

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IT SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON JULY 2, 2003, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: July 18, 2003.

Estimated End of Comment Period: August 18, 2003

The Texas Workforce Commission (Commission) proposes the repeal of 40 T.A.C. §815.132 titled The Rate and Collection of the Additional Tax and new §815.132. Computation of Unemployment Obligation Assessment for Chapter 815. Unemployment Insurance, Subchapter C. Tax Provisions, (40 T.A.C. §815.132) concerning the bonding provisions as authorized under Subchapter F. Issuance of Financial Obligations for Unemployment Compensation Fund (compensation fund), Texas Labor Code Chapter 203, as added by Article 6 of Senate Bill 280, 78th Legislature, Regular Session, 2003.

The purpose of the rule is to set forth the provisions applicable to the computation of unemployment obligation assessment provisions added to the Texas Labor Code. The Legislature has made the following findings. It is an essential governmental function to maintain funds in an amount sufficient to pay unemployment benefits when due. At the time of the enactment of Article 6 of Senate Bill 280, 78th Legislature, Regular Session, 2003 borrowing from the federal government was the only option available to obtain sufficient funds to pay benefits when the compensation fund is depleted.

The Legislature also determined that alternative methods of replenishing the compensation fund may reduce the costs of providing unemployment benefits and employers' cost of doing business in the state; and that funds representing revenues received from the unemployment obligation assessment authorized under Article 6 of Senate Bill 280, 78th Legislature, Regular Session, 2003 and any income from the investment of those funds are not state property. The purpose of Article 6 of Senate Bill 280, 78th Legislature, Regular Session, 2003 (SB280) is to provide appropriate methods through which the state may continue the unemployment compensation program at the lowest possible cost to the state and employers in the state.

Insolvency of the compensation fund has traditionally been addressed by borrowing from the Federal trust fund using a line of credit with the U.S. Department of the Treasurer. The expense associated with this type of borrowing may be more costly than with various commercial borrowing options. SB280 provides the agency with options for borrowing funds during periods of compensation fund insolvency. The borrowing process provides that the Agency must collect the unemployment obligation assessment to pay for the advanced interest and bond obligations when due. To facilitate this process, new rule §815.132 sets out the formulas for determining the unemployment obligation assessment rate.

Texas Labor Code §203.105, V.T.C.A. provides that the Commission shall collect an unemployment obligation assessment, also referred to as assessment, from each employer eligible for an experience tax rate. An assessment rate will be calculated if, after January 1 of a year, an interest payment on an advance from the federal trust fund will be due and the estimated amount necessary to make the interest payment is not available in the obligation trust fund or is not otherwise available. In addition, an assessment will be collected if bond obligations are due and the amount necessary to pay in full those obligations, including bond administrative expenses, is not available in the obligation trust fund or is not otherwise available.

When the Commission determines that an assessment must be collected after January 1 of a year, the Commission will compute the assessment rate using the formulas set out in the rule before November 20th of the year prior to the year of the assessment. This rate will be published in the *Texas Register*.

These assessments will be collected quarterly in the same manner as provided in §815.109 of this chapter (relating to Payment of Contributions and Reimbursements). The formulas in the rule will insure that the Commission will collect adequate revenue to satisfy bond obligations and advance interest payments when due.

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

There are no estimated losses or increases in revenue to the state or local governments as a result of enforcing or administering the rule, except that the funds raised by the assessment will be used to pay advanced interest or bond obligations;

There are no foreseeable implications relating to costs or revenue to the state or local governments as a result of enforcing or administering the rule, except that the funds raised by the assessment will be used to pay advanced interest or bond obligations, including administrative costs; and

There are no anticipated economic costs to persons required to comply with the rule.

Mr. Townsend, Chief Financial Officer, has determined that there is no adverse impact on small businesses as a result of enforcing or administering this rule required by statute.

LaSha Lenzy, Director, Unemployment Insurance and Regulation Division, has determined that for each year of the first five years that the rule will be in effect the

public benefit anticipated as a result of the adoption of the proposed rule will be the timely payment of interest payments on funds borrowed from the Federal Trust Fund and the bond obligations.

James Barnes, Director, Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of this proposed rule.

Comments on the proposed section may be submitted to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778; Fax Number 512-463-2220; or e-mailed to john.moore@twc.state.tx.us. Comments must be received by the Agency no later than thirty (30) days from the date this proposal is published in the *Texas Register*.

The repeal is proposed under Texas Labor Code § § 203.105, and 301.061, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4.

SUBCHAPTER C. TAX PROVISIONS

§815.132. The Rate and Collection of the Additional Tax.

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The new rule is proposed under Texas Labor Code § § 203. 105, and 301.061, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rule affects Texas Labor Code, Title 4.

§815.132. Computation of Unemployment Obligation Assessment.

(a) Texas Labor Code §203.105, V.T.C.A. provides that the Commission shall collect an unemployment obligation assessment, also referred to as an assessment, from each employer eligible for an experience tax rate if, after January 1 of a year, an interest payment on an advance from the federal trust fund will be due and the estimated amount necessary to make the interest payment is not available in the obligation trust fund or available otherwise; or bond obligations are due and the amount necessary to pay in full those obligations, including bond administrative expenses, is not available in the obligation trust fund or available otherwise.

(b) When the Commission determines that an assessment as referred to in the paragraph above will be due after January 1 of a year, the Commission shall compute the assessment rate using the formulas set out below in this section, before November 20th of

the year prior to the year of the assessment. This rate shall be published in the *Texas Register*.

(c) The calculation for the unemployment obligation assessment rate is the sum of subsection (d) and (e) of this section.

(d) The rate for the portion of the assessment that is to be used to pay an interest payment on federal loans shall not exceed two tenths of one percent. The rate shall be calculated by dividing two hundred percent (200%) of the additional amount estimated to be needed to pay interest due, as determined by the Agency, by the estimated total taxable wages for the 1st and 2nd quarters of the year in which the interest is due, and rounded up to the next hundredth.

(e) The rate for the portion of the assessment that is to be used to pay a bond obligation is a percentage of the product of the unemployment obligation assessment ratio and the sum of the employer's general tax rate, the replenishment tax rate and the deficit tax rate. The percentage, to be determined by Commission resolution, shall not exceed 200%.

(1) The Unemployment Obligation Assessment Ratio is computed by:

- (A) Dividing the numerator computed under Subsection (2) by the denominator described in by Subsection (3); and
- (B) Rounding that result up to the next hundredth.

(2) The numerator is computed by adding the total principal, interest and administrative expenses determined to be due during the next year. However, if the Commission determines that there will be excess funds available in the obligation trust fund that are not anticipated to be expended for the purposes set out in Texas Labor Code, section 203.258 (2-4), the numerator may be reduced by the amount of that excess.

(3) The denominator is the amount of contributions due under the general tax rate and the replenishment tax rate for the four calendar quarters ending the preceding June 30 from employers entitled to an experience rate on the tax rate computation date.