

1 **CHAPTER 803. SKILLS DEVELOPMENT FUND**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 **ON OCTOBER 29, 2020,** THE TEXAS WORKFORCE COMMISSION PROPOSED THE
8 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **November 13, 2020**
11 Estimated End of Comment Period: **December 14, 2020**
12

13 The Texas Workforce Commission (TWC) proposes following new section of Chapter 803,
14 relating to the Skills Development Fund:
15

16 Subchapter A. General Provisions Regarding the Skills Development Fund, §803.4
17

18 TWC proposes amendments to the following sections of Chapter 803, relating to the Skills
19 Development Fund:
20

21 Subchapter A. General Provisions Regarding the Skills Development Fund, §§803.1 - 803.2
22 Subchapter B. Program Administration, §803.11 and §§803.13 - 803.15
23

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

28
29 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

30 The purpose of the proposed Chapter 803 rule changes is to implement statutory changes related
31 to the Skills Development Fund (SDF) program.
32

33 House Bill (HB) 700, 86th Texas Legislature, Regular Session (2019), amended sections of
34 Texas Labor Code Chapter 303, relating to the SDF program. The bill amended §303.001(a) to
35 add Local Workforce Development Boards (Boards) to the list of entities that are eligible to use
36 SDF grants as an incentive to provide customized assessment and training.
37

38 Additionally, HB 108, 85th Texas Legislature, Regular Session (2017), amended the Texas
39 Labor Code to add §303.0031 regarding the use of SDF grants to encourage employer expansion
40 and recruitment. The section allows SDF grants to provide "an intensive and rapid response to,
41 and support services for, employers expanding in or relocating their operations to this state, with
42 a focus on recruiting employers that will provide complex or high-skilled employment
43 opportunities in this state."
44

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

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

4 Texas Government Code §2001.039 requires that every four years each state agency review and
5 consider for readoption, revision, or repeal each rule adopted by that agency. TWC has assessed
6 whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the
7 rules in Chapter 803 are needed, reflect current legal and policy considerations, and reflect
8 current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC,
9 therefore, proposes to readopt Chapter 803, Skills Development Fund, with amendments
10 described in this proposed rulemaking.
11

12 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS**
13 **DEVELOPMENT FUND**

14 **TWC proposes the following amendments to Subchapter A:**
15

16 **§803.1. Scope and Purpose**

17 Section 803.1(a) is amended to provide a broad statement on the purpose of the SDF. This
18 language reflects the statutory purpose in the Texas Labor Code, §303.001 and includes business
19 expansion and relocation purpose in the Texas Labor Code, §303.003. The amended language
20 removes references to required partnerships for community-based organization as this eligibility
21 requirement is described in §803.2.
22

23 Section 803.1(a) is also amended to add Boards to the list of entities eligible to receive SDF
24 grants to provide customized assessment and training pursuant to Texas Labor Code §303.001.
25 TWC notes that Texas Government Code §2308.264 prohibits Boards from directly providing
26 workforce training or one-stop workforce services unless the Board requests and is approved for
27 a waiver based on the lack of an existing qualified alternative for delivery of workforce services
28 in the local workforce development area (workforce area). Chapter 303 (as amended by HB 700)
29 allows Boards to apply for and use SDF funds:
30 --as an incentive to provide customized training;
31 --to develop customized training; and
32 --to sponsor small and medium-sized business networks and consortiums for job training
33 purposes.
34

35 Chapter 303 does not state that Boards must provide the training directly and, therefore, does not
36 conflict with §2308.264.
37

38 Section 803.1(a) is also amended to add "A&M" to complete the name of the Texas Engineering
39 Extension Service, which reflects the language in Texas Labor Code §303.001.
40

41 **§803.2. Definitions**

42 Definitions in §803.2 are amended as follows:

43 --Section 803.2(1) is amended to include a Board as a design partner in the definition of a
44 "customized training project."

45 --Section 803.2(2) is amended to include a Board in the definition of a "grant recipient."

1 --Section 803.2(4) is amended to remove "person" to alleviate any ambiguity or confusion with
2 the word in the definition of Private Partner.

3 --Section 802.2(7) is amended to add "A&M" to the defined term "Texas Engineering Extension
4 Service."

5 --Section 803.2(9) is amended to include a Board contractor in the definition of a "training
6 provider."
7

8 **§803.4. Use of Funds to Encourage Employer Expansion and Recruitment**

9 New §803.4 is added to implement Texas Labor Code §303.0031, relating to the use of the SDF
10 to support employers expanding in or relocating to Texas. The rule language reflects the
11 statutory language in §303.0031.
12

13 Section 803.4(a) reflects the statutory language in the Texas Labor Code that the SDF may be
14 used to provide an intensive and rapid response to, and support services for, employers
15 expanding in or relocating their operations to Texas, with a focus on recruiting employers that
16 will provide complex or high-skilled employment opportunities in the state.
17

18 New §803.4(b) reflects the statutory language in the Texas Labor Code that the SDF grand funds
19 may be used to:

- 20 --provide leadership and direction to, and connections among, out-of-state employers, economic
21 development organizations, Boards, public community colleges, and public technical colleges to
22 support employers' recruitment and hiring for complex or high-skilled employment positions as
23 necessary to facilitate the employers' relocation to or expansion of operations in Texas; and
- 24 --award grants to public community colleges or public technical colleges that provide workforce
25 training and related support services to employers that commit to establishing a place of business
26 in Texas.
27

28 New §803.4(c) reflects the statutory language in the Texas Labor Code that the SDF grant funds
29 may be used to develop:

- 30 --customized workforce training programs for an employer's specific business needs;
- 31 --fast-track curriculum;
- 32 --workforce training--related support services for employers; and
- 33 --instructor certification necessary to provide workforce training.
34

35 New §803.4(d) reflects the statutory language in the Texas Labor Code that SDF grant funds
36 may also be used to acquire training equipment necessary for instructor certification and
37 employment. The rule language clarifies that the use of funds for this purpose is permitted only
38 for SDF grants that are funded under §803.4 to support employers expanding in or relocating to
39 Texas.
40

41 Section 303.0031 allows TWC to require grant recipients, as a condition of receiving grant funds
42 under this section, to agree to repay the amount received and any related interest if TWC
43 determines that the grant funds were not used for the purposes for which the funds were
44 awarded. New §803.4(e) includes this option.
45

46 **SUBCHAPTER B. PROGRAM ADMINISTRATION**

1 **TWC proposes the following amendments to Subchapter B:**

2
3 **§803.11. Grant Administration**

4 Section 803.11(3) is amended to correct the citation for Agency Monitoring Activities to Chapter
5 802, Subchapter D.

6
7 **§803.13. Program Objectives**

8 Section 803.13(2) is amended to promote collaboration of workforce activities in workforce
9 areas as an SDF program objective. The amended language removes collaboration solely with
10 Boards and expands the promotion of collaboration and awareness of workforce activities to a
11 broader partnership of entities.

12
13 **§803.14. Procedure for Requesting Funding**

14 Section 803.14 is amended to remove the language stating that SDF applicants obtain the review
15 and comments of the Board in the applicable workforce areas where there is a significant impact
16 on job creation or incumbent worker training.

17
18 TWC notes that collaboration between grant applicants and Boards during the SDF project
19 development review and evaluation process ensures that the needs of local industry and the
20 workforce are being met effectively and efficiently. Collaboration among separate grant
21 applicants during the project development phase ensures that potential SDF projects do not
22 provide duplicative services.

23
24 However, with the passage of HB 700, which allows Boards to apply for SDF grants, TWC
25 acknowledges that non-Board grant applicants may have concerns about requiring another
26 potential grant applicant to review and comment on the application before submitting it to TWC-
27 -specifically that this may appear to provide a Board with a potential advantage in the
28 development of the Board's SDF application.

29
30 Accordingly, §803.14(a) is amended to remove the requirement that Boards review and comment
31 on SDF applicants before the application is submitted to TWC.

32
33 Section 803.14(f)(6) is amended to include Boards, along with the entities currently in rule, in
34 the signed agreement outlining each entity's roles and responsibilities if a grant is awarded.

35
36 Section 803.14(f)(8) is amended to require grant applicants to include a comparison of costs per
37 trainee for customized training projects for similar Board instruction in the grant application in
38 order to align with the current requirement for comparison of costs with instruction at
39 community and technical colleges or TEEX.

40
41 **§803.15. Procedure for Proposal Evaluation**

42 Section 803.15(b) is amended to remove the requirement that TWC must notify the Board in the
43 applicable workforce area when it is evaluating an SDF application. The amended section adds
44 the requirement that TWC must notify all eligible grant applicants when it is evaluating an SDF
45 application. The intent of the amended language is that this notification is to promote
46 collaboration and awareness of potential workforce activities in the workforce area.

1
2 TWC Chapter 802, Subchapter G, Corrective Actions, allows TWC to impose corrective actions
3 when a Board or TWC grantee--defined in §802.2(1) to include SDF grantees--has failed to
4 comply with contract requirements.

5
6 TWC contends that if an entity has failed to comply with past contract requirements and
7 continues to be on corrective action for this noncompliance at the time of the entity's application,
8 the entity should not be eligible for an SDF grant. Therefore, §803.15(d) is added to prohibit
9 SDF applicants on corrective action as described in Chapter 802, Subchapter G, from receiving
10 an SDF grant.

11
12 **PART III. IMPACT STATEMENTS**

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

15
16 There are no additional estimated costs to the state and to local governments expected as a result
17 of enforcing or administering the rules.

18
19 There are no estimated cost reductions to the state and to local governments as a result of
20 enforcing or administering the rules.

21
22 There are no estimated losses or increases in revenue to the state or to local governments as a
23 result of enforcing or administering the rules.

24
25 There are no foreseeable implications relating to costs or revenue of the state or local
26 governments as a result of enforcing or administering the rules.

27
28 There are no anticipated economic costs to individuals required to comply with the rules.

29
30 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
31 communities as a result of enforcing or administering the rules.

32
33 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
34 that the requirement to repeal or amend a rule, as required by Texas Government Code
35 §2001.0045, does not apply to this rulemaking.

36
37 Takings Impact Assessment

38 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
39 affects private real property, in whole or in part or temporarily or permanently, in a manner that
40 requires the governmental entity to compensate the private real property owner as provided by
41 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
42 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
43 would otherwise exist in the absence of the governmental action, and is the producing cause of a
44 reduction of at least 25 percent in the market value of the affected private real property,
45 determined by comparing the market value of the property as if the governmental action is not in
46 effect and the market value of the property determined as if the governmental action is in

1 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking
2 action under Texas Government Code, §2007.043. The primary purpose of this proposed
3 rulemaking action, as discussed elsewhere in this preamble, is to implement statutory changes
4 related to the SDF.

5
6 The proposed rulemaking action will not create any additional burden on private real property.
7 The proposed rulemaking action will not affect private real property in a manner that would
8 require compensation to private real property owners under the United States Constitution or the
9 Texas Constitution. The proposal also will not affect private real property in a manner that
10 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
11 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
12 Government Code, Chapter 2007.

13 14 Government Growth Impact Statement

15 TWC has determined that during the first five years the proposed amendments will be in effect:

- 16 --the proposed amendments will not create or eliminate a government program;
- 17 --implementation of the proposed amendments will not require the creation or elimination of
- 18 employee positions;
- 19 --implementation of the proposed amendments will not require an increase or decrease in future
- 20 legislative appropriations to TWC;
- 21 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 22 --the proposed amendments will not create a new regulation;
- 23 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 24 --the proposed amendments will not change the number of individuals subject to the rules; and
- 25 --the proposed amendments will not positively or adversely affect the state's economy.

26 27 Economic Impact Statement and Regulatory Flexibility Analysis

28 TWC has determined that the proposed rule will not have an adverse economic impact on small
29 businesses or rural communities, as the proposed rules place no requirements on small businesses
30 or rural communities.

31
32 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
33 significant negative impact upon employment conditions in the state as a result of the rules.

34
35 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
36 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
37 the proposed rules will be to implement statutory changes related to the SDF.

38
39 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
40 within TWC's legal authority to adopt.

41 42 **PART IV. COORDINATION ACTIVITIES**

43 In the development of these rules for publication and public comment, TWC sought the
44 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the
45 concept paper regarding these rule amendments to the Boards for consideration and review on
46 January 7, 2020. TWC also conducted a conference call with Board executive directors and

1 Board staff on January 17, 2020, to discuss the concept paper. During the rulemaking process,
2 TWC considered all information gathered in order to develop rules that provide clear and concise
3 direction to all parties involved.
4
5 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov.
6 Comments must be received no later than 30 days from the date this proposal is published in the
7 *Texas Register*.
8
9 The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide
10 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
11 effective administration of TWC services and activities.
12
13 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

- 1 (8) Trade union--An organization, agency, or employee committee in which
2 employees participate and which exists for the purpose of dealing with
3 employers concerning grievances, labor disputes, wages, rates of pay, hours of
4 employment, or conditions of work.
5
6 (9) Training provider--An entity or individual that provides training, including:
7 (A) a public community college;
8 (B) a technical college;
9 (C) TEEX;
10 (D) a community-based organization only in partnership with the public
11 community ~~college~~ or technical college or TEEX; or
12
13 (E) An individual~~a person~~, sole proprietorship, partnership, corporation,
14 association, consortium, governmental subdivision, or public or private
15 organization with whom a Board, public community or technical college,
16 or TEEX has subcontracted to provide training.
17

18 **§803.4. Use of Funds to Encourage Employer Expansion and Recruitment.**
19

20 (a) Pursuant to Texas Labor Code §303.0031, the Skills Development Fund may be used
21 to provide an intensive and rapid response to, and support services for, employers
22 expanding in or relocating their operations to Texas, with a focus on recruiting
23 employers that will provide complex or high-skilled employment opportunities in the
24 state.
25

26 (b) Grant funds under this section may be used to:
27

28 (1) provide leadership and direction to, and connections among, out-of-state
29 employers, economic development organizations, Boards, public community
30 and technical colleges to support employers' recruitment and hiring for
31 complex or high-skilled employment positions as necessary to facilitate the
32 employers' relocation to or expansion of operations in Texas; and
33

34 (2) award grants to public community or technical colleges that provide workforce
35 training and related support services to employers that commit to establishing a
36 place of business in Texas.
37

38 (c) Grant funds under this section may be used only to develop:
39

40 (1) customized workforce training programs for an employer's specific business
41 needs;
42

43 (2) fast-track curriculum;

1
2 (3) workforce training--related support services for employers; and

3
4 (4) instructor certification necessary to provide workforce training.

5
6 (d) Notwithstanding the use of funds restrictions in §803.3(d)(2), grant funds may also
7 be used to acquire training equipment necessary for instructor certification and
8 employment.

9
10 (e) As a condition of receiving grant funds under this section, grant recipients shall
11 agree to repay the amount received and any related interest if the Agency determines
12 that the grant recipients did not use the funds for the purposes for which the funds
13 were awarded.

14
15 **SUBCHAPTER B. PROGRAM ADMINISTRATION**

16
17 **§803.11. Grant Administration.**

18
19 Grant recipients must enter into an agreement with the Agency to comply with contract
20 requirements that include, but are not limited to:

- 21
22 (1) submitting all required reports, including financial and performance reports, in
23 the format and time frame required by the Agency;
- 24
25 (2) maintaining fiscal data needed for independent verification of expenditures of
26 funds received for the customized training project;
- 27
28 (3) cooperating and complying with Agency monitoring activities as required by
29 Chapter 802, Subchapter D, Chapter 800, Subchapter H of this title (relating to
30 Agency Monitoring Activities); and
- 31
32 (4) submitting contract completion reports:
- 33
34 (A) The final payment is contingent upon the executive director's, or
35 designee's, determination that a project has met the training objectives,
36 outcomes, and requirements (an attrition rate of up to 15% of the total
37 number of trainees in the contract is allowed).
- 38
39 (B) The final payment of the contract will be withheld for 60 days after the
40 completion of training and after receipt by the Agency of verification
41 from the employer that the trainees are employed.

42
43 **§803.13. Program Objectives.**

44
45 The ~~following are the~~ program objectives in administering the Skills Development Fund
46 are:

- (1) ~~to~~ ensure that funds from the program are spent in all local workforce development areas (workforce areas) of this state and expand the state's capacity to respond to workforce training needs;
- (2) ~~to~~ promote collaboration and awareness of potential workforce activities in workforce areas ~~develop projects in workforce areas through collaboration with the Boards;~~
- (3) ~~to~~ develop projects that, at completion of the training, will result in wages equal to or greater than the prevailing wage of individuals ~~persons~~ with similar knowledge and experience in that occupation in the local labor market for the participants in the customized training project;
- (4) ~~to~~ prioritize the processing of grant requests from workforce areas where the unemployment rate is higher than the state's annual average unemployment rate; ~~and~~
- (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; and;
- (6) ~~to~~ the greatest extent practicable, ~~the Agency will~~ award Skills Development Fund grants as follows:
 - (A) Approximately 60 percent ~~%~~ of the funds may be for job retention training; ~~and~~
 - (B) The remaining funds may be for training for job creation.

§803.14. Procedure for Requesting Funding.

- (a) ~~A~~ ~~After obtaining the review and comments of the Board in the applicable workforce area(s), where there is a significant impact on job creation or incumbent worker training,~~ a private partner or a trade union, together with a Board, public community or technical college, or TEEX, shall present to the executive director, or designee, a proposal requesting funding for a customized training project or other appropriate use of the fund.
- (b) TEEX, or the public community or technical college that is a partner to a training proposal for a grant from the Skills Development Fund, may be non-local.
- (c) The training proposal shall not duplicate a training project available in the workforce area in which the private partner or trade union is located.
- (d) Proposals shall disclose other grant funds sought or awarded from the Agency or other state and federal entities for the proposed job training project.

- 1
2 (e) Applicants shall indicate whether they are submitting concurrent proposals for the
3 Skills Development Fund and the Texas Enterprise Fund. For the purposes of this
4 subsection, "concurrent proposal" shall mean:
5
6 (1) a proposal for the Skills Development Fund that has been submitted and is
7 pending at the time an applicant submits a proposal for the Texas Enterprise
8 Fund; or
9
10 (2) a proposal for the Texas Enterprise Fund that has been submitted and is
11 pending at the time an applicant submits a proposal for the Skills Development
12 Fund.
13
14 (f) Proposals shall be written and contain the following information:
15
16 (1) The number of proposed jobs created and/or retained;
17
18 (2) A brief outline of the proposed training project, including the skills acquired
19 through training and the employer's involvement in the planning and design;
20
21 (3) A brief description of the measurable training objectives and outcomes;
22
23 (4) The occupation and wages for participants who complete the customized
24 training project;
25
26 (5) A budget summary, disclosing anticipated project costs and resource
27 contributions, including the dollar amount the private partner is willing to
28 commit to the project;
29
30 (6) A signed agreement between the private partner or trade union and the Board,
31 public community or technical college, or TEEX outlining each entity's roles
32 and responsibilities if a grant is awarded;
33
34 (7) A statement explaining the basis for the determination that there is an actual or
35 projected labor shortage in the occupation in which the proposed training
36 project will be provided that is not being met by an existing institution or
37 program in the workforce area;
38
39 (8) A comparison of costs per trainee for the customized training project and costs
40 for similar instruction at the public community or technical college, ~~or TEEX,~~
41 and the Board;
42
43 (9) A statement describing the private partner's or trade union's equal opportunity
44 employment policy;
45
46 (10) A list of the proposed employment benefits;

1
2 (11) An indication of a concurrent proposal as required by subsection (e) of this
3 section; and

4
5 (12) Any additional information deemed necessary by the Agency to complete
6 evaluation of a proposal.
7

8 **§803.15. Procedure for Proposal Evaluation.**
9

10 (a) The executive director, or designee, shall evaluate each proposal considering the
11 purposes listed in §803.3(a) of this subchapter, the program objectives listed in
12 §803.13 of this subchapter, and procedures in §803.14 of this subchapter, along with
13 the prevailing wage for occupations in the local labor market area, the financial
14 stability of the private partner, the regional economic impact, and any other factors
15 unique to the circumstances that the Agency determines are appropriate.
16

17 (b) The Agency shall notify all eligible grant applicants ~~the Board in the applicable~~
18 ~~workforce area~~ when the Agency is evaluating a proposal so as to promote
19 collaboration and awareness ~~inform the Board~~ of potential workforce activities in the
20 workforce area.
21

22 (c) If the Agency determines that a proposal is appropriate for funding through the Skills
23 Development Fund, the executive director, or designee, shall enter into a contract
24 with the grant recipient on behalf of the Agency.
25

26 (d) Skills Development Fund applicants on corrective action pursuant to Chapter 802,
27 Subchapter G, shall not be eligible to receive a Skills Development Fund grant.
28