

Chapter 801. Local Workforce Development Boards
Sections 801.1, 801.11-801.13, 801.16, 801.17 and Section 801.3

The following rule(s) will be effective November 2, 2000.

Chapter 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

Subchapter A. GENERAL PROVISIONS

The Texas Workforce Commission (Commission) adopts amendments to §801.1 relating to the Requirements for Local Workforce Development Boards (Boards), new §§801.12-801.13 relating to the Board Members, new §801.16 and §801.17 relating to Board Oversight and Management, with changes to the proposed text as published in the June 9, 2000, issue of the Texas Register (25 TexReg 5599). Section 801.11 is adopted without changes to the proposed text and will not be republished.

The Texas Workforce Commission (Commission) adopts the repeal of §801.3 relating to Requirements for Submission of Local Workforce Training and Services Plans, Modifications and Amendments without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5603).

Concurrent with this filing, the Commission is adopting the repeal of Chapter 805, Subchapter B relating to the Job Training Partnership Act (JTPA) Program Delivery System without changes to the proposed text as published in the June 9, 2000 issue of the *Texas Register* (25 TexReg 5603). No comments were received on the proposed repeal.

Background and Purpose: Texas Labor Code §302.002(d) authorizes the Commission to adopt rules necessary for the proper administration of the Division of Workforce Development. The Commission was established to operate an integrated workforce development system in the state. An integral part of that system is the establishment, maintenance, and oversight of the Boards.

New Subchapter A is added to contain rules relating to Board General Requirements.

Section 801.1 contains amendments regarding Requests for Formation of Boards.

Section 801.3 is repealed and the content of the rule is moved to new §801.17 relating to Board Training and Services Plans.

Sections 801.11 - 801.13 are added to contain provisions relating to Board Members, which set forth provisions as indicated in the title of the section as follows:

Section 801.11. Board Member Nomination and Application;

Section 801.12. Board Member Vacancies; and

Section 801.13. Board Member Conflicts of Interest.

New §§801.16 and 801.17 are added to contain provisions relating to Board Management and Oversight, which set forth provisions as indicated in the title of the section as follows:

Section 801.16. Agreement for Local Procedures; and

Section 801.17. Board Training and Services Plans, Modifications and Amendments.

A more detailed explanation of the changes that were adopted is as follows.

Section 801.1 is amended for the following purposes:

to provide a uniform use of terms;

to remove references to the Job Training Partnership Act (JTPA) since the State has fully implemented the Workforce Investment Act (WIA) (29 U.S.C.A. §§ 2801 et seq.), which replaces JTPA;

to remove obsolete provisions that are no longer necessary;

to add the requirement that private sector representatives on a Board must derive the majority of their income from private sector sources to assure that private sector representatives have sufficient ties to private sector activities in the community;

to add a clarification to the nomination process of labor representatives;

to provide a definition of the term "labor federation" to assure that labor representatives meet the statutory requirements for that category; and

to add a provision that sets forth the relationship that all Board nominees have with the workforce area in the category which they are representing.

The remaining rules are added for the following purposes.

Section 801.11 is added to describe the process for the nomination and appointment of Board members;

Section 801.12 is added to describe the requirements for filling Board vacancies;

Section 801.13 is added to set out the conflict of interest requirements on a Board;

Section 801.16 is added to list the requirements for an agreement between a Board and the local chief elected officials (CEOs); and

Section 801.17 is added to move §801.3, relating to Board Training and Services Plan and Modifications, to the more applicable location relating to Board Oversight and Management Responsibilities.

Chapter 805, Subchapter B relating to the Job Training Partnership Act (JTPA) Program Delivery System is repealed since the State has fully implemented the WIA program, which replaces the JTPA program in Texas.

The amendments, new rules and repeal are adopted to assure compliance with state and federal statutory requirements regarding Boards, to clarify changes resulting from the change from the JTPA to the WIA, and to assist Boards in complying with state and federal law.

Comments were received from the following Boards: Brazos Valley Workforce Development Board, Deep East Texas Workforce Development Board, East Texas Workforce Development Board, North Texas Workforce Development Board, North Central Texas Workforce Development Board, Texoma Workforce Development Board, and West Central Texas Workforce Development Board. Comments were also received from a member of the Texas House of Representatives and a county judge. Some commenters were in favor of the rule, while others presented questions and suggested changes. A summary of the comments and the responses are as follows. A description of the changes to the rules resulting from consideration of comments are included in the responses to the comments.

General Comments: Several commenters posed questions regarding the authority for the Commission to require specific provisions relating to the formation, membership, and related matters concerning the local workforce development boards (Boards). In response to those comments, the Commission sets forth the following general response to explain the State statutory governance provisions relating to the Boards.

The 74th Texas Legislature and the Governor enacted Texas' landmark legislation, House Bill 1863, in 1995. This state law reformed both the welfare and workforce systems and made Texas one of the nation's leaders among reform-minded states. House Bill 1863 also provided local elected officials, also referred to as chief elected officials (CEOs), with the opportunity to form local workforce development boards

(Boards) that enjoy the flexibility and authority to design and oversee the delivery of workforce development services that meet the needs of local employers and workers. This state law was codified into several sections of the Texas statutes, including the following: Texas Government Code, Chapter 2308, and Texas Labor Code, Chapter 302. Texas Government Code, Chapter 2308, sets forth the provisions relating to the:

Texas Council on Workforce and Economic Competitiveness;

creation and administration of local workforce development areas (workforce areas) and Boards; and

the responsibilities and duties of Boards and Board members.

Texas Labor Code §302.021, sets forth the job-training, employment, and employment-related educational programs and functions consolidated under the authority and jurisdiction of the Division of Workforce Development of the Commission.

Although the Boards manage and administer numerous programs, a few commenters asked about authority under the federal Workforce Investment Act of 1998 (WIA) as it relates to the proposed changes to Chapter 801 relating to Boards.

In response, the Commission states that the WIA recognizes the strides made in the development of Texas' workforce investment system as designed by the Texas Legislature in House Bill 1863, and specifically provides for exemptions from WIA that authorize the state to maintain many features of House Bill 1863. The WIA included specific exemptions recognizing the states that had in place laws consistent with the purpose of WIA that existed prior to the enactment of WIA. The provisions that include the specific exemptions are commonly referred to as "WIA grandfather provisions." For purposes of understanding how the grandfather provisions are applied in Texas, the phrase "prior consistent state law" generally refers to the statutory changes created in House Bill 1863 in addition to state rules and procedures that implement House Bill 1863. For further information regarding the "WIA grandfather provisions" see the Agency's web page at www.twc.state.tx.us.

Relevant to the proposal of changes to Chapter 801, the WIA grandfather provisions allow Texas to preserve several components of the Texas workforce investment system, including the following: (1) The State Human Resource Investment Council, called the Texas Council on Workforce and Economic Competitiveness (TCWEC) constituted under prior consistent state law, which functions as the State Board; (2) the twenty-eight existing local workforce development areas (workforce areas), and

(3) many of the Board requirement provisions contained in Texas Government Code, Chapter 2308, that are also established under prior consistent state law.

In short, the WIA grandfather provisions provide the Commission with continued authority under Texas Government Code, Chapter 2308, to set forth requirements consistent with the general rulemaking authority under Texas Labor Code, Chapter 302.001, and particularly, §301.061 and §302.002 to continue the enforcement of the intent of House Bill 1863. Many of the provisions contained in the Board requirement rules are based on the codified provisions of House Bill 1863 that appear in the Texas Government Code and Texas Labor Code.

The general response is responsive to all of the comments received. Following is additional information regarding specific comments and responses.

1) Comment: Regarding §801.1(g)(2)(C)(i), one commenter asserted that the change from 10% to 15% on membership of private sector representatives with fewer than five employees is commendable; however, the commenter found no indication in the WIA law or regulations that limits the percentage or number of private sector representatives based on employer size. The commenter also stated that in rural areas, the requirement may eliminate many individuals who would be excellent Board members. The commenter recommended elimination of any restrictions related to the size of a representative's business.

Response: Although the Commission has authority to implement general requirements for the enforcement of the Board requirement provisions as well as the provisions contained in Texas Labor Code Chapters 301 and 302 as expressed in the general response, the Commission recognizes the difficulty faced by rural areas with meeting the 10% requirement, and therefore, agrees to remove the restrictions on the membership of private sector representatives with fewer than five employees. The language in the rule is modified accordingly.

2) Comment: Regarding §801.1(g)(2)(C)(i), one commenter found no requirement in the WIA law or draft regulations that 51% of a private sector representative's income must be from private sector sources. The commenter stated concern about the legality of requesting and requiring such information from a Board nominee and the potential elimination of individuals who are unwilling or unable to provide this information. The commenter recommended elimination of this requirement. Another commenter questioned the requirement that to be eligible to be a private sector representative, at least 51% of the individual's annual income must be from private sector sources. A third commenter asked that the Commission reconsider the requirement that to be eligible to represent the private sector, at least 51% of an individual's annual income must be from private sector resources. The third commenter opined that it will be

difficult for chief elected officials (CEOs) to find competent people to serve on Boards if nominees are required to submit financial statements. Two of the commenters asked what information must be submitted to demonstrate that a Board nominee meets this requirement or what verification may be required.

Response: Texas Government Code §2308.256 specifically requires that a Board is composed of "representatives of the private sector, who: (A) constitute a majority of the membership of the Board; and (B) are owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibilities...." The Commission set forth rules in 1996 regarding what constitutes "representatives of the private sector," which included the requirement that a private sector nominee derive 51% of his income from private sector sources. Section 805.125(c) of the Texas Administrative Code also contained this same requirement as a means of setting forth clear and reasonable measures for determining if the minimum level of representation existed to meet the intent of Texas Government Code §2308.256. Specifically, the purpose of the 51% provision is to assure that business representatives on a Board have a substantial interest in the private sector. This provision was originally adopted to prevent situations in which an individual working full-time for a non-private sector entity was appointed as a private sector representative because the individual also worked part-time for a private business or was self-employed part of the time. The authority upon which the Commission relies is the Texas Government Code, which is recognized by the grandfather provision in WIA as the controlling authority under prior consistent state law. The Commission moved the provision to Chapter 801 from Chapter 805 to locate the provision with other Board related provisions. For the reasons stated in this response, the Commission does not agree with removing the proposed provision.

Regarding the types of appropriate documentation for representatives, the Agency is compiling a new publication, for use as a Board Handbook, which will include a description of the types of documentation, which a Board and the Commission may use to establish that a nominee meets the requirement.

3) Comment: Regarding §801.1(g)(2)(C)(v), one commenter found no requirement in WIA that individuals be "actively engaged" in the organization, enterprise or field which they are nominated to represent. Rather the WIA language focuses on individuals with "optimum policymaking or hiring authority" and "businesses with employment opportunities that reflect the employment opportunities of the area." The commenter asserted that there is no indication that the individual must have an existing relationship with the workforce area through residence or employment. The commenter recommended deletion of this requirement and substitution or reference to the WIA language in §117 (b)(2)(i).

Response: The commenter is correct; however, Texas utilizes provisions for Board constitution based on the prior existing law as expressed in the general response. For this reason, and because "actively engaged" is a reasonable requirement to ensure that the intent of Texas Government Code, Chapter 2308, and Texas Labor Code, Chapters 301 and 302, are consistently enforced, the Commission relies on the prior consistent law and the provisions that have to be in place since 1996 as the foundation for Board appointments. Furthermore, the Commission asserts that the language is reflective of the intent of the language in WIA §117(b)(3) as applied in Texas.

4) Comment: Regarding §801.11, one commenter expressed concern that §801.11 would require that all workforce area CEOs sign each Board appointment even if the CEO agreement did not require such signatures. The commenter also expressed concern that the proposed rule would prevent CEOs from seeking advice from Board staff in completing the nomination forms.

Response: The Commission would clarify by stating that the rule does not require that each Board appointment form be signed by all workforce area CEOs. The appointment form must be signed by the CEO or CEOs as specified in the CEO's interlocal agreement, referred to as the "local government agreement" in Texas Government Code §2308.255. A CEO, so authorized, is free to seek advice of any party, including Board staff, in making appointments and completing appointment forms.

5) Comment: Regarding §801.11(b), one commenter found no requirement in WIA that Board nominees provide a resume, work history or other supporting qualifications. The commenter asserted that completion of a nomination form by the appropriate organization and appointment by the local CEOs should be adequate support of the individual. The commenter recommended deletion of this current requirement.

Response: The rule currently in place at §805.126(b) requires that "documentation in the form of a vitae, resume, or work history supporting the qualification of the nominees must accompany the nomination slate." Section §805.126(c) goes on to require that the documentation on nominations be submitted to the Commission. The proposed rule moves the requirement from the JTPA section of the rules to the Board section of the rules but makes no substantive changes to current requirements. The Commission is required to establish criteria for use by CEOs in the appointment of Board members. Therefore, the Commission does not agree with modifying the rule.

6) Comment: Regarding §801.12(c), the commenter found no requirements in WIA related to the time period associated with filling Board vacancies. The commenter agreed that a reasonable time period should be established by the local CEOs in

conjunction with the Board. The commenter recommended modification of this section to require that local boards have a vacancy policy established either in bylaws or local agreements.

Response: The Commenter is correct in that WIA sets no specific requirement of a set time period to fill Board vacancies; however, the provision is controlled by prior existing state law, which falls under the grandfather provisions. Specifically, the language as proposed in §801.12(c) repeats the requirement found in the existing rule at §805.130. The proposed section moves the requirement from the JTPA section of the rules to the Board section of the rules. Under this policy, Boards currently may set local vacancy policies within the limitations set forth in the proposed rule. Boards are encouraged to adopt local policies regarding filling vacant positions on Boards as long as the policy does not conflict with the requirements of the Texas Board requirements contained in prior existing law, including the Commission rules. Because of the concerns expressed by the comments and the challenges, which some Boards have described, the Commission agrees to extend the time period allowed to 90 days. The rule is amended to reflect this change. As modified, the rule continues to follow the policy developed under JTPA and prior consistent law by requiring a reasonable limit to the period in which a Board may operate while it is out of compliance with Board composition requirements. The Commission believes that 90 days is a reasonable and clearly defined amount of time to fill a vacancy.

7) Comment: Regarding §801.12(d), one commenter found no requirements in WIA related to the time period for replacement of vacancies. The commenter recognized the importance of the Board maintaining appropriate and required membership at all times to the extent possible. The commenter recognized the need for penalties or sanctions if a Board area continues to violate policies related to replacement of members, but would recommend using the already established sanctions policy. The commenter recommended that language be inserted to refer to the current sanctions policy and the language related to withholding of administrative funds be removed. The commenter stated that this would promote consistency in the application of the sanctions rules.

Response: The Commission agrees that violation of rules regarding timely replacement of Board members may subject a Board to the sanctions set out in §§800.151-800.191. One possible sanction would be withholding of administrative funds. The rule will be changed to include a reference to the sanction rules.

8) Comment: Regarding §801.12(d), one commenter found no provision in WIA that would allow the Commission to make appointments to the local Board that are not approved by local CEOs. The commenter questioned if such an appointment would be in compliance with WIA and the legality of a board appointment by an entity other

than the local CEOs. The commenter recommended removal of the language, which allows the Commission to make appointments to the Board because the Commission agrees that in the event that the CEOs fail to appoint members to the Boards that the Governor should be advised and appropriate action as determined by the Governor, including up to decertification, would be appropriate instead of the Commission making such appointments.

Response: WIA §117(c)(1) provides that if the local CEOs fail to carry out their responsibilities in regard to the appointment of Board members, the state may appoint members to a Board from individuals nominated or recommended, under the grandfather provisions. The controlling state statutes include Texas Government Code, Chapter 2308. Nevertheless, the Commission agrees to delete this provision because it is already addressed by state statute.

9) Comment: Regarding §801.13, one commenter agreed that Boards should establish conflict of interest policies, but does not believe such a requirement should be established in a rule. Instead, the Commission should provide guidance and minimum standards for conflict of interest policies based on federal and state law through a policy letter rather than in rules. The commenter recommended elimination of this section, and transmittal of legal requirements and Commission guidelines on conflict-of-interest through a WD letter.

Response: In addition to the conflict of interest restrictions found in WIA §117(g) and 20 CFR §667.200(a)(14), WIA §112(b)(13) requires that the State specify the actions which constitute a conflict of interest. Texas Labor Code §301.061 requires that the Commission adopt rules necessary for the administration of workforce programs. Because of the importance of assuring that Boards and other Agency contractors have a clear understanding of the federal and state statutory requirements regarding avoiding conflicts of interests, the Commission has determined that a rule is necessary.

10) Comment: Regarding §801.16(b), this section appears to relate to the agreement developed during the Board formation process. The commenter questioned the requirement that the agreement be signed by the current CEOs and Board Chair since the agreement relates to the formation of the Board, not necessarily the on-going operations of the Board. The commenter recommended deletion of this requirement.

Response: Texas Government Code §2308.253(g) requires that the Board and the CEOs enter into a written partnership agreement. This agreement provides the framework for the ongoing relationship between a Board and the workforce area CEOs. It is important that successive CEOs and Board Chairs understand the nature of the relationship so that they can work effectively within that structure. The proposed

rule assures that all of the relevant parties are familiar with and agree to abide by the terms of the agreement.

11) Comment: Regarding §801.16(c) and (d), one commenter stated that these requirements appear to be a good practice and reflective of the Commission's preferences for timely notification of changes. However, the commenter recommended deletion of these requirements and insertion of language that allows Boards to set local policies related to timeframes for submission of changes and requirements, if any, related to acknowledgement of the current agreement.

Response: The proposed rule continues the notice requirements found in current state regulation and moves the requirements from the JTPA section of the rules to the Board section of the rules. The purpose of this provision is to assist the Agency with achieving consistency on a statewide basis with the compliance by Boards with the governing state and federal statutes.

12) Comment: Regarding §801.17, one commenter stated that this section appears to be a statement of requirements related to Board submission of plans. The commenter agreed that there is a need to establish policy in this area, but recommended that this section be deleted from the rule and transmitted as an information notice or policy letter. It appears that the Commission intends to provide criteria at a later date for an acceptable plan and budget as to what constitutes a substantial revision or a minor adjustment. The lack of inclusion of this criteria in this section further supports elimination of this section until such time as the criteria is developed.

Response: The proposed rule restates the existing rule at §801.3. Section 801.3 is renumbered as §801.17 because of an expansion of the rules in the subchapter. The rule is necessary to establish the most basic requirements for a local plan and to establish the process for submission and review of local plans and local plan amendments and modifications.

13) Comment: One commenter disagreed with the requirement in §801.1(g)(2)(D) that no individual member shall be a representative of more than one sector or category. The commenter also expressed the opinion that a new Board appointment should not be required to meet the membership category requirement of a resigning member. The commenter stated that meeting appointment requirements is especially difficult in rural areas.

Response: Texas Government Code §2308.253 lists the specific Board membership requirements by category. In order to meet the requirements of state law, the composition of a Board must comply with these requirements. The state statute requires individual members in the required categories and one member may not

represent multiple categories, except in the case of the child care representative. Regarding representation, the Commission further clarifies the rule language by adding to the provisions contained in §801.1(g)(2) (C)(vi) and (D) to reflect the statutory requirement that at least one member of each Board shall have expertise in child care or early childhood education in addition to meeting the requirements for representing one of the other sectors or categories of representation.

The Commission recognizes that participation as a Board member is a challenging job. Agency staff are available to provide assistance to local CEOs in developing procedures to encourage the participation of workforce area organizations in the Board member selection process.

40 TAC §§801.1, 801.11 - 801.13, 801.16, 801.17

The rules are adopted under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

§801.1. Requirements for Formation of Local Workforce Development Boards.

(a)

Purpose of Rule.

(1)

Upon application by the chief elected officials (CEOs) and approval of the Commission, the Commission will forward an application to form a local workforce development board (Board) to the Governor.

(2)

Before an application may be submitted to the Governor, all requirements of this section must be met.

(b)

State Law. The formation of Boards is governed by the Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308.

(c)

Chief Elected Official Agreement. Creation of a Board requires agreement by at least three-fourths of the CEOs in the workforce area who represent units of general local government, including all of the CEOs who represent units of general local government having populations of at least 200,000. The elected officials agreeing to the creation of the Board must represent at least 75% of the population of the workforce area.

(d)

Chief Elected Officials. The CEOs may, and are encouraged to, consult with local officials other than the ones delineated below. The following officials are designated as the CEOs for the purpose of establishing agreements to form Boards:

(1)

Mayors.

(A)

The mayor of each city with a population of at least 100,000;

(B)

or, if there is no city with a population of greater than 100,000, the mayor of each city with a population greater than 50,000;

(C)

or, if there are no cities with a population of greater than 50,000, the mayor of the largest city in the workforce area.

(D)

For purposes of this section, municipal population will be determined by the figure last reported by the Texas State Data Center at the time of submission of the application to the Commission.

(2)

All county judges included in a workforce area as designated by the Governor.

(e)

Time of Application. CEOs in an area may not establish a Board until the Governor has designated that area as a workforce area as provided in the Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308.

(f)

Applications must meet all Governor-approved criteria for the establishment of Boards.

(g)

Procedures for Formation of a Board. The CEOs must comply with the following procedures to form a Board.

(1)

Public process procedure. If three-fourths of the CEOs, as defined in subsection (d) of this section, agree to initiate procedures to establish a Board, they must conduct a public process, including at least one public meeting, to consider the views of all affected organizations before making a final decision to form a Board. This public process may include, but is not limited to, notices published in various media and surveys for public comment.

(2)

Application procedure.

(A)

The CEOs must submit an application to the Commission. This application must include evidence of the actions required by paragraph (1) of this subsection. As a part of the application, each of the CEOs, who is in agreement regarding the formation of a Board, must execute the following documents:

(i)

an interlocal agreement delineating:

(I)

the purpose of the agreement;

(II)

the process that will be used to select the CEO who will act on behalf of the other CEOs and the name of such CEO if the person has been selected;

(III)

the procedure that will be followed to keep those CEOs informed regarding local workforce development activities;

(IV)

the initial size of the Board;

(V)

how resources allocated to the workforce area will be shared among the parties to the agreement;

(VI)

the process to be used to appoint the Board members, which must be consistent with applicable federal and state laws; and

(VII)

the terms of office of the members of the Board.

(ii)

an acknowledgment in the following form: We, the chief elected officials of the _____ Workforce Development Area, acknowledge that the following are responsibilities and requirements pursuant to the formation of local workforce development boards (Boards):

(I)

The Board will assume the responsibilities for the following committees and councils that will be replaced by the Board unless otherwise provided in Texas Government Code, Chapter 2308: private industry council, quality workforce planning committee, job service employer committee, and local general vocational program advisory committee.

(II)

At least one career development center must be established within 180 days of Board certification;

(III)

The Board must have its own independent staff and not be a provider of workforce services, unless the Board secures a waiver of these provisions;

(IV)

The chief elected officials must enter into a partnership agreement with the Board to designate a grant recipient to receive and be accountable for block grant funds, and be liable for any misuse of funds;

(V)

The partnership agreement must also specify the entity that will administer the programs, which may be separate from the entity that receives the funds from the state;

(VI)

The partnership agreement must define the process through which the Boards and chief elected officials will develop the strategic and operational plans, including the training plan required under the Workforce Investment Act, required by the legislation in order to receive block grant funds; and

(VII)

The strategic plan must be reviewed by both the Commission and the Texas Council on Workforce and Economic Competitiveness, and approved by the Governor before block grants will be available to the workforce area.

(B)

The application must include evidence that any affected existing Board has been notified and agrees that its functions and responsibilities will be assumed by the proposed Board upon the proposed Board's final certification by the Governor.

(C)

The application shall include the names and affiliations of individuals recommended for Board membership, with documentation that CEOs followed the nomination

process specified in applicable state and federal law, including Texas Government Code, §2308.255 and §2308.256.

(i)

Private sector members shall be owners of business concerns, chief executives, chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. To be eligible to represent the private sector, at least 51% of an individual's annual income must be from private sector sources.

(ii)

Private sector membership should represent the composition of the local pool of employers. The private sector membership should include representatives of the region's larger employers and emerging growth industries. Primary consideration should be given to private sector employers who do not directly provide employment and workforce training services to the general public. CEOs must develop a profile of the area's major industries using locally obtained information and state published data. The Commission will provide relevant labor market information, including data which identify employment trends, emerging and growth industries, the size of local employers, and other data needed to assist CEOs in developing the employer profile. Documentation submitted with the application must show how the regional employer profile is reflected in the Board membership.

(iii)

Board membership must include representatives of local organized labor organizations, community-based organizations, educational agencies, vocational rehabilitation agencies, public assistance agencies, economic development agencies, the public employment service, local literacy councils, and adult basic and continuing education organizations as required by law.

(iv)

Representatives of local organized labor organizations shall be nominated by local labor federations unless no employees in the workforce area are represented by such organizations, in which case nominations may be made by other representatives of employees. A labor federation is defined as an alliance of two or more organized labor unions for the purpose of mutual support and action.

(v)

Board nominees shall be actively engaged in the organization, enterprise or field which they are nominated to represent. A Board nominee shall have an existing relationship with the workforce area through residence or employment within the workforce area.

(vi)

At least one of the members of a Board appointed under Texas Government Code §2308.256(a) must, in addition to the qualifications required for the members under that subsection, have expertise in child care or early childhood education.

(D)

No individual member shall be a representative of more than one sector or category described in this section, except as statutorily permitted for one or more members having expertise in child care or early childhood education in addition to meeting one of the other sector or categories of representation.

(E)

The application must include documentary evidence substantiating compliance with the application procedure, including but not limited to, written agreements, minutes of public meetings, copies of correspondence, and such other documentation as may be appropriate.

§801.12.Board Member Vacancies.

(a)

If a Board member vacancy occurs due to resignation, termination, or any other reason, the Board Chair shall provide notice to the CEOs of the workforce area and to the Commission within 20 calendar days of such event. Such notice shall include:

(1)

the name of the Board member;

(2)

the category represented; and

(3)

the effective date of resignation, termination or other event causing the vacancy.

(b)

The original resignation letter or documentation of other official action must be maintained at the local Board level.

(c)

The CEOs shall fill a vacancy in a required category, in the same manner as the original appointment, within 90 calendar days from the effective date of the resignation, termination, or other event causing a vacancy. During the 90-day period, the Board will be able to act as a body and conduct business. Any action taken by the Board, with a vacancy in a required category, beyond such 90-day period shall be void.

(d)

If the CEOs fail to fill a vacancy in a required category within 90 calendar days of the effective date of the vacancy, and remain in noncompliance with this section beyond that time, the Commission may impose sanctions under Chapter 800, including the withholding of administrative funds from the Board until compliance is achieved. The Commission may recommend that the Governor decertify the Board.

§801.13. Board Member Conflicts of Interest.

(a)

Pursuant to WIA § 117(g) (29 U.S.C.A. §2832(g)), this section sets forth the state's Board conflict of interest requirements for disclosure and declaration of a conflict of interest by a Board member.

(b)

A Board member may not vote on any matter that would provide direct financial benefit to the member or the member's immediate family, nor on matters of the provision of services by the member or the entity the member represents. No Board member may participate in a decision in which the member has a direct or indirect interest, particularly a financial interest, which is in substantial conflict with the discharge of the duties of the Board.

(c)

A Board member shall avoid even the appearance of a conflict of interest. Prior to taking office, Board members must provide to the Board Chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations which have received, currently receive, or are likely to receive contracts or funding from the Board. Such declarations shall be updated within 30 days to reflect any changes in such business interests or relationships. The Board shall appoint an individual to timely review the disclosure information and advise the Board Chair and appropriate members of potential conflicts.

(d)

Prior to a discussion, vote or decision on any matter before a Board, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization or property that would be pecuniarily affected by any official Board action, that member shall disclose the nature and extent of the interest or relationship and shall abstain from voting on or in any other way participating in the decision on the matter. All such abstentions shall be recorded in the minutes of the Board meeting.

(e)

Each Board must include in its organizational plan or bylaws, or in a separate code of conduct, provisions for penalties, sanctions or other disciplinary actions for any direct violations of the Board conflict of interest policy. The following definitions must be incorporated into those provisions.

(1)

Immediate family -- Any person related within the first degree of affinity (marriage) or consanguinity (blood) to the person involved.

(2)

Substantial interest -- A person has a substantial interest:

(A)

in a business entity if:

(i)

the person owns 10% or more of the voting stock or shares of the business, owns 10% or more, or owns \$5,000 or more, of the fair market value of a business; or

(ii)

funds received by the person from the business exceed 10% of the person's gross income for the previous year;

(B)

in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more; or

(C)

if the Board member is related to a person in the first degree of affinity or consanguinity who has a substantial interest as defined in subparagraph (A) or (B) of this paragraph.

§801.16. Agreement for Local Procedures.

(a)

The CEOs in a workforce area shall enter into an Agreement for Local Procedures with the Board for the workforce area as required by Texas Government Code §2308.253(g) and by §801.1(g)(2)(A)(iii)(IV)-(VI).

(b)

The Agreement for Local Procedures must be signed by the current CEOs and the Board Chair.

(c)

Any amendment to an Agreement for Local Procedures, change to a Board's organizational plan or bylaws, or notice of an election of a new CEO or Board Chair must be submitted to the Commission within 15 calendar days of the adoption of such amendment, change, or election.

(d)

If a CEO or Board Chair is newly elected during the then current two-year program planning cycle, such newly elected individual must submit a written statement acknowledging that the newly elected official:

(1)

has read, understands, and will comply with the current Agreement for Local Procedures; and

(2)

reserves the option to request negotiations to amend the agreement at any time during the official's tenure as CEO or Board Chair.

(e)

All Agreements for Local Procedures and Board organizational plans or bylaws shall state that Board members will not be permitted to delegate any Board duties to proxies or alternates.

§801.17. Board Training and Services Plans, Modifications and Amendments.

(a)

Purpose of Rule.

(1)

All workforce training and services plans and budgets developed pursuant to state and federal law by a Board shall be submitted to the Workforce Division of the Texas Workforce Commission for review.

(2)

Before a plan and budget will be forwarded by the Commission to the Texas Council on Workforce and Economic Competitiveness (TCWEC) for recommendation to the Governor for approval, all requirements of this section must be met.

(b)

Standards for Submission. A local workforce training and services plan and budget will be reviewed according to criteria established by the Commission. The Texas

Workforce Commission will provide guidelines for strategic planning and budgeting to Boards.

(c)

Plan Modification or Amendment. An approved plan and budget may be changed by either modification or amendment. Either method of change must be submitted to the Commission for review before implementation.

(1)

A modification is a substantial revision of a plan and budget. The Commission will provide criteria to Boards that will define what constitutes a substantial revision. Each modification must provide evidence that a majority of the CEOs of a workforce area or their designee or designees with signatory authority have approved the modification.

(2)

An amendment is a minor adjustment to a plan and budget. The Commission will provide criteria to Boards that will define what constitutes a minor adjustment. An amendment does not require approval by a majority of the CEOs of a workforce area.

40 TAC §801.3

The repeal is adopted under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.