

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

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

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

9
10 Subchapter B, One-Stop Service Delivery Network, §801.23

11
12 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

13 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

14 **PART III. IMPACT STATEMENTS**

15 **PART IV. COORDINATION ACTIVITIES**

16
17 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

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

24
25 Under 20 C.F.R. §1010.110, DOL defines a *veteran* as: "a person who served in the active
26 military, naval, or air service, and who was discharged or released therefrom under conditions
27 other than dishonorable, as specified in 38 U.S.C. § 101(2). Active service includes full-time
28 duty in the National Guard or a Reserve component, other than full-time duty for training
29 purposes."

30
31 Further, 20 C.F.R. §1010.110 defines an *eligible spouse* as the spouse of:

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

43
44 Additionally, House Bill (HB) 1452, enacted by the 81st Texas Legislature, Regular Session
45 (2009) (to be codified in Texas Labor Code, Chapter 302, Subchapter G) mandates that state

1 qualified veterans receive preference (i.e., priority of service) for training or assistance under a
2 job training or employment assistance program or service. This requirement applies to services
3 funded in whole or in part by state funds.
4

5 The statute also aligns the definitions of "active military, naval, or air service," "covered person,"
6 and "veteran" with federal law for purposes of receiving priority of service in certain job training
7 and employment assistance programs. HB 1452 also includes the spouse of any member of the
8 armed forces who died while serving on active military, naval, or air service in the definition of
9 "qualified spouse."
10

11 The purpose of this rule change is to provide a new definition of "eligible veteran" based on
12 DOL definitions and HB 1452.
13

14 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

15 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
16 therefore, are not discussed in the Explanation of Individual Provisions.)
17

18 **SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK**

19 **The Commission proposes the following amendments to Subchapter B:**
20

21 **§801.23. Definitions**

22 New §801.23(4), the definition of "eligible foster youth," is unchanged; however, it is
23 renumbered from §801.23(5) to maintain alphabetical order.
24

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

26 --Federal/state qualified veteran

27 --Federal qualified spouse

28 --State qualified spouse
29

30 The new definition is derived from the definitions of veteran found in the DOL definition of
31 federal qualified veteran at 20 C.F.R. § 1010.110 and the state definition of veteran set forth in
32 HB 1452.
33

34 Section 801.23(7) is removed. The definition of "state qualified veteran" is included in new
35 §810.23(5)(A).
36

37 **PART III. IMPACT STATEMENTS**

38 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
39 years the rules will be in effect, the following statements will apply:
40

41 There are no additional estimated costs to the state and local governments expected as a result of
42 enforcing or administering the rules.
43

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

1
2 There are no estimated losses or increases in revenue to the state or to local governments as a
3 result of enforcing or administering the rules.

4
5 There are no foreseeable implications relating to costs or revenue of the state or local
6 governments as a result of enforcing or administering the rules.

7
8 There are no anticipated economic costs to persons required to comply with the rules, including
9 small or microbusinesses.

10
11 The reasoning that led to these conclusions is as follows:

12
13 All workforce services are provided to eligible veterans with current funding. Giving veterans
14 priority over all other individuals in the receipt of services (e.g., job referrals, support services,
15 child care, and training) does not indicate or infer that any increase in costs from current
16 requirements would result. It also has been determined that modifications required in the
17 information system to accommodate the minor change in definitions for "veteran," if any, will be
18 accomplished within the existing baseline resources.

19
20 Laurence M. Jones, Director, Workforce Development Division, has determined that for each
21 year of the first five years the rules are in effect, the public benefit anticipated as a result of
22 enforcing the proposed rules will be to ensure Agency operations with regard to veterans' priority
23 of service are consistent with state statute and regulations issued by DOL-VETS and that eligible
24 veterans will be appropriately served.

25
26 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to
27 be within the Agency's legal authority to adopt.

28
29
30 **PART IV. COORDINATION ACTIVITIES**

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

38
39 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
40 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,
41 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
42 The Commission must receive comments postmarked no later than 30 days from the date this
43 proposal is published in the *Texas Register*.

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

4

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

7

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;~~~~~~~~

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

3
4 ~~(III) as a member of a reserve component under an order to active~~
5 ~~duty pursuant to 10 U.S.C. §12301(a), (d), or (g), §12302, or~~
6 ~~§12304, served on active duty during a period of war or in a~~
7 ~~campaign or expedition for which a campaign badge is~~
8 ~~authorized and was discharged or released from such duty~~
9 ~~with other than a dishonorable discharge.~~

10
11 ~~(B) The spouse of any of the following individuals:~~

12
13 ~~(i) Any veteran who died of a service-connected disability.~~

14
15 ~~(ii) Any member of the Armed Forces serving on active duty who, at the~~
16 ~~time of application for assistance under this section, is listed,~~
17 ~~pursuant to 37 U.S.C. §556 and regulations issued thereunder, by the~~
18 ~~Secretary concerned in one or more of the following categories and~~
19 ~~has been so listed for a total of more than 90 days:~~

20
21 ~~(I) Missing in action;~~

22
23 ~~(II) Captured in line of duty by a hostile force; or~~

24
25 ~~(III) Forcibly detained or interned in line of duty by a foreign~~
26 ~~government or power.~~

27
28 ~~(iii) Any veteran who has a total disability resulting from a service-~~
29 ~~connected disability.~~

30
31 ~~(iv) Any veteran who died while a disability, as defined in clause (iii) of~~
32 ~~this subsection, was in existence.~~

33
34 (4)~~(5)~~ Eligible Foster Youth -- An eligible foster youth is a:

35
36 (A) Current Foster Youth -- A youth, age 14 or older, who is receiving
37 substitute care services under the managing conservatorship of the Texas
38 Department of Family and Protective Services (DFPS). This includes
39 youth residing in private foster homes, group homes, residential treatment
40 centers, juvenile correctional institutions, and relative care; or

41
42 (B) Former Foster Youth -- A youth up to 23 years of age, who formerly was
43 under the managing conservatorship of DFPS, until:

44
45 (i) the conservatorship was transferred by a court;

- 1 (ii) the youth was legally emancipated (i.e., the youth's minority status
2 was removed by a court); or
3
4 (iii) the youth attained 18 years of age.
5

6 (5) Eligible Veteran -- an eligible veteran is one of the following:
7

8 (A) Federal/state qualified veteran -- an individual who served in the active
9 military, naval, or air service, and who was discharged or released from
10 such service under conditions other than dishonorable as specified at 38
11 U.S.C. §101(2). Active service includes full-time duty in the National
12 Guard or a Reserve component, other than full time for training purposes.
13

14 (B) Federal qualified spouse -- the spouse of one of the following:
15

16 (i) Any veteran who died of a service-connected disability.
17

18 (ii) Any member of the Armed Forces serving on active duty who, at the
19 time of application for assistance under this section, is listed,
20 pursuant to 37 U.S.C. §556 and regulations issued thereunder, by the
21 Secretary concerned in one or more of the following categories and
22 has been so listed for a total of more than 90 days:
23

24 (I) Missing in action;
25

26 (II) Captured in line of duty by a hostile force; or
27

28 (III) Forcibly detained or interned in line of duty by a foreign
29 government or power.
30

31 (iii) Any veteran who has a total disability resulting from a service-
32 connected disability as evaluated by the Department of Veterans
33 Affairs.
34

35 (iv) Any veteran who died while a disability, as defined in clause (iii) of
36 this subparagraph, was in existence.
37

38 (C) State qualified spouse:
39

40 (i) A spouse who meets the definition of federal qualified spouse; or
41

42 (ii) A spouse of any member of the armed forces who died while
43 serving on active military, naval, or air service.
44

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

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

6
7 ~~(B) Former Foster Youth—A youth up to 23 years of age, who formerly was under~~
8 ~~the managing conservatorship of DFPS, until:~~

9
10 ~~(i) the conservatorship was transferred by a court;~~

11
12 ~~(ii) the youth was legally emancipated (i.e., the youth's minority status was~~
13 ~~removed by a court); or~~

14
15 ~~(iii) the youth attained 18 years of age.~~

16
17 (6) National Emergency -- A condition declared by the President by virtue of powers
18 previously vested in that office to authorize certain emergency actions to be
19 undertaken in the national interest pursuant to 50 U.S.C. §1621.

20
21 ~~(7) State Qualified Veteran—An individual who meets the criteria of Texas Government~~
22 ~~Code §657.002(e) is entitled to a preference (i.e., priority) for training or assistance~~
23 ~~under a job training or employment assistance program or service funded in whole or~~
24 ~~in part by state funds if the individual:~~

25
26 ~~(A) served in the military for not less than 90 consecutive days during a national~~
27 ~~emergency declared in accordance with federal law or was discharged from~~
28 ~~military service for an established service-connected disability;~~

29
30 ~~(B) was honorably discharged from military service; and~~

31
32 ~~(C) is competent as defined in paragraph (1) of this section.~~
33