

1                   TRANSCRIPT OF PROCEEDINGS  
2                               BEFORE THE  
3                   TEXAS WORKFORCE COMMISSION  
4                               AUSTIN, TEXAS

5 PUBLIC MEETING                   \*  
6 FOR THE TEXAS                   \*  
7 WORKFORCE COMMISSION           \*

8  
9  
10                   COMMISSION MEETING  
11                               DOCKET 5  
12                   TUESDAY, FEBRUARY 1, 2011

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17                   BE IT REMEMBERED THAT at 9:00 a.m., Tuesday,  
18 the 1st day of February, 2011, the above-entitled  
19 matters came on for hearing at the Texas Workforce  
20 Commission, TWC Building, 101 East 15th Street, Room  
21 244, Austin, Texas, before TOM PAUKEN, RONALD G.  
22 CONGLETON, and ANDRES ALCANTAR, COMMISSIONERS, and LARRY  
23 TEMPLE, EXECUTIVE DIRECTOR, of the Texas Workforce  
24 Commission; and the following proceedings were reported  
25 by Lydia L. Edwards, a Certified Shorthand Reporter of:

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## 1 P R O C E E D I N G S

2 TUESDAY, FEBRUARY 1, 2011

3 (9:00 a.m.)

## 4 AGENDA ITEM NO. 1

09:05AM

5 CHAIRMAN PAUKEN: Okay. Good morning.  
6 The meeting will now come to order, and I'll turn it  
7 over to Commissioner Alcantar to preside over that  
8 portion of the meeting involving Agenda Items 2  
9 through 5.

09:06AM

10 COMMISSIONER ALCANTAR: Thank you,  
11 Chairman Pauken.

## 12 AGENDA ITEM NO. 2

13 Discussion, consideration, and possible  
14 action regarding whether to assume continuing  
15 jurisdiction on unemployment compensation cases, wage  
16 claim cases, and/or tax liability cases and  
17 reconsideration of unemployment compensation cases, wage  
18 claim cases, and/or tax liability cases, if any.

19 No discussion.

## 20 AGENDA ITEM NO. 3

21 Discussion, consideration and possible  
22 action regarding tax liability cases listed on the Texas  
23 Workforce Commission Docket 5.

24 The Commission considered and took action  
25 on all tax liability cases listed on Docket 5.

1 AGENDA ITEM NO. 4

2 Discussion, consideration and possible  
3 action regarding higher level appeals in wage claim  
4 cases listed on the Texas Workforce Commission  
5 Docket 5.

6 The Commission considered and took action  
7 on all wage claim cases listed on Docket 5.

8 AGENDA ITEM NO. 5

9 Discussion, consideration and possible  
10 action regarding higher level appeals in unemployment  
11 compensation cases listed on the Texas Workforce  
12 Commission Docket 5.

13 The Commission considered and took action  
14 on all unemployment compensation cases listed on  
15 Docket 5.

16 (The Commission paused, then continued  
17 with the remainder of the agenda.)

18 AGENDA ITEM NO. 6

19 CHAIRMAN PAUKEN: We're ready to begin. I  
09:24AM 20 believe we have one person who wants to make a public  
21 comment, Sara Black. Ms. Black.

22 MS. BLACK: Yes. Okay. Thank you,  
23 commissioners. Yes, I do have a couple of comments. On  
24 January the 18th, I had the opportunity to be at the  
09:25AM 25 ball for the inauguration, but I couldn't go because I

1 didn't have the money to buy a dress or anything to go  
2 to that celebration. Years ago when George Bush was the  
3 governor, I had the same opportunity, and I was able to  
4 buy two dresses to choose from, complete outfits, you  
09:25AM 5 know, the ball gown, the shoes, the little wrap around  
6 my shoulders, the purse to choose -- I mean, I had two  
7 choices because I had so much money because I had a good  
8 job.

9           At this time, I don't have a good job, and  
09:25AM 10 I feel it's because of the practices of the Texas  
11 Workforce Commission. When I was working for a bad  
12 employer and left, my timely filed appeal was not noted  
13 by TWC. And most recently when I worked for the State  
14 in 2008, I was a -- when I was a new hire, I was

09:26AM 15 performing so far above the other people that were hired  
16 with me, but TWC allowed that employer to lie about me.  
17 And, you know, TWC hid the fact that they were going to  
18 allow that comment in my file. I was not given notice  
19 that that was going to be in my file. I mean, I know

09:26AM 20 TWC says we have a right to change -- make changes to  
21 our record -- to see it and make changes, but the notice  
22 that I was sent didn't make a comment about that, what  
23 TWC was going to say on my record. And I found out --  
24 when I found out, I wanted to make the change, and I was  
09:27AM 25 told, "Well, it's too late."

1                   So I would like TWC to start actually -- I  
2 mean, if you could investigate your employee misconduct,  
3 the fact that -- and, you know, maybe I'll bring it next  
4 time, but, I mean, I don't even have the chance to  
09:27AM 5 appeal. I filed an appeal two years ago in another  
6 case, but I wasn't even -- I wasn't given a date for an  
7 appeal hearing. So, I mean, when you file an appeal --  
8 timely appeal and then you guys pretend I didn't file it  
9 and I file an appeal in another situation and then I'm  
09:28AM 10 not given a date for the hearing, how can I go through  
11 the process to get to even, say, Travis County where  
12 they have judicial review of your actions? I don't even  
13 know if I can say, "Hey, Travis County, two years ago I  
14 filed an appeal. They never scheduled me for a  
09:28AM 15 hearing," because there's supposed to be a series of  
16 actions before you go to judicial review. And when TWC  
17 is cutting out some of those opportunities for me to  
18 take proper rebuttal, or whatever would get me to that  
19 point, where these things in my records could be  
09:28AM 20 corrected, I end up on January the 18th with no dress to  
21 wear at Rick Perry's ball.

22                   CHAIRMAN PAUKEN: Okay. All right. We'll  
23 be happy to take it under advisement and review the  
24 matters. We always take complaints about the process or  
09:29AM 25 anything that is done seriously.

1                   Are there any questions or comments  
2 from my fellow Commissioners?

3                   COMMISSIONER CONGLETON: I have no  
4 questions or comments.

09:29AM 5                   MS. BLACK: What was that?

6                   CHAIRMAN PAUKEN: We'll take a look. We  
7 take all the complaints we receive seriously, and we'll  
8 take a look and review the matter.

9                   MS. BLACK: But my complaints haven't been  
09:29AM 10 taken seriously, and I did go to judicial review.

11                   CHAIRMAN PAUKEN: Okay. Well, I mean,  
12 we'll take a look at it. That's all I can do. I don't  
13 know -- you know, I don't know the facts of the matter.  
14 So we'll take a look.

09:29AM 15                   MS. BLACK: Let me give you one fact that  
16 I will tell you --

17                   CHAIRMAN PAUKEN: Okay. We --

18                   MS. BLACK: -- since we're here. Can I  
19 just make one quick comment?

09:29AM 20                   CHAIRMAN PAUKEN: One final comment.

21                   MS. BLACK: This is a form that a claimant  
22 is supposed to be able to use to file their appeal  
23 (indicating).

24                   CHAIRMAN PAUKEN: No, no. This is a  
09:29AM 25 public hearing. You asked for a brief --

1 MS. BLACK: Okay. Wait. No. I'm giving  
2 you an example. This is unavailable sometimes. When  
3 you go on the Internet, it says I can use an A-4 form to  
4 file an appeal, but when you ask for it --

09:30AM

5 CHAIRMAN PAUKEN: Well --

6 MS. BLACK: I asked for it, and they said,  
7 "We, you know, don't use it."

8 CHAIRMAN PAUKEN: -- you know, all I can  
9 say, Ms. Black, is, I -- we did listen to what you had  
10 to say.

09:30AM

11 MS. BLACK: Okay.

12 CHAIRMAN PAUKEN: We'll review it, okay?

13 MS. BLACK: But I wasn't finished. I just  
14 wanted to say this is sometimes unavailable. If you  
15 even go to Friedrich Lane --

09:30AM

16 CHAIRMAN PAUKEN: Well, this is a  
17 public --

18 MS. BLACK: -- Friedrich Lane doesn't even  
19 tell you you can use this form because --

09:30AM

20 CHAIRMAN PAUKEN: All right.

21 MS. BLACK: -- the thing this form does,  
22 it --

23 CHAIRMAN PAUKEN: Mr. Jones is  
24 our counsel.

09:30AM

25 MR. JONES: Chairman Pauken --

1 CHAIRMAN PAUKEN: Yes.

2 MR. JONES: -- for the record, we usually  
3 grant three minutes, and I believe at you-all's  
4 discretion you can expand the time that a person can  
09:30AM 5 provide public comment. And I believe --

6 CHAIRMAN PAUKEN: I think we may -- I  
7 think we will take a look at this, okay?

8 MS. BLACK: Okay. Well, how could you  
9 look at it when you didn't let me finish? I just wanted  
09:30AM 10 to tell you I had more to say. Thank you, Mr. Pauken.

11 CHAIRMAN PAUKEN: Thank you.

12 AGENDA ITEM NO. 7

13 CHAIRMAN PAUKEN: Okay. Agenda Item 7,  
14 Discussion, consideration, possible action regarding the  
09:31AM 15 report describing the Agency's procedures for charging  
16 and collecting fees for providing copies of public  
17 information pursuant to Texas Government Code, Section  
18 552.274(b), Lona Chastain. How are you?

19 MS. CHASTAIN: Good morning, Chairman,  
09:31AM 20 Commissioners. Lona Chastain with the Office of General  
21 Counsel for the record. Before you this morning is a  
22 report to the legislature regarding our procedures for  
23 charging for public records. The report has in it  
24 Section 800.6 which sets out our rule in detail  
09:31AM 25 regarding the procedures. There are two main components

1 to the rule. The first component is that the rule  
2 follows the Attorney General's charge guidelines, and  
3 the second part relates to the unemployment insurance  
4 charges which are following the federal requirements  
09:31AM 5 regarding reimbursement for providing those records.  
6 With your permission, we would like approval to submit  
7 the report and post it on our Internet.

8 CHAIRMAN PAUKEN: Okay. Any questions,  
9 comments, Commissioner Congleton?

09:32AM 10 COMMISSIONER CONGLETON: No questions.  
11 And I move we allow the post -- the staff to post to our  
12 agency's web site the procedures for charging and  
13 collecting fees for copies of public information in  
14 accordance with Section 552.274(b) of the Texas  
09:32AM 15 Government Code.

16 COMMISSIONER ALCANTAR: Second.

17 CHAIRMAN PAUKEN: It's unanimous. Thank  
18 you, Ms. Chastain.

19 MS. CHASTAIN: Thank you.

09:32AM 20 AGENDA ITEM NO. 8

21 CHAIRMAN PAUKEN: Michael Sparks,  
22 Discussion, consideration, possible action regarding the  
23 acceptance of pledges for Fiscal Year 2011 child care  
24 matching funds.

09:32AM 25 MR. SPARKS: Good morning, Chairman,

1 Commissioners, Mr. Temple. For the record, I'm Michael  
2 Sparks of the Workforce Development Division. This  
3 morning we have for your approval child care local match  
4 pledges totaling \$1,165,721 from the following board  
09:32AM 5 areas: North Texas, Dallas County, Upper Rio Grande,  
6 Concho Valley, Cameron County, and Gulf Coast. And we  
7 anticipate that all boards will be fully secured by the  
8 end of the match period, and we will be bringing the  
9 final agreements to you at your next regular meeting.

09:33AM 10 To put this in perspective, we are currently at 91  
11 percent of the statewide child care match local target  
12 compared to 91.6 percent at this time last year, and,  
13 again, we expect everyone to be fully matched.

14 And I'll be glad to ask any questions  
09:33AM 15 you-all may have.

16 CHAIRMAN PAUKEN: Commissioner Congleton.

17 COMMISSIONER CONGLETON: No questions.

18 And I move that we accept the child care pledges for our  
19 Fiscal Year 2011 child care matching funds in the amount  
09:33AM 20 of \$1,165,721 as discussed by staff.

21 COMMISSIONER ALCANTAR: I second.

22 CHAIRMAN PAUKEN: It's unanimous. Thank  
23 you, Mr. Sparks.

24 MR. SPARKS: Thank you.

09:33AM 25

## 1 AGENDA ITEM NO. 9

2 CHAIRMAN PAUKEN: No. 9, Discussion,  
3 consideration, possible action regarding an extension of  
4 the Workforce Investment Act and Wagner-Peyser Act state  
09:33AM 5 plan, including an extension of existing approved WIA  
6 waivers for Program Year 2011, Debbie Carlson.

7 MS. CARLSON: Good morning. Debbie  
8 Carlson with the Workforce Division. The Department of  
9 Labor recently issued guidance advising states of the  
09:34AM 10 option to extend or modify their current Workforce  
11 Investment Act state plan. The deadline for complying  
12 with the new guidance is April 15th. As you'll recall,  
13 anytime we modify our WIA state plan, after the  
14 Commission takes action, the plan modification is then  
09:34AM 15 submitted to the Texas Workforce Investment Council for  
16 recommendation to and subsequent approval by the  
17 Governor. In addition to plan extension, DOL will also  
18 consider extension of states' currently approved  
19 waivers. As with all waiver requests or extensions, the  
09:34AM 20 waivers have to be posted for a public comment period.  
21 At this time, staff are making two recommendations,  
22 first that the Commission authorize posting of waivers  
23 to the TWC web site for public comment and that the  
24 Commission approve the plan extension request. And in  
09:34AM 25 the interest of administrative efficiency, we would also

1 request that if there are no comments received during  
2 the public comment period that staff be allowed to go  
3 ahead and submit the extension requests based on today's  
4 action.

09:35AM

5 CHAIRMAN PAUKEN: Commissioner Congleton.

09:35AM

6 COMMISSIONER CONGLETON: I move that we  
7 approve posting for public comment the proposed request  
8 for extension of the current WIA waivers of June 30th,  
9 2012 and that we approve the proposed extensions of the  
10 WIA and the Wagner-Peyser state plans through June 30th,  
11 2012. I also move that if there's no objections to the  
12 extension received in public comment staff may submit  
13 the proposed extension to the U.S. Department of Labor  
14 without further vote by the Commissioners.

09:35AM

15 COMMISSIONER ALCANTAR: I second.

16 CHAIRMAN PAUKEN: It's unanimous.

17 MS. CARLSON: Thank you.

18 AGENDA ITEM NO. 10

09:35AM

19 CHAIRMAN PAUKEN: No. 10, Discussion,  
20 consideration and possible action regarding publication  
21 for public comment for proposed rules relating to state  
22 on and off indicator weeks for extended benefits, Steve  
23 Riley.

09:35AM

24 MR. RILEY: Good morning, Mr. Chairman,  
25 Commissioners. I'm Steve Riley with the UI Division.

1 For your consideration this morning, staff is presenting  
2 a proposed amendment to TWC rules, Chapter 815,  
3 "Unemployment Insurance." This amendment is authorized  
4 by Public Law 111-312, the Tax Relief, Unemployment  
09:36AM 5 Insurance Reauthorization and Job Creation Act of 2010.  
6 In addition to extending the deadline for payment of  
7 emergency unemployment compensation and 100 percent  
8 federally funded extended benefits, Public Law 111-312  
9 allows states to temporarily amend their extended  
09:36AM 10 benefit triggers to add a third year, look-back  
11 provision in determining whether the state is triggering  
12 on or off state-extended benefits. To pay extended  
13 benefits, a state must reach a trigger related to  
14 statewide unemployment levels.

09:36AM 15 If the total unemployment rate average  
16 over the most recent three months meets or exceeds 6.5  
17 percent and is at least 110 percent of the corresponding  
18 three-month period in either of the prior two calendar  
19 years called a look-back period, a state must offer 13  
09:37AM 20 weeks of extended benefits. If the average rate meets  
21 or exceeds eight percent and meets the same 110 percent  
22 test, seven additional weeks of extended benefits must  
23 be available. As we move through 2011, the look-back  
24 period will be in 2010 and 2009. The average total  
09:37AM 25 unemployment rate during either of these years is likely

1 too high to produce the 110 percent differential. Texas  
2 would need to be able to look back three years, to 2008,  
3 to keep the trigger on. Congress provided the temporary  
4 authority to adopt a third year look-back in order to  
09:37AM 5 take advantage of the continued federal funding of  
6 extended benefits.

7 The proposed amendment before you today  
8 adds the third year look-back provision. We're  
9 requesting your permission to publish the proposed  
09:37AM 10 amendment for a 30-day public comment period in the  
11 Texas Register. We're also seeking permission to make  
12 any minor technical corrections that may be needed for  
13 submission to the Register.

14 I'll be happy to answer any questions that  
09:38AM 15 you have.

16 CHAIRMAN PAUKEN: Commissioner Congleton.

17 COMMISSIONER CONGLETON: I have no  
18 questions, and I move that we -- that the proposed  
19 amendment rule for extended benefits on and off  
09:38AM 20 indicator be submitted to the Texas Register for public  
21 comment as discussed.

22 COMMISSIONER ALCANTAR: Second.

23 CHAIRMAN PAUKEN: It's unanimous. Thank  
24 you, Mr. Riley.

09:38AM 25 MR. RILEY: Thank you.

1 AGENDA ITEM NO. 11

2 CHAIRMAN PAUKEN: No. 11, Discussion,  
3 consideration and possible action regarding approval of  
4 local workforce development board nominees, John Fuller.

09:38AM

5 MR. FULLER: Good morning, Chairman  
6 Pauken, Commissioner Congleton, Commissioner Alcantar,  
7 Mr. Temple. For the record, I'm John Fuller with the  
8 Workforce Development Division. Before you today, we  
9 have nominees from Middle Rio Grande, Heart of Texas,  
10 Permian Basin, Golden Crescent, and East Texas.

09:38AM

11 I'll answer any questions you may have on  
12 these nominations.

13 CHAIRMAN PAUKEN: Okay. It looks to me.  
14 Commissioner Congleton.

09:38AM

15 COMMISSIONER CONGLETON: I have no  
16 questions, and I move that we approve the board nominees  
17 for Middle Rio, Heart of Texas, Permian Basin, Golden  
18 Crescent, and East Texas.

19 COMMISSIONER ALCANTAR: I second.

09:39AM

20 CHAIRMAN PAUKEN: It's unanimous. Thank  
21 you, Mr. Fuller.

22 MR. FULLER: Thank you.

23 AGENDA ITEM NO. 12

09:39AM

24 CHAIRMAN PAUKEN: No. 12, Discussion,  
25 consideration and possible action regarding legislative

1 proposals by the Texas Workforce Commission to the 82nd  
2 Texas Legislature, Regular Session, 2011, Tom McCarty.

3 MR. McCARTY: Good morning, Chairman  
4 Pauken, Commissioner Congleton, Commissioner Alcantar.

09:39AM

5 For the record, Tom McCarty, director of External  
6 Relations. This morning for your consideration we have  
7 one legislative proposal relating to the state-extended  
8 benefits. This proposal would extend the program past  
9 August providing that it remains 100 percent federally  
10 funded.

09:39AM

11 CHAIRMAN PAUKEN: Okay. Commissioner  
12 Alcantar.

13 COMMISSIONER ALCANTAR: I have no  
14 questions.

09:39AM

15 CHAIRMAN PAUKEN: Commissioner Congleton.

16 COMMISSIONER CONGLETON: I move that we  
17 authorize staff to proceed to seek the necessary  
18 legislative authority to allow us to access all  
19 available 100 percent federal funding from the  
20 state-extended benefits.

09:40AM

21 COMMISSIONER ALCANTAR: I second.

22 CHAIRMAN PAUKEN: It's unanimous. Thank  
23 you, Mr. McCarty.

24 AGENDA ITEM NO. 13

09:40AM

25 CHAIRMAN PAUKEN: Discussion,

1 consideration and possible action regarding enacted,  
2 proposed or considered federal regulations, executive  
3 orders, or federal or state enacted or proposed  
4 legislation.

09:40AM

5 MR. McCARTY: Good morning again. For the  
6 record, Tom McCarty, External Relations. Last week the  
7 Senate made committee appointments. Overall we did not  
8 see any changes in committee chairman for the Senate.  
9 We are expecting the House to release their committee  
10 assignments at the end of the week -- of this week.

09:40AM

11 We've had two of the agency initiatives filed by -- on  
12 the Senate side, Senate Bill 439 by Senator Van de  
13 Putte, which is the chargeback exemption related to  
14 USERRA, and then Senate Bill 459 by Senator Seliger

09:41AM

15 relating to the last employing unit. On the House side  
16 last week, the committees did adopt the rules. So we  
17 have a new oversight committee which is the House  
18 committee on Economic Development and Small Business.

09:41AM

19 And then on the Senate side, we still have Senate  
20 Business and Commerce and Senate Economic Development as  
21 our oversight committees.

22 That concludes my remarks should you have  
23 any questions.

09:41AM

24 CHAIRMAN PAUKEN: Do you have anything on  
25 the federal front, Mr. McCarty?

1 MR. McCARTY: Only that right now that  
2 we're preparing for the February 7th hearing with Ways  
3 and Means, the subcommittee that I believe you're going  
4 to be testifying at, sir.

09:41AM 5 CHAIRMAN PAUKEN: Let me ask you, any  
6 chance we can get our federal unemployment benefits back  
7 without the strings attached, Mr. McCarty, or,  
8 Mr. Temple, would you like to address that issue?

9 MR. TEMPLE: It could be certainly an  
09:41AM 10 interesting subject to bring up to the new Congress.  
11 They probably haven't heard that in a hearing so far.  
12 But I think our real issue is as we had talked with Matt  
13 Winegar, and he ran the traps with OMB that --

14 CHAIRMAN PAUKEN: They've already spent  
09:42AM 15 our money?

16 MR. TEMPLE: They -- they figured in that  
17 a lot of states wouldn't take it, and anything now would  
18 cost the bill. So we would have to find an offset  
19 somewhere. So --

09:42AM 20 CHAIRMAN PAUKEN: Well, I think it's at  
21 least worth raising --

22 MR. TEMPLE: Certainly.

23 CHAIRMAN PAUKEN: -- Mr. Temple.

24 MR. TEMPLE: Certainly.

09:42AM 25 CHAIRMAN PAUKEN: Those are our dollars.

1 They went to Washington.

2 AGENDA ITEM NO. 14

3 CHAIRMAN PAUKEN: Okay. All right.

4 Mr. Temple, any other items that you might have today?

09:42AM

5 MR. TEMPLE: Commissioner, the only thing,  
6 just letting you know that we are in full tilt.

7 Obviously in the legislative session, we are beginning  
8 to work fiscal notes through the process, and we'll be  
9 briefing you as we get those fiscal notes done so that

09:42AM

10 you'll have all the information that you need. But  
11 that's -- the season has begun full when you start  
12 getting fiscal notes done. So that's it.

13 AGENDA ITEM NO. 17

14 CHAIRMAN PAUKEN: Okay. All right. Is

09:42AM

15 there a motion to adjourn?

16 COMMISSIONER CONGLETON: So made.

17 COMMISSIONER ALCANTAR: Second.

18 CHAIRMAN PAUKEN: It's unanimous.

19 (At this time, the proceedings were  
20 adjourned at 9:42 o'clock a.m.,  
21 Tuesday, February 1, 2011.)

22

23

24

25

1 STATE OF TEXAS )

2 COUNTY OF TRAVIS )

3 I, LYDIA L. EDWARDS, certified shorthand  
4 reporter for the State of Texas, do hereby certify that  
5 the above-captioned matter came on for hearing before  
6 the TEXAS WORKFORCE COMMISSION as hereinafter set out.

7 I FURTHER CERTIFY that the proceedings of said  
8 hearing were reported by me, accurately reduced to  
9 typewriting under my supervision and control, and, after  
10 being so reduced, were filed with the TEXAS WORKFORCE  
11 COMMISSION.

12 GIVEN UNDER MY OFFICIAL hand of office at  
13 Austin, Texas, the \_\_\_\_\_ day of February, 2011.

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17

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Lydia L. Edwards  
Certification No. 2567  
My Commission Expires 12/31/12

19

Certified Shorthand Reporter  
State of Texas

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