

## **Chapter 801. LOCAL WORKFORCE DEVELOPMENT BOARDS**

### **Subchapter A. GENERAL PROVISIONS**

The Texas Workforce Commission (Commission) proposes amendments to §801.1 relating to the Requirements for Local Workforce Development Boards (Boards), the repeal of §801.3 relating to Requirements for Submission of Local Workforce Training and Services Plans, Modifications and Amendments, new §§801.11-801.13 relating to the Board Members, and new §801.16 and §801.17 relating to Board Oversight and Management.

Concurrent with this filing, the Commission is proposing the repeal of Chapter 805, Subchapter B relating to the Job Training Partnership Act (JTPA) Program Delivery System.

Background and Purpose: Texas Labor Code §302.002(d) authorizes the Commission to adopt rules necessary for the proper administration of the Division of Workforce Development. The Commission was established to operate an integrated workforce development system in the state. An integral part of that system is the establishment, maintenance, and oversight of the Boards.

New Subchapter A is added to contain rules relating to General Provisions and will contain §801.1 and §801.2 and reserve room for expansion. Section 801.1 contains amendments regarding Requirements for Formation of Boards. Section 801.3 is repealed and the content of the rule is moved to new §801.17 Board Training and Services Plans, Modifications, and Amendments.

New §§801.11-801.13 are added to contain provisions relating to Board Members, which set forth provisions as indicated in the title of the section as follows:

new §801.11, Board Member Nominations and Applications;

new §801.12, Board Member Vacancies; and

new §801.13, Board Member Conflicts of Interest.

New §801.16 and §801.17 are added to contain provisions relating to Board Management and Oversight, which set forth provisions as indicated in the title of the section as follows:

new §801.16, Agreement for Local Procedures; and

new §801.17, Board Training and Services Plans, Modifications and Amendments.

Section 801.1 is amended to provide a uniform use of terms, to remove references to the Job Training Partnership Act (JTPA) since the State has fully implemented the Workforce Investment Act (WIA), which replaces JTPA, and to remove obsolete provisions that are no longer necessary. Section 801.1 is also amended to add the requirement that private sector representatives must derive the majority of their income from private sector sources. This requirement is added to assure that private sector representatives have sufficient ties to private sector activities in the community. Section 801.1 is also amended to add a clarification to the nomination process of labor representatives, to provide a definition of the term "labor federation" and assure that labor representatives meet the statutory requirements for that category. A final amendment to §801.1 requires that all Board nominees have an existing relationship to the workforce area and are actively engaged in the category which they are representing.

Specifically, the remaining proposed rules are added for the following purposes:

§801.11 is added to describe the process for the nomination and appointment of Board members;

§801.12 is added to describe the requirements for filling Board vacancies;

§801.13 is added to set out the conflict of interest requirements on a Board;

§801.16 is added to list the requirements for an agreement between a Board and the local chief elected officials (CEOs); and

§801.17 is added to move §801.3, relating to Board Training and Services Plan and Modifications, to the more applicable location relating to Board Oversight and Management Responsibilities.

Chapter 805, Subchapter B relating to the Job Training Partnership Act (JTPA) Program Delivery System is proposed for repeal since the State has fully implemented the WIA program, which replaces the JTPA program in Texas.

The amendments, new rules and repeal are proposed to assure compliance with state and federal statutory requirements regarding Boards, to clarify changes resulting from the change from the JTPA to the WIA, and to assist Boards in complying with requirements imposed by the federal funding source.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the sections are 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 rules;

there are no estimated reductions in costs to the state or to local governments expected 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 revenues to the state or to local governments as a result of enforcing or administering the rules; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because small businesses are not required to do anything as a result of the rules.

Barbara Cigainero, Director of Workforce Development, has determined that the public benefit anticipated as a result of the sections as proposed will be to assure compliance with state and federal statutory and regulatory requirements.

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

Comments on the proposed sections may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 504BT, Austin, Texas, 78778; Fax Number 512-463-2799; or E-mail to barbara.cigainero@twc.state.tx.us. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the Texas Register .

#### **40 TAC §§801.1, 801.11-801.13, 801.16, 801.17**

The amendments and new sections are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposal affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.

*§801.1. Requirements for Formation of Local Workforce Development Boards.*

(a) Purpose of Rule.

(1) Upon application by the chief elected officials (CEOs) and approval of the [~~Texas Workforce~~] Commission, [~~Commission~~] the Commission will forward an application to form a local workforce development board (Board) to the Governor.

(2) Before an application may be submitted to the Governor, all requirements of this section must be met.

(b) State [ ~~and Federal~~] Law. The formation of Boards [ ~~local workforce development boards~~] is governed by the [ ~~following federal statutes and regulations and state statutes:-~~]

~~[(1) The Job Training Partnership Act, as amended, 29 United States Code §§ 1501, et seq;]~~

~~[(2) 20 Code of Federal Regulations, Part 628; and]~~

~~(3) The Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308[ , Government Code, Texas Civil Statutes, as amended ].~~

(c) Chief Elected Official Agreement. Creation of a Board [ ~~board~~] requires agreement by at least three-fourths of the CEOs in the workforce area [ ~~workforce development area~~] who represent units of general local government, including all of the CEOs who represent units of general local government having populations of at least 200,000. The elected officials agreeing to the creation of the Board [ ~~board~~] must represent at least 75% of the population of the workforce area [ ~~workforce development area~~].

(d) Chief Elected Officials. The CEOs may, and are encouraged to, consult with local officials other than the ones delineated below. The following officials are designated as the CEOs for the purpose of establishing agreements to form Boards: [ ~~local workforce development boards.-~~]

(1) Mayors.

(A) The mayor of each city with a population of at least 100,000;

(B) or, if there is no city with a population of greater than 100,000, the mayor of each city with a population greater than 50,000;

(C) or, if there are no cities with a population of greater than 50,000, the mayor of the largest city in the workforce area: [ ~~workforce development area.-~~]

(D) For purposes of this section, municipal population will be determined by the figure last reported by the Texas State Data Center at the time of submission of the application to the Commission.

(2) All county judges included in a workforce area [ ~~workforce development area~~] as designated by the Governor.

(e) Time of Application. CEOs in an area may not establish a Board [ ~~local board~~] until the Governor has designated that area as a workforce area [ ~~local workforce development area~~] as provided in the Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308 [ ~~, Government Code, Texas Civil Statutes, as amended~~].

(f) Applications must meet all Governor-approved criteria for the establishment of Boards. [ ~~local workforce development boards~~.-]

(g) Procedures for Formation of a [ ~~Local Workforce Development~~-] Board. The CEOs must comply with the following procedures to form a Board [ ~~local workforce development board~~-].

(1) Public process procedure. If three-fourths of the CEOs, as defined in subsection (d) of this section, agree to initiate procedures to establish a Board [ ~~local workforce development board~~-], they must conduct a public process, including at least one public meeting, to consider the views of all affected organizations before making a final decision to form a Board [ ~~local workforce development board~~-]. This public process may include, but is not limited to, notices published in various media and surveys for public comment.

(2) Application procedure.

(A) The CEOs must submit an application to the Commission. This application must include evidence of the actions required by paragraph (1) of this subsection. As a part of the application, each of the CEOs, who is in agreement regarding the formation of a Board [ ~~local workforce development board~~-], must execute the following documents:

(i) an interlocal agreement delineating:

(I) the purpose of the agreement;

(II) the process that will be used to select the CEO who will act on behalf of the other CEOs and the name of such CEO if the person has been selected;

(III) the procedure that will be followed to keep those CEOs informed regarding local workforce development activities;

(IV) the initial size of the Board [ ~~local workforce development board~~-];

(V) how resources allocated to the workforce area [ ~~local workforce development area~~-] will be shared among the parties to the agreement;

(VI) the process to be used to appoint the Board [ ~~board~~-] members, which must be consistent with applicable federal and state laws; and

(VII) the terms of office of the members of the Board [ ~~board~~-].

(ii) an acknowledgment in the following form: We, the chief elected officials of the \_\_\_\_\_ Workforce Development Area, acknowledge that the following are responsibilities and requirements pursuant to the formation of local workforce development boards:

(I) The Board [ ~~local workforce development board~~-] will assume the responsibilities for the following committees and councils that will be replaced by the Board [ ~~board~~-] unless otherwise provided in Texas Government Code, Chapter 2308 [ ~~Texas Government Code, V.T.C.A., as amended~~-]: private industry council, quality workforce planning committee, job service employer committee, and local general vocational program advisory committee.

(II) At least one career development center must be established within 180 days of Board [ ~~board~~-] certification;

(III) The Board [ ~~board~~-] must have its own independent staff and not be a provider of workforce services, unless the Board [ ~~board~~-] secures a waiver of these provisions;

(IV) The chief elected officials must enter into a partnership agreement with the Board [ ~~board~~-] to designate a grant recipient to receive and be accountable for block grant funds, and be liable for any misuse of funds;

(V) The partnership agreement must also specify the entity that will administer the programs, which may be separate from the entity that receives the funds from the state;

(VI) The partnership agreement must define the process through which the Boards [ ~~local boards~~-] and chief elected officials will develop the strategic and operational plans, including the training plan required under the Workforce Investment [ ~~Job Training Partnership~~-] Act, required by the legislation in order to receive block grant funds; and

(VII) The strategic plan must be reviewed by both the Commission and the Texas Council on Workforce and Economic Competitiveness, and approved by the Governor before block grants will be available to the workforce [ ~~local~~-] area.

(B) The application must include evidence that any affected existing Board [ ~~private industry council~~-] has been notified and agrees that its functions and responsibilities [ ~~as a private industry council pursuant to the terms of the Job Training Partnership Act~~] will be assumed by the proposed Board [ ~~local workforce development board~~-] upon the proposed Board's [ ~~board's~~-] final certification by the Governor.

(C) The application shall include the names and affiliations of individuals recommended for Board [ ~~board~~-] membership, with documentation that CEOs followed the nomination process specified in applicable state and federal law, including Texas Government Code §§2308.255 and 2308.256 [ ~~Texas Civil Statutes, §2308.255 and §2308.256, and the Job Training Partnership Act~~].

(i) Private sector members shall be owners of business concerns, chief executives, chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. No more than 15% [ ~~10%~~-] of the Board [ ~~board~~-] membership should be composed of private sector

representatives who employ fewer than five employees. To be eligible to represent the private sector, at least 51% of an individual's annual income must be from private sector sources.

(ii) Private sector membership should represent the composition of the local pool of employers. The private sector membership should include representatives of the region's larger employers and emerging growth industries. Primary consideration should be given to private sector employers who do not directly provide employment and workforce training services to the general public. CEOs must develop a profile of the area's major industries using locally obtained information and state published data. The Commission will provide relevant labor market information, including data which identify employment trends, emerging and growth industries, the size of local employers, and other data needed to assist CEOs in developing the employer profile. Documentation submitted with the application must show how the regional employer profile is reflected in the Board [ ~~board~~ ] membership.

(iii) Board membership must include representatives of local organized labor organizations, community-based organizations, educational agencies, vocational rehabilitation agencies, public assistance agencies, economic development agencies, the public employment service, local literacy councils, and adult basic and continuing education organizations as required by law.

(iv) Representatives of local organized labor organizations shall be nominated by local labor federations unless no employees in the workforce area are represented by such organizations, in which case nominations may be made by other representatives of employees. A labor federation is defined as an alliance of two or more organized labor unions for the purpose of mutual support and action.

(v) Board nominees shall be actively engaged in the organization, enterprise or field which they are nominated to represent. A Board nominee shall have an existing relationship with the workforce area through residence or employment within the workforce area.

(D) No individual member shall be a representative of more than one sector or category described in this section.

(E) [ ~~(D)~~ ] The application must include documentary evidence substantiating compliance with the application procedure, including but not limited to, written agreements, minutes of public meetings, copies of correspondence, and such other documentation as may be appropriate.

~~[(E) CEOs who have submitted applications to the Texas Council on Workforce and Economic Competitiveness may supplement those applications with documentation of any actions necessary to meet the provisions in these rules.]~~

~~[(F) Boards formed on the basis of completed applications on which the Texas Council on Workforce and Economic Competitiveness took formal action prior to September 1, 1995, must be brought into compliance under the rules adopted by the Texas Workforce Commission no later than July 1, 1997.]~~

#### §801.11. Board Member Nomination and Appointment.

(a) For each Board member nomination, the nominating organization shall submit to the CEOs of the workforce area a completed Board Nomination Slate in a form established by the Commission.

(b) Documentation in the form of a curriculum vitae, resume or work history supporting the qualifications of the nomination must accompany the Board Nomination Slate.

(c) Once nominations are submitted to and appointments are made by the CEOs, the Appointments form and documentation shall be forwarded to the Director of the Workforce Development Division, Texas Workforce Commission. Only nominations forwarded by the CEOs may be accepted by the Commission. The documentation submitted by the CEOs must include the following:

(1) a Board Nomination Slate for each appointment; and

(2) a Board Appointments form, in a format determined by the Commission, indicating the official beginning and expiration dates of all appointments.

(d) Board reappointments shall be processed under the provisions of this chapter.

#### §801.12. Board Member Vacancies.

(a) If a Board member vacancy occurs due to resignation, termination, or any other reason, the Board Chair shall provide notice to the CEOs of the workforce area and to the Commission within 20 calendar days of such event. Such notice shall include:

(1) the name of the Board member;

(2) the category represented; and

(3) the effective date of resignation, termination or other event causing the vacancy.

(b) The original resignation letter or documentation of other official action must be maintained at the local Board level.

(c) The CEOs shall fill a vacancy in a required category, in the same manner as the original appointment, within 60 calendar days from the effective date of the resignation, termination, or other event causing a vacancy. During the

60-day period, the Board will be able to act as a body and conduct business. Any action taken by the Board, with a vacancy in a required category, beyond such 60-day period shall be void.

(d) If the CEOs fail to fill a vacancy in a required category within 60 calendar days of the effective date of the vacancy, and remain in noncompliance with this section beyond that time, the Commission may withhold administrative funds from the Board until compliance is achieved. The Commission may make appointments necessary to bring the Board into compliance or may recommend that the Governor decertify the Board.

§801.13. Board Member Conflicts of Interest.

(a) Pursuant to WIA § 117(g)(29 U.S.C.A. §2832), this section sets forth the state's Board conflict of interest requirements for disclosure and declaration of a conflict of interest by a Board member.

(b) A Board member may not vote on any matter that would provide direct financial benefit to the member or his immediate family, nor on matters of the provision of services by the member or the entity the member represents. No Board member may participate in a decision in which the member has a direct or indirect interest, particularly a financial interest, which is in substantial conflict with the discharge of the duties of the Board.

(c) A Board member shall avoid even the appearance of a conflict of interest. Prior to taking office, Board members must provide to the Board Chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations which have received, currently receive, or are likely to receive contracts or funding from the Board. Such declarations shall be updated within 30 days to reflect any changes in such business interests or relationships. The Board shall appoint an individual to timely review the disclosure information and advise the Board Chair and appropriate members of potential conflicts.

(d) Prior to a discussion, vote or decision on any matter before a Board, if a member, or the immediate family of such member, has a substantial interest in or relationship to a business entity, organization or property that would be pecuniarily affected by any official Board action, that member shall disclose the nature and extent of the interest or relationship and shall abstain from voting on or in any other way participating in the decision on the matter. All such abstentions shall be recorded in the minutes of the Board meeting.

(e) Each Board must include in its organizational plan or bylaws, or in a separate code of conduct, provisions for penalties, sanctions or other disciplinary actions for any direct violations of the Board conflict of interest policy. The following definitions must be incorporated into those provisions.

(1) Immediate family--Any person related within the first degree of affinity (marriage) or consanguinity (blood) to the person involved.

(2) Substantial interest--A person has a substantial interest:

(A) in a business entity if:

(i) the person owns 10% or more of the voting stock or shares of the business, owns 10% or more, or owns \$5,000 or more, of the fair market value of a business; or

(ii) funds received by the person from the business exceed 10% of the person's gross income for the previous year;

(B) in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more; or

(C) if the Board member is related to a person in the first degree of affinity or consanguinity who has a substantial interest as defined in subparagraph (A) or (B) of this paragraph.

§801.16. Agreement for Local Procedures.

(a) The CEOs in a workforce area shall enter into an Agreement for Local Procedures with the Board for the area as required by Texas Government Code §2308.253(g) and by 40 TAC §801.1(g)(2)(A)(iii)(IV)-(VI).

(b) The Agreement for Local Procedures must be signed by the current CEOs and the Board Chair.

(c) Any amendments to an Agreement for Local Procedures, changes to a Board's organizational plan or bylaws, or the election of a new CEO or Board Chair must be submitted to the Commission within 15 calendar days of the adoption of such amendment or the new official's election.

(d) If a CEO or Board Chair is newly elected during the then current two-year program planning cycle, such newly elected individual must submit a written statement acknowledging that the newly elected official:

(1) has read, understands, and will comply with the current Agreement for Local Procedures; and

(2) reserves the option to request negotiations to amend the agreement at any time during the official's tenure as CEO or Board Chair.

(e) All Agreements for Local Procedures and Board organizational plans or bylaws shall state that Board members will not be permitted to delegate any Board duties to proxies or alternates.

§801.17. Board Training and Services Plans, Modifications, and Amendments.

(a) Purpose of Rule.

(1) All workforce training and services plans and budgets developed pursuant to state and federal law by a Board shall be submitted to the Workforce Division of the Texas Workforce Commission for review.

(2) Before a plan and budget will be forwarded by the Commission to the Texas Council on Workforce and Economic Competitiveness (TCWEC) for approval, all requirements of this section must be met.

(b) Standards for Submission. A local workforce training and services plan and budget will be reviewed according to criteria established by the Commission. The Commission will provide guidelines for strategic planning and budgeting to local boards.

(c) Plan Modification or Amendment. An approved plan and budget may be changed by either modification or amendment. Either method of change must be submitted to the Commission for review before implementation.

(1) A modification is a substantial revision of a plan and budget. The Commission will provide criteria to Boards that will define what constitutes a substantial revision. Each modification must provide evidence that a majority of the CEOs of a workforce area or their designee or designees with signatory authority have approved the modification.

(2) An amendment is a minor adjustment to a plan and budget. The Commission will provide criteria to Boards that will define what constitutes a minor adjustment. An amendment does not require approval by a majority of the CEOs of a workforce area.

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.

Filed with the Office of the Secretary of State, on May 26, 2000.

TRD-200003775

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 9, 2000

For further information, please call: (512) 463-8812

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#### **40 TAC §801.3**

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §§301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The repeal affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.

*§801.3. Requirements for Submission of Local Workforce Training and Services Plans, Modifications and Amendments.*

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.

Filed with the Office of the Secretary of State, on May 26, 2000.

TRD-200003776

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 9, 2000

For further information, please call: (512) 463-8812