

Chapter 801. Local Workforce Development Board.

§ 801.1 Requirements for formation of Local Workforce Development Boards

Part XX. Texas Workforce Commission

Chapter 801. Local Workforce Development Boards

40 TAC §801.1

The Texas Workforce Commission adopts new §801.1, with changes to the proposed text as published in the November 24, 1995, issue of the Texas Register (20 TexReg 9840).

The Workforce and Economic Competitiveness Act, as amended by Chapter 655, Acts of the 74th Legislature, 1995, requires the Commission to establish rules for the formation of local workforce development boards to plan and oversee the delivery of all workforce training and services programs and evaluate all workforce development programs in the local workforce development areas. Through its deliberative process the Legislature has determined that an integrated workforce development system in this state, featuring consolidated job training, employment and employment-related educational programs, will benefit business, employees, welfare recipients and other disadvantaged workers, communities and taxpayers. The Commission held a public hearing on the proposed rules on December 14, 1995. Oral comments received at that hearing and at subsequent posted Commission meetings were replicated in substance within the 33 written comments received.

The following parties submitted written comments following publication of the proposed rule: Mr. Don Balcer, Regional Administrator, U.S. Department of Labor; Honorable Paul J. Batista, County Judge, Burleson County; Honorable Kim Brimer, State Representative, Texas House of Representatives; Mr. Preston Combest, County Chairman, East Texas JTPA Board of Directors of the East Texas SDA; Honorable Jimmy L. Doyle, County Judge, Fannin County; Mr. Paul Fagan, Junction Five-O-Five; Dr. Margaret Ford, Interim Vice Chancellor, House Community College System; Mr. Raul Garcia, Interim Director, Cameron County PIC; Honorable John Garth, County Judge, Bell County Judge & Commissioners; Honorable Horace Groff, County Judge, Grayson County; Mr. Norman R. Haley, Executive Director, Upper Rio Grande PIC, Inc.; Honorable Ron Harris, County Judge, Collin County (North Central TXWFDA); Honorable Paul F. Hesse, County Judge, Cooke County; Honorable Gilberto Hinojosa, County Judge, Cameron County; Mr. Timo Hinojosa, Chair, Cameron County PIC; Mr. Thom Holt, HRM and Safety Director, Schult Homes Corporation; Mr. T. W. Hudson, Executive Director, HoustonWorks; Honorable Alvin W. Jones, County Judge, Brazos County; Mr. Mark Jones, President, National Employer Council; Mr. Douglas S. Kinsinger, President, San Angelo Chamber of Commerce; Mr. Richard Levy, Texas AFL-CIO; Mr. Jim Loyd, Texas Workforce Development Network; Dr. Robert McAbee, Chair, Tarrant County PIC; Mr. Bob McPherson, UT-Center for the Study of Human Resources; Mr. Alan D. Miller, Austin PIC; Honorable Dorothy Morgan, County Judge, Washington County; Ms. Cynthia Mugerauer, Executive Director, Texas Council on Workforce and Economic Competitiveness; Honorable Rene O. Oliveira, State Representative, Texas House of Representatives; Mr. James F. Ray, Executive Director, Texas Association of Regional Councils; Mr. Jack Steele, Houston-Galveston Area Council; Mr. Mike Temple, President, Texas Workforce Association (Houston); Mr. Glenn E. West, President & CEO, Greater Austin Chamber of Commerce; and Ms. Linda Williamson, Acting Director, Texas Department of Commerce.

One commenter objected to the substitution of local boards for JSECs. The Commission notes that this is a matter of state law.

One commenter indicated that any "grandfathering" of the present system in response to criticism of the proposed rule would be contrary to legislative intent. The Commission believes that very limited grandfathering is necessary to

take advantage of major organizing efforts already undertaken and previously reviewed by appropriate officials.

One commenter endorsed the rule as proposed except for the mandatory inclusion of organized labor on local boards. The Commission notes that this provision is dictated by federal law.

Several commenters suggested either that PICs be retained in their present function, that their dissolution be mandatory, or that they merely be allowed to transfer their JTPA function to a local board. Recognizing that incorporated PICs may well have a non-JTPA role in workforce development, the Commission has amended the rule to allow for a change in function, rather than dissolution.

One commenter objected to the provision requiring PIC agreement that its JTPA function be overtaken by a local board, arguing that the PICs do not have a "veto power" over redirection of function. The Commission believes the adopted provision is necessary to comply with those provisions of federal law which safeguard continuity of PIC membership and function.

Some commenters objected to the expanded definition of chief elected official, finding it unclear, or unfair to certain areas of the State, or designed to cause those areas already involved in the application process to forfeit much time and effort. The Commission believes that a clarified, expanded definition is appropriate to give effect to legislative intent that local boards reflect local workforce conditions to the extent practicable.

Several commenters suggested dropping any formal pre-application procedures. The Commission concurs except to the extent of continuing to require a public process before an application is submitted.

Most commenters, while supporting the concept of expanded local board membership, suggested that the provision for categorical representation of business by size was impractical or overly prescriptive. Recommended changes ranged from eliminating the provision altogether, to describing an "ideal" board member and encouraging recruitment of same, to prescribing a "reasonable representation" concept, to adding a "whenever possible" caveat. The adopted rule reflects the Commission's general agreement with the spirit of these comments while adhering to the principle of expanded representation.

One commenter suggested that state employees or state employee organizations be made part of the pre-application consulting process; that labor and community based organizations be "adequately represented" on local boards even if this resulted in representation greater than 15% of board membership; that the AFL-CIO be designated as the appropriate referring and nominating body in the absence of a local central labor council; and that appropriate representation for minorities, women and the disabled be made a goal. A second commenter agreed that local state office employees, their union representatives and advocacy groups should be canvassed by CEOs. The Commission believes that the rule as adopted, in conjunction with existing law and regulation, adequately addresses these concerns.

Various commenters suggested that definitions be included of terms such as "grant recipient," "entity" and "units of local government." The Commission believes these terms are adequately defined in general law and other relevant regulations.

Several commenters suggested the inclusion of timeliness standards variously covering submission, review and appeal of denial of applications. The Commission believes that existing law adequately addresses these concerns.

Several commenters suggested variously that specified board membership should recite all JTPA requirements or recite none, but that in any event care should be taken to be sure that board membership in fact complies with federal law. The rule as amended and adopted properly addresses these concerns.

Several commenters suggested that the rule be amended to permit assurances of compliance with the notice set out in §801.1(g)(2)(A)(ii), rather than requiring resubmission to get sign-off on specific language. The Commission

believes that the importance of the notice as proposed justifies any minor inconvenience experienced in securing express sign-off.

One commenter suggested a periodic certification review process. The Commission believes existing law secures adequate oversight of local performance without the addition of a formal review process.

The new section is adopted under Texas Civil Statutes, Article 5190.7a, as amended by Chapter 655, Acts of the 74th Legislature, 1995, which provide the Texas Workforce Commission with the authority to establish rules for the formation of local workforce development boards.

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

§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 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 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, Chapter 2308, Government Code, Texas Civil Statutes, as amended.

(c) Chief Elected Official Agreement. Creation of a board requires agreement by at least three-fourths of the CEOs in the 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 must represent at least 75% of the population of the 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 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 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 development area as designated by the Governor.

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

(f) Applications must meet all Governor-approved criteria for the establishment of 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 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 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 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 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 local workforce development board;

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

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

(VII) the terms of office of the members of the board.

(ii) an acknowledgment in the following form:

Figure 1: 40 TAC §801.1(g) (2) (A) (ii)

(B) The application must include evidence that any affected 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 local workforce development board upon the board's final certification by the Governor.

(C) The application shall include the names and affiliations of individuals recommended for board membership, with documentation that CEOs followed the nomination process specified in applicable state and federal law, including Government Code, 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 10% of the board membership should be composed of private sector representatives who employ fewer than five employees.

(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 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.

(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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on January 10, 1996.

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