

## **CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS**

**ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF SECRETARY OF STATE.**

ON **APRIL 1, 2024**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Publication Date of the Adoption in the *Texas Register*: **April 19, 2024**

The Rules are Effective: **April 21, 2024**

The Texas Workforce Commission (TWC) adopts amendments to the following section of Chapter 801, relating to Local Workforce Development Boards:

### Subchapter A. General Provisions, §801.1

Amended §801.1 is adopted *without changes* to the proposal, as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 26), and, therefore, the adopted rule text will not be published.

## **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The purpose of the Chapter 801 rule change is to address changes in Texas Government Code §2308.256(a) and (g) because of the passage of House Bill (HB) 1615 by the 88th Texas Legislature, Regular Session (2023). Regarding Local Workforce Development Board (Board) composition, the bill removes the requirement that a Board member must have expertise in child care or early childhood education and adds the requirement that a Board must have representatives from the child care workforce.

## **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 A. GENERAL PROVISIONS**

TWC adopts the following amendments to Subchapter A:

#### **§801.1. Requirements for Formation of Local Workforce Development Boards**

Section 801.1 is amended by amended Texas Government Code §2308.256(a) to add that a Board must include a representative from the child care workforce and subsection §2308.256(g) subsequently removes the requirement that at least one Board member shall have expertise in child care or early childhood education by amending §801.1 as follows:

--Section 801.1(g)(2)(C)(vi) is removed because of the amended Texas Government Code §2308.256(a) requirement. The subsequent clause is renumbered.

--Section 801.1(g)(2)(D)(i) and (ii) are also removed and the language in §801.1(g)(2)(D)(ii) is merged into §801.1(g)(2)(D).

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

### **PART III. PUBLIC COMMENTS**

The public comment period closed on February 19, 2024. TWC received one comment from an individual.

**COMMENT:** One individual supported the requirement that a Board must have representatives from the child care workforce.

**RESPONSE:** The Commission appreciates the support. No changes were made in response to this comment.

### **PART IV. STATUTORY AUTHORITY**

The rules are adopted to implement House Bill 1615, 88th Texas Legislature, Regular Session (2023), which amended Texas Government Code §2308.256 to require that Boards include a representative of the child care workforce.

The rules are adopted under:

- Texas Government Code §2308.253, which provides TWC with the specific authority to establish rules related to local workforce development boards; and
- Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Texas Government Code Chapter 2308.

## CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

### SUBCHAPTER A. GENERAL PROVISIONS

#### §801.1. Requirements for Formation of Local Workforce Development Boards.

- (a) Purpose of Rule.
  - (1) Upon application by the chief elected officials (CEOs) and approval of the Commission, the Commission shall forward an application to form a Local Workforce Development Board (Board) to the Governor.
  - (2) Before an application may be submitted to the Governor, all requirements of this section shall be met.
- (b) State Law. The formation of Boards is governed by Texas Government Code Chapter 2308.
- (c) Chief Elected Official Agreement. Creation of a Board requires agreement by at least three-fourths of the CEOs in the local workforce development area (workforce area) who represent units of general local government, including all of the CEOs who represent units of general local government having populations of at least 200,000. The elected officials agreeing to the creation of the Board shall represent at least 75 percent of the population of the workforce area.
- (d) Chief Elected Officials. The CEOs may, and are encouraged to, consult with local officials other than the ones delineated below. The following officials are designated as the CEOs for the purpose of establishing agreements to form Boards:
  - (1) Mayors.
    - (A) The mayor of each city with a population of at least 100,000;
    - (B) or, if there is no city with a population of greater than 100,000, the mayor of each city with a population greater than 50,000;
    - (C) or, if there are no cities with a population of greater than 50,000, the mayor of the largest city in the workforce area.
    - (D) For purposes of this section, municipal population will be determined by the figure last reported by the Texas Demographic Center at the time of submission of the application to the Commission.
  - (2) All county judges included in a workforce area as designated by the Governor.

- (e) Time of Application. CEOs in a workforce area may not establish a Board until the Governor has designated that area as a workforce area as provided in Texas Government Code Chapter 2308.
- (f) Applications shall meet all Governor-approved criteria for the establishment of Boards.
- (g) Procedures for Formation of a Board. The CEOs shall comply with the following procedures to form a Board.
  - (1) Public process procedure. If three-fourths of the CEOs, as defined in subsection (d) of this section, agree to initiate procedures to establish a Board, they shall conduct a public process, including at least one public meeting, to consider the views of all affected organizations before making a final decision to form a Board. This public process may include, but is not limited to, notices published in various media and surveys for public comment.
  - (2) Application procedure.
    - (A) The CEOs shall submit an application to the Commission. This application shall include evidence of the actions required by paragraph (1) of this subsection. As a part of the application, each CEO who is in agreement regarding the formation of a Board, shall execute the following documents:
      - (i) An interlocal agreement delineating:
        - (I) the purpose of the agreement;
        - (II) the process that will be used to select the CEO who will act on behalf of the other CEOs and the name of such CEO if the person has been selected;
        - (III) the procedure that will be followed to keep those CEOs informed regarding Board activities;
        - (IV) the initial size of the Board;
        - (V) how resources allocated to the workforce area will be shared among the parties to the agreement;
        - (VI) the process to be used to appoint the Board members, which shall be consistent with applicable federal and state laws; and
        - (VII) the terms of office of the members of the Board.

- (ii) An acknowledgment in the following form: We, the chief elected officials of the Workforce Development Area, acknowledge that the following are responsibilities and requirements pursuant to the formation of the Board:
  - (I) The Board will assume the responsibilities for the following committees and councils that will be replaced by the Board unless otherwise provided in Texas Government Code Chapter 2308: private industry council, quality workforce planning committee, job service employer committee, and local general vocational program advisory committee;
  - (II) At least one Workforce Solutions Office shall be established within 180 days of Board certification;
  - (III) The Board shall have its own independent staff and not be a provider of workforce services, unless the Board secures a waiver of these provisions;
  - (IV) The CEOs shall enter into a partnership agreement with the Board to designate a grant recipient to receive, be accountable for, and be liable for any misuse of block grant funds;
  - (V) The partnership agreement shall also specify the entity that will administer the programs, which may be separate from the entity that receives the funds from the state;
  - (VI) The partnership agreement shall define the process through which the Boards and CEOs will develop the strategic and operational plans, including the training plan required under the Workforce Innovation and Opportunity Act; and
  - (VII) The strategic plan shall be reviewed by both the Commission and the Texas Workforce Investment Council and approved by the Governor before block grants will be available to the workforce area.
- (B) The application shall include evidence that any affected existing Board has been notified and agrees that its functions and responsibilities will be assumed by the proposed Board upon the proposed Board's final certification by the Governor.
- (C) The application shall include the names and affiliations of individuals recommended for Board membership, with documentation that CEOs followed the nomination process specified in applicable state and federal law, including Texas Government Code §2308.255 and §2308.256.

- (i) Private sector members shall be owners of business concerns, chief executives, chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. To be eligible to represent the private sector, at least 51 percent of an individual's annual income shall be from private sector sources.
- (ii) Private sector membership should represent the composition of the local pool of employers. The private sector membership should include representatives of the region's larger employers and emerging growth industries. Primary consideration should be given to private sector employers who do not directly provide employment and workforce training services to the general public. CEOs shall develop a profile of the workforce area's major industries using locally obtained information and state-published data. The Agency shall provide relevant labor market information, including data that identifies employment trends, emerging high-growth, high-demand industries, the size of local employers, and other data needed to assist CEOs in developing the employer profile. Documentation submitted with the application shall show how the regional employer profile is reflected in the Board membership.
- (iii) Board membership shall include representatives of local organized labor organizations, community-based organizations, educational agencies, vocational rehabilitation agencies, public assistance agencies, economic development agencies, the public employment service, local literacy councils, adult basic and continuing education organizations, and the child care workforce as required by law.
- (iv) Representatives of local organized labor organizations shall be nominated by local labor federations unless no employees in the workforce area are represented by such organizations, in which case nominations may be made by other representatives of employees. A labor federation is defined as an alliance of two or more organized labor unions for the purpose of mutual support and action.
- (v) Board nominees shall be actively engaged in the organization, enterprise, or field that they are nominated to represent. Board nominees shall have an existing relationship with the workforce area through residence or employment within the workforce area.
- (vi) At least one of the members of a Board appointed under Texas Government Code §2308.256(a) shall, in addition to the qualifications required for the members under that subsection:

- (I) be a veteran as defined in Texas Government Code §2308.251(2); and
  - (II) have an understanding of the needs of the local veterans' population and willingness to represent the interests and concerns of veterans in the workforce area.
- (D) No individual member shall be a representative of more than one sector or category described in this section, except as statutorily permitted for one or more members having the qualifications set forth in subparagraph (C)(vi) of this paragraph.
- (E) The application shall include documentary evidence substantiating compliance with the application procedure, including but not limited to, written agreements, minutes of public meetings, copies of correspondence, and such other documentation as may be appropriate.