

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

**TITLE 40. SOCIAL SERVICES AND ASSISTANCE
PART XX. TEXAS WORKFORCE COMMISSION
CHAPTER 803. SKILLS DEVELOPMENT FUND**

The Texas Workforce Commission (Commission) adopts the repeal of Chapter 803. Skills Development Fund, Subchapter A. General Provisions Regarding the Skills Development Fund, §§803.1-803.3; Subchapter B. Program Administration, §§803.11-803.15; Subchapter C. Program Administration After Award of Contract, §§803.31-803.35; and new Chapter 803. Skills Development Fund, Subchapter A. General Provisions Regarding the Skills Development Fund, §§803.1-803.3; Subchapter B. Program Administration, §§803.11-803.12 and §§803.14-803.15; and Subchapter C. Program Administration After Award of Contract, §§803.31-803.36, without changes as published in the September 13, 2002 issue of the *Texas Register* (27 TexReg 8743). The text is not being republished. New §803.13 is adopted with changes and is being republished.

The purpose of the adopted rules is to interpret and administer Texas Labor Code, Chapter 303, relating to the operation of the Skills Development Fund.

As part of the Commission's innovative system of workforce training and services, the Skills Development Fund exists to meet the needs of Texas employers for the development of a highly skilled and productive workforce through customized job training for new and existing jobs. Customized job training provided through the Skills Development Fund also prepares, places and retains individuals in employment, and meets the needs of workers of this state for education and skills. By merging private and public interests into a winning formula for putting Texans to work, the Skills Development Fund ensures a trained workforce for Texas employers with high-skill, in-demand employment positions.

The Skills Development Fund teams the business community with education organizations, such as public community and technical colleges, the Texas Engineering Extension Service (TEEX), or community-based organizations in partnership with education organizations, to fund customized job training for employers needing high-skilled workers for new or existing positions. This formula successfully merges employer needs and local job training opportunities that in turn expands the local workforce and economic base of a community. As an opportunity to expand a local workforce and economic base, and as a source of workforce development funds provided to a local workforce development area, the Commission encourages employers and education organizations to collaborate with the Local Workforce Development Boards (the Boards) when creating Skills Development Fund proposals. The Boards are the Commission's partner in workforce training and service delivery and the architects of

local workforce development policy, but also have valuable local economic development expertise and resources beneficial to successfully creating a proposal or implementing customized job training.

The new rules incorporate substantially all of the requirements currently contained in Chapter 803, which is concurrently adopted for repeal. However, because of the extensive nature of the changes, the Commission proposes the repeal of the current rules and proposes new rules. The new rules describe the operation of the Skills Development Fund. The new rules update the rules to reflect current workforce development philosophy and policy, strengthen accountability of the grant recipients, encourage collaboration with the Boards, enhance administrative efficiency of the fund, and provide clarity throughout Chapter 803. Some of the nonsubstantive changes include minor typographical edits, changes in terminology in line with the definitions set out in Chapter 800 distinguishing Commission, meaning three member decision-making body of the Commission, from Agency, meaning the Texas Workforce Commission as an Agency responsible for implementing and administering programs. The purposes and goals of the Skills Development Fund are to increase the skills and wages of Texas' workforce, to enhance the ability of education organizations to respond to employer and workforce training needs, and to develop incentives for education organizations to provide customized assessment and training in a timely and efficient manner. The fund provides customized job training throughout the state. The rules describe the procedure to be used in making an application for a Skills Development Fund award, in evaluating the proposals submitted, enumerate the responsibilities of the grant recipient, and list the requirements that the grant recipient must meet in order to obtain payment on training contracts. A document reflecting the new rules may be viewed at www.twc.state.tx.us/twcinfo/rules/prorules.html, or requested by contacting Kathy Turney at (512) 936-9256, faxing (512) 463-2672, e-mailing Kathy.Turney@twc.state.tx.us, or writing to the Texas Workforce Commission, 101 East 15th Street, Room 526-T, Austin, Texas, 78778-0001.

Subchapter A contains §§803.1-803.3 and sets out the provisions relating to the scope and purpose, definitions, and uses of the fund.

Specifically, the purposes of the sections contained in Subchapter A are as follows.

Section 803.1 sets out the scope and purpose of the Skills Development Fund. A reference to wages is added as part of the goal to clarify that the goal of the fund is to increase the wage level of the trainee in addition to the skills level of the trainee.

Section 803.2 sets out the definitions. Some of the definitions, such as customized training project and private partner, are edited for clarity within the rule and to enhance administrative efficiency of the fund. The clarifications made to the definitions are reflected through the remainder of the Chapter 803, where applicable, to clarify the rules. The term "Director" is simplified to allow the reader to understand clearly when duties can be delegated and not delegated to a designee, and edits to reflect this change are made through the remainder of Chapter 803 where applicable to clarify the rules.

Throughout Chapter 803, the term "training project" replaces the term "training program" to provide clarity to the rules and update the rules to reflect current workforce development philosophy and policy. Other edits made to this section are to correct typographical errors.

Section 803.3 sets out uses of the Skills Development Fund. The term public community college is added in reference to junior colleges because the Texas Education Code treats them interchangeably. Including a reference to public community colleges clarifies Chapter 803 and enhances administrative efficiency of the fund.

Subchapter B contains §§803.11-803.15 and sets out the provisions relating to program administration.

Section 803.11 sets out the provisions for grant administration. This section is edited to clarify the role of the Executive Director, and brings the rule in line with definitions set out in Chapter 800 that distinguish Agency and Commission. Subsection (c) is eliminated because of redundancy.

Section 803.12 sets out the limitations on awards. Edits are made to this section to bring the rule in line with definitions set out in Chapter 800 that distinguish Agency and Commission. Other edits are made to clarify the rule under Chapter 803.

Section 803.13 sets out the program objectives. A new objective is added to address the development of projects that will create jobs in local workforce development areas through the collaboration with the Boards. As the Commission's partner in workforce training and service delivery and the architects of local workforce development policy, the Boards should be informed about workforce training funding designed to impact employment and training in a local workforce development area. Furthermore, the Boards should be utilized as a local economic development resource. The new objective is added to emphasize that employers and education organizations should work with the Boards when preparing Skills Development Fund proposals. Former subsection (a)(2) is removed because it is redundant with former subsection (a)(3), which is now new subsection (a)(4). In an effort to streamline the objectives for administrative efficiency, some objectives with common issues are merged. Former objectives under subsections (a)(1) and (a)(12) are merged into new subsection (a)(1); former subsections (a)(8) and (a)(9) are merged into new subsection (a)(5). The Commission has made a change to §803.13(a)(3) at adoption to clarify that the trainee must receive a wage in that occupation that is equal to or greater than the prevailing wage for a person of like experience and knowledge in the local labor market. This clarification reflects current practice that takes into consideration the experience and knowledge of the trainees when the trainees are placed into a job following the Skills Development Fund training. The Commission has made a change to §803.13 (a)(5) at adoption that removes the reference to targeted occupations and demand occupations as examples of occupation that are suitable to that objective. This change will allow the Commission to retain the flexibility to review proposed training projects under the objective §803.13(a)(5) on a case by case basis. Furthermore, the Commission strikes the objectives listed in §803.13(a)(6) through

§803.13(a)(10) because the objectives are redundant, and the Commission seeks to focus on the objectives listed in §803.13 (a)(1) through §803.13 (a)(5).

Section 803.14 sets out the procedures for requesting Skills Development Fund grant funding. Subsection (a) now calls for employer and education organizations to obtain from the Boards review and comments of the proposal. Any review and comments of the Board would be part of the proposal submission to the Agency. The Skills Development Fund is a vital source of customized training funds for a local workforce development area and local economy. As architects of local workforce development policy, the Boards should be informed of and have the opportunity to collaborate on any workforce training that might come into a local workforce development area. When preparing the proposal, businesses, education organizations, and community-based organizations must recognize that the Boards are the cornerstone of workforce training and services in a local workforce development area, and coordinate accordingly. Under subsection (c), the parties submitting the joint proposal and the Board must disclose to the Agency if the parties are seeking other funding from the Commission to fund the proposed training project or a similar project, such as funding through an Achieving Performance Excellence (APEX) grant. Though the Commission encourages the development of training projects that facilitate the integration with other state and federally funded training, the use of Skills Development Fund grant funds to duplicate training projects available in a local workforce development area, or that would be available concurrently with the adopted Skills Development Fund training, is not considered an efficient use of scarce resources and funds by the Commission. Other changes made to Section 803.14 are made for clarity of Chapter 803, to strengthen business and education organization commitment to the Skills Development Fund grant funded training, to strengthen contract monitoring issues, and to eliminate parts of the rule that are no longer applicable, such as the provisions relating to the now defunct Smart Jobs Fund.

Section 803.15 sets out the procedures for proposal evaluation. This section's edits provide clarity to the rule and bring the rule in line with Chapter 800 definitions distinguishing Agency and Commission. A new section is added to establish the notification of Boards when the Agency is evaluating a proposal in order to keep the Boards up to date about potential workforce activities in a local workforce development area.

Subchapter C contains §§803.31-803.36 and sets out the provisions relating to program administration after award of contract.

Section 803.31 sets out the grant recipient responsibilities. The adopted new subsection (a) requires a grant recipient to submit financial and performance reports to the Agency on a quarterly basis based on the commencement date of the contract. Other provisions clarify the rules, such as replacing the term contractor with grant recipient. Four new subsections are added. These are added to bring clarity to the rules, strengthen the contractual obligations of the grant recipient, enhance administrative efficiency of the fund, strengthen contract monitoring procedures, and to provide the grant recipient with

guidance on how to submit reports and establish the treatment of additional reports requested by the Agency.

Section 803.32 sets out the provisions for contract completion reports. Edits are made to provide clarity to the rule or are made to bring the terminology in line with definitions set out in Chapter 800. The term contractor is replaced with grant recipient for clarity. The time frame to submit final reports is reduced from 90 days to 60 days following the end of the contract period to accelerate the closeout process and enhance administrative efficiency of the fund. Subsection (5), which addresses payroll records and reports, is edited to provide the grant recipient greater flexibility with regard to obtaining trainee wage information from the employer participating in the customized job training.

Section 803.33 sets out the contract payment provisions. The provisions are edited to provide clarity on how the final payment will be completed. It is also edited to specify that final payment of the awarded funds will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed in occupations agreed upon in the contract, which will accelerate the closeout process and enhance administrative efficiency of the fund.

Section 803.34 sets out the notice to the Texas Higher Education Coordinating Board. Edits are made to provide clarity to the rule, or are made to bring the terminology in line with definitions set out in Chapter 800.

Section 803.35 is a new section that sets out notification to the Boards when a Skills Development Fund grant is awarded. The rule is added to update workforce development philosophy and policy with regard to the role of the Boards and the Skills Development Fund. The new rule will also enhance administrative efficiency of the fund and provide the Boards with notice of workforce training funding invested by the Commission in a local workforce development area.

Former section 803.35 is renumbered to section 803.36 to provide clarity to the rules under Chapter 803. New section 803.36 is the same as former section 803.35.

Comments were received from the following five Boards:

Permian Basin Workforce Development Board;
West Central Workforce Development Board;
Capital Area Workforce Development Board;
Concho Valley Workforce Development Board; and
North Central Texas Workforce Development Board.

Comments were also received from the San Antonio Economic Development Foundation.

Some commenters agreed with the new rules, some disagreed with the changes, and some made recommendations for changes to the proposed language. The comment summaries and responses are as follows.

Comment: One commenter was supportive of the rule changes.

Response: The Commission is appreciative of the comments.

Comment: One commenter felt the proposed changes brought the Skills Development Fund program closer to the Boards, and felt that the changes would help the Board more closely align the structure of the Skills Development Fund with Workforce Investment Act (WIA) employment and training programs; increase communication and coordination between community colleges, technical colleges, TEEEX, and the Boards; and increase the synergy between Skills Development Fund programs and local employment and training programs through close coordination, greater communication, and added accountability. The commenter felt that Skills Development Fund training projects and local employment and training programs can accomplish much more by working together than either can accomplish separately.

Response: The Commission agrees with the commenter that the rules further the Commission's strategy of aligning employers, education organizations, and the Boards, which will result in greater communication, coordination, and synergy between employers, education organizations, and the Boards, thereby better serving the workforce network and its employer-driven goals. The Commission also agrees with the commenter that employers, education organizations, and the Boards accomplish more working together than they do working separately, and encourages these local partners to strengthen communication and collaboration to improve the local workforce and economic base of the community.

Comment: One commenter applauded the usefulness of the fund and our simplified process, but felt the program needed to be flexible for projects unique to Texas and high economic impact projects.

Response: The Commission agrees that the Skills Development Fund needs to continue to maximize the economic impact of employers, workers, and communities across Texas. The Commission agrees with the commenter's suggestion that the program should be flexible. Under the rules, the Commission retains flexibility to allow the Commission to meet the needs of employers, but also to maximize allocated dollars appropriated each year and to distribute the funds statewide as required under Texas Labor Code §303.003(e).

Comment: Regarding §803.3(d)(2), §803.3(d)(3), and §803.3(d)(4), one commenter stated that the program should be flexible to cover the purchase of proprietary or production equipment required for the training project of a single employer, the travel cost of trainees and instructors, and to pay a portion of the wages of employees who are a part of a Skills Development Fund job-training project.

Response: The Commission agrees with the commenter's suggestion that the Skills Development Fund should be flexible. Under §803.36 Waiver, it is at the discretion of

the Agency's executive director to suspend or waive a rule upon a showing of good cause. Hence, though the rules ban the use of Skills Development Fund money to pay for the purchase of proprietary or production equipment required for the training project of a single employer, travel costs of trainees and instructors, and to pay wages of employees, these rules may be waived by the Agency's executive director upon a showing of good cause in a grant proposal, thereby allowing the Commission the flexibility to maximize economic impact on employers, workers, and communities across Texas.

Comment: Regarding §803.12(1), one commenter stated that the Commission needed to continue to broaden the program and maximize its economic impact. The commenter stated that the Commission should not limit all projects to \$500,000, or at the very least should make allowances for larger or exceptional projects based on economic impact, number and level of jobs or some measurement that emphasizes the need for Texas to better compete for high impact and primary employers.

Response: The Commission agrees with the commenter's suggestion that the program should be flexible. Under §803.12 Limitation on Awards, the Commission retains flexibility to allow the Commission to meet the needs of employers because the Commission may, at its discretion, limit training projects to \$500,000 for grants involving a single employer. As a discretionary limitation, the rule furnishes the Commission the desired flexibility to meet the needs of employers, but also enables the Commission to spend Skills Development Fund grant money statewide, as required under Texas Labor Code §303.003(e).

Comment: Regarding §803.12(2), one commenter stated that the program should be flexible to cover the cost of purchased equipment beyond the 10% limit for required training.

Response: The Commission agrees with the commenter's suggestion that the program should be flexible. Under §803.12 Limitation on Awards, the Commission retains flexibility to allow the Commission to meet the needs of employers because the Commission may, at its discretion, limit the purchase of any proprietary or production equipment required for training to 10% of grant funds. As a discretionary limitation, the rule furnishes the Commission the desired flexibility to meet the needs of employers, but also enables the Commission to spend Skills Development Fund grant money statewide, as required under Texas Labor Code §303.003(e).

Comment: Regarding §803.12(4), one commenter stated that all Skills Development Fund projects should operate at a 10% administrative cost cap rather than allowing projects with more than one employer to have up to 15% for administrative costs, and claimed that if training programs were done in concert with community partners, such as the Boards, a 10% percent administrative cost would be sufficient. The commenter also noted that the Commission has the authority to waive sections of the rules if a project needed more room for administrative costs.

Response: Under §803.12 Limitation on Awards, the Commission retains flexibility to meet the needs of employers because the Commission may, at its discretion, cap administrative costs at 10% for single employers, and 15% for multiple employers. The Commission disagrees with the commenter's suggestion that multiple employer grants should be capped at 10% under §803.12. The 15% administrative cost cap encourages employers to team together or join a business consortium that in turn could train more employees per capita and address more skills at an overall less administrative cost per student. It also encourages employers to communicate and work together to identify the needed skills for a local workforce area. Furthermore, the increased cap for multiple employer or consortium grants drives education organizations to pursue such collaborations and gives the Commission the flexibility to appropriately fund the administrative costs of the grant recipient. Because the rule merely sets a discretionary maximum limitation on administrative costs, the Commission may also, at its discretion, cap administrative costs below the limitations set out in the rule.

Comment: Regarding §803.13(a)(2), a commenter stated that collaboration and coordination with the local workforce development boards was positive, however, expressed concern that it could cause delay in the application process.

Response: The Commission agrees that more collaboration and coordination with the Boards is essential to the overall workforce and economic impact in communities and encourages employers, education organizations, and the Boards to coordinate with one another early in the planning process so as to not delay the application process.

Comment: Regarding §803.13(a)(2), one commenter felt the phrase “collaboration with the Boards” was too general and suggested amending the phrase in the objective to state, “To collaborate with local Workforce Boards in the planning, design, and evaluation of the Skills Development grant.” The commenter felt that “collaboration” meant nothing more than obtaining a letter of support from the Board.

Response: The Commission agrees that more collaboration and coordination with the Boards is essential to impact the local workforce and economic base of a community, and encourages employers, education organizations, and the Boards to coordinate with one another early in the planning process so as to not delay the application process. The Commission disagrees with imposing requirements in the rules to force these local partners into working relationships, rather the local partners should foster productive relationships as part of their goal in meeting the workforce and economic development needs of the workforce area.

Comment: Regarding §803.13(a)(5), one commenter agreed that training projects funded through the Skills Development Fund should focus on occupations that facilitate the growth of industry and foster the economic growth of the region, but strongly believed the training projects should only focus on training for jobs listed as targeted occupations by the Boards to ensure new hires and current workers receive self-sufficient wages that include benefits.

Response: The Commission agrees with the commenter's suggestion about high value, high skills jobs; however, the Commission disagrees that Skills Development Fund grants should be limited exclusively to training projects involving targeted occupations. The Commission is removing the reference to targeted occupations and demand occupations in proposed §803.13(a)(5) to allow the Commission to retain the flexibility to determine if a proposed training project meets the objective under §803.13(a)(5) on a case by case basis, and not based upon whether the occupation that is the subject of the proposed training is on a targeted occupation or demand occupation list. However, in working with employers and education organizations, the Board is free to support or not support proposals based on whether Skills Development Fund training proposals address the local workforce development needs and goals. Furthermore, the Commission strikes objectives listed in §803.13(a)(6) through §803.13(a)(10) because these objectives are redundant, and the Commission seeks to emphasize the objectives listed in §803.13(a)(1) through §803.13(a)(5).

Comment: Regarding §803.13(b), one commenter stated that the proposed rule should be amended so that priority shall be given to counties, rather than workforce areas, whose unemployment rates are higher than the state's annual unemployment rate. The commenter gave an example and pointed out that many workforce areas cover multiple counties. Although some of the counties have an unemployment rate higher than the state's annual average unemployment rate, the grant proposal would not be given priority because other counties in the workforce area bring the average unemployment rate for the entire workforce area below the state average unemployment rate.

Response: The Commission disagrees with the commenter's suggestion to amend the rule to give priority to counties with a high unemployment rate. However, county unemployment rate information may be included in an application by the employer and education organization as additional information for the Commission to consider, though it would not give the application priority status under §803.13(b).

Comment: Regarding §803.14, two commenters suggested that the following should be added to §803.14 to enhance Board engagement with Skills Development Fund projects. Two commenters suggested the first four items, and one commenter suggested the last two items.

*Proposal shall contain a statement about the role and extent of involvement of the Boards in the planning, implementation and evaluation processes.

*Proposal shall contain a statement identifying the relationship to the Board's targeted occupation list.

*Proposal shall contain a statement about how the Boards will be informed on a regular basis of project progress.

*For prior recipients of Skills Development Funds, the proposal shall contain a brief description of effectiveness of the project in meeting the planned financial and programmatic goals.

*Proposal shall contain a description of how the training project will coordinate with existing workforce employment and training programs.

*Proposal shall contain a description of how the training project will coordinate with local workforce centers.

Response: Though the Commission strongly encourages employers and education organizations to involve the Boards early in the planning process so as not to delay the review and comment requirements of the application, the Commission disagrees with the commenters' suggested additions to §803.14. It is the responsibility of the local partners to foster relationships and collaborate on projects to improve workforce and economic circumstances for local residents. However, the Commission may consider adding similar requirements to the grant applications to encourage collaboration and coordination among employers, education organizations and the Boards.

Comment: Regarding §803.14, two commenters appreciated the revisions to the rules in regard to the Boards' increased role; however, the two commenters felt that communication would be ensured if language in this section were revised to require the education organizations and employers to engage the Boards during the planning process and/or provide written notification to the Boards of the intent to apply for Skills Development Fund grant funds 30 to 45 days in advance of proposal submission to the Board.

Response: The Commission agrees that more collaboration and coordination with the Boards is essential to the workforce and economic development of communities and encourages employers, as partners of this employer-driven system, and education organizations to coordinate with the Boards early in planning of training projects so as not to delay the application process for Skills Development Fund grants. The Commission disagrees with adding such time restrictions by rule because it is the responsibility of employers, education organizations, and the Boards to foster relationships and collaborate on projects that will improve workforce and economic circumstances for local residents.

Comment: Regarding §803.14, one commenter stated that the Skills Development Fund needed to be more closely aligned with the Boards, but expressed concern about pressure placed on the Board to support a Skills Development Fund grant without having adequate time to review and comment on a submitted proposal.

Response: The new rules reflect the Commission's strategy to more closely align employers, education organizations, and the Boards, as all three are local partners and are responsible for fostering a productive working relationship to improve the local workforce and economic base of the community. The Commission strongly encourages employers and education organizations seeking Skills Development Fund grants to strengthen communication and collaboration with the Boards to ensure success. Because relationships need to be fostered at a local level, the Commission disagrees with imposing requirements on employers and education organizations submitting proposals to the Boards because it is the responsibility of these local partners to work together on such issues. Furthermore, the Commission accepts grant applications at any time. The Commission does not set deadlines on submitting applications because the Commission

wants to encourage employers and education organizations to develop projects when appropriate, and not based on arbitrary deadlines.

Comment: Regarding §803.31(a), two commenters suggested that the grant recipients provide to the Boards copies of the quarterly contract reports that are to be submitted to the Commission.

Response: The Commission strongly encourages the local partners to establish productive relationships and keep each other informed of on-going workforce training in a local area. Although the Board should be informed about the progress of Skills Development Fund training in the local workforce area, the Commission disagrees with the commenters' suggestion that the Boards be provided copies of the quarterly reports. Skills Development Fund grant contracts are between grant recipients and the Commission, and because the Board is not a party to the contract, the Commission is concerned about confidential information contained in the reports that is required to remain confidential based on federal and state laws. However, in an effort to keep the Board apprised of on-going workforce training, the Commission may make a progress report available to the Board at the Board's request.

Comment: Regarding §803.32, two commenters suggested that the grant recipients provide to the Boards copies of the final contract reports that are to be submitted to the Commission.

Response: The Commission strongly encourages the local partners to establish productive relationships and keep each other informed of on-going workforce training in a local area. Although the Boards should be informed about the progress of Skills Development Fund training in the local workforce area, the Commission disagrees with the commenters' suggestion that the Boards be provided copies of the final reports. Skills Development Fund grant contracts are between grant recipients and the Commission, and because the Board is not a party to the contract, the Commission is concerned about confidential information contained in the reports that is required to remain confidential based on federal and state laws. However, in an effort to keep the Board apprised of on-going workforce training, the Commission may make a progress report available to the Board at the Board's request.

Comment: One commenter felt that the Skills Development Fund program should be devolved to the Boards as other federal and state programs have been transitioned to the Boards.

Response: The Commission recognizes the need for the Boards to have visibility and flexibility regarding their role in planning and implementing economic and workforce development policy in a local workforce area, and the rules succeed in more closely aligning the Boards, employers, and education organizations regarding Skills Development Fund training. However, the Commission disagrees with the commenter's suggestion of transitioning the Skills Development Fund program to the Boards at this time. There are unique opportunities that present themselves at the State level or at

companies with locations in more than one workforce area, and the Commission does not want to limit its flexibility in responding to requests from those entities for training funds. In addition, the Commission has taken steps this year through the Workforce Investment Act (WIA) alternative funding mechanism to ensure that Boards have flexible funding to be used for employer's emergent needs and customized training projects. The Commission has also requested relief via a WIA waiver from the Department of Labor on the amount of matching fund required of employers for WIA customized training projects that are funded with an individual Board's own allocation. The Commission does, however, believe a stronger relationship between applicants for Skills Development Fund grants and the Boards is critical to the success of these projects. The new rules seek closer alignment of all the interested parties.

The rules are repealed under Texas Labor Code §301.061 and §302.002, 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 repeal affects Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

CHAPTER 803. SKILLS DEVELOPMENT FUND

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

§803.1. Scope and Purpose

§803.2. Definitions

§803.3. Uses of the Fund

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The new rules are adopted under Texas Labor Code §301.061 and §302.002, 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.

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CHAPTER 803. SKILLS DEVELOPMENT FUND

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

<new>§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, TEEX, or community-based organizations only in partnership with the public community and technical colleges or the 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 and wages of the Texas workforce.

<new>§803.2. Definitions

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

- (1) Assessment--The evaluation of an employer's workforce needs and requirements.
- (2) Community-based organization--A private nonprofit organization, including a development corporation and faith-based organization, that:
 - (A) provides for education, vocational education, rehabilitation, job training, or internship services or programs; and
 - (B) is exempt from the payment of federal income taxes under §501(a) of the Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt entity under §501(c)(3) of that code.
- (3) Customized training project--A project designed by a private business or trade union in partnership with a public community or technical college or TEEX 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.
- (4) Director--The Executive Director of the Texas Workforce Commission.
- (5) Grant recipient--Any public community or technical college, TEEX, or community-based organizations only in partnership with the public community and technical colleges or the TEEX awarded a grant from the Skills Development Fund.
- (6) Non-local public community and technical college--A public community college or technical college providing training outside of its local taxing district.

- (7) Private partner--Any person, sole proprietorship, partnership, corporation, association, consortium, or private organization that enters into a partnership for a customized training project with a public community or technical college, TEEEX, or community-based organizations only in partnership with the public community and technical colleges or the TEEEX.
- (8) Public community college--A state funded two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical and academic courses for certification or associate degrees.
- (9) Public technical college--A state funded coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate degrees.
- (10) Texas Engineering Extension Service (TEEX)--A higher education agency and service established by the Board of Regents of the Texas A&M University System.
- (11) 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.
- (12) 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.

<new>§803.3. Uses of the Fund

- (a) The Skills Development Fund may be used by public community and technical colleges, TEEEX, or community-based organizations only in partnership with the public community and technical colleges or the TEEEX as start-up or emergency funds for the following purposes:
 - (1) to develop customized training projects for businesses and trade unions; and
 - (2) to sponsor small and medium-sized business networks and consortiums.
- (b) TEEEX training activities shall focus on projects that are statewide or are not available from a local public community and junior college district, a local technical college, or a consortium of public community and junior college

districts. In developing such projects, TEEEX may participate in a consortium of public community and 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 projects that are not available from a local public community college, except in the technical college's local service area, and shall be encouraged to focus on projects 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 project 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.

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The rules are repealed under Texas Labor Code §301.061 and §302.002, 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 repeal affects Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

CHAPTER 803. SKILLS DEVELOPMENT FUND

SUBCHAPTER B. PROGRAM ADMINISTRATION

§803.11. Grant Administration

§803.12. Limitations on Awards

§803.13. Program Objectives

§803.14. Procedure for Requesting Funding

§803.15. Procedure for Proposal Evaluation

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The new rules are adopted under Texas Labor Code §301.061 and §302.002, 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 rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

SUBCHAPTER B. PROGRAM ADMINISTRATION

<new>§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 Agency who are knowledgeable in the administration of grants to administer the program.
- (b) The Agency is not required to fund all proposals for customized training projects that are submitted.

<new>§803.12. Limitations on Awards

The Agency 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 project 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 project;
- (3) a limit of 10% for administrative costs related to direct training for the training project of a single employer; or
- (4) a limit of 15% for administrative costs related to direct training for the training project of entities other than a single employer.

<new>§803.13. Program Objectives

- (a) 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 and expand the state's capacity to respond to workforce training needs;
 - (2) to develop projects in local workforce development areas through collaboration with the Boards;
 - (3) to develop projects that at completion of the training will result in wages equal to or greater than the prevailing wage for of persons with similar knowledge and experience in that occupation in the local labor market for the participants in the customized training project;
 - (4) to prioritize the processing of grant requests from local workforce development areas where the unemployment rate is higher than the state's annual average unemployment rate;
 - (5) to sponsor creation and attraction of high value, high skill jobs for the state that will facilitate the growth of industry and emerging occupations, ~~such as targeted occupations and demand occupations.~~
 - ~~(6) to develop projects that at the completion of training will result in employment benefits, including medical insurance, for the participants in the customized training project;~~
 - ~~(7) to respond to the training needs of consortiums consisting of at least two micro-, small or medium-sized businesses;~~
 - ~~(8) to ensure retention of jobs by providing retraining in response to new or changing technology;~~
 - ~~(9) to develop projects which include contributions from other resources, including the private partners, that are being committed to the customized training project and to facilitate integration with other state and federally funded training; and~~
 - ~~(10) to develop projects that at completion of the training will result in the greatest economic benefit to the public, in the form of enhanced worker skills and positive economic impact within the local community for each dollar invested in worker training.~~
- (b) In processing requests referenced in subsection (a)(4) of this section, the Director, or his or her designee, shall give priority in processing to grant requests from local workforce development areas where the unemployment rate is higher than

the state's annual average unemployment rate. Notwithstanding the priority in processing, the other objectives within this section apply.

- ~~(e) The referenced in subsection (a)(7) of this section shall be for micro-businesses which employ not more than 20 employees, small businesses that have fewer than 100 employees or less than \$1 million in annual gross receipts, and medium-sized businesses which employ not more than 500 employees.~~

<new>§803.14. Procedure for Requesting Funding

- (a) After obtaining the review and comments of the Board in the applicable local workforce development area(s), a prospective private partner, together with a public community or technical college or TEEEX, shall present to the Director, or his or her designee, a joint proposal requesting funding for a customized training project 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.
- (c) The training proposal must not duplicate a training project available in the local workforce development area in which the prospective private partner is located. TEEEX, or the public community or technical college that is a partner to the joint training proposal, the private partner, and the Board must disclose other grant funds sought from the Agency, such as Achieving Performance Excellence (APEX) grants, for the training project covered in the training proposal.
- (d) 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 project, including the skills acquired through training;
 - (3) a brief description of the measurable training objectives and outcomes;
 - (4) the occupation and wages for participants who complete the customized training project;
 - (5) a budget summary, disclosing anticipated project costs and resource contributions, including the dollar amount the prospective private partner is willing to commit to the project;
 - (6) a signed agreement between the prospective private partner and the public community or technical college or TEEEX outlining each entity's roles and responsibilities if a grant is awarded;

- (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 project 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 project and costs for similar instruction at the public community or technical college or TEEK;
- (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 Agency to complete evaluation of a proposal.

<new>§803.15. Procedure for Proposal Evaluation

- (a) The Director, or his or her designee, shall evaluate each proposal considering the program objectives listed in §803.13 of this subchapter (relating to Program Objectives), the factors listed in §803.14(c) of this subchapter (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 Agency determines are appropriate.
- (b) The Agency will notify the Board in the applicable local workforce development area(s) when the Agency is evaluating a proposal so as to inform the Board of potential workforce activities in the workforce area(s).
- (c) If the Agency determines that a proposal is appropriate for funding through the Skills Development Fund, the Director, or his or her designee, shall enter into a contract with the grant recipient on behalf of the Agency.

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The repeal affects Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

CHAPTER 803. SKILLS DEVELOPMENT FUND

SUBCHAPTER C. PROGRAM ADMINISTRATION AFTER AWARD OF CONTRACT

§803.31. Grant Recipient Responsibilities

§803.32. Contract Completion Reports

§803.33. Contract Payment

§803.34. Notice to Texas Higher Education Coordinating Board

§803.35. Waivers

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The new rules are adopted under Texas Labor Code §301.061 and §302.002, 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 rules affect Texas Labor Code, Titles 4 as well as Texas Government Code Chapter 2308.

SUBCHAPTER C. PROGRAM ADMINISTRATION AFTER AWARD OF CONTRACT

<new>§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 Agency on a quarterly contract basis.
- (b) Grant recipient shall maintain fiscal data needed for independent verification of expenditures of funds received for the customized training project.
- (c) Contract amendments must be requested in writing and approved by the Director, of his or her designee, in writing before a change to the contract is implemented.
- (d) In a format approved by the Agency, 60 days after execution of the contract the grant recipient shall provide to the Agency a list of trainees enrolled in the training.
- (e) The grant recipient shall cooperate with and comply with the Agency monitoring activities as required by Chapter 800, Subchapter H of this title (relating to Agency Monitoring Activities).
- (f) The grant recipient shall submit all required reports in the electronic format required by the Agency unless otherwise approved by the Agency.
- (g) The grant recipient shall submit to the Agency reports as needed by the Agency upon request of the Agency.

<new>§803.32. Contract Completion Reports

No later than 60 days following the end of the contract period for the customized training project, the grant recipient shall provide the Agency with the following information:

- (1) a copy of any audit performed on the customized training project;
- (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 project;
- (3) a narrative report by the grant recipient summarizing the training project 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 project's effectiveness in meeting the business' workforce needs and requirements;
- (4) a detailed breakdown reflecting the expenditure of funds received; and
- (5) the grant recipient shall provide the Agency one of the following:
 - (A) payroll records and/or reports certified by an independent auditor or verified by the employer that provide the name, the social security number, the occupation, and the trainee's wage at the completion of the training; or
 - (B) a statement from the employer that the wage at the time of job placement for each individual who successfully completes customized training is equal to the prevailing wage for that occupation in the local labor market area.

<new>§803.33. Contract Payment

Payment under a contract will be contingent upon the Director's, or his or her designee's, determination that a project has met the training objectives, outcomes, and requirements specified in the contract. The Director may allow an attrition rate of up to 15% based on the total number of trainees as outlined in the contract. The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.

<new>§803.34. Notice to Texas Higher Education Coordinating Board

The Agency 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 project in order that it may conduct its review of the training project pursuant to Texas Labor Code, §303.004.

<new>§803.35. Notice to Local Workforce Development Board

The Agency will inform the Board in the applicable local workforce development area(s) when the Agency awards a grant from the Skills Development Fund that impacts the local workforce development area.

<new>§803.36. 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. For purposes of this section, the Director, and not a designee of the Director, is the only person who may approve a waiver.

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