

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
TEXAS WORKFORCE COMMISSION  
AUSTIN, TEXAS

PUBLIC MEETING )  
FOR THE TEXAS )  
WORKFORCE COMMISSION)

COMMISSION MEETING  
TUESDAY, OCTOBER 25, 2011

BE IT REMEMBERED THAT at approximately 9:00 a.m., Tuesday, the 25th day of October 2011, the above-entitled matters came on for hearing at the Texas Workforce Commission, TWC Building, 101 East 15th Street, Room 244, Austin, Texas, before TOM PAUKEN, RONALD G. CONGLETON, and ANDRES ALCANTAR, COMMISSIONERS, and LARRY TEMPLE, EXECUTIVE DIRECTOR, of the Texas Workforce Commission; and the following proceedings were reported by Janis Simon, a Certified Shorthand Reporter of:

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P R O C E E D I N G S

TUESDAY, OCTOBER 25, 2011

(9:00 a.m.)

AGENDA ITEM NO. 1

CHAIRMAN PAUKEN: The meeting will now be called to order, and I'll turn the proceedings over to Commissioner Alcantar to preside over Agenda Items 2 through 5.

COMMISSIONER ALCANTAR: Thank you, Chairman Pauken.

Good morning.

AGENDA ITEM NO. 2

Discussion, Consideration and Possible Action Regarding Whether to Assume Continuing Jurisdiction on Unemployment Compensation Cases, Wage Claim Cases, and/or Tax Liability Cases and Reconsideration of Unemployment Compensation Cases, Wage Claim Cases, and/or Tax Liability Cases, if Any

No discussion.

AGENDA ITEM NO. 3

Discussion, Consideration and Possible Action Regarding Tax Liability Cases Listed on the Texas Workforce Commission Dockets 42 and 43

The Commission considered and took action on all Tax Liability Cases listed on Dockets 42

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1 and 43.

2 AGENDA ITEM NO. 4

3 Discussion, Consideration and Possible  
4 Action Regarding Higher Level Appeals in Wage Claim  
5 Cases listed on the Texas Workforce Commission Dockets  
6 42 and 43

7 The Commission considered and took  
8 action on all Wage Claim Cases listed on Dockets 42  
9 and 43.

10 AGENDA ITEM NO. 5

11 Discussion, Consideration and Possible  
12 Action Regarding Higher Level Appeals in Unemployment  
13 Compensation Cases Listed on the Texas Workforce  
14 Commission Dockets 42 and 43

15 The Commission considered and took  
16 action on all Unemployment Compensation Cases listed  
17 on Dockets 42 and 43.

18 (The Commission paused, then continued  
19 with the remainder of the agenda.)

20 AGENDA ITEM NO. 6

21 CHAIRMAN PAUKEN: Okay. Agenda Item 6,  
22 public comment, Mr. Jones?

23 MR. PAUL N. JONES: No, no public  
24 comment, Mr. Chairman.

25 CHAIRMAN PAUKEN: No public comment.

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## AGENDA ITEM NO. 7

CHAIRMAN PAUKEN: Agenda Item 7, discussion, consideration, and possible action regarding the acceptance of pledges for Fiscal Year 2011 Child Care Matching Funds. Michael Sparks.

MR. SPARKS: Good morning, Commissioners, Mr. Temple. For the record, I am Michael Sparks with the Workforce Development Division.

This morning for your consideration we have modifications to Fiscal Year 2011 Child Care local match pledges from one board area totaling \$86,000. The board and the state will remain fully matched as a result of these amendments. We are requesting your acceptance of these Child Care local match pledges, and I'll answer any questions you gentlemen may have.

CHAIRMAN PAUKEN: Commissioner Congleton.

COMMISSIONER CONGLETON: I have no questions. I move we accept the amendments to the Child Care matching funds in the amount of \$86,000 as discussed by staff.

COMMISSIONER ALCANTAR: I second.

CHAIRMAN PAUKEN: It's unanimous. Thank

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1 you, Mr. Sparks.

2 MR. SPARKS: Thank you.

3 AGENDA ITEM NO. 8

4 CHAIRMAN PAUKEN: Discussion,  
5 consideration, and possible action regarding the  
6 acceptance of pledges for Fiscal Year 2012 Child Care  
7 matching funds, Michael Sparks.

8 MR. SPARKS: Again, Michael Sparks,  
9 Workforce Development Division.

10 We also have Fiscal Year 2012 Child Care  
11 local match pledges totaling 1,431,000. To date the  
12 boards have secured 19.8 percent of the total 2012  
13 target of \$26,980,335. This compares to 27.31 percent  
14 at this point last year. Two board areas have secured  
15 100 percent of their local match targets, and five  
16 additional board areas have secured more than 50  
17 percent of their respective targets.

18 Again, we are asking for your acceptance  
19 of these Child Care local match pledges.

20 CHAIRMAN PAUKEN: Commissioner  
21 Congleton.

22 COMMISSIONER CONGLETON: Move that we  
23 accept the Child Care pledges for Fiscal Year 2012  
24 Child Care Matching Funds in the amount of 1,431,000  
25 as discussed by staff.

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1 COMMISSIONER ALCANTAR: I second.

2 CHAIRMAN PAUKEN: It's unanimous.

3 MR. TEMPLE: Mr. Chairman, the  
4 Administration of Children and Families sent their  
5 annual deal to states. States that don't access all  
6 their Child Care, because they didn't have match for  
7 whatever reason, they put that in a pool and then ask  
8 states if they're interested. Every year we have  
9 said, "Yes, we're interested." So, Randy sent the  
10 notice. We haven't gotten an idea yet what's  
11 available.

12 So, as soon as we do -- it probably  
13 November 1st, Randy?

14 MR. TOWNSEND: I'm not sure (inaudible).

15 MR. TEMPLE: But we'll let you know.  
16 So, there will be some opportunities to draw down  
17 some -- some more dollars there, but we're not real  
18 sure what that will be yet.

19 CHAIRMAN PAUKEN: Okay.

20 MR. SPARKS: Thank y'all.

21 AGENDA ITEM NO. 9

22 CHAIRMAN PAUKEN: No. 9, discussion,  
23 consideration, and possible action regarding adoption  
24 of rules relating to SB 76 Listed In-home Relative  
25 Child Care previously published for public comment in

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1 the Texas Register on September 16, 2011. Mr. Jones.

2 MR. LARRY JONES: Good morning,  
3 Mr. Chairman, Commissioners, Mr. Temple. For the  
4 record, my name is Larry Jones with Workforce  
5 Development.

6 This morning for your consideration are  
7 final rules to implement changes as a result of Senate  
8 Bill 76, which was passed by the 82nd Legislature.  
9 This legislation enacted new requirements for relative  
10 providers who are caring for a child in the child's  
11 home and requires these relative providers to be  
12 listed as a family home with DFPS. Currently, only  
13 relative providers caring for the children in the  
14 relative's home, not the child's home, must be listed  
15 with DFPS.

16 The rules were published September 16th  
17 in the Texas Register for a 30-day public comment  
18 period. We did not receive any public comment.  
19 Therefore, we are requesting approval of the final  
20 rules with no changes from what was originally  
21 proposed.

22 CHAIRMAN PAUKEN: Commissioner  
23 Congleton.

24 COMMISSIONER CONGLETON: Move that we  
25 adopt the changes to Chapter 809 Child Care Services

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1 rules without change as previously published for  
2 comment in the Texas Register.

3 COMMISSIONER ALCANTAR: I'll second.

4 CHAIRMAN PAUKEN: It's unanimous.

5 AGENDA ITEM NO. 10

6 CHAIRMAN PAUKEN: No. 10, discussion,  
7 consideration, and possible action regarding the  
8 estimated Unemployment Trust Fund balance pursuant to  
9 Texas Labor Code Section 204.061 and the estimated  
10 Employment and Training Investment Holding Fund  
11 balance available for transfer pursuant to Texas Labor  
12 Code Section 204.123. Mr. Townsend.

13 MR. TOWNSEND: Good morning,  
14 Mr. Chairman, Commissioners. For the record, Randy  
15 Townsend.

16 We're making our first projection for  
17 the October 1st, 2012 Unemployment Trust Fund balance.  
18 We're estimating the balance on that date will be nine  
19 hundred and thirty -- 939.1 million. That would put  
20 the balance about 24 million above the floor on that  
21 date. Just as a point of reference, we began the year  
22 October 1st of 2011 with a 702 million balance.

23 Let me share a little bit of the recent  
24 trends for the Trust Fund for the last six completed  
25 weeks. This will as of October 8th. Our total net

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1 benefits paid averaged 45.2 million per week. That  
2 was down about 9.5 percent from the one-year-ago  
3 average.

4 The initial claims averaged 16,450,  
5 again, for the six weeks ending October 8th. That was  
6 about 9.1 percent below the one-year-ago average. And  
7 then, finally, our continued claims averaged 167,706  
8 for the six weeks ending October 8th, and that was  
9 about 11 percent below the one-year-ago average.

10 Mr. Chairman, Commissioners, that  
11 concludes my presentation, if you have comments or  
12 questions.

13 CHAIRMAN PAUKEN: Commissioner Alcantar.

14 COMMISSIONER ALCANTAR: I have no  
15 questions.

16 CHAIRMAN PAUKEN: Commissioner  
17 Congleton.

18 COMMISSIONER CONGLETON: No questions,  
19 Randy.

20 CHAIRMAN PAUKEN: Thank you,  
21 Mr. Townsend.

22 AGENDA ITEM NO. 11

23 CHAIRMAN PAUKEN: No. 12 (sic),  
24 discussion, consideration, and possible action  
25 regarding the incentive award criteria and weighting

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1 for Board Contract Year 2011 pursuant to rules  
2 relating to General Administration 40 TAC Section  
3 800.106. Adam Leonard.

4 MR. LEONARD: Good morning,  
5 Commissioners. For the record, Adam Leonard,  
6 Performance, Analysis, and Reporting.

7 Last year you-all approved several  
8 performance awards that will be given out at this  
9 year's conference, and amongst those were two related  
10 to Child Care Admin and Ops. And what we realized is  
11 that we needed to kind of make a clarification here  
12 and wanted to bring it forth in the public record and  
13 make certain that you agree with the original intent  
14 here.

15 And that is, if we're looking at overall  
16 efficiencies within the Child Care program and  
17 administering Child Care, then we needed to be  
18 considering all sources of those expenditures.  
19 Traditionally, we'd only have the CCM/CCF  
20 expenditures. But, of course, over the last year  
21 couple of years, we've also had direct care going in  
22 the -- from the ARRA funds. And we also realized  
23 that, since we've now been giving out these incentive  
24 awards for a few years, the boards who win those  
25 awards are able to spend that money on Admin and Ops,

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1 which meant if we're not considering that in there, it  
2 may give them kind of an advantage in future years  
3 based on their performance in previous years.

4           So, we just wanted to clarify here that  
5 we're recommending that when we give out the awards  
6 this year that we would consider all the Child Care  
7 contracts with the exception the ARRA quality  
8 contracts in the reporting for the -- for the awards,  
9 and also we would not consider the Child Care  
10 Automated Attendance Tracking for the awards, as well,  
11 since that is really a pass-through expense that --  
12 from the Commission through the boards to our  
13 contractor.

14           CHAIRMAN PAUKEN: Commissioner  
15 Congleton.

16           COMMISSIONER CONGLETON: Move that we  
17 accept staff recommendations to clarify the Board  
18 Contract 2011 Child Care award criteria to ensure full  
19 reporting of administration and operation rates.

20           COMMISSIONER ALCANTAR: I second.

21           CHAIRMAN PAUKEN: It's unanimous. Thank  
22 you, Mr. Leonard.

23           MR. LEONARD: Thank you.

24           AGENDA ITEM NO. 12

25           CHAIRMAN PAUKEN: Discussion -- No. 12,

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1 discussion, consideration, and possible action  
2 regarding approval of Local Workforce Development  
3 Board Nominees. John Fuller.

4 MR. FULLER: Good morning, Chairman  
5 Pauken, Commissioner Congleton, Commissioner Alcantar,  
6 Mr. Temple. For the record, I'm John Fuller with the  
7 Workforce Development Division.

8 Before you today, you have nominations  
9 from the East Texas Workforce Development Board,  
10 Golden Crescent, Lower Rio Grande, Permian Basin, and  
11 Texoma.

12 CHAIRMAN PAUKEN: I have -- I have no  
13 concerns.

14 Commissioner Congleton.

15 COMMISSIONER CONGLETON: I move that we  
16 approve the board nominees from East Texas, Golden  
17 Crescent, Lower Rio, Permian Basin, and Texoma.

18 COMMISSIONER ALCANTAR: I second.

19 CHAIRMAN PAUKEN: It's unanimous. Thank  
20 you.

21 MR. FULLER: Thank you.

22 AGENDA ITEM NO. 13

23 CHAIRMAN PAUKEN: There's nothing,  
24 Mr. McCarty, to report, I understand.

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1 AGENDA ITEM NO. 14

2 CHAIRMAN PAUKEN: So, we go to  
3 Mr. Temple. Is there a report and update from you and  
4 your staff with regard to --

5 (Simultaneous discussion)

6 MR. TEMPLE: Two things. LaSha is going  
7 to -- LaSha Lenzy is going to give an update on DUA.

8 And I just wanted to give you update.

9 HR 2832, the Trade Adjustment Act, was passed.

10 Mr. Chairman, you wrote a letter to the  
11 delegation asking for flexibility to let states  
12 determine what -- a pattern of an employer not  
13 cooperating, and that has been the ruling by DOL so  
14 far that they will pass that to states to determine  
15 if -- if a business, in fact, is a repeat offender  
16 for -- or a pattern, I think they said, of -- of not  
17 providing information.

18 It also provides for the 15 percent  
19 penalty on fraud for claimants. That money -- there's  
20 one thing that -- that hadn't been changed, and DOL  
21 apparently is going to work toward that, is all of  
22 that money at this point is supposed to go into the  
23 Trust Fund, as opposed to states being able to use  
24 some of that to fund those initiatives.

25 And back to the employer deal, if --

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1 if -- if it's determined that the employer is not  
2 giving adequate and timely information and -- and then  
3 they will be held responsible for the overpayment that  
4 resulted from that. We have two years to enact that.  
5 We're looking at what is -- is our ability to do some  
6 of this by rule versus statute. So, we're looking at  
7 that.

8                   And there's a third one that is the --  
9 the Attorney General's side of the house, and that's a  
10 requirement for businesses to report rehires, anyone  
11 that's been separated from the company at least 60  
12 days. So, they have until -- the state has until the  
13 first day of the second quarter after the first  
14 regular session after this bill goes in place. So,  
15 we'll be working with the Attorney General's office  
16 when that comes about so I know that we'll want to try  
17 to get that information as well out to employers about  
18 their obligation to report, because they -- it  
19 certainly helps us, too.

20                   So, LaSha.

21                   MS. LENZY: Thank you.

22                   Good morning, Chairman Pauken,  
23 Commissioner Alcantar, Commissioner Congleton,  
24 Mr. Temple; LaSha Lenzy, Unemployment Insurance  
25 Division. This morning, briefly, we just wanted to

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1 give you a wrap-up report on the wildfire activity.

2 To date, we have taken 565  
3 disaster-related claims. Of those, 380 are regular,  
4 and 185 are federal DUA claimants. Last week, we did  
5 start seeing a rapid decline in claims for the week.  
6 There was only about seven taken, and yesterday, I  
7 think there was one or two that was taken.

8 Of the 185 federal DUA claims taken, the  
9 majority, or about 142 of them to be exact, were from  
10 the Bastrop County area. As you know, their deadline  
11 did expire last week for filing those claims. Travis  
12 County was the next highest as far as number of claims  
13 filed.

14 Of the 185, 120 have been approved, 44  
15 were denied, and 21 are still pending. The 30-day  
16 filing deadline has expired for 13 counties.  
17 Tomorrow, October the 26th, will be the filing  
18 deadline for Harrison, Smith, and Upshur Counties.  
19 Next Monday, October the 31st, is the deadline for  
20 Anderson, Caldwell, Fayette, Henderson, Hill, and Rusk  
21 Counties. And then, lastly, the filing deadline for  
22 Navarro County will be November the 9th.

23 Communications has been sending out  
24 reminder Press Releases reiterating to everyone what  
25 those deadline dates are and -- and what the

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1 instructions are for filing and what have you. That  
2 completes my report. If you have any questions, or  
3 later if you want any additional information, I'd be  
4 glad to give that to you.

5 CHAIRMAN PAUKEN: Commissioner  
6 Congleton.

7 COMMISSIONER CONGLETON: No questions.  
8 Thank you.

9 CHAIRMAN PAUKEN: Commissioner Alcantar.

10 COMMISSIONER ALCANTAR: I have no  
11 questions.

12 CHAIRMAN PAUKEN: All right.

13 MS. LENZY: Thank you.

14 AGENDA ITEM NO. 15

15 CHAIRMAN PAUKEN: At this time, then,  
16 we'll go into Executive Session pursuant to Government  
17 Code 551.071(1) concerning pending litigation as to  
18 the case of Marilou Morrison versus TWC et al.

19 (Executive Session: 10:01 a.m. to  
20 10:10 a.m.)

21 CHAIRMAN PAUKEN: We've gone back into  
22 regular session.

23 AGENDA ITEM NO. 17

24 CHAIRMAN PAUKEN: Commissioner  
25 Congleton, do you have a motion to make?

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COMMISSIONER CONGLETON: On?

CHAIRMAN PAUKEN: Adjourning.

COMMISSIONER CONGLETON: I move that we  
adjourn the Commission Meeting.

COMMISSIONER ALCANTAR: I second.

CHAIRMAN PAUKEN: It's unanimous.

(Meeting adjourned: 10:11 a.m.)

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## C E R T I F I C A T E

STATE OF TEXAS        )  
COUNTY OF TRAVIS    )

I, JANIS SIMON, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true, and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 31st day of October 2011.

JANIS SIMON  
Certified Shorthand Reporter  
CSR No. 7076 - Expires 12/31/11  
Firm Registration No. 276  
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