

CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

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

The Texas Workforce Commission (Commission) proposes the following amendments to Chapter 801 relating to Local Workforce Development Boards:

Subchapter B, One-Stop Service Delivery Network, §801.23

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

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The U.S. Department of Labor Veterans' Employment and Training Service (DOL-VETS) final rules and regulations (20 C.F.R. Part 1010), effective January 19, 2009, implement priority of service for covered persons, as set forth in the Jobs for Veterans Act, and as specified by the Veterans' Benefits, Health Care, and Information Technology Act of 2006. The final rules articulate how to apply priority of service across all new and existing qualified DOL-funded job training programs.

Under 20 C.F.R. §1010.110, DOL defines a *veteran* as: "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, as specified in 38 U.S.C. §101(2). Active service includes full-time duty in the National Guard or a Reserve component, other than full-time duty for training purposes."

Further, 20 C.F.R. §1010.110 defines an *eligible spouse* as the spouse of:

- (1) any veteran who died of a service-connected disability;
- (2) any member of the Armed Forces serving on active duty who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
 - (i) missing in action;
 - (ii) captured in line of duty by a hostile force; or
 - (iii) forcibly detained or interned in line of duty by a foreign government or power;
- (3) any veteran who has a total disability resulting from a service-connected disability, as evaluated by the Department of Veterans Affairs;
- (4) any veteran who died while a disability, as indicated in paragraph (3) of this section, was in existence.

Additionally, House Bill (HB) 1452, enacted by the 81st Texas Legislature, Regular Session (2009) (to be codified in Texas Labor Code, Chapter 302, Subchapter G) mandates that state

qualified veterans receive preference (i.e., priority of service) for training or assistance under a job training or employment assistance program or service. This requirement applies to services funded in whole or in part by state funds.

The statute also aligns the definitions of "active military, naval, or air service," "covered person," and "veteran" with federal law for purposes of receiving priority of service in certain job training and employment assistance programs. HB 1452 also includes the spouse of any member of the armed forces who died while serving on active military, naval, or air service in the definition of "qualified spouse."

The purpose of this rule change is to provide a new definition of "eligible veteran" based on DOL definitions and HB 1452.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

The Commission proposes the following amendments to Subchapter B:

§801.23. Definitions

New §801.23(4), the definition of "eligible foster youth," is unchanged; however, it is renumbered from §801.23(5) to maintain alphabetical order.

New §801.23(5) defines eligible veteran as one of the following:

- Federal/state qualified veteran
- Federal qualified spouse
- State qualified spouse

The new definition is derived from the definitions of veteran found in the DOL definition of federal qualified veteran at 20 C.F.R. §1010.110 and the state definition of veteran set forth in HB 1452.

Section 801.23(7) is removed. The definition of "state qualified veteran" is included in new §810.23(5)(A).

PART III. IMPACT STATEMENTS

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

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

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

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

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

There are no anticipated economic costs to persons required to comply with the rules, including small or microbusinesses.

The reasoning that led to these conclusions is as follows:

All workforce services are provided to eligible veterans with current funding. Giving veterans priority over all other individuals in the receipt of services (e.g., job referrals, support services, child care, and training) does not indicate or infer that any increase in costs from current requirements would result. It also has been determined that modifications required in the information system to accommodate the minor change in definitions for "veteran," if any, will be accomplished within the existing baseline resources.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure Agency operations with regard to veterans' priority of service are consistent with state statute and regulations issued by DOL-VETS and that eligible veterans will be appropriately served.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on April 21, 2009. The Commission also conducted a conference call with Board executive directors and Board staff on April 24, 2009, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302; Texas Family Code, Chapter 264; and Texas Government Code, Chapter 551 and Chapter 2308.

Chapter 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

§801.23. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words or terms shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Certified Full-Service Texas Workforce Center -- A local full-service workforce center that has integrated service functions to aid employers and job seekers in all aspects of employment and training in a seamless, nonprogram-specific manner, and has been found to meet the requirements of a Full-Service Texas Workforce Center set out in §801.25(b) of this subchapter.
- (2) Certified Texas Workforce Center -- A local workforce center that provides integrated services to aid employers and job seekers in all aspects of employment and training in a seamless nonprogram-specific manner, and has been found to meet the requirements of a Certified Texas Workforce Center set out in §801.25(a) of this subchapter.
- (3) Competent -- A federal or state qualified veteran who meets the eligibility requirements of the program from which he or she is seeking services, and is determined eligible for a specific employment and training service funded by that program.
- ~~(4) Federal Qualified Veteran or Qualified Spouse -- For purposes of implementing priority of service for DOL-funded employment and training programs, the term "federal qualified veteran or qualified spouse" is defined as:
 - ~~(A) A veteran as defined:
 - ~~(i) under the Workforce Investment Act (29 U.S.C. §2801), or by any relevant waivers, as an individual who served in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable; or~~
 - ~~(ii) in 38 U.S.C. §4211 as a person who:
 - ~~(I) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;~~~~~~~~

~~(II) — was discharged or released from active duty because of a service-connected disability; or~~

~~(III) — as a member of a reserve component under an order to active duty pursuant to 10 U.S.C. §12301(a), (d), or (g), §12302, or §12304, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge.~~

~~(B) The spouse of any of the following individuals:~~

~~(i) — Any veteran who died of a service-connected disability.~~

~~(ii) — Any member of the Armed Forces serving on active duty who, at the time of application for assistance under this section, is listed, pursuant to 37 U.S.C. §556 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than 90 days:~~

~~(I) — Missing in action;~~

~~(II) — Captured in line of duty by a hostile force; or~~

~~(III) — Forcibly detained or interned in line of duty by a foreign government or power.~~

~~(iii) — Any veteran who has a total disability resulting from a service-connected disability.~~

~~(iv) — Any veteran who died while a disability, as defined in clause (iii) of this subsection, was in existence.~~

~~(4)(5) Eligible Foster Youth -- An eligible foster youth is a:~~

~~(A) Current Foster Youth -- A youth, age 14 or older, who is receiving substitute care services under the managing conservatorship of the Texas Department of Family and Protective Services (DFPS). This includes youth residing in private foster homes, group homes, residential treatment centers, juvenile correctional institutions, and relative care; or~~

~~(B) Former Foster Youth -- A youth up to 23 years of age, who formerly was under the managing conservatorship of DFPS, until:~~

~~(i) the conservatorship was transferred by a court;~~

- (ii) the youth was legally emancipated (i.e., the youth's minority status was removed by a court); or
- (iii) the youth attained 18 years of age.

(5) Eligible Veteran -- an eligible veteran is one of the following:

(A) Federal/state qualified veteran -- an individual who served in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable as specified at 38 U.S.C. §101(2). Active service includes full-time duty in the National Guard or a Reserve component, other than full time for training purposes.

(B) Federal qualified spouse -- the spouse of one of the following:

- (i) Any veteran who died of a service-connected disability.
- (ii) Any member of the Armed Forces serving on active duty who, at the time of application for assistance under this section, is listed, pursuant to 37 U.S.C. §556 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than 90 days:
 - (I) Missing in action;
 - (II) Captured in line of duty by a hostile force; or
 - (III) Forcibly detained or interned in line of duty by a foreign government or power.
- (iii) Any veteran who has a total disability resulting from a service-connected disability as evaluated by the Department of Veterans Affairs.
- (iv) Any veteran who died while a disability, as defined in clause (iii) of this subparagraph, was in existence.

(C) State qualified spouse:

- (i) A spouse who meets the definition of federal qualified spouse; or
- (ii) A spouse of any member of the armed forces who died while serving on active military, naval, or air service.

~~(5) Eligible Foster Youth -- An eligible foster youth is a:~~

~~(A) Current Foster Youth—A youth, age 14 or older, who is receiving substitute care services under the managing conservatorship of the Texas Department of Family and Protective Services (DFPS). This includes youth residing in private foster homes, group homes, residential treatment centers, juvenile correctional institutions, and relative care; or~~

~~(B) Former Foster Youth—A youth up to 23 years of age, who formerly was under the managing conservatorship of DFPS, until:~~

~~(i) the conservatorship was transferred by a court;~~

~~(ii) the youth was legally emancipated (i.e., the youth's minority status was removed by a court); or~~

~~(iii) the youth attained 18 years of age.~~

(6) National Emergency -- A condition declared by the President by virtue of powers previously vested in that office to authorize certain emergency actions to be undertaken in the national interest pursuant to 50 U.S.C. §1621.

~~(7) State Qualified Veteran—An individual who meets the criteria of Texas Government Code §657.002(c) is entitled to a preference (i.e., priority) for training or assistance under a job training or employment assistance program or service funded in whole or in part by state funds if the individual:~~

~~(A) served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged from military service for an established service-connected disability;~~

~~(B) was honorably discharged from military service; and~~

~~(C) is competent as defined in paragraph (1) of this section.~~