

Chapter 803. Skills Development Fund. Prior rules repealed and new rules adopted. §§803.1-803.3, 803.11-803.15, 803.31-803.35

PART XX. Texas Workforce Commission

CHAPTER 803. Skills Development Fund

The Texas Workforce Commission (Commission) adopts the repeal of § 803.1 and new §§803.1-803.3, §§803.11-803.15 and §§803.31-803.35, concerning Requirements for Skills Development Fund, with changes to the proposed text as published in the August 1, 1997, issue of the Texas Register (22 Tex Reg 7147).

New §§803.1, 803.3, 803.11, 803.12, 803.13, 803.15 and §§803.31-803.35 are adopted without changes and new §803.2 concerning Definitions and §803.14 concerning Procedure for Requesting Funding are adopted with changes. In §803.2, the proposed second sentence is deleted to remove superfluous language and §803.14(a) is changed to include language clarifying the local workforce development boards' role in the funding process.

The purpose of these rules is to implement Texas Labor Code, Chapter 303, relating to the operation of the Skills Development Fund. New Subchapter A concerning the General Provisions 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 § 803.2, concerning Definitions, adds a definition for the Texas Engineering Extension Service (TEEX), and adds references to TEEX in the definitions of: Customized Training Program, Grant Recipient, Prospective Private Partner, and Training Provider. The definition for Director is also changed to clarify that it may refer to the Executive Director's designee. New § 803.3, concerning Uses of the Fund, 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 statewide training programs that 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 Subchapter B is added, concerning Program Administration.

New § 803.11 concerning Grant Administration adds that the Executive Director or a designated employee or employees of the 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 adds the following 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, adds language to allow TEEEX to present a joint proposal with a prospective private partner requesting skills development funds; to require prior consultation with a local workforce development board, to allow TEEEX to be a non-local partner in a joint training proposal as long as the training proposal does not duplicate a training program available in the local workforce development area; to add a reference to TEEEX in the information that is included in the proposal; and to require 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 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 Executive 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, 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, 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. The new section also adds that the occupations trainees were placed in and wages for those occupations need to be included in the final report from the Contractor and 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 affected by the outcome of the customized training program. New § 803.32 also 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 adds language authorizing the Executive 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 adds a reference to TEEEX.

New § 803.35 concerning Waivers provides the Executive Director with 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.

The following comments were received from Mr. Robert Prock, Assistant Agency Director, Texas Engineering Extension Service, Texas A&M University System, from Dr. Sandy Shugart, of the North Harris/Montgomery Community College District, and from Texas Workforce Commission staff, concerning the proposed rules.

Following the comments are the Commission's responses.

Comment: One commenter did not indicate a position for or against the rules, but expressed concern that new § 803.3(d)(4), which prohibits use of the Skills Development Fund to pay for trainee or instructor travel costs, assigns an unfair cost to rural or remote businesses.

Response: The Commission believes the intent of the Skills Development Fund is to provide initial funding to cover part of the expenses directly related to approved training. The start-up funding from the Skills Development Fund is intended to be a portion of multiple funding sources for a training project. In establishing its rules on the uses of the Skills Development Fund, the Commission is seeking to limit administrative expenses to those directly related training costs. The Commission believes that travel costs are not a directly related training cost, and no change is made to the rule.

Comment: The same commenter expressed a concern that new § 803.3(d)(4) which also prohibits use of the Skills Development Fund to pay for trainee drug testing will add costs to the program, in that if potential employees fail a drug test, the training funds are wasted.

Response: The Commission believes that the provision of trainee drug tests should be negotiated between the training provider and the private partner in developing their partnership to propose a customized training program. Because the Skills Development Fund is only intended to provide initial funding for a customized training program, trainee drug test funding should be from other sources available to the training provider or private partner. The Commission believes that trainee drug test costs are not a directly related training cost, and no change is made to the rule.

Comment: A second commenter did not indicate a position for or against the rules, but expressed a concern that a local community college should have the right of first refusal for training that is within the local community college's capacity to deliver, before another agency, such as TEEEX, is funded for training in that area.

Response: The Commission believes that the commenter's concern is sufficiently addressed by statutory and rule safeguards which will be implemented by agency staff administering the Skills Development Fund. Texas Labor Code, § 303.003(f), limits TEEEX's training activities to statewide projects, or to programs that are not available from a local junior college district, a local technical college, or a consortium of junior college districts. The Commission's new § 803.3(b) and (c), concerning Uses of the Fund, reinforce the statutory limitation by requiring TEEEX training activities to focus on statewide projects or programs that are not available from a local junior college district. The Commission's new § 803.14(b), concerning Procedure for Requesting Funding, provides that a proposal from TEEEX or a technical college must not duplicate a training program in the local workforce development area. The Commission staff will ensure that such limitations and safeguards are strictly implemented, and no change is made to the rule.

Comment: The Commission staff indicated a position in support of the rules but stated that new § 803.2, concerning Definitions, contained superfluous language in defining Public Community Colleges.

Response: The Commission believes that the initial sentence in the definition of Public Community Colleges accurately describes such entities, and that deletion of the second proposed sentence would provide a clearer definition. The Commission will delete the last sentence in the proposed definition of Public

Community Colleges.

Comment: The Commission staff also expressed concern that new § 803.14(a), concerning Procedure for Requesting Funding, did not reflect the intent that training must be coordinated within a local workforce development area.

Response: The Commission believes that in order to clarify the intent of the rule, § 803.14(a) should be amended to expressly provide that prior to submission of a joint proposal requesting funding the prospective private partner and the public community or technical college must consult with a local workforce development board.

40 TAC §803.1

The repeal is adopted under Texas Labor Code, § 301.061, which provides the Texas Workforce Commission with the authority to adopt, amend or rescind such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4.

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

Issued in Austin, Texas, on September 16, 1997.

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J. Randel Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-2291

SUBCHAPTER A.General Provisions Regarding the Skills Development Fund

40 TAC §§803.1-803.3

The new rules are adopted under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend or rescind such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4.

§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.

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 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 TEEX 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 TEEX has subcontracted to provide training.

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

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SUBCHAPTER B. Program Administration

40 TAC §§803.31-803.35

The new rules are adopted under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend or rescind such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4.

§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 TEEX shall present to the director a joint proposal requesting funding for a customized training program or other appropriate use of the fund.

(b) TEEX, 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 TEEX;

(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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. Issued in Austin, Texas, on September 16, 1997.

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SUBCHAPTER C. Program Administration After Award of Contract

40 TAC §§803.31-803.35

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