

CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

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 12, 2006, 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*: **September 29, 2006**
Estimated End of Comment Period: **October 30, 2006**

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 801 relating to Local Workforce Development Boards:

Subchapter B. One-Stop Service Delivery Network, §801.33

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
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PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed new Chapter 801 rule is to implement Senate Bill (SB) 998, enacted by the 79th Texas Legislature, Regular Session (2005), which amends Texas Government Code §2308.264(e)(4) to allow entities that contract with Local Workforce Development Boards (Boards) to use, display, and advertise their business names when providing one-stop workforce services for a Board.

SB 998 directs the Commission to adopt rules that are applicable to any existing and future contracts for one-stop workforce services to ensure that any entity contracting with a Board may use, display, and advertise its business name when providing one-stop workforce services for the Board. Each contractor is responsible for determining if they want to use, sell, or advertise their business name. It is not the Board's responsibility to modify any written material to include the business names of its contractors. Boards must require, through local policy, that each contractor notify the Board of its intent to use, display, or advertise its business name when providing one-stop workforce services.

Texas Government Code Chapter 2308 and this chapter govern Boards. The Commission proposes to add new §801.33, relating to Advertising, to Chapter 801, Subchapter B, One-Stop Service Delivery Network.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

The Commission proposes the following new section:

§801.33. Advertising

Section 801.33(a) requires that within 120 days of the effective date of this rule or within three Board meetings, Boards must develop policies that specify the limitations and restrictions regarding the use, display, and advertising of contractors' business names when providing one-stop workforce services for the Boards. These policies will be applicable only in the event that a contractor or prospective contractor requests to advertise.

Section 801.33(a)(1) states that a Board's policies must address the requirement that a contractor's business name be displayed in a subordinate position to the Board's name in terms of size, placement, stature, and location.

Section 801.33(a)(1)(A) states that a Board's policies must address the advertising medium to be used, such as the Internet, radio, television, and print.

Section 801.33(a)(1)(B) states that a Board's policies must address the design of the advertising medium.

Section 801.33(a)(2) requires a Board to develop a local policy that requires contractors and prospective contractors to provide the Board advance written notice of their intent to use, display, or advertise their business name. For example, a Board may require contractors to provide 30-days written notice if they intend to use, display, or advertise their business name. In addition, a Board may include a provision in a Request for Proposals that prospective contractors state their intent to advertise in the proposal.

Section 801.33(a)(3) requires Boards to develop policies prohibiting a contractor's or prospective contractor's business-name recognition from being a factor in evaluating a proposal for services.

Section 801.33(a)(4) states that a Board's policies must address the limitations necessary to avoid potential confusion of employers and job seekers attempting to access one-stop workforce services. Boards, as well as the entire Texas workforce system, maintain a vested interest in controlling and protecting the business relationships developed with local employers and the goodwill developed with job seekers and the public. An advertising strategy that creates customer confusion potentially makes one-stop workforce services inaccessible to employers and job seekers—if customers cannot find your business, they cannot access your services. Among other things, customer confusion prevents an efficient and effective labor exchange between employers and job seekers, thus undermining a critical, core mission of the Texas workforce system. When developing policies to address contractor advertising, Boards also should consider events such as contractor turnover, which may create a significant negative impact on the

continuity of a Board's image if the contractor's brand dominates to the detriment of the Board brand. A Board's advertising policy:

- may direct how contractor staff outreaches and communicates with employers;
- will establish parameters that align with its branding strategy; and
- may allow a contractor's business name to be advertised in print material only, by limiting greetings or introductions to the Board's brand.

Section 801.33(a)(5) states that a Board's policies must address the methods of holding contractors accountable. A Board may include a provision on adherence to its advertising policies in existing and future contracts for one-stop workforce services.

Section 801.33(a)(6) states that a Board's policies must address how a contractor or prospective contractor will address the requirement that Commission-contracted funds must not be used for advertising. The Board's policies must require the contractor or prospective contractor to disclose the source of funds to be used for advertising. The Board's policies must also require an attestation from the contractor or prospective contractor that no Commission-contracted funds will be used for advertising.

Section 801.33(b) requires that Commission-contracted funds must not be used for costs associated with advertising the contractor's business name. Boards and contractors are prohibited from using these funds to pay for costs such as displaying the contractor's business name on materials used in performing contracted duties; replacing the contractor's unused advertising materials; and removing the contractor's business name from signs remaining on a Texas Workforce Center's premises.

Section 801.33(c) allows Boards to charge an outgoing contractor for the cost of replacing unused materials containing the outgoing contractor's business name and the cost of removing the outgoing contractor's business name from signs remaining on a Texas Workforce Center's premises.

Section 801.33(d) requires Boards to be the final decision-making authority related to Boards' policies on contractor advertising. As a result, there will be no appeal to the Commission.

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 or increases 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.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

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.

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.

Luis M. Macias, 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 ensure that public funds are not used to replace unused materials containing an outgoing contractor's business name or used to remove an outgoing contractor's business name from signs designed to remain on the premises of a Texas Workforce Center.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved. Additionally, the Commission provided the policy concept to the Boards for consideration and review.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 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 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 rules affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code §2308.

Chapter 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

§801.33. Advertising.

- (a) Boards shall ensure that, within 120 days of the effective date of this rule (or within three Board meetings, whichever is later), policies are developed regarding the limitations and restrictions on the use, display, and advertising of contractors' and prospective contractors' business names when providing one-stop workforce services for the Boards. These policies shall only be applicable in the event a contractor or prospective contractor requests to advertise. At a minimum, Board policies shall address:
- (1) the requirement that the use or display of the contractors' business names be in a subordinate manner or position to the Board's name in terms of size, placement, stature, and location and include restrictions specifically relating to:
 - (A) the advertising medium to be used, including, but not limited to, Internet, radio, television, and print; and
 - (B) the design of the advertising medium;
 - (2) the requirement that contractors and prospective contractors provide the Board advance written notice of their intent to use, display, or advertise their business name;
 - (3) the prohibition on a contractor's or prospective contractor's business-name recognition from being a factor in evaluating a proposal for services;
 - (4) limitations necessary to avoid potential confusion of employers and job seekers attempting to access one-stop workforce services;
 - (5) the method of holding contractors accountable in conforming to the policies;
 - (6) methods to comply with subsection (b) of this section, disclosure of the source of funds to be used for advertising, and the requirement of an attestation that no Commission-contracted funds will be used to cover the cost of advertising.
- (b) Commission-contracted funds shall not be used for costs associated with advertising a contractor's business name. Specifically, Boards and contractors are prohibited from using Commission-contracted funds to pay for costs associated with:

- (1) displaying a contractor's business name on materials used in performing contracted duties, including materials that a Board requires a contractor to purchase;
 - (2) replacing unused materials that contain a contractor's business name, such as pamphlets describing one-stop workforce services; and
 - (3) removing the contractor's business name from signs designed to remain on the premises of a Texas Workforce Center.
- (c) Boards shall charge an outgoing contractor for the costs associated with:
- (1) replacing unused materials that contain the outgoing contractor's business name, such as pamphlets describing one-stop workforce services; and
 - (2) removing the outgoing contractor's business name from signs designed to remain on the premises of a Texas Workforce Center.
- (d) Boards shall be the final decision-making authority related to Boards' policies on contractor advertising. There will be no appeal to the Commission.