

Chapter 800. GENERAL ADMINISTRATION

Subchapter C. PERFORMANCE AND CONTRACT MANAGEMENT

40 TAC §800.81

The Texas Workforce Commission (Commission) proposes new §800.81 regarding Board Performance.

The purpose of Subchapter C is generally to set forth the performance requirements applicable to the Boards. The proposed rule emphasizes the partnership between the Commission and Boards in assuring compliance with federal and state requirements through a performance-based contract method. The purpose of the rule is to describe the performance standards applicable to Boards and other subrecipients and to set forth the Boards responsibilities regarding those performance requirements.

The 74th Texas Legislature enacted Texas' landmark legislation, House Bill 1863 (H.B. 1863), in 1995, now codified in part in Texas Labor Code Chapter 302 and Texas Government Code Chapter 2308. This state law reformed both the welfare and workforce systems and made Texas the nation's leader among reform-minded states. House Bill 1863 provided local elected officials the opportunity to form local workforce development boards (Boards) that enjoy the flexibility and authority to design and oversee the delivery of workforce development services that meet the needs of local employers and workers.

A key goal of the federal Workforce Investment Act (WIA) of 1998 (42 U.S.C.A. Section 2801 et seq.) was that of improving the effectiveness and efficiency of federally-funded job training programs. WIA recognized the strides made by the Texas workforce development system and specifically provided for the state to maintain many of the features of H.B. 1863 through grandfather provisions.

The Commission, as the entity responsible for overseeing the implementation of H.B. 1863 and WIA, sets policy regarding performance standards using federal and state performance measures. The Commission approves the performance targets during the budget process based upon federal and state statutory and regulatory performance measures and requirements. In addition, the Commission sets policy regarding contracts to ensure that the performance requirements are met and that contracts are performance-based. Performance-based contracts describe expectations in terms of specific outcomes, results, or final work products, as opposed to methods, processes, or designs. The Agency then incorporates performance standards in contracts with the Boards and other subrecipients of federal and state funds that are funded through the Commission.

The Commission ensures compliance with the WIA and other federal and state performance standards while providing options for the Boards to exercise local flexibility. The Commission works with the Boards to ensure that contract performance requirements are consistent with the Board's and State's strategic planning goals and objectives, and adjusted for local factors including specific economic, demographic and other characteristics of populations to be served in the local workforce development area and other factors the Commission deems appropriate. The Commission welcomes comment and input by all interested parties regarding performance in order to achieve the key objectives of maximizing access to employment, education and training options, while minimizing the Boards' reporting requirements.

The overall goal of the Commission is to use, to the maximum extent practicable, performance-based contracting methods in its management of contracts with the Boards. Performance-based contracting concepts and methodologies that are generally applied to contracts with the Boards and other subrecipients are designed to: (1) describe performance requirements in terms of results rather than methods of accomplishing the work; (2) use measurable (i.e., terms of quality, timeliness, quantity) performance standards and objectives and quality assurance plans; (3) and provide a basis for either performance incentive awards for achieving high performance or penalty imposition for low performance.

The Commission is charged with ensuring accountability of Boards and subrecipients of the Agency. Boards are charged with the oversight and management of the services and activities of the One-Stop Service Delivery Network.

Texas Government Code Chapter 2308, Texas Labor Code Title 4 and WIA have made Boards responsible for a number of duties and responsibilities for the administration of Commission-funded activities, including maintaining adequate fiscal systems, complying with the uniform rules for administration of grants and agreements, meeting the contract performance measures, and complying with all applicable state and federal statutes and regulations.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

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

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

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

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

There are no anticipated economic costs to persons required to comply with the rule.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated or required to do anything by the rule.

James Barnes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rule.

Barbara Cigainero, Director of Workforce and Development, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to provide information and set forth requirements regarding the performance.

Comments on the proposal may be submitted to John Moore, Texas Workforce Commission Building, 101 East 15th Street, Room 608, Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426 or e-mailed to: John.Moore@twc.state.tx.us.. Comments must be received by the Agency within thirty days from the date of the publication in the *Texas Register*.

The new rule is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rule as it deems necessary for the effective administration of Agency services and activities.

The rule affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§800.81.Board Performance.

(a) A Board shall achieve levels of performance consistent with performance standards that are reflected in the individual Board's contracts with the Commission.

(b) The Commission shall determine the performance standards by using measures of performance based on federal and state performance requirements and by using factors that may be necessary to achieve the mission of the Commission.

(c) A Board shall comply with all Commission rules, Workforce Development (WD) Letters, the Grants and Contracts Manual, the Financial Manual and guidance letters of the Agency, including rules contained in other chapters of this Part XX applicable to specific programs, including but not limited to Chapter 841 relating to WIA.

(d) A Board's achievement of high levels of performance may result in the Commission providing incentives for the Board.

(e) A Board's failure to meet minimum levels of performance as referenced in the Board's contract may result in corrective actions, penalties or sanctions as specified in:

(1) Part XX of this title (relating to the Texas Workforce Commission), including chapter 800, Subchapter E, relating to Sanctions;

(2) the Board's contract with the Commission; or

(3) as otherwise provided for by federal or state statute or rule.

(f) A Board may submit to the Commission a request for an adjustment to the minimum levels of performance.

(g) The Commission may determine what constitutes a necessary adjustment to local performance measures and may consider specific economic, demographic and other characteristics of populations to be served in the local workforce development area and other factors the Commission deems appropriate including the anticipated impact of the adjustment on the state's performance.

(h) The Governor may adopt additional performance incentives and sanctions provisions as provided in WIA.

(i) A Board shall comply with and remain subject to the provisions contained in Chapter 805 effective on July 1, 2001, relating to performance or any other matters addressed in Chapter 805 regarding any funds granted by the Secretary of Labor under the JTPA regulations or Act, including NRA and other funds.

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

Filed with the Office of the Secretary of State, on July 26, 2001.

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Texas Workforce Commission

Earliest possible date of adoption: September 9, 2001

For further information, please call: (512) 463-2573

