

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

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3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
4 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**
6

7 **ON JULY 31, 2018, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES**
8 **BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **August 17, 2018**
11 Estimated End of Comment Period: **September 17, 2018**

12
13 The Texas Workforce Commission (TWC) proposes amendments to the following section of
14 Chapter 802, relating to Integrity of the Texas Workforce System:

15
16 Subchapter D. Agency Monitoring Activities, §802.67

- 17
18 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
19 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
20 **PART III. IMPACT STATEMENTS**
21 **PART IV. COORDINATION ACTIVITIES**

22
23 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

24 Chapter 802 is revised to broaden the definition of the types of Local Workforce Development
25 Board (Board) oversight issues that TWC may need to evaluate and to more accurately reflect
26 TWC's intent to ensure that Boards are able to address any oversight issues at the local level.

27
28 Texas Labor Code §302.048 requires TWC, in consultation with the Boards, to establish criteria
29 for evaluating each Board's overall capacity to oversee and manage local funds and the delivery
30 of local workforce services.

31
32 On October 21, 2015, TWC's three-member Commission (Commission) adopted amendments to
33 §802.67 that allow TWC to change the criteria used for evaluating a Board's oversight capacity
34 on an as-needed basis. Section 802.67, as amended states that TWC shall evaluate, at least
35 annually, each Board's oversight capacity, including the Board's ability to:

- 36
37 --develop, maintain, and upgrade comprehensive fiscal management systems;
38 --hire, train, and retain qualified staff to carry out the Board's oversight activities;
39 --select and oversee workforce service providers to improve the delivery of workforce services;
40 --oversee and improve the operations of Workforce Solutions Offices served by the Board.
41 --manage each workforce service provider's performance across multiple Board programs; and
42 --identify and resolve long-standing Board oversight problems and workforce service provider
43 performance issues.

1 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

2 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
3 therefore, are not discussed in the Explanation of Individual Provisions.)

4
5 **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**

6 **TWC proposes the following amendments to Subchapter D:**

7
8 **§802.67. Commission Evaluation of Board Oversight Capacity**

9 Section 802.67(b)(6) adds the words "or severe" to more accurately reflect TWC's intent to
10 ensure Boards' ability to address any oversight problems at the local level. The definition of the
11 terms "long-standing" and "severe" in the context of this rule are also added. The term "severe"
12 is defined as an issue serious enough to warrant a sanction or intent-to-sanction as described in
13 §802.122 and §802.123. The term "long-standing" is defined as an issue that persists for more
14 than one review period to ensure that Boards are given notice and an opportunity to correct a
15 deficiency during an initial review period.

16
17 **PART III. IMPACT STATEMENTS**

18 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
19 years the rules will be in effect, the following statements will apply:

20
21 There are no additional estimated costs to the state and to local governments expected as a result
22 of enforcing or administering the rules.

23
24 There are no estimated cost reductions to the state and to local governments as a result of
25 enforcing or administering the rules.

26
27 There are no estimated losses or increases in revenue to the state or to local governments as a
28 result of enforcing or administering the rules.

29
30 There are no foreseeable implications relating to costs or revenue of the state or local
31 governments as a result of enforcing or administering the rules.

32
33 There are no anticipated economic costs to individuals required to comply with the rules.

34
35 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
36 communities as a result of enforcing or administering the rules.

37
38 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
39 that the requirement to repeal or amend a rule, as set forth in Texas Government Code
40 §2001.0045, does not apply to this rulemaking.

41
42 **Takings Impact Assessment**

43 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
44 affects private real property, in whole or in part or temporarily or permanently, in a manner that
45 requires the governmental entity to compensate the private real property owner as provided by
46 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas

1 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
2 would otherwise exist in the absence of the governmental action, and is the producing cause of a
3 reduction of at least 25 percent in the market value of the affected private real property,
4 determined by comparing the market value of the property as if the governmental action is not in
5 effect and the market value of the property determined as if the governmental action is in
6 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking
7 action under Texas Government Code, §2007.043. The primary purpose of this proposed
8 rulemaking action, as discussed elsewhere in this preamble, is to broaden the definition of the
9 types of Local Workforce Development Board (Board) oversight issues that TWC may need to
10 evaluate and to more accurately reflect TWC's intent to ensure that Boards are able to address
11 any oversight issues at the local level.

12
13 The proposed rulemaking action will not create any additional burden on private real property.
14 The proposed rulemaking action will not affect private real property in a manner that would
15 require compensation to private real property owners under the United States Constitution or the
16 Texas Constitution. The proposal also will not affect private real property in a manner that
17 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
18 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
19 Government Code, Chapter 2007.

20
21 Government Growth Impact Statements
22 TWC has determined that during the first five years the amendment will be in effect:
23 --the amendment will not create or eliminate a government program;
24 --implementation of the amendment will not require the creation or elimination of employee
25 positions;
26 --implementation of the amendment will not require an increase or decrease in future legislative
27 appropriations to TWC;
28 --the amendment will not require an increase or decrease in fees paid to TWC;
29 --the amendment will not create a new rule;
30 --the amendment will not expand, limit, or repeal an existing rule;
31 --the amendment will not change the number of individuals subject to the rule; and
32 --the amendment will not positively or adversely affect the state's economy.

33
34 Economic Impact Statement and Regulatory Flexibility Analysis
35 TWC has determined that the proposed rules will not have an adverse economic impact on small
36 businesses or rural communities, as these proposed rules place no requirements on small
37 businesses or rural communities.

38
39 Mariana Vega, Interim Director of Labor Market and Career Information, has determined that
40 there is no significant negative impact upon employment conditions in the state as a result of the
41 rules.

42
43 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
44 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
45 the rules will be to ensure Boards' ability to address any oversight problems at the local level.

46

1 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
2 within TWC's legal authority to adopt.

3
4 **PART IV. COORDINATION ACTIVITIES**

5 In the development of these rules for publication and public comment, TWC sought the
6 involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rules to the
7 Boards for consideration and review on May 8, 2018. TWC also conducted a conference call
8 with Board executive directors and Board staff on May 11, 2018, to discuss the concept paper.
9 During the rulemaking process, TWC considered all information gathered in order to develop
10 rules that provide clear and concise direction to all parties involved.

11
12 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
13 Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas
14 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
15 Comments must be received or postmarked no later than 30 days from the date this proposal is
16 published in the *Texas Register*.

17
18 The rules are proposed under Texas Labor Code §302.048, Assessment of local workforce
19 development board's capacity to oversee and manage local funds and delivery of services and
20 §§301.0015 and 302.002(d), which provide TWC with the authority to adopt, amend, or repeal
21 such rules as it deems necessary for the effective administration of TWC services and activities.

22
23 The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
24

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

2
3 **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**

4
5 **§802.67. Commission Evaluation of Board Oversight Capacity.**

- 6
7 (a) This section outlines the process used by the Commission to evaluate Board oversight
8 capacity related to the management of local funds and the delivery of local
9 workforce services.
- 10
11 (b) The Agency shall evaluate, at least annually, each Board's oversight capacity,
12 including the Board's ability to:
- 13
14 (1) develop, maintain, and upgrade comprehensive fiscal management systems;
- 15
16 (2) hire, train, and retain qualified staff to carry out the Board's oversight
17 activities;
- 18
19 (3) select and oversee workforce service providers to improve the delivery of
20 workforce services;
- 21
22 (4) oversee and improve the operations of Workforce Solutions Offices ~~erved by~~
23 in the Board's service area;
- 24
25 (5) manage each workforce service provider's performance across multiple Board
26 programs; and
- 27
28 (6) identify and resolve long-standing or severe Board oversight problems and
29 workforce service provider performance issues. In the context of this section,
30 the term "severe" is defined as an issue serious enough to warrant a sanction or
31 intent-to-sanction, as described in §802.122 and §802.123, and the term "long-
32 standing" is defined as an issue that persists for more than one review period.
- 33
34 (c) The Commission shall approve, in an open meeting, specific criteria to be used in its
35 evaluation of Board oversight capacity and shall communicate these criteria to
36 Boards through issuance of a Workforce Development Letter. The Commission shall
37 approve, in an open meeting, on an as-needed basis, updates to the criteria used to
38 evaluate Board oversight capacity.
- 39
40 (d) Notwithstanding any other provision of this section, the Commission may consider
41 any extraordinary situation related to any of the factors identified in subsection (b) of
42 this section, including natural disasters.
- 43
44 (e) Annually, the Commission shall post the results of its evaluation of each Board and
45 each Board's performance on its website with an explanation of the rating, rating

1 criteria, and performance measures in a format that is readily accessible to and
2 understandable by a member of the public.

- 3
- 4 (1) The explanation shall include specifically how each of the criteria was applied
5 for each Board.
- 6
- 7 (2) Evaluations shall be performed using information at the Commission's disposal
8 at the time of the evaluation. If no updated information is available, the
9 Commission is not obligated to schedule a review or visit to confirm or obtain
10 new information.
- 11
- 12 (3) The Commission may update the Board ratings more often than annually if the
13 Commission determines new information or circumstances warrant
14 consideration.