

PROPOSED REPEAL OF AND NEW RULES FOR CHAPTER 803. SKILLS DEVELOPMENT FUND

ON AUGUST 26, 2002, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: September 13, 2002.
Estimated End of Comment Period: October 14, 2002.

The Texas Workforce Commission (Commission) proposes 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, §§803.11-803.15; and Subchapter C. Program Administration After Award of Contract, §§803.31-803.36.

The purpose of the proposed 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 with the business community and 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 proposed 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 the decision of the Commissioners, from Agency, meaning the Texas Workforce Commission as an Agency responsible for implementing and administering programs. The purpose and goal of the Skills Development Fund is to increase the skills and wages of Texas' workforce and 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 contract. 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 section (a)(2) is removed because it is redundant with former section (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); and former subsection (a)(5) and (a)(11) are merged into new subsection (a)(9). The remaining objectives are reordered to update the rules to reflect current workforce development philosophy and policy in administering the fund. Repealed statutory referenced are removed from Subsection (c), but the definitions of micro-business and small business are not changed. Other edits are made to clarify the rule under Chapter 803.

Section 803.14 sets out the procedures for requesting Skills Development 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 Commission. 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 Commission 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 funds to duplicate training projects available in a local workforce development area, or that would be available concurrently with the proposed 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 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 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 Commission 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 proposed new subsection (a) requires a grant recipient to submit financial and performance reports to the Texas Workforce Commission 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 Commission.

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.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

there are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule;

there are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

there are anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated or required to do anything by the rule.

James Barnes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed repeal and new rules.

Luis Macias, Director of Workforce Development, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed repeal and new rules will be to clarify and improve the state and local partnership in policy making and service delivery that will meet the needs of Texas' employers to have a skilled workforce, and provide workers throughout Texas additional educational and employment opportunities to increase skills and wages.

Under §2007.003(b) of the Texas Government Code, the Office of General Counsel has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the Agency is not required to complete a takings impact assessment regarding this rule.

Comments on the proposed new rules may be submitted to John Moore, Office of General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778; Fax Number (512)463-2220 ; E-mail to John.Moore@twc.state.tx.us.

Comments must be received by the Commission no later than thirty days from the date this proposal is published in the *Texas Register*.

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 proposed 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.

CHAPTER 803. SKILLS DEVELOPMENT FUND

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

§§ 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.

§§ 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 project--A program 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.
~~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 college or 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 enters into a partnership ~~submits a joint proposal~~ for a customized training program project 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.

~~**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.~~

- (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.

~~**Public Technical Colleges**—Coeducational institutions of higher education offering courses of study in vocational and technical education 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.

§§ 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~~ 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 ~~program~~ projects that are statewide or are not available from a local public community and junior ~~junior~~ college district, a local technical college, or a consortium of public community and junior ~~junior~~ college districts. In developing such ~~program~~ projects, TEEEX may participate in a consortium of public community and junior ~~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 ~~program~~ 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 ~~program~~ 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 ~~program~~ 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

§801.11. Grant Administration

§801.12. Limitations on Awards

§801.13. Program Objectives

§801.14. Procedure for Requesting Funding

§801.15. Procedure for Proposal Evaluation

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The new rules are proposed 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

§§ 803.11. Grant Administration

- (a) The ~~d~~Director is responsible for the distribution of money from the ~~s~~Skills ~~d~~Development ~~f~~Fund. The ~~d~~Director may designate an employee or employees of

the Agency ~~Texas Workforce Commission (Commission)~~ who are knowledgeable in the administration of grants to administer the program.

- (b) The Agency ~~Commission~~ is not required to fund all proposals for customized training ~~programs~~ projects that are submitted.
- ~~(c) — The Commission may allocate the use of funds throughout the biennium in any manner that in the director's judgment furthers the goals and objectives of the fund, including quarterly allocations.~~

§§ 803.12. Limitations on Awards

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

§§ 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 of the state's capacity to respond to workforce training needs ~~(COMBINED WITH FORMER #12)~~;
 - ~~(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;~~
 - (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 greater than the prevailing wage for that occupation in the local labor

market for the participants in the customized training project; (~~FORMER #6~~)

- (4)(3) 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; (~~FORMER #3~~)
- (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 or demand occupations; (~~COMBINES FORMER # 8 & 9~~)
- ~~(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)(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 program project; (~~FORMER #7~~)
- (7) to respond to the training needs of consortiums consisting of at least two micro-, small or medium-sized businesses; (~~FORMER #4~~)
- (8) to ensure retention of jobs by providing retraining in response to new or changing technology; (~~FORMER #10~~)
- (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; (~~FORMER #5 & 11~~)
- (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. (~~FORMER #13~~)
- ~~(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~~
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- (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 (43) of subsection (a), the ~~d~~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.
- (c) The priority referenced in paragraph (84) of subsection (a) shall be for micro-businesses which employ not more than 20 employees ~~as defined under Government Code, Section 481.151~~, small businesses that have fewer than 100 employees or less than \$1 million in annual gross receipts ~~as defined under Government Code, Section 481.101(3)~~, and medium-sized businesses which employ not more than 500 employees.

§§ 803.14. Procedure for Requesting Funding

- (a) After obtaining the review and comments of the Board in the applicable local workforce development area(s), ~~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 ~~d~~Director, or his or her designee, a joint proposal requesting funding for a customized training ~~program~~ 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 ~~but the~~ training proposal must not duplicate a training ~~program~~ 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.

- (ed) 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~~ 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 ~~program~~ project;
 - (5) a budget summary, disclosing anticipated ~~program~~ project costs and resource contributions, including the dollar amount the prospective private partner is willing to commit to the project;
 - (6) a signed ~~an outline of the~~ agreement between the prospective private partner and the public community or technical college or TEEX 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 ~~program~~ 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 ~~program~~ project and costs for similar instruction at ~~to the public community or technical college's or TEEX's 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 Agency ~~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 Smarts Job 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.~~

§§ 803.15. Procedure for Proposal Evaluation

- (a) The ~~d~~Director, or his or her designee, shall evaluate each proposal considering the program objectives listed in §§ 803.13 of this subchapter~~title~~ (relating to Program Objectives), the factors listed in subsection (c) of §§ 803.14 of this subchapter~~title~~ (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 ~~Commission~~ 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).
- (bc) If the Agency ~~Commission~~ determines that a proposal is appropriate for funding through the ~~s~~Skills ~~d~~Development ~~f~~Fund, the ~~d~~Director, or his or her designee, shall enter into a contract with the grant recipient on behalf of the Agency ~~Commission~~.

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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 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 proposed 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

§§ 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 ~~Commission~~.
- (b) ~~Contractor~~ Grant recipient shall maintain fiscal data needed for independent verification of expenditures of funds received for the customized training ~~program~~ project.
- (c) Contract amendments must be requested in writing and approved by the ~~d~~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.
- (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.

§§ 803.32. Contract Completion Reports

No later than 6090 days following the end of the contract period for the customized training program project, the grant recipient shall provide the Agency Commission with the following information:

- (1)(1) a copy of any audit performed on the customized training program project;
- (2)(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 program project;
- (3)(3) a narrative report by the Contractor grant recipient summarizing the training program 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 program project's effectiveness in meeting the business' workforce needs and requirements;
- (4) a detailed breakdown reflecting the expenditure of funds received; and
- (5)(4) 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 at the college is equal to the prevailing wage for that occupation in the local labor market area.; and
- ~~(5) a detailed breakdown reflecting the expenditure of funds received.~~

§§ 803.33. Contract Payment

~~Final p~~Payment under a contract will be contingent upon the ~~d~~Director's, or his or her designee's, determination that a project has met the training objectives, outcomes, and requirements ~~evaluation of the program using the outcome objectives specified in the contract.~~ The ~~d~~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.

§§ 803.34. Notice to Texas Higher Education Coordinating Board

The Agency ~~Texas Workforce Commission~~ will inform the Texas Higher Education Coordinating Board that a grant from the ~~s~~Skills ~~d~~Development ~~f~~Fund has been made to a public community or technical college or TEEEX to provide a customized training ~~program~~project in order that it may conduct its review of the training ~~program~~project pursuant to Texas Labor Code, §§ 303.004.

§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.

§§ 803.356. Waivers

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

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