

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
PART XX. Texas Workforce Commission
CHAPTER 801. Local Workforce Development Boards
40 TAC §801.2

The Texas Workforce Commission proposes an amendment to §801.2, Waiver Requirements, concerning waivers that may be granted regarding service delivery, board staffing and developmental services. The section clarifies terms and circumstances in which waivers will be allowed. The section is amended to streamline the process of obtaining a waiver and clearly defines what a board must do to obtain a waiver.

The Texas Labor Code, as amended by Chapter 655, Acts of the 74th Legislature, 1995, requires the Commission to establish objective criteria for granting waivers to local workforce development boards. The amendment deletes statutory definitions from the rule as such information is repetitive and unnecessary, and the amendment clarifies that operational functions, such as intake, eligibility determination, assessment and referral, are included within the meaning of "workforce training and services." The amendment also clarifies that the Commission will issue a recommendation on submitted waiver requests to the Texas Council on Workforce and Economic Competitiveness. Finally, the proposed amendment replaces the requirement that certain documentation be submitted with the request with a provision granting the Commission discretion in identifying what documents may be needed to support a request for a waiver. This would allow greater flexibility in submitting and reviewing requests for waivers. Emily Zimmet, Deputy Director of Operational Services, has determined that for the first five-year period the section is in effect, there will be minimal fiscal implications for state or local government as a result of enforcing or administering the section. There will be no additional costs to state government as a result of enforcing or administering the rule. Reductions in costs to the state will depend on program consolidation and local involvement and cannot be estimated. Any costs to local governments choosing to operate under a plan including waivers are entirely within the control of the local government and cannot be estimated.

Ms. Zimmet, also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be improved coordination of and access to workforce training and services programs at the local level. There will be no effect on small businesses. There may be minimal economic impact as a result of this amendment, but it is impossible to estimate at this time.

Written comments on the proposal may be submitted to Emily Zimmet, Operational Services, Texas Workforce Commission Building, 101 East 15th Street, Room 144T, Austin, Texas 78778 (512) 463-6045. E-mail address: emily.zimmet@twc.state.tx.us The amendment is proposed under Texas Labor Code, Title 4, §302.063, as amended by Chapter 655, Acts of the 74th Legislature, 1995, which provides the Texas Workforce Commission with the authority to develop objective criteria for the granting of waivers under Texas Civil Statutes, Government Code, §§2308.264, 2308.267, and 2308.312.

No other statute, article or code will be affected by this proposal.

§801.2.<nl>Waivers [Waiver Requirements].

(a) Purpose of Rule. The Workforce and Economic Competitiveness Act, §§2308.264, 2308.267, and 2308.312, Government Code, Vernon's Texas Codes Annotated, sets forth prohibitions regarding service delivery, board staffing, and developmental services. Only under exceptional circumstances will waivers from such prohibitions be allowed. [The Commission's decision on a waiver request shall be final.]

[(b) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly requires otherwise.]

[(1) Board--A local workforce development board as created under the Workforce and Economic Competitiveness Act.

[(2) Developmental services--Program services designed to increase a participant's basic education and skill level, including adult basic education courses, GED preparatory courses, adult literacy programs, and occupational skills training.

[(3) One-Stop services--Services provided at a Career Development Center established by a board, including, but not limited to:

[(A) access to labor market information in the workforce area;

[(B) individual education, training, and employment referral services;

[(C) independent assessment of individual needs and the development of an individual service strategy;

[(D) centralized and continuous case management and counseling;

[(E) support services, including, child care assistance, student loans, and other forms of financial assistance required to participate in and complete training;

[(F) uniform eligibility determination of state and federal benefit programs, including Food Stamp Employment and Training and unemployment insurance benefits; and

[(G) other employment services, such as job readiness seminars, life skills programs, and job search seminars.

[(4) Operational functions--Intake, eligibility determination, assessment, and referral.

[(5) Person--Any individual, sole proprietorship, partnership, corporation or other legal entity.

[(6) Workforce development--Includes workforce educational programs and workforce training and services.

[(7) Workforce education--Articulated career-path programs and the constituent courses of those programs that lead to initial or continuing licensing or certification or associate degree-level accreditation and that are subject to:

[(A) initial and ongoing state approval or regional or specialized accreditation;

[(B) a formal state evaluation that provides the basis for program continuation or termination;

[(C) state accountability and performance standards; and

[(D) a regional or statewide documentation of the market demand for labor according to employers' needs.

[(8) Workforce training and services--Training and services programs that are not "workforce education."]

<nl>(b)[(c)] Independent Service Delivery. A board is prohibited from directly providing workforce training and services <nl>including operational functions normally associated with such services such as intake, eligibility determination, assessment, and referral unless a waiver is obtained. [A board is prohibited from directly providing operational functions.]

<nl>(c)[(d)] Separate Staffing. <nl> The board's staff must be employed separately and independently of any person that provides workforce training and services, as described in subsection (b) of this section, unless the board arranges for independent evaluation of any other workforce services provided by the staffing organization and obtains a waiver. [A board may employ professional, technical and support staff to carry out its strategic planning, oversight, and evaluation functions. The staff employed by the board must be employed separately and independently of any person that provides workforce training and services. The independent nature of the board's staff shall be ensured through employment policies or contractual provisions.]

<nl>(d)[(e)] Developmental Services. A person who provides "one-stop" services at a Career Development Center may not also provide developmental services <nl>unless a waiver is obtained . [Persons seeking developmental

services must be referred to the full range of services available in the region and must not be unduly influenced to participate in any training services made available by a particular provider.]

<nl>(e)[(f)] Requesting a Waiver . [of the Requirements.]

(1) <nl>Waiver requests should be submitted to the Commission and contain detailed justification as specified in the respective statutes. The Commission will forward a recommendation to the Texas Council on Workforce and Economic Competitiveness for a determination. [The board may submit its written request for a waiver under subsection (c), (d), or (e) of this section to the Commission at any time in the board's planning process, including at the time of submission of the strategic plan.]

(2) <nl>In recommending action on such requests, the Commission will apply only the criteria specified in the respective statutes.[A request for a waiver of any of the requirements under subsection (c), (d), or (e) of this section must contain the following:

[(A) a detailed justification for the waiver, including, but not limited to:

[(i) cost-effectiveness;

[(ii) prior experience;

[(iii) geographic and budgetary considerations;

[(iv) availability of qualified applicants; and

[(v) a detailed proposal for the provision of such services should a waiver be granted.

[(B) Documentation of the process used to solicit proposals for the provision of necessary services, including, but not limited to:

[(i) the process used to notify the public and interested parties of the solicitation of proposals for the provision of necessary services;

[(ii) details regarding any proposals or inquiries received as a result of public notice and solicitation for proposals, including responses given to any inquiries received;

[(iii) criteria used to evaluate any proposals received; and

[(iv) methodology used to determine the lack of any existing qualified alternative.]

<nl>(3) <nl> The Commission may require a board to submit documentation as outlined in the Texas Workforce Planning Guidelines and/or Workforce Development Letters to support its waiver request.

<nl>(f)[(g)] Duration of Waiver.

(1) A waiver may be granted for a period less than, but not to exceed, the effective term of an approved plan and budget.

(2) A waiver may be conditioned upon the board's completion of measures taken to eliminate the need for a waiver.

[(h) Changed Circumstances. If the Commission becomes aware of a change in circumstances materially affecting its decision to grant a waiver, the Commission may review its decision and require the board to submit information regarding the continued need for the waiver.]

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

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Director of Legal Services

Texas Workforce Commission

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