

Sections 803.1-803.3, 803.13, 803.14, and 803.35 Skills Development Fund

The following rule amendments will be effective January 25, 2000.

The Texas Workforce Commission (Commission) adopts amendments to §§803.1, 803.2, 803.13, and 803.35, concerning the Skills Development Fund, without changes and §§803.3 and 803.14 with changes to the proposed text as published in the November 19, 1999, issue of the *Texas Register* (24 TexReg 10312).

The purpose of the amendments is to incorporate changes resulting from House Bills 3656 and 3657 from the 76th Legislative Session and related changes to add clarification reflecting the intent of the Commission in administering the Skills Development Fund.

The Commission, while maintaining efficient statewide distribution of the Skills Development Fund's resources, is committed to timely service of high-need areas.

The Commission determined the need to make minor changes to the program objectives of the Skills Development Fund. The fifth objective was revised to encourage a more broad-based integration with other programs, to be more inclusive, and to allow maximum leveraging with other state and federal programs. The former sixth objective was deleted because it is no longer required.

The purpose of the new sixth objective is to promote higher wages. The purpose of the amendment adding the thirteenth objective is to develop projects that, at completion of the training, will result in the greatest economic benefit to the public of each dollar invested in worker training, in the form of enhanced worker skills and optimized multiplier effects within the local community.

The Commission received no comments on the proposed amendments.

Three technical corrections are made to the rules for purposes of clarity and to provide consistency with the statute. In §803.3(a) the words "either of" are deleted and the word "purposes" is added after the word "following." In §803.3(a)(1) the word "or" is deleted and the word "and" is added. In §803.13(a)(11), "and" is deleted; and in §803.13(a)(12), the period is changed to a semicolon and the word "and" is added. Finally, in §803.14(c)(11) the word "and" was inadvertently deleted in the proposed rule and is now added in the adopted rule.

Subchapter A. General Provisions Regarding the Skills Development Fund

The amendments to the rules are adopted under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or

repeal such rules as it deems necessary for the effective administration of Commission programs.

§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 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.

(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 Program--A program 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 or the Executive Director's designee.

(5) Grant Recipient--Any public community or technical college, TEEEX, or community-based organizations only in partnership with the public community and technical colleges or the TEEEX awarded a grant from the Skills Development Fund.

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

(7) 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, TEEEX, or community-based organizations only in partnership with the public community and technical colleges or the TEEEX.

(8) 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.

(9) Public Technical Colleges--Coeducational institutions 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.

§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 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.

Subchapter B. Program Administration

The amendments to the rules are adopted under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

§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;
 - (2) to develop projects that will create jobs in local workforce development areas (workforce areas) where the unemployment rate is above the state's annual average unemployment rate;
 - (3) to prioritize the processing of grant requests from workforce areas where the unemployment rate is higher than the state's annual average unemployment rate;
 - (4) to respond to the training needs of consortiums consisting of at least two micro-, small or medium-sized businesses;
 - (5) to facilitate integration with other state and federally funded training;
 - (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;
 - (12) to ensure expansion of the state's capacity to respond to workforce training needs; and
 - (13) 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 optimized multiplier effects within the local community of each dollar invested in worker training.
- (b) In processing requests referenced in paragraph (3) of subsection (a), the director shall give priority in processing to grant requests from workforce 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.
- (c) The priority referenced in paragraph (4) of subsection (a) shall be for micro-businesses which employ not more than 20 employees as defined under Texas Government Code, §481.151, small businesses that have fewer than 100 employees or less than \$1 million in annual gross receipts as defined under Texas Government Code, §481.101(3), and medium-sized businesses which employ not more than 500 employees.

§803.14. Procedure for Requesting Funding.

(a) After consultation with a local workforce development board, 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;
- (11) any additional information deemed necessary by the Commission to complete evaluation of a proposal; and
- (12) a certification as required by subsection (d) of this section.

(d) For purposes of coordinating applications for the Skills Development Fund and the Smart Jobs Fund that is administered under Texas Government Code, Subchapter J, Business Development - Smart Jobs Fund Program, §481.152 *et seq.*, by the Texas Department of Economic Development (Department), the following shall apply:

- (1) A certification at the time of application to the Commission or the Department shall be filed indicating whether the application is a "concurrent application" for both

the Skills Development Fund and the Smart Jobs Fund.

(2) For purposes of this subsection, "concurrent application" shall mean either:

(A) an application for the Skills Development Fund that has been filed and is pending at the time the applicant applies for the Smart Jobs Fund with the Department; or

(B) an application for the Smart Jobs Fund that has been filed and is pending at the time the applicant applies for the Skills Development Fund.

(3) A joint application, on a form approved by the director and the director's counterpart at the Department, may be used for coordinating application for both the Skills Development Fund and the Smart Jobs Fund.

Subchapter C. Program Administration After Award of Contract

The amendments to the rules are adopted under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

§803.35. Waivers.

The executive 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 executive director, and not a designee of the executive director, is the only person who may approve a waiver.