

CHAPTER 800. GENERAL ADMINISTRATION

PROPOSED 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 SEPTEMBER 22, 2009, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **October 9, 2009**
Estimated End of Comment Period: **November 9, 2009**

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.9

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule change is to establish rules for the acceptance of donations by the Commission in support of any TWC-administered program.

Texas Labor Code §301.201 authorizes the Commission to "accept donations"—but not to "solicit" donations. Further, Texas Government Code §2255.001 requires the Commission to adopt rules governing the relationship between "the donor or organization and the agency and its employees."

Texas Government Code §2255.001 also governs all aspects of conduct of the Agency and its employees in the relationship, including:

- administration and investment of the funds;
- a donor's use of an Agency employee or property;
- service by an Agency officer or employee as an officer or director of the donor or organization;
- and
- monetary enrichment of an Agency officer or employee by the donor or organization.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§800.9. Grants and Donations

New §800.9(a) relates the purpose of this section, which is to establish rules for the acceptance of donations made to the Commission.

New §800.9(b) establishes the general authority to accept donations. Texas Labor Code §301.021 allows the Commission to accept a donation of services or money that it determines furthers the lawful objectives of the Commission.

New §800.9(c) sets forth the general prohibitions regarding donations as:

- (1) Texas Labor Code §301.021(b) and (c), which identifies the entities that the Commission is not authorized to accept donations from; and
- (2) Texas Government Code §575.005, which states that the Commission is not authorized to accept donations from entities in contested cases.

New §800.9(d) provides that the Agency, prior to the Commission's consideration of a donation, shall perform an inquiry and analysis to determine if there is a detrimental effect to accepting the donation. This subsection also identifies the Agency's option, under Texas Government Code §551.073, to hold a closed meeting to discuss any possible detrimental information relating to an offered donation.

New §800.9(e), the criteria for the Commission's acceptance of donations, requires that donations be:

- (1) accepted in an open meeting;
- (2) reported in the minutes to include donor's name, purpose, and description of the donation;
- (3) either money or in-kind assets; and
- (4) at least \$500.00.

New §800.9(f) sets forth that the Commission, following its acceptance of the donation, must execute a donation agreement that includes the following:

- (1) Description of the donation to include the value;
- (2) Donor's statement attesting to the donor's ownership rights and authority to make the donation;
- (3) Signature of the donor or designee;
- (4) Signature of Agency designee;
- (5) Restrictions on the use of the donations, if any, agreed upon by the donor and the Commission;
- (6) Mailing address of the donor and principal place of business if the donor is a business entity;
- (7) Statement identifying any official relationship between the donor and the Agency; and
- (8) Statement advising the donor to seek legal and tax advice from its own legal counsel.

New §800.9(g) details the administration of donations. The Agency must:

- (1) deposit all monetary donations to the Texas Workforce Commission account of the state General Revenue Fund;
- (2) disperse all monetary donations by the Agency's direction; and

(3) use the donation according to the purpose specified by the donor, to the extent possible, and in accordance with applicable laws and within the Agency's statutory authority.

New §800.9(h) recognizes that Texas Government Code, Chapter 572, governs the standards of conduct between the Agency and donors.

New §800.9(i) clarifies that all information pertaining to donations is public record subject to the Texas Public Information Act but exceptions can be made upon application by the Agency to the Attorney General's Office.

New §800.9(j) provides that state statute controls in the resolution of any conflicts regarding these rules.

PART III. IMPACT STATEMENTS

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

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

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

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

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

There are no anticipated economic costs to persons required to comply with the rules, including small or microbusinesses.

The reasoning that led to these conclusions is as follows:

The proposed rule changes have no implications for cost or revenue increases, or reductions, and there are no anticipated costs to small or microbusinesses. Any changes required to implement the proposed rules are procedural only for the Agency and will be accomplished within existing baseline resources.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of

enforcing the proposed rules will be to potentially increase available funds for specific employment and training programs administered by the Commission.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on April 21, 2009. The Commission also conducted a conference call with Board executive directors and Board staff on April 24, 2009, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the 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 rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

Chapter 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

§800.9. Donations.

- (a) Purpose. The purpose of this section is to establish rules for the acceptance of donations made to the Commission.
- (b) General Authority to Accept Donations. Texas Labor Code §301.021 allows the Commission to accept a donation of services or money that it determines furthers the lawful objectives of the Commission.
- (c) General Prohibitions Regarding Donations.
 - (1) Texas Labor Code §301.021(b) and (c) identify entities that the Commission is not authorized to accept donations from; and
 - (2) Texas Government Code §575.005 states that the Commission is not authorized to accept donations from entities in contested cases.
- (d) Analysis of Offered Donations. The Agency, prior to the Commission's consideration of a donation, shall perform an inquiry and analysis to determine if there is a detrimental effect to accepting the donation. Texas Government Code §551.073 allows the Commission to hold a closed meeting regarding an identified detrimental effect as determined by the Agency.
- (e) Acceptance of Donations. Acceptance of donations by the Commission on behalf of the Agency shall:
 - (1) be in an open meeting by a majority of the voting members of the Commission;
 - (2) be reported in the public records of the Commission and include the name of the donor, and the purpose and a description of the donation;
 - (3) be in the form of monetary or in-kind assets; and
 - (4) have a minimum value of \$500.00.
- (f) Donation Agreement. Following acceptance of the donation by the Commission, the donor and the Agency shall execute a donation agreement, which includes:
 - (1) description of the donation, including a statement of the value;

- (2) statement by the donor attesting to the donor's ownership rights in the donation and the donor's authority to make the donation;
- (3) signature of the donor or designee;
- (4) signature of the Agency designee;
- (5) restrictions on the use of the donations, if any, agreed to by the donor and Commission;
- (6) mailing address of the donor and principal place of business if the donor is a business entity;
- (7) statement identifying any official relationship between the donor and the Agency; and
- (8) statement advising the donor to seek legal and/or tax advice from its own legal counsel.

(g) Administration of Donations. The Agency shall:

- (1) deposit monetary donations to the credit of the Texas Workforce Commission account of the state General Revenue Fund;
- (2) disburse monetary donations at the Agency's direction. All monetary gifts are automatically appropriated to the Commission in accordance with the General Appropriations Act; and
- (3) use the donations for the purpose specified by the donor, to the extent possible, and in accordance with any local, state, and federal laws. In no event shall donations be used for purposes not within the Agency's statutory authority.

(h) Texas Government Code, Chapter 572, governs the standards of conduct between the Agency and donors.

(i) Public Records.

- (1) Documents and other information pertaining to the official business of the Commission are public information and are subject to the Texas Public Information Act (Texas Government Code, Chapter 552).
- (2) If the Commission determines an exception to the Texas Public Information Act is applicable, it may seek a determination from the Attorney General of Texas regarding the confidentiality of information relating to a donation before releasing the requested information.

(j) Conflict of Laws. These rules shall not conflict with a requirement of a statute regulating the conduct of an officer or employee of a state agency or the procedures of the Agency. In the event that there appears to be a conflict between these rules and a state statute, the state statute controls.