



**MEETING OF THE
TEXAS WORKFORCE COMMISSION**

DATE

MAY 24, 2022

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Tuesday, May 24, 2022

CHAIRMAN DANIEL: Good morning, everyone.

This meeting is called to order. Mr. Trobman, has anyone signed up for public comment?

MR. TROBMAN: Good morning, commissioners.

Les Trobman, general counsel. We have one person who would like to address the commission when we get to the policy item 8. We'll take that item up.

CHAIRMAN DANIEL: All right. Thank you very much. Good morning, Ms. Miller.

MS. MILLER: Good morning, sir.

CHAIRMAN DANIEL: Thank you. This brings us to the end of Agenda Items 3 through 7. We'll take a short break. We're back with Agenda Item 8, non-LEU base period employers.

NELSON KERR: Good morning, commissioners.

Nelson Kerr with the Office of General Counsel. Before you today is a discussion paper that was requested by this body several weeks ago on the possible means for offering non-LEU employers an opportunity to obtain a ruling from the agency on chargebacks to their account where the employer did not timely submit a protest or appeal during the COVID event. I don't have anything else in my presentation but I'm available to answer any questions you may have.

1 CHAIRMAN DANIEL: We do have a public
2 commenter so if I could ask you to sort of hold on, let's hear
3 from the public and then we'll come back and address any
4 questions we may have.

5 LES TROBMAN: Commissioners, Les Trobman. We
6 do have one commenter, Ms. Streufert, if you could go ahead and
7 unmute yourself, introduce yourself for the record, and proceed.

8 KELSEY ERICKSON STREUFERT: Hi, hopefully
9 you can hear me.

10 LES TROBMAN: Yes.

11 KELSEY ERICKSON STREUFERT: Great. Good
12 morning, my name is Kelsey Erickson Streufert. I'm the chief
13 public affairs officer for the Texas Restaurant Association. The
14 TRA represents restaurants of all shapes and sizes from across
15 our state. We're the second-largest private sector employer and
16 as you know, our industry has been especially devastated by
17 COVID-19. We were under full or partial closure orders for
18 nearly one year and now supply chain disruptions, inflation, and
19 labor shortages have made it nearly impossible for many to break
20 even much less recover from the past two years. The good news in
21 all of this is that the TWC has been an incredible partner to
22 our industry throughout the entire pandemic. Thank you for all
23 that you continue to do to support restaurants' recovery. I'm
24 here today to quickly ask for your support of Agenda Item 8 on
25 today's agenda. I have heard from many restaurants who saw their

1 unemployment insurance tax rates jump from the lowest possible
2 rate to the highest in the past two years because of COVID
3 claims they didn't know they would be held responsible for. In
4 the chaos of the early days of the pandemic, many restaurants
5 believed they would not face chargebacks for any of these COVID
6 claims because of TWC communications. Some never received their
7 notices. Others received them but couldn't connect with someone
8 at the TWC to understand their options. We provided guidance
9 working with your wonderful staff at the TWC but those days were
10 truly unprecedented and everyone was doing their best to simply
11 survive. Adopting Agenda Item 8 and giving employers a fair
12 chance to quickly and efficiently protest or appeal COVID
13 chargebacks will go a long way towards helping restaurants get
14 back on their feet. For the most part these are small businesses
15 and they want to do the right thing. They just need some help
16 navigating the system so they don't have to pay significantly
17 higher taxes than they should. At this point in the recovery, I
18 can assure you that could mean the difference between a small
19 business being able to stay open and rehire or not. Thank you
20 again for considering this proposal and for giving me the chance
21 to speak today, and again thank you for being such a great
22 partner to our industry.

23 CHAIRMAN DANIEL: Thank you. Any comments or
24 questions for Nelson.

25

1 COMMISSIONER ALVAREZ: Yes, chairman. I have
2 a comment. I'm not in favor of this proposed modification to the
3 chargeback process. In the current system employers are given
4 the required notice of chargeback to their account and already
5 have multiple opportunities to protest and have their case
6 adjudicated if they believe that their account has been
7 wrongfully charged. There is no evidence that employers in Texas
8 face an undue burden because of their employment tax
9 contributions or account charges. During the pandemic most
10 employer appeals on chargeback and timeliness have not been
11 based on allegations of misleading information or other failures
12 by the commission. Rather, their appeals are based on many of
13 the same struggles, meeting commission deadlines and procedural
14 requirements that claimants have faced during the pandemic for
15 which they have not been afforded any special treatment such as
16 this. My understanding is the majority of the chargeback
17 complaints have come from third-party administrators whose
18 business it is to respond to UI claims. Unlike Hurricane Harvey
19 where there was devastating infrastructure damage, the pandemic
20 caused no infrastructure damage. Fax lines, telephone lines,
21 internet all remained operational. Businesses pivoted and
22 adapted. Recently the commission took action to establish a
23 replenishment tax rate comparable to the rate employers had to
24 meet prior to the pandemic. The Texas Legislature approved 7.2
25 billion dollars to add to the UI trust fund so that employers

1 would not be subject to increased tax contributions. Analysis
2 presented by staff indicates that the proposed action could
3 cause pressure on the UI trust fund within one to two years even
4 if future UI claims are within a normal expected range. However,
5 there are serious reasons to believe that the unemployment
6 claims may not stay within their current projected trajectory.
7 There are credible economic indicators that we may be heading
8 into a recession in the near future. We will also enter
9 hurricane season and we all have seen the devastating effects
10 summer wildfires can have on our state. Any of these potential
11 disasters could cause an increase in unemployment. If there is a
12 drastic rise in UI claims, we might not have the flexibility to
13 maintain the current low tax rate. Taking this action today may
14 force us to raise the tax rate on employers down the road when
15 an increase might most stifle recovery. We must prepare for what
16 lies ahead. Staff has presented information that implementing
17 this option would cause significant increases to investigative
18 and appellate divisions on top of the existing backlogs and will
19 negatively impact our DOL time lapse numbers and cost the agency
20 an additional 6.1 million dollars to contract personnel costs,
21 TWC personnel costs and other costs. Given the risk and cost
22 involved, we cannot afford to approve this action. The current
23 process has been well tailored over time to judge the merits of
24 each party's claim meaningfully and accurately on a case-by-case

1 basis. We should not do anything here today to disturb that
2 balance. For these reasons I do not support this proposal.

3 COMMISSIONER DEMERSON: First of all, let me
4 thank Kelsey who just testified from the Texas Restaurant
5 Association. Appreciate the relationship that we have with them,
6 and, Nelson, you and the team, I appreciate all the hard work
7 that's been put into this request as well the entire staff,
8 legal side, finance side, the entire team, so, Randy, make sure
9 that Ed knows we appreciate that support. The action we're
10 taking today is very meaningful for employers, some of whom may
11 have genuinely thought that they did not need to respond to
12 chargeback notices that were issued during the height of the
13 pandemic. I welcome the opportunity for affected employers to
14 have a reasonable opportunity to submit responses and explain
15 any circumstances that would be allow otherwise late responses
16 to be evaluated. The important thing will be that we have a
17 reasonable opportunity to submit responses and have their
18 chargebacks evaluated on the basis of why particular employees
19 stopped working for the companies whenever they did, and so we
20 look forward to further discussion.

21 CHAIRMAN DANIEL: Let me offer a motion. I
22 move we approve the publication and the opportunity for non-last
23 employing unit base period employers who receive chargeback
24 determinations during the pandemic to file an appeal or protest,
25 provide an explanation of the reason for the late filing and

1 receive a decision and determination that may be appealed for a
2 hearing on the matter as described in the discussion paper
3 presented by staff.

4 COMMISSIONER DEMERSON: Mr. Chairman, can I
5 have a friendly to that?

6 CHAIRMAN DANIEL: Certainly.

7 COMMISSIONER DEMERSON: If we were able to
8 add some dates and parameters around that, those that have not
9 already responded to the notice of maximum potential chargeback
10 that were sent to them during the period between and including
11 the dates of March 2, 2020, and December 31, 2020, that they may
12 respond within 30 calendar days of the mailing date of the
13 announcement and explain the circumstances of their responses
14 and of the work separations underlying the chargeback notices,
15 and that any issues of timeliness and chargeback of benefits
16 will be determined on the basis of commission rule 815.32, the
17 timeliness rule, and Section 204.022 of the Texas Labor Code,
18 and that's the chargeback protection [inaudible] so we're
19 basically putting in the record just some parameters and
20 timeframes around that.

21 CHAIRMAN DANIEL: What was your timeframe?

22 COMMISSIONER DEMERSON: So the dates again
23 were including the dates of March 2, 2020, and December 31,
24 2020.

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1 CHAIRMAN DANIEL: And then what was the
2 remainder of that?

3 COMMISSIONER DEMERSON: That they may
4 respond within 30 calendar days of the mailing date, and the
5 rest is in line with what you had already mentioned so it's
6 basically your motion but putting some parameters around it with
7 dates.

8 CHAIRMAN DANIEL: So your reference to
9 administrative code Chapter 815 would just simply mean that
10 under this process employers would be bound by the existing
11 rules on appeals and timeliness?

12 COMMISSIONER DEMERSON: Yes, if we're
13 accepting this motion, then we would refer back to commission
14 rule 815.32.

15 CHAIRMAN DANIEL: Which I think was staff's
16 intent and certainly it was mine as well. So really the
17 substantive amendment you would make to my motion is to bracket
18 that between the dates of March 2, 2020, and December 31, 2020,
19 so any notice that they received during that time, if they
20 assert the correct affirmative sort of defense of why they
21 didn't respond during that time period, they could make their
22 protest. Is that what—

23 COMMISSIONER DEMERSON: That's correct.

24 NELSON KERR: Just to clarify, the addition
25 of the 30-day requirement for response is a change to what you

1 had proposed initially and not necessarily addressed in the
2 original DP.

3 COMMISSIONER DEMERSON: So you're talking
4 about the dates.

5 NELSON KERR: Not the limitation—well, the
6 limitations on dates certainly are amendments as well. They
7 weren't contemplated by the original discussion paper nor would
8 the 30-day period of response after the announcement have been
9 something that was vetted previously.

10 CHAIRMAN DANIEL: So the staff proposal,
11 what would have been the response time for that?

12 NELSON KERR: There wasn't a limitation of
13 either response time or the period in which the individuals were
14 covered.

15 COMMISSIONER DEMERSON: Mr. Chairman, I
16 think the additional timeframe or parameters but let me ask you—
17 can I ask [inaudible] would parameters assist the staff if this
18 effort were approved? Would having parameters assist the staff?

19 NELSON KERR: Bounding the period where it
20 might be applicable certainly would have some effect. I can't
21 speak to whether or not bounding the period in time in which
22 they would have to respond would have a similar measure given
23 the timings of the delays that have already occurred.

24 COMMISSIONER DEMERSON: So if we allowed it
25 past 30 days is almost perpetual in a sense.

1 NELSON KERR: Potentially that would be the
2 case. There's almost always an opportunity when you're looking
3 at the timeliness rules to look at when an employer actually
4 received notice of an opportunity and to use existing precedent
5 to address their failure to act once they had specific notice
6 but that's not something that would necessarily specify if
7 they're on the 32nd day, that they're outside of that
8 opportunity.

9 COMMISSIONER DEMERSON: So as it exists now,
10 it's pretty much wide open.

11 NELSON KERR: The existing DP does not set
12 parameters, that's correct. I'm not saying that parameters
13 couldn't or shouldn't be set but they're not discussed.

14 COMMISSIONER DEMERSON: Chairman, that's the
15 reason for the parameters that I've indicated here. I don't
16 think anything that I've suggested is—could be hard [inaudible]
17 felt to be hard press on the employers or the staff from that
18 standpoint.

19 CHAIRMAN DANIEL: So I mean just in terms of
20 my motion, I would—I see the logic behind the March 2, 2020,
21 through December 31, 2020, timeframe, and I could certainly
22 accept that as an amendment to my motion. I'm not inclined to
23 accept the amendment with regard to the time in which they act.
24 I think we've got to give some adequate time here. A lot of
25 times, I mean there were restaurants that were closed for some

1 large period of time that we heard from the witness with regard
2 to the pandemic. There were other businesses for whom this would
3 impact. I do think, reluctantly but I do think that the
4 timeframe March 2nd through December 31st probably does capture
5 most of the employers who might have seen information that we
6 published, in some way found confusion in that and failed to
7 make a timely sort of response, and my interest is in helping
8 those employers who felt like they had one piece of information
9 and acted in another way and didn't get all of their rights that
10 they could have enjoyed here at TWC. So I think that the
11 limitation of the dates March 2nd through December 31st really
12 probably does create a universe of all employers who may have
13 been subjected to this misinformation. I don't see the benefit
14 of the second part to your amendment in terms of why the need to
15 rush it through during that time period. I would also suggest
16 that by leaving it slightly more flexibility, staff has more
17 room to work through what could be, has the potential to be, an
18 influx of workload but that's sort of a secondary thought in my
19 thought process.

20 COMMISSIONER DEMERSON: I'm fine without the
21 30 days. I think we were just trying to keep in line with what
22 we already do in terms of responses. Thirty days, that's pretty
23 standard and so that's where we were going there. This is an
24 unprecedented situation and so I'm not hard pressed on that. I
25 just wanted to offer that as an amendment just in case and

1 wanted to hear staff's thoughts on that as well. The dates are
2 fine, and if we're going past 30 days, then we're going past 30
3 days, and so I'm not hard pressed on that.

4 COMMISSIONER ALVAREZ: Before we vote—

5 CHAIRMAN DANIEL: I was going to ask you a
6 question but please go ahead.

7 COMMISSIONER ALVAREZ: Yeah, because a lot
8 of stuff came up and actually really good points. One is,
9 Nelson, is there any basis in the rule to limit the timeframe?

10 NELSON KERR: The rule wouldn't necessarily
11 specifically limit the timeframe nor would we have anything that
12 we could point to in rule that would specifically support
13 creating a limited timeframe. That would be something that would
14 be part of the operational process, not necessarily something
15 that we would be able to point to rule and say, oh, well,
16 because we've sent a new opportunity, that creates some deadline
17 to respond. We're not attempting to—let me clarify. The
18 discussion paper doesn't attempt to create a new right. It
19 intends to notify employers of an existing right to use existing
20 processes to assert their rights even though they may believe
21 that they no longer have that opportunity, and then they would
22 have to explain the reason for the delay, and then have an
23 adjudication of both that reason for delay and the underlying
24 chargeback.

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1 CHAIRMAN DANIEL: Commissioner Alvarez may
2 have other questions but I want to ask about that point that you
3 just made. That part is incumbent upon the process that you laid
4 out. The employer has to make the assertion that they somehow
5 missed this due to misinformation or confusion of information or
6 something like that. They have to have some valid reason for not
7 having made the protest and/or appeal at the appropriate time.

8 NELSON KERR: That's correct.

9 CHAIRMAN DANIEL: OK.

10 COMMISSIONER ALVAREZ: And we're not acting
11 outside our authority, right?

12 NELSON KERR: Based upon the information
13 that's been presented in the discussion paper, if they are
14 required to provide that reason to establish jurisdiction within
15 the agency and the commission, no, we're not acting outside of
16 our authority.

17 COMMISSIONER ALVAREZ: Some good comments
18 were made from the dais. I have another question. I know it's
19 not a part of the discussion paper but would this apply to
20 claimants as well?

21 NELSON KERR: Would it apply to claimants?

22 COMMISSIONER ALVAREZ: Yeah, because we're
23 talking about employers. I'm just curious.

24 NELSON KERR: Sure, I'm not certain in which
25 cases it would arise but certainly if there were claimants that

1 had received information from the agency that they felt in some
2 way misled them about their opportunities or rights, they would
3 be able to make the same presentation as an employer would be
4 making under this discussion paper.

5 COMMISSIONER ALVAREZ: Interesting, all
6 right. So a lot of stuff has been given to us. Chairman, I'd be
7 willing to reevaluate this and have this presentation again at a
8 later-next commission meeting. It's up to you all. I mean this
9 is some really good information and I'm actually inclined to a
10 lot of the things that you all have said from up here.

11 COMMISSIONER DEMERSON: I'm prepared to take
12 action today.

13 CHAIRMAN DANIEL: What would be your
14 interest in delaying action?

15 COMMISSIONER ALVAREZ: Just for
16 clarification. I mean I just—you just stated something here
17 about the claimants. That's fairly interesting to me. I like
18 that. I like the idea of being able to actually use the same
19 type of discussion to include my claimants. I guess it really
20 would be how it's going to impact the agency. That's what really
21 concerns me as you heard in my comments regarding what we're
22 going to or at least we're seeing in the future that we may
23 encounter as far as natural disasters and stuff so I'm just
24 curious. I just want to know specifically how it would impact
25 the agency.

1 NELSON KERR: With respect to—and I
2 apologize for—

3 COMMISSIONER ALVAREZ: No, that's fine,
4 Nelson.

5 NELSON KERR: Divided attention. With
6 respect to the rules on timeliness, they are not specific to any
7 specific party so where an individual makes a representation
8 about the timeliness of their response to agency action, it
9 doesn't make any distinction between whether it's an employer
10 making that representation or whether or not it's a claimant
11 making that representation. For notice purposes for today's
12 discussion paper and action, this has been noticed as an
13 employer specific so if we were trying to expand that to include
14 claimants in some way out of this, you may have to re-notice it
15 in order to have adequate notice to the public that we're not
16 looking at specifically what they were originally advised.

17 COMMISSIONER ALVAREZ: Chairman, I know you
18 put a lot of work in this with the trust fund and all of that,
19 and I'm just going back to some of the remarks that were made
20 some time back and how important it was but certainly I
21 understand the position that we're in with this.

22 CHAIRMAN DANIEL: Here's my stance today. I
23 think I'm hearing that Commissioner Demerson and I agree that we
24 would move forward on staff's proposal with the addition of the
25 March 2, 2020, through December 31, 2020, brackets. That's a

1 legislative term but I'll use it here. I'll note, commissioner,
2 you present a compelling case. Since we have two commissioners
3 that seem to be in agreement, I would say that if indeed we
4 agree on this that the commission would take this action today
5 and then, I think you do make a compelling point and I would ask
6 staff to go through the same evaluation procedures that they did
7 on this known employer issue with regard to claimants and see if
8 there is a pool of claimants who were similarly impacted who
9 might find similar relief which would give us time to do the
10 type of due diligence that it would appear staff did on this one
11 since they presented to us some pretty lengthy information. So
12 what I'm suggesting is that if indeed Commissioner Demerson and
13 I agree and I think that we do, we would take an affirmative
14 vote today. You would vote however you choose obviously. That
15 would be a commission action but then I would ask staff to bring
16 back a similar analysis of claimants and see what that situation
17 looked like.

18 COMMISSIONER ALVAREZ: And that would
19 include, chairman, the same dates that you all referenced
20 earlier, the March 2, 2020, to-

21 CHAIRMAN DANIEL: Probably, I mean that's a
22 good timeframe for us to look at.

23 COMMISSIONER DEMERSON: Commissioner
24 Alvarez, I think when we were going through all the discussions,
25 we were under the impression or thinking that claimants would

1 probably be on both sides but it's in here as employers right
2 now.

3 CHAIRMAN DANIEL: So the question before us
4 is my motion with the addendum of the March 2, 2020, through
5 December 31, 2020, timeframe for which employers falling within
6 that timeframe could avail themselves of this action. I'm
7 prepared to vote, and I am voting aye. Commissioner Demerson?

8 COMMISSIONER DEMERSON: I second that motion
9 and vote aye.

10 CHAIRMAN DANIEL: Commissioner Alvarez?

11 COMMISSIONER ALVAREZ: So I'm going to
12 abstain from this particular item today until we defer a vote,
13 until we—I like what the chairman said about the claimants and
14 Commissioner Demerson, it was always the impression that we were
15 going to include the claimants as part of this discussion so I'm
16 just going to go ahead and abstain for today's vote on this
17 particular agenda item.

18 CHAIRMAN DANIEL: OK, so the vote today
19 would be two ayes, one abstention, and then—protocol, Mr.
20 Townsend, you would be so kind as to ask staff to prepare a
21 similar analysis for claimants following the same model that we
22 just did for employers and bring that back at the next available
23 commission meeting, I really would appreciate that.

24 RANDY TOWNSEND: Sure, we can do that.

25 CHAIRMAN DANIEL: Thank you, Mr. Kerr.

1 NELSON KERR: Thank you.

2 CHAIRMAN DANIEL: This brings us to Agenda
3 Item 9, PPD advisory committee chairperson.

4 JUAN GARCIA: Good morning, commissioners,
5 Mr. Townsend. Juan Garcia with the voc rehab division. This
6 morning for your consideration and possible action we are
7 bringing forth the appointment of a chairperson for the advisory
8 committee for the Purchasing from People with Disabilities
9 program. Section 122.0057(a) of the Texas Human Resources Code
10 authorizes the Texas Workforce Commission's three-member
11 commission to form an advisory committee to help establish
12 program performance goals and criteria for certifying community
13 rehabilitation programs for participation in the Purchasing from
14 People with Disabilities program. Section 122.0057(b) states
15 that the advisory committee members must be composed of 13
16 members appointed by the commission as follows: Four
17 representatives from CRPs that participate in the PPD program,
18 four representatives from organizations that advocate for
19 individuals with disabilities, four individuals with
20 disabilities, two of whom are employed by CRPs that participate
21 in the PPD program, and the executive commissioner of the Texas
22 Health and Human Services Commission or his or her designee.
23 Section 122.0057(d) requires the commission to appoint an
24 advisory committee chairperson from among the members serving on
25 the committee. When the role of the chairperson is vacant, PPD

1 staff invites current PPD members to submit their interest in
2 serving as chair. PPD staff members then gather information
3 about each interested member and consider factors such as the
4 opportunity for a member of each group representative on the
5 committee to serve as chairperson, and the experience of each
6 interested member in performing similar leadership roles.
7 Following the completion of the former PPD advisory committee
8 chair's term, PPD staff surveyed committee members to determine
9 which members were interested in being considered for
10 appointment as chairperson. Two members, both of whom represent
11 CRPs expressed an interest in serving. Staff recommends the
12 appointment of Mr. Platt Allen as chairperson of the PPD
13 advisory committee for a period beginning May 24, 2022, and
14 ending February 1, 2025. With that, I can answer any questions.

15 CHAIRMAN DANIEL: Any comments or questions?

16 COMMISSIONER ALVAREZ: None here, chairman.

17 COMMISSIONER DEMERSON: None here.

18 CHAIRMAN DANIEL: Is there a motion?

19 COMMISSIONER ALVAREZ: Chairman, I move that
20 we approve appointing Mr. Platt Allen as chairperson of the PPD
21 advisory committee for the period beginning May 24, 2022, and
22 ending February 1, 2025.

23 COMMISSIONER DEMERSON: I second.
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1 CHAIRMAN DANIEL: It's been moved and
2 seconded. We're unanimous. Thank you. This is Agenda Item 10, a
3 policy concept having to do with Chapter 801, LWDB rules.

4 JOEL MULLINS: Hi, good morning,
5 commissioners, Mr. Townsend. For the record, I'm Joel Mullins
6 with the Workforce Development Division. Today for your
7 consideration is a policy concept relating to potential rule
8 amendments to Chapter 801 on Local Workforce Development Boards.
9 The proposed changes are related to WIOA conformity, local board
10 required partnerships, the veteran definition, digital skill
11 building, and financial literacy. Additionally, the rules in
12 Chapter 801 will be reviewed in accordance with Texas Government
13 Code Section 2001.039. This morning staff seeks direction on
14 this policy concept for potential rule amendments to Chapter 801
15 as detailed in your meeting materials, and I'll be happy to
16 answer any questions.

17 CHAIRMAN DANIEL: Any comments or questions?

18 COMMISSIONER ALVAREZ: None here, chairman.

19 COMMISSIONER DEMERSON: None.

20 CHAIRMAN DANIEL: Is there a motion.

21 COMMISSIONER ALVAREZ: I move that we
22 approve the policy concept to amend Chapter 801, Local Workforce
23 Development Boards, as recommended by staff and described in the
24 discussion paper to be posted to the commission website for an
25 informal 30-day comment period.

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COMMISSIONER DEMERSON: I second.

CHAIRMAN DANIEL: It's been moved and seconded. We're unanimous. This is Agenda Item 11, a policy concept, Chapter 803, Skills Development Fund rules.

ABBY AUSTIN: Good morning, Chairman Daniel, Commissioner Alvarez, Commissioner Demerson, Mr. Serna. For the record, my name is Abby Austin with the Outreach and Employer Initiatives Division. Commissioners, before you today for your consideration for approval is a policy concept to amend Chapter 803, Skills Development Fund. This amendment will streamline the grant proposal and approval process. In fiscal year 2020 the Texas Workforce Commission implemented Skills Development Fund COVID-19 grants to respond quickly and effectively assess the COVID-19 recovery effort. The agency designed COVID-19 grants to help Texas employers including small businesses to train and hire employees by simultaneously supporting Texas workers in regaining employment and reducing the number of individuals depending on unemployment assistance. In 2021 we expanded the pilot to SDF grants that continue to support economic recovery through skills training for Texas businesses. The new process has proven to be successful in streamlining the SDF approval process and shortening the grant development time by saving anywhere between 40 to 50 days. The Outreach and Employer Initiatives and Office of General Counsel have developed a waiver for the rule pursuant to 40 Texas Administrative Code

1 803.32 for approval by TWC's executive director to use this new
2 process. The proposed rule will remove the need for a waiver and
3 allow for the use of the streamlined process moving forward
4 while still allowing for traditionally developed contracts.
5 Texas Government Code 2001.039 requires state agencies to review
6 their rules at least every four years. This rulemaking will
7 satisfy that statutory requirement. Staff recommends amending
8 Chapter 803 to expand the grant proposal and approval process to
9 allow for the streamlined method and reviewing the chapter in
10 accordance with Texas Government Code 2001.039. This concludes
11 my presentation and I'm available to answer any questions that
12 you might have.

13 CHAIRMAN DANIEL: Any comments or questions?

14 COMMISSIONER ALVAREZ: None here, chairman.

15 COMMISSIONER DEMERSON: Abby, you've got a
16 good presentation. Good job. Anytime we can streamline processes
17 that benefit employers in that regard, it's a good thing so
18 appreciate and applaud the staff on those efforts.

19 CHAIRMAN DANIEL: Is there a motion?

20 COMMISSIONER ALVAREZ: Chairman, I move that
21 we approve the policy concept for Chapter 803, Skills
22 Development Fund, and post to the TWC website for an informal
23 three-week comment period.

24 COMMISSIONER DEMERSON: I second.

25

1 CHAIRMAN DANIEL: It's been moved and
2 seconded. We're unanimous. Thank you. Agenda Item 12 has been
3 postponed to a future commission meeting. This is Agenda Item
4 13, apprenticeship funding.

5 KERRY BALLAST: Good morning, commissioners,
6 and Mr. Townsend. For the record, Kerry Ballast of the Workforce
7 Development Division. For your consideration today is the fiscal
8 year 2023 planning estimates for the apprenticeship training
9 programs. Each year the Texas Workforce Investment Council makes
10 recommendations regarding the Chapter 133, Apprenticeship
11 Training Program. This year TWIC's recommendations are as
12 follows: A contact-hour rate not to exceed \$4.25 and a five
13 percent reserve for new programs or established programs that
14 are not currently receiving funds. So for today your commission
15 decision points are as follows: A planning estimate that is
16 detailed in your notebook materials, and acceptance of the TWIC
17 recommendations. As required by Texas Administrative Code rule
18 837.21 with the commission's approval, we will provide public
19 notice of the amount of the funds available to support
20 apprenticeship training programs for FY23. That concludes my
21 remarks. I'm happy to answer any questions.

22 CHAIRMAN DANIEL: Any comments or questions?

23 COMMISSIONER ALVAREZ: None here. Thank you,
24 Kerry.

25 COMMISSIONER DEMERSON: None.

1 CHAIRMAN DANIEL: I have a couple questions.
2 Can you clarify for me how the funds from this program are
3 distributed to grantees, like how do they sign up to get these
4 funds?

5 KERRY BALLAST: Upon notice of the funds
6 being available, we have programs who will contact and go
7 through an application process with our Apprenticeship Texas
8 team. They over the summer will submit estimated number of
9 apprentices that they will train over the year. We then put a
10 contract in place with them based on those estimated amounts. A
11 little bit later into the year when our programs know the exact
12 number of apprentices to be trained, they submit an amendment
13 and we amend the contract to reflect the actual number of
14 apprentices trained.

15 CHAIRMAN DANIEL: How are those applications
16 evaluated?

17 KERRY BALLAST: As of this point, if they
18 meet the requirements of being a registered program with DOL,
19 that they have an apprenticeship committee in place, if they are
20 acting as an LEA, a local education agency, or as the
21 apprenticeship committee itself, if they meet those requirements
22 at this point and if funding is available, we've been able to
23 meet all of the contract requests that we receive.

24

25

1 CHAIRMAN DANIEL: So it's just sort of a
2 first-come, first-serve situation right now based on whether or
3 not you meet the requirements.

4 KERRY BALLAST: Yes, sir.

5 CHAIRMAN DANIEL: Do we turn very many
6 applications away?

7 KERRY BALLAST: To date, no, sir, we do not.

8 CHAIRMAN DANIEL: No? Would we ever consider
9 a point where it would be a more competitive-type application?

10 KERRY BALLAST: Yes, sir. We do in our rules
11 note that the commission is able to adopt performance
12 requirements if, for example, in the future we receive so many
13 applications, we would begin to become concerned about
14 maintaining a contact-hour rate that would work well for these
15 programs. We could put in some performance standards and then
16 begin to select applicants based on previous performance.

17 CHAIRMAN DANIEL: I just want to clarify
18 [inaudible]. So we have exactly the number of applications that
19 we have dollars available or we don't fund all—we have dollars
20 left over? Just help me clarify that.

21 KERRY BALLAST: Yes, sir. In the funding
22 that we set aside, part of that is general revenue. The other
23 part is WIOA statewide. Based on the number of apprentices that
24 are served, we typically adjust the WIOA state balance up and
25 down to meet that at least. The commission as you know strives

1 to meet about a \$4.00 contact-hour rate each year, so that
2 balance is adjusted up and down to meet that \$4.00 rate. In
3 previous years, I believe for the last couple of years we have
4 had a little bit of a WOIA statewide balance left at the end of
5 the year.

6 CHAIRMAN DANIEL: But what we're—I mean
7 we're close on this.

8 KERRY BALLAST: Yes.

9 CHAIRMAN DANIEL: I asked for two reasons.
10 One, we've introduced some new apprenticeship concepts in the
11 last 60 days or so that are taking form. We've done—you guys
12 have done a remarkable job at creating new apprenticeship
13 programs with some expansion grants that we've had. I'm just
14 trying to, in terms of good governance, trying to pinpoint a
15 date in the future where there would be more competition for the
16 funds, and we might possibly have applications that would exceed
17 the amount of funds that are available. That's the picture that
18 I'm trying to get. My next question is related to that. So that
19 being the case, is the five percent set aside for new
20 apprenticeships or people who haven't otherwise used the funds?
21 Is that a fail-safe at this point or is that something that gets
22 exercised pretty aggressively each year?

23 KERRY BALLAST: It's a fail-safe at this
24 point.

25

1 CHAIRMAN DANIEL: OK. All right, I don't
2 have any other questions or comments. Anything else, gentlemen?

3 COMMISSIONER ALVAREZ: No. Great
4 presentation, Kerry.

5 COMMISSIONER DEMERSON: None here.

6 CHAIRMAN DANIEL: Is there a motion?

7 COMMISSIONER ALVAREZ: I move that we
8 approve the apprenticeship training program funding for fiscal
9 year 2023 as follows: A planning estimate of \$3,732,785 in
10 general revenue, \$1,650,000 in WIOA statewide, \$150,000 in TANF
11 NCP funds for fiscal year 23 registered apprenticeship funds,
12 contingent on adoption of TWC's fiscal 23 operating budget, a
13 fiscal year 23 contact-hour rate not to exceed \$4.25 an hour, a
14 five percent reserve of planning estimate funds for new or
15 established registered apprenticeship training programs that did
16 not receive Chapter 133 funds in fiscal year 2022.

17 COMMISSIONER DEMERSON: I second.

18 CHAIRMAN DANIEL: It's been moved and
19 seconded. We're unanimous. Thank you.

20 KERRY BALLAST: Thank you.

21 CHAIRMAN DANIEL: Nothing on Agenda Item 14.
22 Nothing on Agenda Item 15. Nothing on Agenda Item 16. There is
23 no legislative report today. Mr. Townsend.

24 RANDY TOWNSEND: Good morning, chairman.

25

1 CHAIRMAN DANIEL: I do not see Mr. Serna in
2 the audience so you can speak frankly.

3 RANDY TOWNSEND: I'm in the clear here, all
4 right. We have a couple reports to offer this morning. I'll
5 start with the request, chairman, that you had made back on
6 April 26th where you had requested that staff bring back a plan
7 regarding a couple of items. One of those items was any
8 potential limitations on eligibility of the public sector health
9 care workers for being included in our programs. The second were
10 any steps the commission would need to take to eliminate
11 barriers to participation. So those are the questions that will
12 be addressed in the report this morning. I'm going to focus on
13 the apprenticeship and the skills development this morning as
14 far as the information. Those are the two programs thought to
15 benefit the public sector health care employers in our case. As
16 we identify the programs, however, we plan to bring those back
17 to the commission and include recommendations for the future.
18 Before I go into the discussion on the apprenticeship and the
19 skills development, I just want to make clear one item just so
20 there's no confusion around this, and that is the initiatives
21 that were previously—that are being funded with the federal
22 apprenticeship expansion funds which includes the recently
23 approved statewide health care apprenticeship initiative do not
24 currently have limitations on eligibility of public health care
25 workers. So what that means is that TWC is not restricted in

1 working with public versus private employers when using the
2 federal apprenticeship expansion grant dollars. And then also it
3 means [inaudible] public and private employers can be supported
4 in the statewide health care apprenticeship initiative so I just
5 want to make sure that point was clear before I provide a little
6 bit more information about the apprenticeship and the skills
7 here. With respect to apprenticeship programs, there is a term,
8 apprentice, that is in the definition in the Chapter 837 rules
9 for the apprenticeship training program that currently limits
10 employment to the private sector so that is a current limitation
11 in our rules. That private sector limitation is not required by
12 federal or state law. It's only a limitation in our agency
13 rules, Chapter 837 specifically. What we could do based on the
14 current significant shortage in health care occupations, the
15 commission could approve a short-term suspension of the private
16 sector rule definition of apprentice based on using the current
17 rule suspension authority to [inaudible] TWC's agency rule
18 Section 800.8. If that were to be adopted, that short-term
19 suspension that could address the issue of apprenticeship
20 training programs. The second program we'll discuss here at this
21 point regards the skills development program. I have looked at
22 enabling statute within the Labor Code for the skills
23 development program, Labor Code Section 303. General counsel
24 office has found that there's not an explicit prohibition to
25 training for publicly funded employers in the Labor Code section

1 for the skills program. However, the rule for skills
2 development, Texas Administrative Code Section 803, includes
3 several, multiple references to training projects for private
4 businesses, sometimes referenced as private partner, sometimes
5 business consortium. So while there's no specific mention of
6 public employers, there is not—there would need to be applicable
7 sections of the skills development rule, would need to be
8 suspended to allow for public entities to participate in the
9 skills development. There is a section of our current rule,
10 803.32, that would allow the executive director to suspend—it
11 also allows waiver but to suspend a portion of the skills
12 development rules so if the commission were to choose to go with
13 the—determine that a pilot health care training initiative using
14 skills program is appropriate, staff can identify sections that
15 would need to be suspended in our current rule language
16 consistent with what we talked about earlier on the
17 apprenticeship in terms of the importance of the public health
18 care industry or employers. The next steps that we would
19 recommend is that we bring forward a comprehensive discussion
20 paper that lays out the foundation for the commission and the
21 executive director actions on both apprenticeship and skills
22 programs. We can bring that discussion paper for the next
23 commission meeting, and, in fact, we have gone ahead just
24 anticipating because of the importance of this, included an
25 agenda item for possible consideration on the May 31st commission

1 meeting which would consider temporary suspension of applicable
2 rule sections due to an imperative public necessity. At this
3 point that is the plan that we've brought back for your
4 consideration this morning as far as the—have been requested so
5 if you have questions, I'd be happy to address those.

6 CHAIRMAN DANIEL: Any questions for Mr.
7 Townsend?

8 COMMISSIONER ALVAREZ: Good presentation,
9 Randy. I was looking up what you were referencing when it comes
10 to the skills development policy, I mean the rules here, and I
11 agree with you, the 803.32, the executive director or designee
12 may suspend or waive sections of this chapter, not statutorily
13 imposed so thank you for the clarification on that. I have no
14 further questions.

15 COMMISSIONER DEMERSON: I'm curious in
16 regards to there was a lot of the statute refers to private
17 sector and so in the analysis that comes back or even some of
18 our briefing just kind of talk about what was the intent behind
19 that where public sector entities were not included. I represent
20 employers both private and public, and so it would be of benefit
21 on all sides but I'm curious in regards to why public sectors
22 weren't included from that standpoint. The second point would
23 be—we'll discuss this particular issue but the other programs
24 probably are going to do the same. They'll want to look at your
25 JET program, all these others that were for the time being we've

1 not allowed public sector entities to participate in those
2 programs, and that's going to be something that if this is
3 approved, you'll probably get the same thing down the line, same
4 request down the line.

5 RANDY TOWNSEND: I think the thought process
6 to move this forward more quickly was for apprenticeship in
7 particular, there is as you previously heard in another
8 commission agenda item this morning, applications are going out.
9 I think part of that was just the timing to make sure that this
10 was [inaudible].

11 CHAIRMAN DANIEL: Let's do this, gentlemen.
12 If there's no objection, let's let staff—we can't take action
13 today. We don't have an agenda item for this. This is just
14 informational so let's let staff bring forward what they've
15 proposed as they proposed it. We'll have our typically
16 comprehensive discussion here and take commission action next
17 week? What's today, the 24th? Next week so Commissioner Demerson
18 makes good points. Commissioner Alvarez certainly has an
19 interest here and obviously I do because I asked for this so
20 let's just do what you just recommended and then we'll have a
21 good robust discussion next week.

22 COMMISSIONER ALVAREZ: I agree.

23 CHAIRMAN DANIEL: In the meantime, you heard
24 Commissioner Demerson's questions. You can certainly be
25 answering questions. I'm sure I'll have some as well so all that

1 can happen in the next week through our approved briefing
2 processes.

3 RANDY TOWNSEND: That works and I agree. I
4 have one other quick item. Just wanted to provide a status
5 update. A couple weeks ago in our strategic plan, we had
6 received a couple questions from the Legislative Budget Board
7 staff. It was basically to add a couple performance measures for
8 one of our strategies that was for the state workforce services.
9 Basically, a number of folks, participants to be served, and
10 then average cost so we got that information back to the LBB
11 staff and it's been approved, and believe we're ready to move
12 forward. The budget structure is approved as well so we're in
13 good shape there [inaudible]. That was it.

14 CHAIRMAN DANIEL: Thank you. Anything else?
15 Any other item of business to come before the commission?

16 COMMISSIONER ALVAREZ: Chairman, yesterday
17 we had an opportunity, all three of us got an opportunity to
18 speak to the folks that were attending the workforce forum so we
19 appreciate those invitations to be there and catch up with good
20 friends. We do have somebody here as a special guest from Rio
21 Grande Valley, Anabell Cardona, who represents the Valley Grande
22 Institute. We welcome her and glad that you were here today to
23 join us.

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1 COMMISSIONER DEMERSON: Commissioner
2 Alvarez, Anabell is here as a guest and she's an employer in our
3 state, and so we appreciate that relationship as well.

4 COMMISSIONER ALVAREZ: And she has workers.
5 Remember that. You got workers.

6 COMMISSIONER DEMERSON: She's an employer
7 that has employees.

8 CHAIRMAN DANIEL: A hundred percent of the
9 jobs in this state are created by employers, and a hundred
10 percent of those jobs are worked by workers. It's an irrefutable
11 fact.

12 COMMISSIONER ALVAREZ: I know Commissioner
13 Demerson always wants to get that plug in for employers. I've
14 got to get that plug in for workers.

15 COMMISSIONER DEMERSON: We don't take our
16 employers for granted.

17 CHAIRMAN DANIEL: Oh, we've reached that
18 point in the meeting. I do have a question. I see Ms. Arbour
19 hiding behind the—so I had to leave early, she was at another
20 presentation I had to give. Did the man make it to the summit
21 before he—I cut short during his speech. I assume he made it to
22 the top of Everest? OK, good, that's good news. Thank you very
23 much. There's a good meeting going on, our workforce boards from
24 around the state are represented. Obviously, others that are
25 participating, really good meeting. Pretty aggressive agenda I

1 thought so appreciate everybody always trying to stay on top of
2 the game. It's a complicated issue out there. Anything else?

3 COMMISSIONER ALVAREZ: I would also like to
4 just inform everybody that Sunday you celebrate your birthday
5 and happy birthday to you, chairman.

6 CHAIRMAN DANIEL: Thank you very much.

7 COMMISSIONER DEMERSON: Happy birthday.

8 CHAIRMAN DANIEL: Twenty-two has been—I
9 mean, well, something like that.

10 COMMISSIONER DEMERSON: Nice.

11 CHAIRMAN DANIEL: Any motion to adjourn?

12 COMMISSIONER ALVAREZ: Chairman, I move that
13 we adjourn.

14 COMMISSIONER DEMERSON: I second the motion.

15 CHAIRMAN DANIEL: It's been moved and
16 seconded to adjourn. We're adjourned.

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