

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

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

**ON AUGUST 18, 2015, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

Estimated Publication Date of the Proposal in the *Texas Register*: **September 4, 2015**  
Estimated End of Comment Period: **October 5, 2015**

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

Subchapter D. Agency Monitoring Activities, §802.67

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The purpose of the proposed Chapter 802 rule change is to recognize the maturity and the evolution of the Texas workforce system since the Board oversight capacity rules were originally adopted in 2004. At that time, Boards were accountable for 46 performance measures. In 2015, Boards are accountable for 10 performance measures. Because the existing performance criteria are heavily based on meeting a certain percentage of targets, this drastic reduction has significantly affected Board oversight capacity standards. In addition, the criteria used in evaluating Board oversight capacity should be adaptable to changing conditions, including new federal or state legislation, guidance or performance measures, and extraordinary circumstances (e.g., natural disasters).

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

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

## **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**

**The Commission proposes the following amendments to Subchapter D:**

### **§802.67. Commission Evaluation of Board Oversight Capacity**

Section 802.67:

- adds that the Agency will evaluate, at least annually, each Board's oversight capacity, including its ability to:
  - develop, maintain, and upgrade comprehensive fiscal management systems;
  - hire, train, and retain qualified staff to carry out the Board's oversight activities;

- select and oversee local contractors to improve the delivery of workforce services;
  - oversee and improve the operations of Workforce Solutions Offices served by the Board;
  - manage each contractor's performance across multiple Board programs; and
  - identify and resolve long-standing Board oversight problems and contract provider performance issues;
- removes the criteria currently specified, and adds that the Commission:
    - shall approve in an open meeting specific criteria to be used in its evaluation of Board oversight capacity and will communicate these criteria to Boards through a Workforce Development Letter;
    - shall approve in an open meeting, on an as-needed basis, updates to the criteria used to evaluate Board oversight capacity; and
    - may consider any extraordinary situation, including natural disasters, when evaluating the factors in subsection (b); and
  - amends relettered subsection (e) to indicate that the Commission does not intend to update Board ratings more often than annually, unless new information or circumstances (e.g., economic factors, natural disasters, or performance reporting errors) warrant consideration.

Certain subsections and paragraphs have been relettered and renumbered to reflect changes.

### **PART III. IMPACT STATEMENTS**

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

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

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

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

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

There are no anticipated economic costs to persons required to comply with the rules. There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

#### Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses, as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide the public with an effective and comprehensive summary of each Board's capacity to oversee and manage local funds and the delivery of local workforce services.

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

#### **PART IV. COORDINATION ACTIVITIES**

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on November 17, 2014. The Commission also conducted a conference call with Board executive directors and Board staff on December 5, 2014, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), 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 rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

## CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

### SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

#### §802.67. Commission Evaluation of Board Oversight Capacity.

- (a) This section outlines the process ~~and criteria~~ used by the Commission to evaluate Board oversight capacity ~~to oversee and manage~~ related to the management of local funds and the delivery of local workforce services.
- (b) ~~The Commission shall use oversight methods outlined in this chapter and elsewhere in statute and rules to evaluate each Board's performance and compliance with applicable laws, regulations, provisions of contracts and Board plans, and official directives and circulars including, but not limited to, DOL Training and Employment Guidance Letters, DOL Training and Employment Notices, U.S. Department of Health and Human Services guidance letters, Commission rules contained in Part 20 of this title, Texas Workforce Commission WD Letters, the Agency's Financial Manual for Grants and Contracts, and other Agency guidance. In particular, the Commission shall evaluate and make findings as appropriate relating to Board fulfillment of responsibilities relating to:~~ The Agency shall evaluate, at least annually, each Board's oversight capacity, including the Board's ability to:
- (1) develop, maintain, and upgrade ~~developing, maintaining, and upgrading~~ comprehensive fiscal management ~~and accountability~~ systems;
  - (2) hire, train, and retain ~~hiring, training, and retaining~~ qualified staff to carry out the Board's oversight activities;
  - (3) select and oversee ~~selecting and overseeing~~ workforce service providers to improve the delivery of workforce services;
  - (4) oversee and improve the operations ~~overseeing and improving operation~~ of Workforce Solutions Offices ~~in the workforce area~~ served by the Board;
  - (5) manage each ~~managing~~ workforce service provider's ~~providers'~~ performance across multiple Board programs; ~~and achieving required performance targets;~~ and
  - (6) identify and resolve ~~identifying and resolving~~ long-standing Board oversight problems ~~of the Board~~ and ~~performance problems of~~ workforce service provider performance issues ~~providers~~.
- (c) The Commission shall approve, in an open meeting, specific criteria to be used in its evaluation of Board oversight capacity and shall communicate these criteria to Boards through issuance of a Workforce Development Letter. The Commission shall approve, in an open meeting, on an as-needed basis, updates to the criteria used

to evaluate Board oversight capacity.~~The Commission shall rate each Board's capacity as "above standards," "within standards," or "below standards." The following criteria shall be used to set the rating.~~

~~(1) A Board will be rated as above standards if:~~

~~(A) the Board meets its targets as defined in §800.2(13) of this title on 90 percent of its measures; and~~

~~(B) the Board does not miss the target on any single measure by more than 10 percent of target;~~

~~(C) there are no disallowed costs since the prior evaluation; and~~

~~(D) there are no repeat findings.~~

~~(2) A Board will be rated as within standards if:~~

~~(A) the Board meets its targets as defined in §800.2(13) of this title on 80 percent of its measures; and~~

~~(B) the Board does not miss the target on any single measure by more than 15 percent of target;~~

~~(C) disallowed costs do not exceed 1 percent of allocation; and~~

~~(D) there are no repeat findings.~~

~~(3) A Board will be rated as below standards if the Board is:~~

~~(A) found to not be above or within standards or if there are significant findings; or~~

~~(B) under a level one, two, or three sanction as defined in §802.123 of this chapter.~~

~~(4) For the purpose of calculating "disallowed costs" as used in this section, do not include such costs that meet the following three criteria: discovered, quantified, and self-reported to the Commission by a Board unless the Commission finds the disallowed costs were the result of gross mismanagement or other significant violation of Board responsibilities;~~

~~(5)~~(d) Notwithstanding any other provision of this section, the Commission may consider any extraordinary situation related to any of the factors identified in subsection (b) of this section, including natural disasters:

~~(A) The Commission may consider any extraordinary situation related to any of the factors identified in subsection (b) of this section.~~

~~(B) The Commission may exclude from consideration under this section performance on measures:~~

~~(i) related to new Board responsibilities; or~~

~~(ii) for which the Commission finds good cause exists for failure to meet the target.~~

~~(c)~~ (d) ~~Annually~~ At least annually, the Commission shall post the results of its evaluation of each Board and each Board's performance on its ~~website~~ Web site with explanation of the rating, rating criteria, and performance measures in a format that is readily accessible to and understandable by a member of the public.

(1) The explanation shall include specifically how each of the criteria ~~was~~ were applied for each Board ~~and how that affected the overall rating.~~

(2) Evaluations shall be performed using information at the Commission's disposal at the time of the evaluation. If no updated information is available, the Commission is not obligated to schedule a review or visit to confirm or obtain new information.

(3) The Commission may update the Board ratings more often than annually if the Commission determines new information or circumstances warrant consideration ~~new information becomes available but does not intend to update them more often than quarterly.~~