE**
6 **SECRETARY OF STATE.**

7
8 **ON JULY 5, 2022**, THE TEXAS WORKFORCE COMMISSION APPROVED THE
9 PROPOSED RULES BELOW WITH PREAMBLE TO BE PUBLISHED IN THE
10 *TEXAS REGISTER*.

11
12 Publication Date of the Proposal in the *Texas Register*: **July 22, 2022**
13 End of Comment Period: **August 22, 2022**

14
15 The Texas Workforce Commission (TWC) proposes new Chapter 839, relating to
16 Apprenticeship Programs - Additional, including the following subchapter:

17
18 Subchapter A. Tax Refund Pilot Program for Certain Persons Who Employ
19 Apprentices, §§839.10 - 839.17

20
21 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

22 The purpose of the Chapter 839, Subchapter A rules is to implement Senate Bill (SB)
23 1524 from the 87th Texas Legislature, Regular Session (2021).

24
25 SB 1524 amended Texas Tax Code, Chapter 151, Subchapter I to add new §151.4292,
26 Tax Refund Pilot Program for Certain Persons Who Employ Apprentices, effective
27 January 1, 2022.

28
29 Texas Tax Code, §151.4292(a) defines "executive director" and "qualified
30 apprenticeship."

31
32 Texas Tax Code, §151.4292(b) stipulates that a person employing at least one apprentice
33 for at least seven months during a calendar year may be eligible for a tax refund if
34 certified by the executive director. The apprentice is not considered employed under
35 Texas Tax Code, §151.4292:

36 --after the earlier of:

37 --the fourth anniversary of employment in the position; or

38 --the conclusion of the term of the apprenticeship position; or

39 --if the apprentice was employed in another position by the employer immediately before
40 beginning employment in the apprenticeship position.

41
42 Texas Tax Code, §151.4292(c) stipulates that the amount of refund for each apprentice
43 described by Texas Tax Code, §151.4292(b) shall be \$2,500.

44
45 Texas Tax Code, §151.4292(d) stipulates that the total amount of the refund under Texas
46 Tax Code, §151.4292 for a calendar year shall be equal to the lesser of:

1 --the amount from Texas Tax Code, § 151.4292(c) for the calendar year for each
2 apprentice described by Texas Tax Code, § 151.4292(b), but not to exceed the maximum
3 number of apprentices allowed by Texas Tax Code, § 151.4292(e); or
4 --the amount of sales and use taxes paid by the person during the calendar year.

5
6 Texas Tax Code, § 151.4292(e) stipulates that a person may receive a refund in a calendar
7 year for a maximum of:

8 --one apprentice; or

9 --not more than six apprentices if at least half are:

10 --foster children who have or are transitioning to independent living as described in
11 Texas Family Code, § 264.121;

12 --military veterans as defined by Texas Occupations Code, § 55.001;

13 --military spouses as defined by Texas Occupations Code, § 55.001; or

14 --women.

15
16 Texas Tax Code, § 151.4292(f) requires the executive director to create an application for
17 certification to receive a tax refund under Texas Tax Code, § 151.4292. Those persons
18 who wish to receive the tax refund shall apply to the executive director for certification
19 under Texas Tax Code, § 151.4292. Only persons certified under Texas Tax Code,
20 § 151.4292 by the executive director may apply to the comptroller for the refund set forth
21 by Texas Tax Code, § 151.4292.

22
23 Texas Tax Code, § 151.4292(g) limits the executive director to providing certification for
24 not more than 100 persons in a calendar year. If the number of applicants in a calendar
25 year exceeds this limit, the executive director shall select applicants to certify using
26 criteria set forth in Texas Tax Code, § 151.4292(h).

27
28 Texas Tax Code, § 151.4292(h) requires the executive director to adopt rules establishing
29 merit-based criteria for selecting persons to certify for eligibility to apply to the
30 comptroller for the tax refund under Texas Tax Code, § 151.4292. The executive director
31 must give preference to applicants who:

32 --offer qualifying apprenticeships in areas of Texas not designated by the United States
33 Office of Management and Budget as metropolitan statistical areas; and

34 --provide training and skills development in emerging or developing occupational fields.

35
36 Texas Tax Code, § 151.4292(i) requires the executive director to issue a certificate that
37 confirms eligibility to apply for the tax refund to each person certified under Texas Tax
38 Code, § 151.4292(f).

39
40 Texas Tax Code, § 151.4292(j) stipulates that a person must apply for the refund under
41 Texas Tax Code, § 151.4292 to the comptroller. The application must include the
42 certificate issued by the executive director and any other information required by the
43 comptroller.

44
45 Texas Tax Code, § 151.4292(k) requires the executive director to prepare and deliver a
46 report that evaluates the effectiveness of the Tax Refund Pilot Program on employment

1 outcomes and earnings for apprentices with respect to the refunds that are granted under
2 Texas Tax Code, §151.4292. The report must recommend whether the program should be
3 "continued, expanded, or terminated." The report must be delivered to the governor,
4 lieutenant governor, speaker of the house of representatives, and presiding officer of each
5 legislative standing committee with primary jurisdiction over taxation, no later than
6 September 1, 2024.

7
8 Texas Tax Code, §151.4292(l) states that a person applying for a refund under Texas Tax
9 Code, §151.4292 shall provide to the executive director such information requested to
10 prepare the report required by §151.4292(k).

11
12 Texas Tax Code, §151.4292(m) stipulates that the section shall expire December 31,
13 2026.

14 15 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

16 17 **SUBCHAPTER A. TAX REFUND PILOT PROGRAM FOR CERTAIN PERSONS** 18 **WHO EMPLOY APPRENTICES**

19 TWC proposes new Subchapter A as follows:

20 21 **§839.10. Purpose and Goal**

22 New §839.10 states the purpose and goal for Chapter 839, Subchapter A.

23 24 **§839.11. Definitions**

25 New §839.11 defines the terms used in Chapter 839, Subchapter A.

26 27 **§839.12. Tax Refund Pilot Program Provisions**

28 New §839.12 states that TWC's executive director shall provide certificates for
29 individuals eligible to apply for tax refund under Chapter 839, Subchapter A. Section
30 839.12 also describes limitations on the amount of such refund that each eligible person
31 may qualify for under Chapter 839, Subchapter A, including that such refund shall not
32 total more than the sales and use tax owed for previous year.

33 34 **§839.13. Eligibility for Persons Employing Apprentices**

35 New §839.13 states that only those active apprentices may be considered who were
36 engaged with an employer for not less than seven months in the prior year (and not more
37 than four total years) for which the employer is applying for the tax refund.

38 39 **§839.14. Application for Certification**

40 New §839.14 describes the process for which persons may apply for certification through
41 TWC. Section 839.14 also states that only applications received from January 1 through
42 March 31 each year will be reviewed for certification.

43 44 **§839.15. Certification of Eligibility**

45 New §839.15 describes merit-based criteria to be used by TWC's executive director.
46 Section 839.15 states that TWC will review applications from April 1 through May 31

1 each year. Section 839.15 also describes the delivery of the report on TWC-certified
2 persons to the comptroller, on June 1 each year.

3
4 **§839.16. Limitations**

5 New §839.16 states that TWC's executive director may certify up to 100 persons for
6 eligibility for tax refund under Chapter 839, Subchapter A each year. Section 839.16
7 clarifies that a person may be certified with one apprentice each year, or up to six if not
8 less than half of such apprentices are included in a listed priority category.

9
10 **§839.17. Tax Refund Pilot Program Expiration**

11 New §839.17 states that Texas Tax Code, §151.4292 expires on December 31, 2026.

12
13 **PART III. IMPACT STATEMENTS**

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

16
17 There are no additional estimated costs to the state and to local governments expected as
18 a result of enforcing or administering the rules.

19
20 There are no estimated cost reductions to the state and to local governments as a result of
21 enforcing or administering the rules.

22
23 There are no estimated losses or increases in revenue to the state or to local governments
24 as a result of enforcing or administering the rules.

25
26 There are no foreseeable implications relating to costs or revenue of the state or local
27 governments as a result of enforcing or administering the rules.

28
29 There are no anticipated economic costs to individuals required to comply with the rules.

30
31 There is no anticipated adverse economic impact on small businesses, microbusinesses,
32 or rural communities as a result of enforcing or administering the rules.

33
34 Based on the analyses required by Texas Government Code, §2001.024, TWC
35 determined that the requirement to repeal or amend a rule, as required by Texas
36 Government Code, §2001.0045, does not apply to this rulemaking.

37
38 **Takings Impact Assessment**

39 Under Texas Government Code, §2007.002(5), "taking" means a governmental action
40 that affects private real property, in whole or in part or temporarily or permanently, in a
41 manner that requires the governmental entity to compensate the private real property
42 owner as provided by the Fifth and Fourteenth Amendments to the United States
43 Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the
44 owner's right to the property that would otherwise exist in the absence of the
45 governmental action, and is the producing cause of a reduction of at least 25 percent in
46 the market value of the affected private real property, determined by comparing the

1 market value of the property as if the governmental action is not in effect and the market
2 value of the property determined as if the governmental action is in effect. TWC
3 completed a Takings Impact Analysis for the proposed rulemaking action under Texas
4 Government Code, §2007.043. The primary purpose of this proposed rulemaking action,
5 as discussed elsewhere in this preamble, is to establish a tax refund pilot program to
6 implement SB 1524.

7
8 The proposed rulemaking action will not create any additional burden on private real
9 property or affect private real property in a manner that would require compensation to
10 private real property owners under the United States Constitution or the Texas
11 Constitution. The proposal also will not affect private real property in a manner that
12 restricts or limits an owner's right to the property that would otherwise exist in the
13 absence of the governmental action. Therefore, the proposed rulemaking will not cause a
14 taking under Texas Government Code, Chapter 2007.

15
16 Government Growth Impact Statement

17 TWC determined that during the first five years the rules will be in effect, they will not:

- 18 --create or eliminate a government program;
- 19 --require the creation or elimination of employee positions;
- 20 --require an increase or decrease in future legislative appropriations to TWC;
- 21 --require an increase or decrease in fees paid to TWC;
- 22 --create a new regulation;
- 23 --expand, limit, or eliminate an existing regulation;
- 24 --change the number of individuals subject to the rules; and
- 25 --positively or adversely affect the state's economy.

26
27 Economic Impact Statement and Regulatory Flexibility Analysis

28 TWC determined that the rules will not have an adverse economic impact on small
29 businesses or rural communities, as the proposed rules place no requirements on small
30 businesses or rural communities.

31
32 Mariana Vega, Director, Labor Market Information, determined that there is not a
33 significant negative impact upon employment conditions in the state as a result of the
34 rules.

35
36 Courtney Arbour, Director, Workforce Development Division, has determined that for
37 each year of the first five years the rules are in effect, the public benefit anticipated as a
38 result of enforcing the proposed rules will be to provide a sale and use tax refund to
39 certain persons who employ apprentices enrolled in a qualifying apprenticeship, as set
40 forth in Texas Tax Code, §151.4292.

41
42 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to
43 be within TWC's legal authority to adopt.

44
45 **PART IV. COORDINATION ACTIVITIES**

1 In the development of these rules for publication and public comment, TWC sought the
2 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC
3 provided the policy concept regarding the new rules to the Boards for consideration and
4 review on March 22, 2022. TWC also conducted a conference call with Board executive
5 directors and Board staff on March 25, 2022, to discuss the policy concept. During the
6 rulemaking process, TWC considered all information gathered in order to develop rules
7 that provide clear and concise direction to all parties involved.

8
9 **PART V. PUBLIC COMMENT**

10 Comments on the proposed new rules may be submitted to
11 TWCPolicyComments@twc.texas.gov and must be received no later than August 22,
12 2022.

13
14 **PART VI. STATUTORY AUTHORITY**

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

18
19 The new rules implement SB 1524, which added Texas Tax Code, §151.4292, Tax
20 Refund Pilot Program for Certain Persons Who Employ Apprentices.
21

1 **CHAPTER 839. APPRENTICESHIP PROGRAMS - ADDITIONAL**

2
3 **SUBCHAPTER A. TAX REFUND PILOT PROGRAM FOR CERTAIN PERSONS**
4 **WHO EMPLOY APPRENTICES**

5
6 **§839.10. Purpose and Goal.**

7
8 (a) The purpose of this subchapter is to establish rules for the Tax Refund Pilot
9 Program in accordance with Texas Tax Code, §151.4292.

10
11 (b) The goal of this subchapter is to implement a tax refund pilot program to
12 provide a sales and use tax refund to certain persons who employ apprentices
13 enrolled in a qualifying apprenticeship, as set forth in Texas Tax Code,
14 §151.4292.

15
16 **§839.11. Definitions.**

17
18 The following words and terms, when used in this subchapter, shall have the
19 following meanings, unless the context clearly indicates otherwise.

20
21 (1) Agency--The unit of state government established under Texas Labor
22 Code, Chapter 301 that is presided over by the Commission and
23 administered by the executive director to operate the integrated
24 workforce development system and administer the unemployment
25 compensation insurance program in this state as established under the
26 Texas Unemployment Compensation Act, Texas Labor Code, Title 4,
27 Subtitle A, as amended. The definition of "Agency" shall apply to all
28 uses of the term in this subchapter.

29
30 (2) Apprentice--A participant in a qualifying apprenticeship as defined in
31 this section.

32
33 (3) Commission--The body of governance of the Texas Workforce
34 Commission composed of three members appointed by the governor as
35 established under Texas Labor Code, §301.002 that includes one
36 representative of labor, one representative of employers, and one
37 representative of the public. The definition of Commission shall apply
38 to all uses of the term in this subchapter.

39
40 (4) Comptroller--The comptroller of public accounts of the State of Texas,
41 as defined under Texas Government Code, Chapter 403.

42
43 (5) Executive director--The individual appointed by the Commission to
44 administer the daily operations of the Agency, which may include an
45 individual delegated by the executive director to perform a specific
46 function on behalf of the executive director.

- 1
2 (6) Military spouse--A person who is married to a military service
3 member, as defined under Texas Occupations Code, Chapter 55.
4
5 (7) Military veteran--A person who has served on active duty and who was
6 discharged or released from active duty, as defined under Texas
7 Occupations Code, Chapter 55.
8
9 (8) Non-metro area--Any area that is not included in a metropolitan
10 statistical area designated by the United States Office of Management
11 and Budget.
12
13 (9) Person--A "person" is:
14
15 (A) a resident of this state;
16
17 (B) a business entity located in this state;
18
19 (C) a governmental subdivision located in this state; or
20
21 (D) a public or private organization located in this state that is not a
22 state agency.
23
24 (10) Qualifying apprenticeship--An apprenticeship training program
25 registered with United States Department of Labor (DOL) and qualified
26 to receive funding provided through the Agency as set forth in Texas
27 Education Code, Chapter 133, or certified as an Industry-Recognized
28 Apprenticeship Program (IRAP) by a Standards Recognition Entity.
29
30 (11) Standards Recognition Entity--A third-party entity recognized by DOL
31 as qualified to recognize apprenticeship programs as IRAPs.
32
33 (12) Transitioning foster youth--A youth who has or is currently
34 transitioning to independent living as described in Texas Family Code,
35 §264.121.

36
37 **§839.12. Tax Refund Pilot Program Provisions.**
38

- 39 (a) The Tax Refund Pilot Program for Certain Persons Who Employ Apprentices
40 is jointly carried out by the comptroller, executive director, and the Agency.
41
42 (b) The executive director shall provide certificates to eligible persons, in
43 accordance with §§839.13 - 839.15 of this subchapter (relating to Eligibility
44 for Persons Employing Apprentices; Application for Certification; and
45 Certification of Eligibility). Such certificates must be included by eligible

1 persons who apply for a tax refund with the comptroller in accordance with
2 Texas Tax Code, §151.4292.

3
4 (c) Subject to the limitations in subsection (d) of this section and §839.16(a) of
5 this subchapter (relating to Limitations), the amount of the refund available to
6 eligible persons in a calendar year in connection with each apprentice is
7 \$2,500.

8
9 (d) The total amount an eligible person may be refunded through the Tax Refund
10 Pilot Program in a calendar year shall be equal to the lesser of:

11
12 (1) the amount of sales and use taxes paid by the person during the
13 calendar year; or

14
15 (2) the amount listed in subsection (c) of this section for each eligible
16 apprentice employed.

17
18 **§839.13. Eligibility for Persons Employing Apprentices.**

19
20 (a) A person may apply to the Agency for certification if the person employs at
21 least one apprentice in a qualifying apprenticeship for not less than seven
22 months in the calendar year.

23
24 (b) A person shall not be determined eligible for certification by the executive
25 director for any apprentice first employed prior to January 1, 2022.

26
27 (c) An apprentice is not considered to be employed for purposes of this
28 subchapter:

29
30 (1) after the earlier of:

31
32 (A) the fourth anniversary of employment in the position; or

33
34 (B) the conclusion of the term of the qualifying apprenticeship
35 position; or

36
37 (2) if the apprentice was employed in another position by the employer
38 immediately before beginning employment in the qualifying
39 apprenticeship position.

40
41 **§839.14. Application for Certification.**

42
43 (a) The Agency shall develop an application for certification under the Tax
44 Refund Pilot Program.

1 (b) The application shall include such information determined necessary by the
2 executive director to certify eligible persons under this subchapter.

3
4 (c) To be considered for certification under this subchapter by the executive
5 director, eligible persons shall submit the application in such manner as
6 required by the Agency.

7
8 (d) Beginning in 2023, the Agency shall accept applications for certification
9 from eligible persons employing apprentices between January 1 and
10 December 31 of the previous calendar year. Only applications received
11 between January 1 and March 31 each year shall be accepted by the Agency
12 for the previous calendar year.

13
14 **§839.15. Certification of Eligibility.**

15
16 (a) The executive director shall adopt merit-based criteria, described in
17 subsection (b) of this section, for the selection of eligible persons. These
18 criteria shall be used if more than 100 eligible applicants are received by the
19 Agency in a calendar year.

20
21 (b) When determining those persons who will be certified in a calendar year
22 from a group larger than 100 applicants, the executive director shall give
23 preference to applicants who:

24
25 (1) offer qualifying apprenticeships in non-metro areas of this state; and

26
27 (2) provide training and skills development in fields defined by the Agency
28 as emerging or developing in Texas.

29
30 (c) In addition to those criteria identified in subsection (b) of this section, the
31 executive director may give preference to applicants who:

32
33 (1) employ at least one apprentice who is included in one or more
34 population identified in §839.16(a)(2)(A) - (D) of this subchapter
35 (relating to Limitations); and

36
37 (2) submit applications for apprentices who have not been previously
38 certified under this section.

39
40 (d) Applications received in accordance with §839.14 of this subchapter (relating
41 to Application for Certification) will be reviewed beginning April 1 through
42 May 31. Persons will be informed of certification or denial of eligibility in a
43 manner determined by the Agency.

44
45 (e) The executive director, or appropriate designated staff, shall issue a report to
46 the comptroller each year on June 1 that identifies each person certified under

1 this subchapter as eligible to apply for the tax refund described in §839.13 of
2 this subchapter (relating to Eligibility for Persons Employing Apprentices).
3 The report shall be delivered in a manner determined by the Agency.
4

5 **§839.16. Limitations.**
6

7 (a) The maximum number of apprentices employed by a person who may be
8 certified under this subchapter to apply to the comptroller for a tax refund in
9 a calendar year is:
10

11 (1) one; or
12

13 (2) up to six apprentices, provided at least half of those individuals are:
14

15 (A) transitioning foster youth;

16 (B) military veterans;

17 (C) military spouses; or
18

19 (D) women.
20
21

22 (b) The executive director may certify up to 100 persons in a calendar year.
23
24

25 **§839.17. Tax Refund Pilot Program Expiration.**
26

27 Texas Tax Code, §151.4292, Tax Refund Pilot Program for Certain Persons Who
28 Employ Apprentices, expires on December 31, 2026.