

CHAPTER 803. SKILLS DEVELOPMENT FUND

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

ON DECEMBER 20, 2005, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated publication date of the adopted rules in the *Texas Register*: **January 6, 2006**
The rules will take effect: **January 9, 2006**

The Texas Workforce Commission (Commission) adopts amendments to rules concerning the Skills Development Fund. Texas Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency. The Commission has reviewed Chapter 803 and determined that reasons for adopting the chapter exist; however, amendments to the rules are needed in order to update terminology and reflect recent changes in state law.

The Commission adopts the repeal of the following sections of Chapter 803 relating to the Skills Development Fund *without* changes to the proposed text as published in the October 7, 2005, issue of the *Texas Register*:

Subchapter C. Program Administration After Award of Contract,
§§803.31–803.36

The Commission adopts the following new sections to Chapter 803 relating to the Skills Development Fund *without* changes to the proposed text as published in the October 7, 2005, issue of the *Texas Register*:

Subchapter C. Program Administration After Award of Contract, §803.31 and
§803.32

The Commission adopts amendments to the following sections of Chapter 803 relating to the Skills Development Fund *without* changes to the proposed text as published in the October 7, 2005, issue of the *Texas Register*:

Subchapter A. General Provisions Regarding the Skills Development Fund,
§803.1 and §803.3

Subchapter B. Program Administration, §803.12, §803.13, and §803.15

The Commission adopts amendments to the following sections of Chapter 803 relating to the Skills Development Fund *with* changes to the proposed text as published in the October 7, 2005, issue of the *Texas Register*:

Subchapter A. General Provisions Regarding the Skills Development Fund, §803.2

Subchapter B. Program Administration, §803.11 and §803.14

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS
AND RESPONSES

PART III. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 803 rule change is to:

- (1) address additional priorities in awarding Skills Development Fund grants as directed by House Bill (HB) 2421, enacted by the 79th Texas Legislature, Regular Session;
- (2) eliminate certain rule language also found in statute;
- (3) remove administrative processes and procedures that are unnecessary in rules; and
- (4) incorporate minor technical edits throughout the rules for improved clarity and consistency.

The additional requirements for Skills Development Fund grants include providing notification of concurrent participation with the Skills Development Fund and the Texas Enterprise Fund with the Office of the Governor Economic Development and Tourism division; training incentives for small businesses; and the availability of funds for incumbent worker training and training focused on economic development.

Effective June 18, 2005, HB 2421 amended Texas Labor Code §303.005 to prohibit an employer from applying for both a Skills Development Fund grant [in conjunction with a community or technical college or the Texas Engineering Extension Service (TEEX)] and a Texas Enterprise Fund grant, unless the employer and the college file an application for concurrent participation.

Additionally, HB 2421 directs the Commission to consider giving priority to training incentives for small businesses. Pursuant to Texas Labor Code §303.003(b)(2), one of the purposes of the Skills Development Fund is to sponsor small businesses, which is addressed in the current rules under Uses of the Fund. The adopted rules add a cross-reference to this existing section under Procedures for Proposal Evaluation to ensure that the purposes of the Skills Development Fund grants are included in the evaluation of proposals.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor, nonsubstantive, editorial changes are made throughout Chapter 803 that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

§803.2. Definitions

The Commission adopts the removal of §803.2(1), the definition of "assessment," and §803.2(2), the definition of "community-based organization," because both terms are defined in Texas Labor Code §303.001(b)(1) and §303.001(b)(2), respectively.

Current §803.2(3), the definition of "customized training project," is reorganized and renumbered as §803.2(1). The Commission amends the definition to state that not only a private business, but also a business consortium, or a community-based organization only in partnership with a public community college, a technical college, or TEEX, may participate in designing the customized training project.

Comment: One commenter expressed support of the clarification that a business consortium may participate in designing the customized training project.

Response: The Commission appreciates the commenter's support.

Comment: One commenter recommended clarifying the definition of customized training project by specifying that the training offered is not part of the training provider's regular curriculum.

Response: The Commission agrees that customized training must be specific to an employer's needs, and clarifies the definition by adding that a customized training project provides workforce training that is "specifically designed to meet the needs and special requirements of employers" and employees or prospective employees of the private business or business consortium, or members of the trade union.

However, the Commission disagrees that customized training does not include standard courses available through the provider. While customized training extends beyond the course curriculum, it may also encompass standard courses. The overall unique design and development of a training project creates customization. A truly customized training project meets an employer's specific training requirements, such as customizing the curriculum, classes scheduled around the employees' schedules,

application to specific company examples, as well as addressing needs in real time with real situations.

The Commission adopts the deletion of §803.2(4), the definition of "director," because it is defined in Chapter 800.2 of this title; therefore, it is unnecessary to redefine the term in this chapter. Further, the Commission adopts the proposal to update references to director throughout Chapter 803 to "executive director," to correctly reflect the Chapter 800 definition.

Current §803.2(5), the definition of "grant recipient," is reorganized and renumbered as §803.2(2).

Comment: One commenter recommended allowing the Local Workforce Development Boards (Boards) to be included as grant recipients with a private business or consortium of businesses.

Response: The commenter's recommendation is not within the purview of the Commission's authority. The definition of grant recipient mirrors Texas Labor Code §303.003(b), which directs that the Skills Development Fund be used by public community and technical colleges, community-based organizations, and TEEEX as start-up or emergency funds for job training purposes.

Current §803.2(12), the definition of "training provider," is reorganized and renumbered as §803.2(9). The Commission adopts the amended definition to include a community-based organization only in partnership with a public community college, technical college, or TEEEX as a training provider.

§803.3. Uses of the Fund

The Commission adopts the amendment of §803.3(a) by specifying that a grant recipient may use the Skills Development Fund as start-up or emergency funds, as specified. Additionally, the Commission adopts the amendment of §803.3(a)(2), which clarifies that the sponsorship of small and medium-sized business networks and consortiums is for the purpose of developing customized training.

SUBCHAPTER B. PROGRAM ADMINISTRATION

§803.11. Grant Administration

The Commission adopts the removal of §803.11(a) regarding the director's responsibility for grant administration because this information is set forth in Texas Labor Code §303.003(d). Additionally, the Commission adopts the removal of §803.11(b) because this information is an established grants administration principle not necessary in rule.

The Commission adopts new §803.11, which states that grant recipients must enter into an agreement with the Agency to comply with contract requirements, which include, but are not limited to, regulations listed in these paragraphs. The Commission also amends this section by specifying in §803.11(4)(A) that final payment is contingent upon the determination by the executive director, or designee, that a project has met the training objectives, outcomes, and requirements (an attrition rate of up to 15% of the total number of trainees in the contract is allowed). Additionally, the Commission adds in §803.11(4)(B) that the contract's final payment will be withheld for 60 days after the completion of training and after the Agency's receipt of verification from the employer that the trainees are employed.

§803.13. Program Objectives

The Commission adopts the amendment of §803.13(2) by referring to "local workforce development areas" as "workforce areas," as set forth in the definition in §800.2 of this title. Further, the Commission adopts changing references from local workforce development area to workforce area throughout Chapter 803.

The Commission adopts the amendment of §803.13 by including an additional program objective §803.13(6), which allows the Agency, to the greatest extent practicable, to award Skills Development Fund grants as follows: (1) approximately 60% of the funds may be for job retention training; and (2) the remaining funds may be for training for job creation. With the exception of the Skills Development Fund, limited resources have been available to upgrade the skills of existing workers to assist with job retention. Because the Legislature has recognized that the Skills Development Fund is available for training the existing workforce, as well as training to create new jobs, the Commission is establishing a flexible goal to meet the economic needs of the state and the skills' needs of employers.

Comment: A majority of the commenters supported the use of 60% of the funds for job retention training. Many of these commenters specifically stated that 40% of the funds should be used for new job creation.

Response: The Commission believes the commenters' intent is to support a funding split that ensures incumbent workers, as well as new workers, receive critically needed Skills Development Fund training. While the Commission appreciates the commenters' suggestion of a 60/40 split, the Commission believes that the rule language provides the greatest flexibility to make adjustments, as warranted, to maximize these funds. The increased flexibility allows the Agency to be as responsive as possible to employers, while providing employers the ability to retain and upgrade the skills of current employees, as well as meeting the need for job creation.

Comment: One commenter suggested using 60% of the funds or more as needed to meet the demand of local businesses for job retention training, as well as for the

training of new hires, with the remaining funds to be used toward job creation training of new businesses and expansion of existing businesses.

Response: The Commission believes the commenter's suggestion will dilute the impact of the proposed 60/40 split by making each of these categories of funds available for both job retention training, as well as the training of new hires. Further, the commenter may be concerned that a single training project cannot contain both training for job retention and training for job creation and, therefore, is attempting to dilute the funding distinctions by including both activities in both categories. The Commission maintains that the addition of this program objective to §803.13 does not change the proposal submission process or burden entities with applying for separate funds. Rather, the entities are applying for funding that provides them with flexibility because this particular funding mechanism will be monitored and managed at the state level.

Comment: One commenter stated that if job retention projects are to become the main priority of the Skills Development Fund, the Agency should expand proposal eligibility to other job retention efforts, including workplace literacy, adult education, and employee asset development programs. The commenter also stated that the Agency should evaluate the proposed rule change to determine if it limits access to customized training for unemployed or underemployed Texans.

Response: Although the Chapter 803 rules do not specify literacy and adult education as part of the information contained in the proposal, employers still have the ability to incorporate these services for those individuals who need it. The Skills Development Fund does not preclude the use of funds for literacy and adult education, if an employer identifies this to be a need.

The Commission disagrees with the commenter's assertion that proposal eligibility should include employee asset development programs (aka Individual Development Accounts [IDAs]). In its January 1, 2005, Report to the Legislature entitled "Status of the Texas Individual Development Account Pilot Project," the Commission determined that:

Given the cost of administration and program services, the lack of data concerning long-term benefits and the low rate of asset purchases, it would be difficult to recommend implementing IDA programs statewide without further research and outcome data supportive of such an effort.

Additionally, the Commission believes that the rule does not limit access to customized training for unemployed or underemployed Texans. The Commission's intent is, to the greatest extent practicable, to award approximately 60% of the funds for job retention training, allowing the remaining funds to be used for job creation. The Commission believes that training for job creation benefits unemployed individuals by developing skills that may lead to a job. The Commission also

believes that underemployed individuals benefit by receiving skills enhancement and occupational advancement training, thereby helping them climb the career ladder.

The Commission adopts the removal of §803.13(b) because it duplicates information found in §803.13(4).

§803.14. Procedure for Requesting Funding

For consistency with the definition of "private partner," renumbered as §803.2(4), the Commission adopts the amendment of current §803.14(a) and §803.14(c) to remove the term "prospective." Additionally, references to a "joint" proposal in §803.14(a) and §803.14(b) are removed to eliminate confusion with references to "concurrent" proposals. Further, in §803.14(a) regarding applicable Boards reviewing and commenting on Skills Development Fund proposals, it is the Commission's intent that "applicable" refer only to the workforce areas where there would be a significant impact on job creation or incumbent worker training. To ensure consistency with §803.14(a), which sets forth that private partners or trade unions may partner with community colleges to receive grants from the Skills Development Fund, a technical amendment is made to add the phrase "or trade union" in §803.14(c), §803.14(f)(6), and §803.14(f)(9).

In addition, §803.14(c) is amended and streamlined to state that a training proposal shall not duplicate a training project available in the workforce area in which the private partner is located.

The Commission adopts new §803.14(d), which requires that proposals disclose other grant funds sought or awarded from the Agency or other state or federal entities. This information does not prevent or hinder consideration of applicants' proposals for Skills Development Fund grants; rather it allows the Agency to provide technical assistance to the applicants for locating additional funding sources that might be available, and to better understand the total amount of funding for all training impacting the project.

Comment: One commenter stated that the purpose and administration of the Skills Development Fund is strengthened by requiring applicants to disclose other potential grant funds that might subsidize training projects.

Response: The Commission appreciates the commenter's support.

The Commission adopts new §803.14(e), which states that applicants shall indicate whether they are submitting concurrent proposals for the Skills Development Fund and the Texas Enterprise Fund. Concurrent proposal is defined in this section as (1) a proposal for the Skills Development Fund that has been filed and is pending at the time the applicant submits a proposal for the Texas Enterprise Fund, or (2) a proposal for the Texas Enterprise Fund that has been submitted and is pending at the time the applicant submits a proposal for the Skills Development Fund. The addition of this new subsection reflects the direction in HB 2421, which does not allow an applicant to apply for both the

Skills Development Fund and the Texas Enterprise Fund unless the applicant files for concurrent participation in both programs.

Comment: One commenter supported the proposed rule changes requiring applicants to disclose whether they are submitting concurrent applications for the Texas Enterprise Fund. The commenter also stated that because many companies receiving Texas Enterprise Fund grants may not be contributing to the Unemployment Insurance (UI) Fund—the main source of funding for the Skills Development Fund—the Texas Enterprise Fund should compensate the Skills Development Fund for training costs associated with companies that become dual recipients.

Response: The Commission appreciates the commenter's support for the submission of concurrent applications. HB 2421 amends Texas Labor Code §303.005 by directing the Commission to require an applicant to disclose concurrent participation in the Skills Development Fund and the Texas Enterprise Fund.

Payment into the UI Trust Fund is not an eligibility issue for the Skills Development Fund. HB 2421 sets forth the funding strategies that encompass the Training Stabilization Fund, the set-aside holding fund, the Skills Development Fund, and the Texas Enterprise Fund. The new statute establishes certain percentage amounts to be transferred to the Skills Development Fund and the Texas Enterprise Fund. The training provided by the Skills Development Fund grants for new or existing jobs, which encourage long-term employment opportunities, will generate new or increased contributions to the UI Trust Fund.

The Commission adopts the amendment of §803.14 to add new §803.14(f)(11), which requires that proposals include an indication of a concurrent proposal as set forth in §803.14(e). Current §803.14(d)(11) is renumbered as §803.14(f)(12).

Comment: One commenter suggested the following revisions to the proposal submission form criteria:

1. Delineate more clearly the current pay for each position and any anticipated increases in wages.

Response: The Commission notes that current pay and wage increase data is contained in §803.14(f)(4), which requires the occupation and wages for participants who complete the customized training project.

2. Describe how the employer is involved in the planning and design of the proposed project.

Response: The Commission notes that this information is contained in §803.2(1), which defines customized training project. To further clarify, however, the Commission adds to §803.14(f)(2) that the employer's involvement in the planning

and design of the proposed training project be outlined in the proposal submission form.

3. Describe the employer's financial commitment.

Response: The Commission notes that this information is contained in §803.14(f)(5), which requires a budget summary, disclosing anticipated project costs and resource contributions, including the dollar amount the private partner is willing to commit to the project.

4. Describe how the project will be delivered and staffed, including the roles of each partner.

Response: The Commission notes that this information is contained in §803.14(f)(6), which requires each entity's roles and responsibilities to be outlined if a grant is awarded.

5. Include how trainees' progress will be measured and evaluated.

Response: The Commission notes that this information is contained in §803.14(f)(3), which requires that proposals include a brief description of the measurable training objectives and outcomes. However, the Commission amends §803.11 to clarify that trainees' progress will be measured and evaluated prior to final payment at contract closeout.

6. Include a section on sustainability and administration.

Response: The Commission believes that the intent of the commenter's suggestion is to sustain the efforts of the training project once funding has ended. The Skills Development Fund grants provide training to enhance the skills of employers' existing workforce or attract individuals for new jobs. The Commission encourages colleges and employers to utilize their own or other resources as needed to continue to build the skill levels of their workforce to enhance the area's economic competitiveness. While employers are not limited to one grant from the Skills Development Fund, the grants are approved based on merit and other factors set forth in statute and rule, including geographic distribution, and additional grants may not be available.

7. Describe how the Board and workforce centers were involved in the project design and how it will be coordinated locally.

Response: The Commission notes that this information is contained in §803.13(2), which requires that projects be developed in collaboration with the Boards.

§803.15. Procedure for Proposal Evaluation

The Commission adopts §803.15(a) by adding a cross-reference to the uses of the funds set forth in §803.3(a) to ensure that small businesses are a factor considered in the proposal evaluation procedure. Additionally, for consistency with the definition of private partner at §803.2(4) of this chapter, the Commission adopts §803.15(a) to remove the term "prospective."

General Comments on Subchapter B

Comment: One commenter recommended the elimination of the additional 5% administrative funds for projects that include more than one employer. The commenter stated that this is inconsistent with other Commission-funded programs in which the allowed administrative percentage remains constant regardless of the number of entities involved.

Response: The Commission believes it is necessary to maintain its flexibility to allow additional funds for overseeing the additional entities in a business consortium. Management of these types of grants requires greater oversight on the part of the training institution, including additional monitoring, technical assistance, site visits, and coordination and tracking for performance.

SUBCHAPTER C. PROGRAM ADMINISTRATION AFTER AWARD OF CONTRACT

§803.31. Grant Recipient Responsibilities

The Commission adopts the repeal of §803.31 in order to remove redundant administrative processes and procedures from rule that are set forth in the Skills Development Fund contracts.

§803.32. Contract Completion Reports

The Commission adopts the repeal of §803.32 in order to remove redundant administrative processes and procedures from rule that are set forth in the Skills Development Fund contracts.

§803.33. Contract Payment

The Commission adopts the repeal of §803.33 to remove redundant administrative processes and procedures from rule that are set forth in the Skills Development Fund contracts.

§803.34. Notice to Texas Higher Education Coordinating Board

The Commission adopts the repeal of §803.34 to remove redundant administrative processes and procedures from rule that are set forth in Texas Labor Code §303.34 and in

the memorandum of understanding between the Agency and the Texas Higher Education Coordinating Board regarding the Skills Development Fund.

§803.35. Notice to Local Workforce Development Board

The Commission adopts the repeal of §803.35 and adopts it as new §803.31, which clarifies that the Agency shall inform a Board in the applicable workforce area of final decisions concerning Skills Development Fund grants in the workforce area.

Comment: One commenter supported the requirement to inform the Board in the applicable workforce area of final decisions concerning Skills Development Fund grants. The commenter stated that Boards may benefit from being notified when a Skills Development Fund application is pending or under review within or near the applicable workforce area.

Response: The Commission appreciates the commenter's support. As under the prior rule, the Commission will notify a Board that has an approved Skills Development Fund project in its workforce area. However, the Commission does not intend to notify Boards in workforce areas near a funded project. Skills Development Fund projects are for specific customized projects, and only Boards that are directly impacted will be notified.

§803.36. Waivers

The Commission adopts the repeal of §803.36 and adopts it as new §803.32 to clarify that in addition to the executive director, the executive director's designee also has the authority to suspend or waive a section of this chapter that is not statutorily imposed, if there is a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

General Comments on Chapter 803

Comment: Two commenters expressed strong support for the proposed rules. One commenter stated the amendments provide clarity and reduce unnecessary language and the second commenter thanked the Commission for its support of the Skills Development Fund.

Response: The Commission appreciates the commenters' support.

PART III. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' twenty-eight Boards and the Texas Association of Workforce Boards (TAWB). During the development of the proposed rules, the Commission considered the information gathered in order to develop rules that provide clear and concise direction to the parties involved.

The Commission received public comments from:

State Representative Norma Chavez, Chair, House Committee on Border and International Affairs

Bonnie Gonzales, ED, Lower Rio Grande Workforce Development Board

Mary Ross, ED, West Central Texas Workforce Development Board

Edelmiro Alaniz, GM, Worth McAllen Bolt & Screw Co.

Roy Arterbury, Call Center Director, Hotels.com

Al Beck, Vice President and General Manager, King's Prosperity, L.P.

Mario Bermudez, General Manager, Textape, Inc.

Boyd Cockrill, Owner, AEF Plating, LLC

Dean Conner, Owner, SGS Industrial

Ron Coronado, Operations Manager, Panasonic Corporation

Norma Diaz, President, Promos, Etc., Inc.

Paul Fielder, Operations, Sapphire Custom Manufacturing

Steven Frank, Area General Manager, Weyerhaeuser

Roberto Garcia, General Manager, HI-TEK Automation Supply

Mark Gibbs, Co-Owner, Rio Grande Container, Inc.

Frank Gomez, Senior Manager, Human Resources, Convergys

Ernesto Gonzales, President, ILP Label Printers

Steve Greer, Senior Vice President, TallyGenicom

Kyle Griffiths, General Manager, General Electric

Adriana Guerrero, Owner, Alpha XL Mold and Tool

Felix Guerrero, Moldmaker/Specialist, Alpha XL Mold and Tool

Julio Guerrero, Owner, Alpha XL Mold and Tool

James R. Hatton, President, Semco Manufacturing

Neal R. Heikkinen, Executive Vice President, Border Comm

Juan Hernandez, Branch Manager, Acetylene Oxygen Company

Liborio Hinojosa, CEO, H&H Foods

Ricardo Hinojosa, Vice President, D&R Precision Manufacturing, Inc.

Dan Ingersoll, PRC Manager, JVC Company of America, Product Return Center

Jeff Jones, Manager, Millard Refrigerated Services

Frank King, Vice President, U.S. Ops and Marketing, Am-Mex

Lorraine Kolenda, Vice President, K-10 Enterprises, Inc.

Don Kurth, Operations Manager, ALPS Automotive, Inc.

Don Kurth, Operations Manager, Alpine Electronics of America

Kevin LaPorte, General Manager, Titan Plastics Group

Ted C. Link, President/CEO, Link & Associates, Inc.

Ronald Loidl, Senior Manager, Human Resources, Symbol Technologies

Erasmus P. Lozano, Quality Manager, Atlantis Plastics, Inc.

Felipe Marcio, President, DynaCal

Angela Miller, Business Analyst, Seagate Technology

Paula Moore, President, Reynolds International Equipment, L.P.

Sam Olivarez, President, Barrera's Supply Company, Inc.

Maria Patterson, Plant Manager, Gerber Manufacturing, Inc.

Judy Rodriguez, President/CEO, Texas Citrus Exchange
Henry Sanchez, Plant Manager, Hi-Tech Plastics Rio Grande
Stan J. Sawko, General Manager, Action Coil Spring Co., Inc.
Heriberto Solis, Vice President of Operations, Plastron Industries
Steve Stauffer, Director of Operations, Pennero Associates, Inc.
Gerald Stinson, Plant Manager, King's Prosperity L.P.
Lawrence R. Thompson, Jr., Sales Manager, Quality Screw and Nut Logistics
Noe Trevino, Plant Manager, Regency Plastics
Richard Vaughan, President, Burton Auto Supply
Michael Weaver, Director of Operations, Black and Decker
Mike Willis, Executive Director, South Texas Manufacturers Association
Stephen Wolf, Director, Global Operations, TI Automotive
Carlos Zambito, Marketing Director, McAllen Produce Terminal Market
Luis Zeledon, Plant Manager, Humanetics
Mike Allen, President & CEO, McAllen Economic Development Corporation
Don Baylor, Center for Public Policy Priorities
Thomas N. Applegate, Executive Dean, Austin Community College
Jerry Cash, Director of Economic Development, City of Cleburne
Paul J. Curtin, Project Manger, Hunt Valley Development I, LLC
Patty Ford, Training Coordinator, Kilgore College Workforce Development
Ramiro Garza, Jr., Executive Director, Edinburg Economic Development Corporation
Wanda Garza, South Texas College
Juan Gonzalez, Economic Development Director, City of Del Rio
Steve Hardy, Associate Vice President, Continuing Education and Workforce
Development, Collin County Community College District
Dr. Richard C. Jolly, Executive Vice President, Midland College
Andrew C. Jones, Ed.D., Vice Chancellor of Educational Affairs, The Dallas County
Community Colleges
Marie McDermott, President, Harlingen Area Chamber of Commerce
Mike Midgley, Vice President, Workforce Education and Business Development, Austin
Community College
Olivia Rodriguez, South Texas College
Pat Townsend, Jr., President/CEO, Mission Economic Development Authority, Inc.
Danny Uptmore, Corporate & Professional Training, McLennan Community College
Antonio Zavaleta, for U.T. Brownsville and Texas Southmost College
Dr. Frederico Zaragoza, Vice Chancellor, Professional Technical and Workforce
Education, Alamo Community College District

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), 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 adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Labor Code, Chapter 303, regarding the Skills Development Fund.

Chapter 803. SKILLS DEVELOPMENT FUND

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

§803.1. Scope and Purpose.

- (a) Purpose. The purpose of the Skills Development Fund is to enhance the ability of public community and technical colleges and the Texas Engineering Extension Service (TEEX) to respond to industry and workforce training needs and to develop incentives for public community and technical colleges, TEEX, or community-based organizations only in partnership with the public community and technical colleges or ~~the~~ TEEX to provide customized assessment and training in a timely and efficient manner.
- (b) Goal. The goal of the Skills Development Fund~~fund~~ is to increase the skills level and wages of the Texas workforce.

§803.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the ~~The~~ following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- ~~(1) Assessment—The evaluation of an employer's workforce needs and requirements.~~
- ~~(2) Community-based organization—A private nonprofit organization, including a development corporation and faith-based organization, that:
 - ~~(A) provides for education, vocational education, rehabilitation, job training, or internship services or programs; and~~
 - ~~(B) is exempt from the payment of federal income taxes under §501(a) of the Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt entity under §501(c)(3) of that code.~~~~
- ~~(3) Customized training project—A project designed by a private business or trade union in partnership with a public community or technical college or TEEX for the purpose of providing specialized workforce training to employees or prospective employees of the private business or members of the trade union with the intent of either adding to the workforce or preventing a reduction in the workforce.~~

- (1) Customized training project -- A project that:
- (A) **provides workforce training, with the intent of either adding to the workforce or preventing a reduction in the workforce, and is specifically designed to meet the needs and special requirements of:**
 - (i) **employers and employees or prospective employees of the private business or business consortium; or**
 - (ii) **members of the trade union; and**
 - ~~(A) provides designed by a private business or trade union in partnership with a public community or technical college or TEEX for the purpose of providing specialized workforce training to employees or prospective employees of the private business or business consortium, or members of the trade union with the intent of either adding to the workforce or preventing a reduction in the workforce; and.~~
 - (B) is designed by a private business or business consortium, or trade union in partnership with:
 - (i) a public community college;
 - (ii) a technical college;
 - (iii) TEEX; or
 - (iv) a community-based organization only in partnership with the public community and technical colleges or TEEX.
- (2) Grant recipient -- A recipient of a Skills Development Fund grant that is:
- (A) a public community college;
 - (B) a technical college;
 - (C) TEEX; or
 - (D) a community-based organization only in partnership with the public community and technical colleges or TEEX.
- (4) ~~Director -- The Executive Director of the Texas Workforce Commission.~~

~~(5) Grant recipient -- Any public community or technical college, TEEEX, or community-based organizations only in partnership with the public community and technical colleges or the TEEEX awarded a grant from the Skills Development Fund.~~

~~(3)(6) Non-local public community and technical college -- A public community college or technical college providing training outside of its local taxing district.~~

~~(4)(7) Private partner -- A Any person, 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; or~~

~~(D) a community-based organizations only in partnership with the public community and technical colleges or the TEEEX.~~

~~(5)(8) Public community college -- A state-funded, two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical, and academic courses for certification or associate's degrees.~~

~~(6)(9) Public technical college -- A state-funded coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate's degrees.~~

~~(7)(10) Texas Engineering Extension Service (TEEX) -- A higher education agency and service established by the Board of Regents of the Texas A&M University System.~~

~~(8)(11) Trade union -- Any organization, agency, or employee committee in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.~~

~~(9) Training provider -- An entity or individual that provides training, including:~~

~~(A) a public community college;~~

~~(B) a technical college;~~

(C) TEEEX;

(D) a community-based organization only in partnership with the public community college or technical college or TEEEX; or

(E) a person, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision, or public or private organization with whom a public community or technical college or TEEEX has subcontracted to provide training.

~~(12) Training provider—Any public community or technical college or TEEEX that provides training; or any person, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision or public or private organization with whom a public community or technical college or TEEEX has subcontracted to provide training.~~

§803.3. Uses of the Fund.

(a) The Skills Development Fund may be used by a grant recipient public community and technical colleges, TEEEX, or community based organizations only in partnership with the public community and technical colleges or the TEEEX as start-up or emergency funds for the following purposes:

- (1) to develop customized training projects for businesses and trade unions; and
- (2) to sponsor small and medium-sized business networks and consortiums for the purpose of developing customized training.

(b) TEEEX training activities shall focus on projects that are statewide or are not available from a local public community and junior college district, a local technical college, or a consortium of public community and junior college districts. In developing such projects, TEEEX may participate in a consortium of public community and junior college districts or with a technical college that provides training under Texas Labor Code, Chapter 303.

(c) Technical college training activities shall focus on projects that are not available from a local public community college, except in the technical college's local service area, and shall be encouraged to focus on projects that are statewide.

(d) The Skills Development Fund may not be used:

- (1) to pay the training costs and related costs of an employer ~~that~~^{who} relocates the employer's worksite from one place in Texas to another;
 - (2) for the purchase of any proprietary or production equipment required for the training project of a single local employer;
 - (3) for wages for trainees; or
 - (4) to pay for trainee or instructor travel costs or trainee drug tests.
- (e) The Skills Development Fund may not be used to pay for the lease of equipment if any one of the following four criteria is characteristic of the lease transaction:
- (1) ~~The the~~ lease transfers ownership of the equipment to the lessee at the end of the lease term;
 - (2) ~~The the~~ lease contains a bargain purchase option;
 - (3) ~~The the~~ lease term is equal to 75% or more of the estimated economic life of the leased equipment; or
 - (4) ~~The the~~ present value of the minimum lease payments at the inception of the lease, excluding executory costs, equals at least 90% of the fair value of the leased equipment.

SUBCHAPTER B. PROGRAM ADMINISTRATION

§803.11. Grant Administration.

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

- (1) submitting all required reports, including financial and performance reports, in the format and time frame required by the Agency;
- (2) maintaining fiscal data needed for independent verification of expenditures of funds received for the customized training project;
- (3) cooperating and complying with Agency monitoring activities as required by Chapter 800, Subchapter H, of this title (relating to Agency Monitoring Activities); and
- (4) submitting contract completion reports:

(A) The final payment Project completion is contingent upon the executive director's, or designee's, determination that a project has met the training objectives, outcomes, and requirements (by allowing an attrition rate of up to 15% of the total number of trainees in the contract is allowed).

(B) The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.

~~(a) The Director is responsible for the distribution of money from the Skills Development Fund. The Director may designate an employee or employees of the Agency who are knowledgeable in the administration of grants to administer the program.~~

~~(b) The Agency is not required to fund all proposals for customized training projects that are submitted.~~

§803.12. Limitations on Awards.

The Agency may impose any or all of the following limitations on the amount of funds awarded under any specific grant:

- (1) Aa limit of \$500,000 for the training project of a single employer;
- (2) Aa limit of 10% of the grant amount for the allowable purchase of any proprietary or production equipment required for the training project;
- (3) Aa limit of 10% for administrative costs related to direct training for the training project of a single employer; or
- (4) Aa limit of 15% for administrative costs related to direct training for the training project of entities other than a single employer.

§803.13. Program Objectives.

~~(a)~~—The following are the program objectives in administering the Skills Development Fund:

- (1) To ~~to~~ ensure that funds from the program are spent in all areas of this state and expand the state's capacity to respond to workforce training needs;
- (2) To ~~to~~ develop projects in ~~local~~ workforce development areas through collaboration with the Boards;

- (3) To ~~to~~ develop projects that, at completion of the training, will result in wages equal to or greater than the prevailing wage of persons with similar knowledge and experience in that occupation in the local labor market for the participants in the customized training project;
 - (4) To ~~to~~ prioritize the processing of grant requests from ~~local-workforce development~~ areas where the unemployment rate is higher than the state's annual average unemployment rate; and
 - (5) To ~~to~~ sponsor creation and attraction of high-value, high-skill jobs for the state that will facilitate the growth of industry and emerging occupations.
 - (6) To the greatest extent practicable, the Agency will award Skills Development Fund grants as follows:
 - (A) Approximately 60% of the funds may be for job retention training; and
 - (B) The remaining funds may be for training for job creation.
- ~~(b) In processing requests referenced in subsection (a)(4) of this section, the Director, or his or her designee, shall give priority in processing to grant requests from local workforce development areas where the unemployment rate is higher than the state's annual average unemployment rate. Notwithstanding the priority in processing, the other objectives within this section apply.~~

§803.14. Procedure for Requesting Funding.

- (a) After obtaining the review and comments of the Board in the applicable ~~local workforce development~~ area(s), where there is a significant impact on job creation or incumbent worker training, a ~~prospective~~ private partner, or a trade union, together with a public community or technical college or TEEX, shall present to the ~~executive director~~ Director, or his or her designee, a ~~joint~~ proposal requesting funding for a customized training project or other appropriate use of the fund.
- (b) TEEX, or the public community or technical college that is a partner to a ~~joint~~ training proposal for a grant from the Skills Development Fund, may be non-local.
- (c) The training proposal ~~shall~~ must not duplicate a training project available in the ~~local workforce development~~ area in which the ~~prospective~~ private partner or trade union is located. ~~TEEX, or the public community or technical college that is a partner to the joint training proposal, the private~~

~~partner, and the Board must disclose other grant funds sought from the Agency, such as Achieving Performance Excellence (APEX) grants, for the training project covered in the training proposal.~~

- (d) Proposals shall disclose other grant funds sought or awarded from the Agency or other state and federal entities for the proposed job training project.
- (e) Applicants shall indicate whether they are submitting concurrent proposals for the Skills Development Fund and the Texas Enterprise Fund. For the purposes of this subsection, "concurrent proposal" shall mean:
 - (1) a proposal for the Skills Development Fund that has been submitted and is pending at the time an applicant submits a proposal for the Texas Enterprise Fund; or
 - (2) a proposal for the Texas Enterprise Fund that has been submitted and is pending at the time an applicant submits a proposal for the Skills Development Fund.
- (f)(d) Proposals shall be written and contain the following information:
 - (1) The ~~the~~ number of proposed jobs created and/or retained;
 - (2) A ~~a~~ brief outline of the proposed training project, including the skills acquired through training **and the employer's involvement in the planning and design;**
 - (3) A ~~a~~ brief description of the measurable training objectives and outcomes;
 - (4) The ~~the~~ occupation and wages for participants who complete the customized training project;
 - (5) A ~~a~~ budget summary, disclosing anticipated project costs and resource contributions, including the dollar amount the ~~prospective~~-private partner is willing to commit to the project;
 - (6) A ~~a~~ signed agreement between the ~~prospective~~-private partner **or trade union** and the public community or technical college or TEEX outlining each entity's roles and responsibilities if a grant is awarded;
 - (7) A ~~a~~ statement explaining the basis for the determination that there is an actual or projected labor shortage in the occupation in which the proposed training project will be provided that is not being met by an

existing institution or program in the local-workforce development area;

- (8) A ~~a~~-comparison of costs per trainee for the customized training project and costs for similar instruction at the public community or technical college or TEEEX;
- (9) A ~~a~~-statement describing the prospective-private partner's **or trade union's** equal opportunity employment policy;
- (10) A ~~a~~-list of the proposed employment benefits; ~~and~~
- (11) An indication of a concurrent proposal as required by subsection (e) of this section; and
- (12)(11) Any ~~any~~-additional information deemed necessary by the Agency to complete evaluation of a proposal.

§803.15. Procedure for Proposal Evaluation.

- (a) The executive director-Director, or ~~his or her~~ designee, shall evaluate each proposal considering the purposes listed in §803.3(a) of this subchapter, the program objectives listed in §803.13 of this subchapter (relating to Program Objectives), and procedures ~~the factors listed in §803.14(e) of this subchapter (relating to Procedure for Requesting Funding)~~, along with the prevailing wage for occupations in the local labor market area, the financial stability of the prospective-private partner, the regional economic impact, and any other factors unique to the circumstances that ~~which~~ the Agency determines are appropriate.
- (b) The Agency shall ~~will~~ notify the Board in the applicable ~~local-workforce development~~ area(s) when the Agency is evaluating a proposal so as to inform the Board of potential workforce activities in the workforce area(s).
- (c) If the Agency determines that a proposal is appropriate for funding through the Skills Development Fund, the executive director-Director, or ~~his or her~~ designee, shall enter into a contract with the grant recipient on behalf of the Agency.

SUBCHAPTER C. PROGRAM ADMINISTRATION AFTER AWARD OF CONTRACT

§803.31. Notice to Local Workforce Development Board.

The Agency shall inform the Board in the applicable workforce area of final decisions made regarding Skills Development Fund grants in the workforce area.

§803.32. Waivers.

The executive director, or designee, may suspend or waive a section of this chapter, not statutorily imposed, in whole or in part upon a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

§803.31. Grant Recipient Responsibilities.

- ~~(a) The grant recipient shall serve as fiscal agent, shall administer the contract, and in cooperation with the private partner and any separate training provider, submit financial and performance reports to the Agency on a quarterly contract basis.~~
- ~~(b) Grant recipient shall maintain fiscal data needed for independent verification of expenditures of funds received for the customized training project.~~
- ~~(c) Contract amendments must be requested in writing and approved by the Director, of his or her designee, in writing before a change to the contract is implemented.~~
- ~~(d) In a format approved by the Agency, 60 days after execution of the contract the grant recipient shall provide to the Agency a list of trainees enrolled in the training.~~
- ~~(e) The grant recipient shall cooperate with and comply with the Agency monitoring activities as required by Chapter 800, Subchapter H of this title (relating to Agency Monitoring Activities).~~
- ~~(f) The grant recipient shall submit all required reports in the electronic format required by the Agency unless otherwise approved by the Agency.~~
- ~~(g) The grant recipient shall submit to the Agency reports as needed by the Agency upon request of the Agency.~~

§803.32. Contract Completion Reports.

~~No later than 60 days following the end of the contract period for the customized training project, the grant recipient shall provide the Agency with the following information:~~

- ~~(1) a copy of any audit performed on the customized training project;~~

- (2) ~~the number of jobs created or preserved, the occupations the trainees were placed in, and the wages for those occupations at the completion of the customized training project;~~
- (3) ~~a narrative report by the grant recipient summarizing the training project results, including results ensuring that the training objectives and outcomes specified in the contract have been achieved, and may include a brief narrative by the private partners evaluating the training project's effectiveness in meeting the business' workforce needs and requirements;~~
- (4) ~~a detailed breakdown reflecting the expenditure of funds received; and~~
- (5) ~~the grant recipient shall provide the Agency one of the following:~~
 - (A) ~~payroll records and/or reports certified by an independent auditor or verified by the employer that provide the name, the social security number, the occupation, and the trainee's wage at the completion of the training; or~~
 - (B) ~~a statement from the employer that the wage at the time of job placement for each individual who successfully completes customized training is equal to the prevailing wage for that occupation in the local labor market area.~~

~~§803.33. Contract Payment.~~

~~Payment under a contract will be contingent upon the Director's, or his or her designee's, determination that a project has met the training objectives, outcomes, and requirements specified in the contract. The Director may allow an attrition rate of up to 15% based on the total number of trainees as outlined in the contract. The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.~~

~~§803.34. Notice to Texas Higher Education Coordinating Board.~~

~~The Agency will inform the Texas Higher Education Coordinating Board that a grant from the Skills Development Fund has been made to a public community or technical college or TEEX to provide a customized training project in order that it may conduct its review of the training project pursuant to Texas Labor Code, §303.004.~~

~~§803.35. Notice to Local Workforce Development Board.~~

~~The Agency will inform the Board in the applicable local workforce development area(s) when the Agency awards a grant from the Skills Development Fund that impacts the local workforce development area.~~

~~§803.36. Waivers.~~

~~The Director may suspend or waive a section of this chapter, not statutorily imposed, in whole or in part upon a showing of good cause and a finding that the public interest would be served by such a suspension or waiver. For purposes of this section, the Director, and not a designee of the Director, is the only person who may approve a waiver.~~