

1 **CHAPTER 803. SKILLS DEVELOPMENT FUND**

2
3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
4 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**
6

7 **ON JANUARY 5, 2021, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**
9

10 Estimated date of publication in the *Texas Register*: **January 22, 2021**
11 The rules will take effect: **January 25, 2021**
12

13 TWC adopts amendments to the following sections of Chapter 803, relating to the Skills
14 Development Fund:
15

- 16 Subchapter A. General Provisions Regarding the Skills Development Fund, §803.1 and
17 §803.2
- 18 Subchapter B. Program Administration, §803.11 and §§803.13 - 803.15
19

20 TWC adopts the following new section of Chapter 803, relating to the Skills Development Fund:
21

- 22 Subchapter A. General Provisions Regarding the Skills Development Fund, §803.4
23

24 The amendments to §§803.1, 803.11, 803.13, and 803.15, and new §803.4 are adopted without
25 changes to the proposed text as published in the November 13, 2020, issue of the *Texas Register*
26 (45 TexReg 8118). The amendments to §803.2 and §803.14 are adopted with changes to the
27 proposed text as published.
28

29 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

30 The purpose of the Chapter 803 rule changes is to implement statutory changes related to the
31 Skills Development Fund (SDF) program.
32

33 House Bill (HB) 700, 86th Texas Legislature, Regular Session (2019), amended sections of
34 Texas Labor Code, Chapter 303, relating to the SDF program. HB 700 amended Texas Labor
35 Code, §303.001(a) to add Local Workforce Development Boards (Boards) to the list of entities
36 that are eligible to use SDF grants as an incentive to provide customized assessment and training.
37

38 Additionally, HB 108, 85th Texas Legislature, Regular Session (2017), amended the Texas
39 Labor Code to add §303.0031 regarding the use of SDF grants to encourage employer expansion
40 and recruitment. Texas Labor Code, §303.0031 allows SDF grants to provide "an intensive and
41 rapid response to, and support services for, employers expanding in or relocating their operations
42 to this state, with a focus on recruiting employers that will provide complex or high-skilled
43 employment opportunities in this state."
44

45 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

1 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
2 therefore, are not discussed in the Explanation of Individual Provisions.)
3

4 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS**
5 **DEVELOPMENT FUND**

6 TWC adopts the following amendments to Subchapter A:
7

8 **§803.1. Scope and Purpose**

9 Section 803.1(a) is amended to provide a broad statement on the purpose of the SDF. This
10 language reflects the statutory purpose in the Texas Labor Code, §303.001 and includes business
11 expansion and relocation purpose in the Texas Labor Code, §303.003. The amended language
12 removes references to required partnerships for community-based organization as this eligibility
13 requirement is described in §803.2.
14

15 Section 803.1(a) is also amended to add Boards to the list of entities eligible to receive SDF
16 grants to provide customized assessment and training pursuant to Texas Labor Code, §303.001.
17 TWC notes that Texas Government Code, §2308.264 prohibits Boards from directly providing
18 workforce training or one-stop workforce services unless the Board requests and is approved for
19 a waiver based on the lack of an existing qualified alternative for delivery of workforce services
20 in the local workforce development area (workforce area). Texas Labor Code, Chapter 303 (as
21 amended by HB 700) allows Boards to apply for and use SDF funds:

- 22 --as an incentive to provide customized training;
- 23 --to develop customized training; and
- 24 --to sponsor small and medium-sized business networks and consortiums for job training
25 purposes.

26
27 Texas Labor Code, Chapter 303 does not state that Boards must provide the training directly and,
28 therefore, does not conflict with Texas Government Code, §2308.264.
29

30 Section 803.1(a) is also amended to add "A&M" to complete the name of the Texas Engineering
31 Extension Service, which reflects the language in Texas Labor Code, §303.001.
32

33 **§803.2. Definitions**

34 Definitions in §803.2 are amended as follows:

35 --Section 803.2(1) is amended to include a Board as a design partner in the definition of a
36 "customized training project."

37 --Section 803.2(2) is added to define "eligible applicant."

38 --Section 803.2(3) is added to define "executive director."

39 --Subsequent definitions are renumbered accordingly to accommodate the added definitions.

40 --Section 803.2(4) is amended to include a Board in the definition of a "grant recipient."

41 --Section 803.2(6) is amended to remove "person" to alleviate any ambiguity or confusion with
42 the word in the definition of "private partner." At adoption, "Boards" is added to the definition
43 for clarification.

44 --Section 803.2(9) is amended to add "A&M" to the defined term "Texas Engineering Extension
45 Service."

1 --Section 803.2(11) is amended to include a Board contractor in the definition of a "training
2 provider."
3

4 In response to comment, §803.2(2) and (3) are added to define "eligible applicant" and
5 "executive director" to clarify the use of those terms in adopted §803.14.
6

7 **§803.4. Use of Funds to Encourage Employer Expansion and Recruitment**

8 New §803.4 is added to implement Texas Labor Code, §303.0031, relating to the use of the SDF
9 to support employers expanding in or relocating to Texas. The rule language reflects the
10 statutory language in Texas Labor Code, §303.0031.
11

12 Section 803.4(a) reflects the statutory language in the Texas Labor Code that the SDF may be
13 used to provide an intensive and rapid response to, and support services for, employers
14 expanding in or relocating their operations to Texas, with a focus on recruiting employers that
15 will provide complex or high-skilled employment opportunities in the state.
16

17 New §803.4(b) reflects the statutory language in the Texas Labor Code that the SDF grand funds
18 may be used to:

- 19 --provide leadership and direction to, and connections among, out-of-state employers, economic
20 development organizations, Boards, public community colleges, and public technical colleges to
21 support employers' recruitment and hiring for complex or high-skilled employment positions as
22 necessary to facilitate the employers' relocation to or expansion of operations in Texas; and
- 23 --award grants to public community colleges or public technical colleges that provide workforce
24 training and related support services to employers that commit to establishing a place of business
25 in Texas.
26

27 New §803.4(c) reflects the statutory language in the Texas Labor Code that the SDF grant funds
28 may be used to develop:

- 29 --customized workforce training programs for an employer's specific business needs;
- 30 --fast-track curriculum;
- 31 --workforce training--related support services for employers; and
- 32 --instructor certification necessary to provide workforce training.
33

34 New §803.4(d) reflects the statutory language in the Texas Labor Code that SDF grant funds
35 may also be used to acquire training equipment necessary for instructor certification and
36 employment. The rule language clarifies that the use of funds for this purpose is permitted only
37 for SDF grants that are funded under §803.4 to support employers expanding in or relocating to
38 Texas.
39

40 Texas Labor Code, §303.0031 allows TWC to require grant recipients, as a condition of
41 receiving grant funds under this section, to agree to repay the amount received and any related
42 interest if TWC determines that the grant funds were not used for the purposes for which the
43 funds were awarded. New §803.4(e) includes this option.
44

45 **SUBCHAPTER B. PROGRAM ADMINISTRATION**

46 TWC adopts the following amendments to Subchapter B:

1
2 **§803.11. Grant Administration**

3 Section 803.11(3) is amended to correct the citation for Agency Monitoring Activities to Chapter
4 802, Subchapter D.

5
6 **§803.13. Program Objectives**

7 Section 803.13(2) is amended to promote collaboration of workforce activities in workforce
8 areas as an SDF program objective. The amended language removes collaboration solely with
9 Boards and expands the promotion of collaboration and awareness of workforce activities to a
10 broader partnership of entities.

11
12 **§803.14. Procedure for Requesting Funding**

13 Section 803.14 is amended to clarify the language stating that SDF applicants obtain the review
14 and comments of the Board in the applicable workforce areas where there is a significant impact
15 on job creation or incumbent worker training.

16
17 TWC notes that collaboration between grant applicants and Boards during the SDF project
18 development review and evaluation process ensures that the needs of local industry and the
19 workforce are being met effectively and efficiently. .

20
21 In response to comment, adopted §803.14 is amended to add subsections (a) - (c) to clarify
22 language for the requirement that Boards review and comment on SDF applications before the
23 applications are submitted to TWC.

24
25 The subsequent subsections are relettered accordingly to accommodate the added subsections.

26
27 Section 803.14(h)(6) is amended to include Boards, along with the entities currently in rule, in
28 the signed agreement outlining each entity's roles and responsibilities if a grant is awarded.

29
30 Section 803.14(h)(8) is amended to require grant applicants to include a comparison of costs per
31 trainee for customized training projects for similar Board instruction in the grant application in
32 order to align with the current requirement for comparison of costs with instruction at
33 community and technical colleges or TEEX.

34
35 **§803.15. Procedure for Proposal Evaluation**

36 Section 803.15(b) is amended to remove the requirement that TWC must notify the Board in the
37 applicable workforce area when it is evaluating an SDF application. The amended section adds
38 the requirement that TWC must notify all eligible grant applicants when it is evaluating an SDF
39 application. The intent of the amended language is that this notification is to promote
40 collaboration and awareness of potential workforce activities in the workforce area.

41
42 TWC Chapter 802, Subchapter G, Corrective Actions, allows TWC to impose corrective actions
43 when a Board or TWC grantee--defined in §802.2(1) to include SDF grantees--has failed to
44 comply with contract requirements.

1 TWC contends that if an entity has failed to comply with past contract requirements and
2 continues to be on corrective action for this noncompliance at the time of the entity's application,
3 the entity should not be eligible for an SDF grant. Therefore, §803.15(d) is added to prohibit
4 SDF applicants on corrective action as described in Chapter 802, Subchapter G, from receiving
5 an SDF grant.

6
7 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within
8 TWC's legal authority to adopt.

9
10 **PART III. PUBLIC COMMENT**

11 The public comment period closed on December 14, 2020. Comments were received from Blinn
12 College and Texas Association of Workforce Boards (TAWB).

13
14 **§803.14. Procedure for Requesting Funding**

15
16 **Comment:** Blinn College stated that "[b]oth the local workforce boards and community colleges
17 play a key role in training the next generation of Texans. Further, the College has no issue with
18 the continued involvement of the local workforce development boards in the review/approval
19 process of SDF grant applications when local boards are not submitting their own SDF grant
20 applications. However, when a local workforce board is submitting their own SDF grant
21 application, their simultaneous involvement in the review/approval process of competing SDF
22 grant applications should not be allowed."

23
24 **Response:** The Commission agrees that simultaneous involvement in the review and approval
25 process of competing SDF grant applications should not be allowed and therefore revises the
26 language in §803.14 as described in the response to the next comment.

27
28 **Comment:** TAWB provided language to ensure compliance with legislative intent and to allow
29 Boards to retain their leadership role and local authority of employer-driven workforce
30 development Boards by continuing to require review of non-Board SDF grant applications.
31 TAWB provided the following language:

32
33 (a) A qualified applicant shall present to the executive director or his or her designee, an
34 application including a proposal requesting funding for a customized training project or other
35 appropriate use of the fund, after obtaining the review and comments of the Board in the
36 applicable workforce area(s) in which there would be a significant impact on job creation or
37 incumbent worker training as a result of the proposal, and including those comments with the
38 proposal, except as provided in subsection (b) below.

39
40 (b) A qualified applicant is not required to obtain or provide the comments of any Board that
41 is submitting a grant application that targets development of the same skills for employers in
42 the same industry.

43
44 **Response:** The Commission agrees that Boards may continue to review applications submitted
45 by eligible applicants, and to clarify this process, the Commission adds the following language to
46 §803.14:

1
2 (a) An eligible applicant shall present to the executive director or his or her designee, an
3 application for funding, in order to acquire grant funds for the provision of customized
4 training as may be identified by the eligible applicant. Except as provided in subsection
5 (b) of this section, the eligible applicant will request the review and comments of the Board
6 in the applicable workforce area(s), where there is a significant impact on job creation or
7 incumbent worker training, and submit these comments to the executive director or his or
8 her designee with the application for funding.
9

10 (b) An eligible applicant is not required to obtain or provide the comments if the Board
11 informs the applicant that the Board is preparing an application or has submitted an
12 application that has not been approved or rejected. A Board is not required to comment on
13 its own applications.
14

15 (c) An eligible applicant shall submit any updates to the original application for funding in
16 accordance with subsections (a) and (b) of this section.
17

18 **PART IV. STATATORY AUTHORITY**

19 The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide
20 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
21 effective administration of TWC services and activities.
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23 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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- (v) a community-based organization only in partnership with the public community and technical colleges or TEEEX.
- (2) Eligible applicant--An entity identified in Texas Labor Code, Chapter 303, as eligible to apply for funds:
 - (A) a public community college;
 - (B) a technical college;
 - (C) TEEEX;
 - (D) a Board; or
 - (E) a community-based organization only in partnership with the public community and technical colleges or TEEEX.
- (3) Executive director--The executive director of the Texas Workforce Commission.
- (4) Grant recipient--A recipient of a Skills Development Fund grant that is:
 - (A) a public community college;
 - (B) a technical college;
 - (C) TEEEX;
 - (D) a Board; or
 - (E) a community-based organization only in partnership with the public community and technical colleges or TEEEX.
- (5) Non-local public community and technical college--A public community or technical college providing training outside of its local taxing district.
- (6) Private partner--A sole proprietorship, partnership, corporation, association, consortium, or private organization that enters into a partnership for a customized training project with:
 - (A) a public community college;
 - (B) a technical college;
 - (C) TEEEX;

- 1 (D) a Board; or
2
3 (E) a community-based organization only in partnership with the public
4 community and technical colleges or TEEEX.
5
6 (7) Public community college--A state-funded, two-year educational institution
7 primarily serving its local taxing district and service area in Texas and offering
8 vocational, technical, and academic courses for certification or associate's
9 degrees.
10
11 (8) Public technical college--A state-funded coeducational institution of higher
12 education offering courses of study in vocational and technical education, for
13 certification or associate's degrees.
14
15 (9) Texas A&M Engineering Extension Service (TEEX)--A higher education
16 agency and service established by the Board of Regents of the Texas A&M
17 University System.
18
19 (10) Trade union--An organization, agency, or employee committee in which
20 employees participate and which exists for the purpose of dealing with
21 employers concerning grievances, labor disputes, wages, rates of pay, hours of
22 employment, or conditions of work.
23
24 (11) Training provider--An entity or individual that provides training, including:
25 (A) a public community college;
26 (B) a technical college;
27 (C) TEEEX;
28 (D) a community-based organization only in partnership with the public
29 community or technical college or TEEEX; or
30 (E) An individual, sole proprietorship, partnership, corporation, association,
31 consortium, governmental subdivision, or public or private organization
32 with whom a Board, public community or technical college, or TEEEX
33 has subcontracted to provide training.
34
35

36 **§803.4. Use of Funds to Encourage Employer Expansion and Recruitment.**
37

- 38 (a) Pursuant to Texas Labor Code §303.0031, the Skills Development Fund may be used
39 to provide an intensive and rapid response to, and support services for, employers
40 expanding in or relocating their operations to Texas, with a focus on recruiting
41 employers that will provide complex or high-skilled employment opportunities in the
42 state.
43

1 (b) Grant funds under this section may be used to:
2

3 (1) provide leadership and direction to, and connections among, out-of-state
4 employers, economic development organizations, Boards, public community
5 and technical colleges to support employers' recruitment and hiring for
6 complex or high-skilled employment positions as necessary to facilitate the
7 employers' relocation to or expansion of operations in Texas; and
8

9 (2) award grants to public community or technical colleges that provide workforce
10 training and related support services to employers that commit to establishing a
11 place of business in Texas.
12

13 (c) Grant funds under this section may be used only to develop:
14

15 (1) customized workforce training programs for an employer's specific business
16 needs;
17

18 (2) fast-track curriculum;
19

20 (3) workforce training--related support services for employers; and
21

22 (4) instructor certification necessary to provide workforce training.
23

24 (d) Notwithstanding the use of funds restrictions in §803.3(d)(2), grant funds may also
25 be used to acquire training equipment necessary for instructor certification and
26 employment.
27

28 (e) As a condition of receiving grant funds under this section, grant recipients shall
29 agree to repay the amount received and any related interest if the Agency determines
30 that the grant recipients did not use the funds for the purposes for which the funds
31 were awarded.
32

33 **SUBCHAPTER B. PROGRAM ADMINISTRATION** 34

35 **§803.11. Grant Administration.** 36

37 Grant recipients must enter into an agreement with the Agency to comply with contract
38 requirements that include, but are not limited to:
39

40 (1) submitting all required reports, including financial and performance reports, in
41 the format and time frame required by the Agency;
42

43 (2) maintaining fiscal data needed for independent verification of expenditures of
44 funds received for the customized training project;
45

- 1 (3) cooperating and complying with Agency monitoring activities as required by
2 Chapter 802, Subchapter D, of this title (relating to Agency Monitoring
3 Activities); and
4
5 (4) submitting contract completion reports:
6
7 (A) The final payment is contingent upon the executive director's, or
8 designee's, determination that a project has met the training objectives,
9 outcomes, and requirements (an attrition rate of up to 15% of the total
10 number of trainees in the contract is allowed).
11
12 (B) The final payment of the contract will be withheld for 60 days after the
13 completion of training and after receipt by the Agency of verification
14 from the employer that the trainees are employed.
15

16 **§803.13. Program Objectives.**

17 The program objectives in administering the Skills Development Fund are:
18

- 19
20 (1) to ensure that funds from the program are spent in all local workforce
21 development areas (workforce areas) of this state and expand the state's
22 capacity to respond to workforce training needs;
23
24 (2) to promote collaboration and awareness of potential workforce activities in
25 workforce areas;
26
27 (3) to develop projects that, at completion of the training, will result in wages
28 equal to or greater than the prevailing wage of individuals with similar
29 knowledge and experience in that occupation in the local labor market for the
30 participants in the customized training project;
31
32 (4) to prioritize the processing of grant requests from workforce areas where the
33 unemployment rate is higher than the state's annual average unemployment
34 rate;
35
36 (5) to sponsor creation and attraction of high-value, high-skill jobs for the state
37 that will facilitate the growth of industry and emerging occupations; and
38
39 (6) to the greatest extent practicable, award Skills Development Fund grants as
40 follows:
41
42 (A) Approximately 60 percent of the funds may be for job retention training.

1
2 (B) The remaining funds may be for training for job creation.
3

4 **§803.14. Procedure for Requesting Funding.**
5

- 6 (a) An eligible applicant shall present to the executive director or his or her designee, an
7 application for funding, in order to acquire grant funds for the provision of
8 customized training as may be identified by the eligible applicant. Except as
9 provided in subsection (b) of this section, the eligible applicant will request the
10 review and comments of the Board in the applicable workforce area(s), where there
11 is a significant impact on job creation or incumbent worker training, and submit
12 these comments to the executive director or his or her designee with the application
13 for funding.
14
- 15 (b) An eligible applicant is not required to obtain or provide the comments if the Board
16 informs the applicant that the Board is preparing an application or has submitted an
17 application that has not been approved or rejected. A Board is not required to
18 comment on its own applications.
19
- 20 (c) An eligible applicant shall submit any updates to the original application for funding
21 in accordance with subsections (a) and (b) of this section.
22
- 23
- 24 (d) TEEEX, or the public community or technical college that is a partner to a training
25 proposal for a grant from the Skills Development Fund, may be non-local.
26
- 27 (e) The training proposal shall not duplicate a training project available in the workforce
28 area in which the private partner or trade union is located.
29
- 30 (f) Proposals shall disclose other grant funds sought or awarded from the Agency or
31 other state and federal entities for the proposed job training project.
32
- 33 (g) Applicants shall indicate whether they are submitting concurrent proposals for the
34 Skills Development Fund and the Texas Enterprise Fund. For the purposes of this
35 subsection, "concurrent proposal" shall mean:
36
- 37 (1) a proposal for the Skills Development Fund that has been submitted and is
38 pending at the time an applicant submits a proposal for the Texas Enterprise
39 Fund; or
40
- 41 (2) a proposal for the Texas Enterprise Fund that has been submitted and is
42 pending at the time an applicant submits a proposal for the Skills Development
43 Fund.
44
- 45 (h) Proposals shall be written and contain the following information:
46

- 1 (1) The number of proposed jobs created and/or retained;
- 2
- 3 (2) A brief outline of the proposed training project, including the skills acquired
- 4 through training and the employer's involvement in the planning and design;
- 5
- 6 (3) A brief description of the measurable training objectives and outcomes;
- 7
- 8 (4) The occupation and wages for participants who complete the customized
- 9 training project;
- 10
- 11 (5) A budget summary, disclosing anticipated project costs and resource
- 12 contributions, including the dollar amount the private partner is willing to
- 13 commit to the project;
- 14
- 15 (6) A signed agreement between the private partner or trade union and the Board,
- 16 public community or technical college, or TEEEX outlining each entity's roles
- 17 and responsibilities if a grant is awarded;
- 18
- 19 (7) A statement explaining the basis for the determination that there is an actual or
- 20 projected labor shortage in the occupation in which the proposed training
- 21 project will be provided that is not being met by an existing institution or
- 22 program in the workforce area;
- 23
- 24 (8) A comparison of costs per trainee for the customized training project and costs
- 25 for similar instruction at the public community or technical college, TEEEX, and
- 26 the Board;
- 27
- 28 (9) A statement describing the private partner's or trade union's equal opportunity
- 29 employment policy;
- 30
- 31 (10) A list of the proposed employment benefits;
- 32
- 33 (11) An indication of a concurrent proposal as required by subsection (e) of this
- 34 section; and
- 35
- 36 (12) Any additional information deemed necessary by the Agency to complete
- 37 evaluation of a proposal.
- 38

39 **§803.15. Procedure for Proposal Evaluation.**

- 40
- 41 (a) The executive director, or designee, shall evaluate each proposal considering the
- 42 purposes listed in §803.3(a) of this subchapter, the program objectives listed in
- 43 §803.13 of this subchapter, and procedures in §803.14 of this subchapter, along with
- 44 the prevailing wage for occupations in the local labor market area, the financial
- 45 stability of the private partner, the regional economic impact, and any other factors
- 46 unique to the circumstances that the Agency determines are appropriate.

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- (b) The Agency shall notify all eligible grant applicants when the Agency is evaluating a proposal so as to promote collaboration and awareness of potential workforce activities in the workforce area.
- (c) If the Agency determines that a proposal is appropriate for funding through the Skills Development Fund, the executive director or designee shall enter into a contract with the grant recipient on behalf of the Agency.
- (d) Skills Development Fund applicants on corrective action pursuant to Chapter 802, Subchapter G, shall not be eligible to receive a Skills Development Fund grant.