

PART XX. Texas Workforce Commission

CHAPTER 803. Skills Development Fund

The Texas Workforce Commission proposes repeal of §803.1, and new §§803.1-803.3, §§803.11-803.15 and §§803.31-803.35, concerning the operation of the Skills Development Fund.

New Subchapter A is added concerning General Provisions.

New §803.1 of Subchapter A, Scope and Purpose, includes language from old §803.1(a) and (b) proposed for repeal, and adds that the Texas Engineering Extension Service (TEEX) may respond to industry and workforce training needs and provide customized assessment and training as authorized by Senate Bill 1712, 75th Legislature, Regular Session.

New §803.3, concerning Uses of the Fund, incorporates language from old §803.1(c) proposed for repeal and adds that TEEX may use the skills development fund as start-up or emergency funds to develop customized training programs and to sponsor small and medium-sized business networks and consortiums; that TEEX shall focus on training programs that are statewide or are not available from a local community or technical college or a consortium of junior college districts; that TEEX may participate with a consortium of junior college districts or with a technical college; that technical college training activities shall focus on statewide programs that are not available from a local community college, except in the technical college's local service area; that travel and drug testing are not eligible costs under the program since these are not considered costs related to direct training or to the administration of the grant; and that lease of equipment is not an allowable cost if the lease transaction meets any of the four criteria in the rule that would characterize the lease as a proprietary or production equipment purchase in which substantially all of the risks and benefits of ownership are assumed by the lessee.

New §803.2, concerning Definitions, includes language from old §803.1(d) proposed for repeal and adds a definition for the Texas Engineering Extension Service (TEEX). The following definitions are also amended to add references to TEEX: Customized Training Program, Grant Recipient, Prospective Private Partner, and Training Provider. The definition for Director is also amended to clarify that it may refer to the Executive Director's designee.

New Subchapter B is added, concerning Program Administration.

New §803.11, concerning Grant Administration, and new § 803.12, concerning Limitations on Awards, includes language from old §803.1(e) (1) proposed for repeal. New §803.11, concerning Grant Administration, adds that the executive director or a designated employee or employees of the Texas Workforce Commission (Commission) may allocate the use of funds during the biennium on a quarterly basis. New § 803.12, concerning Limitations on Awards, adds the Commission's authority to limit the amount of awarded funds, including limits on single employer training programs, caps on allowable purchases of proprietary or production equipment and on administrative costs.

New §803.13, concerning Program Objectives, incorporates the training program objectives from §803.1(e) (4) proposed for repeal, and adds new program objectives, for the following Skills Development Fund program objectives: to ensure that program funds are spent in all areas of this state, to respond to the training needs of business consortiums consisting of micro-businesses to medium-sized businesses; to develop projects that will create jobs in Local Workforce Development Areas where the unemployment rate is above the state's annual average; to facilitate projects eligible for the Self-Sufficiency Fund; to sponsor pilot programs in allied health professions to certain recipients of financial assistance under Human Resources Code, Chapter 31; to develop projects that at completion of training will result in wages greater than the prevailing wage and employment benefits; to develop projects that will result in employment benefits for participants, to facilitate the statewide growth of industry and

emerging occupations; to sponsor creation and attraction of high value, high skill jobs for the state, to ensure retention of jobs; to develop projects that include contributions from other resources; and to ensure that available resources are utilized to respond to workforce training needs.

New §803.14, concerning Procedure for Requesting Funding, includes language from old §803.1(e)(2) and adds language to allow TEEEX to present a joint proposal with a prospective private partner requesting skills development funds; allowing TEEEX to be a non-local partner to a joint training proposal as long as the training proposal does not duplicate a training program available in the local workforce development area; adding a reference to TEEEX in the information that is included in the proposal; and requiring a written proposal that indicates the number of proposed jobs created and preserved, the skills acquired through training, the occupations and wages at the end of the training, the amount of the private partner's contribution, a comparison of program costs, and a list of the employment benefits.

New §803.15, concerning Procedure for Proposal Evaluation, includes language from old §803.1(e)(2)(D) proposed for repeal and adds the list of the following additional factors in the Commission's evaluation of a proposal: the program objectives, the information contained in the proposal, the prevailing wage for occupations in the local labor market area, the financial stability of the prospective private partner, and the regional economic impact. The section also authorizes the director to enter into a contract with the grant recipient if a contract is approved for funding.

New Subchapter C is added relating to Program Administration After Award of Contract.

New §803.31, concerning Grant Recipient Responsibilities, includes language from old §803.1(e)(2)(E), proposed for repeal, adds subsection (b) requiring that contractors maintain fiscal data needed for independent verification of expenditures; and subsection (c) requiring that contract amendments be requested and approved in writing before a change to the contract is implemented.

New §803.32, concerning Contract Completion Reports, includes language from old §803.1(e)(2)(F) proposed for repeal, and adds a reference to TEEEX and clarifies that the 90 day requirement to submit a final report is tied to the end of the contract period instead of the completion of the customized training program. New § 803.32(2) adds that the occupations trainees were placed in and wages for those occupations need to be included in the final report from the Contractor.

New §803.32(3) clarifies that the final report from the Contractor should summarize the training program results, including the results of the training objectives and outcomes specified in the contract to ensure that the contractual obligations were met and may include an evaluation of the effectiveness of the training program from the private partner since the business will be effected by the outcome of the customized training program.

New §803.32(4) adds that payroll records and/or reports certified by an independent auditor must be provided that include the name, social security number, occupation, and trainee's wage or a statement that each trainee's wage is equal to the prevailing wage for that occupation.

New §803.33, concerning Contract Payment, includes language from old §803.1(e)(2)(G) proposed for repeal and adds language authorizing the director to allow an attrition rate of 15% based on the total number of trainees outlined in the contract.

New §803.34, concerning Notice to Texas Higher Education Coordinating Board, includes language from old §803.1(e)(3) and adds a reference to TEEEX.

New §803.35, concerning Waivers, is added so that the director has the authority to suspend or waive a section, not statutorily imposed, if there is a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

Randy Townsend, Director of Finance, has determined that for the first five-year period the section is in effect, there will be minimal fiscal implications as a result of enforcing or administering the rules, beyond the legislative appropriation establishing the corpus of the fund. There will be minimal additional costs to the state as a result of enforcing the rules. There will be no reduction in costs to the state. There will be no costs to local governments other than those attendant to obtaining a grant.

Richard Hall, Director of Business Services has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the enhancement of the ability of public community and technical colleges and the Texas Engineering Extension Service to respond to industry and workforce training needs and to provide customized assessment and training in a timely and efficient manner. The effect on small businesses is that additional skills development funds will be used to develop customized training programs for these businesses. There are no anticipated costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Richard Hall, Director of Business Services, Texas Workforce Commission Building, 101 East 15th Street, Room 668, Austin, Texas 78778, fax (512) 475-1133.

40 TAC §803.1

(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 Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

The repeal affects Texas Labor Code, Chapter 303.

§803.1. Requirements for Skills Development Fund.

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.

Issued in Austin, Texas, on July 23, 1997.

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Deputy Director of Legal Services

Texas Workforce Commission

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

SUBCHAPTER A. General Provisions Regarding the Skills Development Fund

40 TAC §§803.1-803.3

The new sections are proposed under Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

The proposed new sections affect Texas Labor Code, Chapter 303.

§803.1. Scope and Purpose.

(a) Purpose. The purpose of the skills development fund is to enhance the ability of public community and technical colleges and the Texas Engineering Extension Service (TEEX) to respond to industry and workforce training needs and to develop incentives for public community and technical colleges or TEEX to provide customized assessment and training in a timely and efficient manner.

(b) Goal. The goal of the fund is to increase the skills level of the Texas workforce.

§803.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

Assessment-- The evaluation of an employer's workforce needs and requirements.

Commission -- The Texas Workforce Commission or an employee or employees designated by the director to administer the Skills Development Fund.

Customized Training Program -- A program designed by a private business or trade union in partnership with a public community or technical college or TEEEX for the purpose of providing specialized workforce training to employees or prospective employees of the private business or members of the trade union with the intent of either adding to the workforce or preventing a reduction in the workforce.

Director -- The Executive Director of the Texas Workforce Commission or the Executive Director's designee.

Grant Recipient -- Any public community or technical college or TEEEX awarded a grant from the skills development fund.

Non-Local Public Community and Technical College -- A public or community technical college providing training outside of its local taxing district.

Prospective Private Partner -- Any person, sole proprietorship, partnership, corporation, association, consortium, or private organization that submits a joint proposal for a customized training program in partnership with a public community or technical college or TEEEX.

Public Community Colleges -- Two-year institutions primarily serving their local taxing districts and service areas in Texas and offering vocational, technical and academic courses for certification or associate degrees. Public community colleges also provide continuing education, remedial and compensatory education consistent with open-admission policies, and counseling and guidance programs.

Public Technical Colleges -- Coeducational institutions of higher education offering courses of study in vocational and technical education, for certification or associate degrees.

Texas Engineering Extension Service (TEEX) -- A higher education agency and service established by the Board of Regents of the Texas A&M University System.

Trade Union -- Any organization, agency, or employee committee, in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Training Provider -- Any public community or technical college or TEEEX that provides training; or any person, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision or public or private organization with whom a public community or technical college or TEEEX has subcontracted to provide training.

§803.3. Uses of the Fund.

(a) The skills development fund may be used by public community and technical colleges or TEEEX as start-up or emergency funds for either of the following:

(1) to develop customized training programs for businesses and trade unions; and
(2) to sponsor small and medium-sized business networks and consortiums.

(b) TEEEX training activities shall focus on programs that are statewide or are not available from a local junior college district, a local technical college, or a consortium of junior college districts. In developing such programs, TEEEX may participate in a consortium of junior college districts or with a technical college that provides training under Texas Labor Code, Chapter 303.

(c) Technical college training activities shall focus on programs that are not available from a local community college, except in the technical college's local service area, and shall be encouraged to focus on programs that are statewide.

(d) The skills development fund may not be used:

(1) to pay the training costs and related costs of an employer who relocates the employer's worksite from one place in Texas to another;

(2) for the purchase of any proprietary or production equipment required for the training program of a single local employer;

(3) for wages for trainees; or

(4) to pay for trainee or instructor travel costs or trainee drug tests.

(e) The skills development fund may not be used to pay for the lease of equipment if any one of the following four criteria is characteristic of the lease transaction:

(1) the lease transfers ownership of the equipment to the lessee at the end of the lease term;

(2) the lease contains a bargain purchase option;

(3) the lease term is equal to 75% or more of the estimated economic life of the leased equipment; or

(4) the present value of the minimum lease payments at the inception of the lease, excluding executory costs, equals at least 90% of the fair value of the leased equipment.

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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SUBCHAPTER B. Program Administration

40 TAC §§803.11-803.15

The new sections are proposed under Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

The proposed new sections affect Texas Labor Code, Chapter 303.

§803.11. Grant Administration.

(a) The director is responsible for the distribution of money from the skills development fund. The director may designate an employee or employees of the Texas Workforce Commission (Commission) who are knowledgeable in the administration of grants to administer the program.

(b) The Commission is not required to fund all proposals for customized training programs that are submitted.

(c) The Commission may allocate the use of funds throughout the biennium in any manner that in the director's judgment furthers the goals and objectives of the fund, including quarterly allocations.

§803.12. Limitations on Awards.

The Commission may impose any or all of the following limitations on the amount of funds awarded under any specific grant:

(1) a limit of \$500,000 for the training program of a single employer;

(2) a limit of 10% of the grant amount for the allowable purchase of any proprietary or production equipment required for the training program;

(3) a limit of 10% for administrative costs related to direct training for the training program of a single employer; or

(4) a limit of 15% for administrative costs related to direct training for the training program of entities other than a single employer.

§803.13. Program Objectives.

The following are the program objectives in administering the Skills Development Fund:

- (1) to ensure that funds from the program are spent in all areas of this state;
- (2) to respond to the training needs of consortiums consisting of at least two micro-, small or medium-sized businesses. The priority shall be for micro-businesses which employ not more than 20 employees as defined under Government Code, §481.151, small businesses that have fewer than 100 employees or less than \$1 million in annual gross receipts as defined under Government Code, §481.101(3), and medium-sized businesses which employ not more than 500 employees;
- (3) to develop projects that will create jobs in local workforce development areas where the unemployment rate is above the state's annual average unemployment rate;
- (4) to facilitate projects eligible for the Self-Sufficiency Fund, by working with employers and training organizations to provide training for targeted employment for recipients of Temporary Assistance to Needy Families (TANF formerly referred to as Aid For Dependent Children AFDC) and to facilitate other projects which assist in the employment of former welfare recipients;
- (5) to sponsor pilot programs in allied health professions for certain recipients of financial assistance under Human Resources Code, Chapter 31;
- (6) to develop projects that at completion of the training will result in wages greater than the prevailing wage for that occupation in the local labor market for the participants in the customized training program;
- (7) to develop projects that at the completion of training will result in employment benefits, including medical insurance, for the participants in the customized training program;
- (8) to facilitate the growth of industry and emerging occupations;
- (9) to sponsor creation and attraction of high value, high skill jobs for the state;
- (10) to ensure retention of jobs by providing retraining in response to new or changing technology;
- (11) to develop projects which include contributions from other resources, including the private partners, that are being committed to the customized training program; and
- (12) to ensure expansion of the state's capacity to respond to workforce training needs.

§803.14.Procedure for Requesting Funding.

- (a) A prospective private partner together with a public community or technical college or TEEEX shall present to the director a joint proposal requesting funding for a customized training program or other appropriate use of the fund.
- (b) TEEEX, or the public community or technical college that is a partner to a joint training proposal for a grant from the Skills Development Fund may be non-local, but the training proposal must not duplicate a training program available in the local workforce development area in which the prospective private partner is located.
- (c) Proposals shall be written and contain the following information:
 - (1) the number of proposed jobs created or retained;
 - (2) a brief outline of the proposed training program, including the skills acquired through training;
 - (3) a brief description of the measurable training objectives;
 - (4) the occupation and wages for participants who complete the customized training program;
 - (5) a budget summary, disclosing anticipated program costs and resource contributions, including the dollar amount the prospective private partner is willing to commit to the project;
 - (6) an outline of the agreement between the prospective private partner and the

public community or technical college or TEEEX;

(7) a statement explaining the basis for the determination that there is an actual or projected labor shortage in the occupation in which the proposed training program will be provided that is not being met by an existing institution or program in the local workforce development area;

(8) a comparison of costs per trainee for the customized training program to the public community or technical college's or TEEEX' costs for similar instruction;

(9) a statement describing the prospective private partner's equal opportunity employment policy;

(10) a list of the proposed employment benefits; and

(11) any additional information deemed necessary by the Commission to complete evaluation of a proposal.

§803.15.Procedure for Proposal Evaluation.

(a) The director shall evaluate each proposal considering the program objectives listed in §803.13 of this title (relating to Program Objectives), the factors listed in §803.14(c) of this title (relating to Procedure for Requesting Funding), along with the prevailing wage for occupations in the local labor market area, the financial stability of the prospective private partner, the regional economic impact, and any other factors unique to the circumstances which the Commission determines are appropriate.

(b) If the Commission determines that a proposal is appropriate for funding through the skills development fund, the director shall enter into a contract with the grant recipient on behalf of the Commission.

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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SUBCHAPTER C.Program Administration After Award of Contract

40 TAC §§803.31-803.35

The new sections are proposed under Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

The proposed new sections affect Texas Labor Code, Chapter 303.

§803.31.Grant Recipient Responsibilities.

(a) The grant recipient shall serve as fiscal agent, shall administer the contract, and in cooperation with the private partner and any separate training provider, submit financial and performance reports to the Commission.

(b) Contractor shall maintain fiscal data needed for independent verification of expenditures of funds received for the customized training program.

(c) Contract amendments must be requested in writing and approved by the director in writing before a change to the contract is implemented.

§803.32.Contract Completion Reports.

No later than 90 days following the end of the contract period for the customized training program, the grant recipient shall provide the Commission with the following information:

(1) a copy of any audit performed on the customized training program;

(2) the number of jobs created or preserved, the occupations the trainees were placed in, and the wages for those occupations at the completion of the

customized training program;

(3) a narrative report by the Contractor summarizing the training program results, including results ensuring that the training objectives and outcomes specified in the contract have been achieved, and may include a brief narrative by the private partners evaluating the training program's effectiveness in meeting the business' workforce needs and requirements;

(4) payroll records and/or reports certified by an independent auditor that provide the name, the social security number, the occupation, and the trainee's wage at the completion of the training or a statement that the wage at the time of job placement for each individual who successfully completes customized training at the college is equal to the prevailing wage for that occupation in the local labor market area; and

(5) a detailed breakdown reflecting the expenditure of funds received.

§803.33.Contract Payment.

Final payment under a contract will be contingent upon the director's evaluation of the program using the outcome objectives specified in the contract. The director may allow an attrition rate of 15% based on the total number of trainees as outlined in the contract.

§803.34.Notice to Texas Higher Education Coordinating Board.

The Texas Workforce Commission will inform the Texas Higher Education Coordinating Board that a grant from the skills development fund has been made to a public community or technical college or TEEEX to provide a customized training program in order that it may conduct its review of the training program pursuant to Texas Labor Code, §303.004.

§803.35.Waivers.

The director may suspend or waive a section of this chapter, not statutorily imposed, in whole or in part upon a showing of good cause and a finding that the public interest would be served by such a suspension or 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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