

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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 **ON NOVEMBER 26, 2018,** THE TEXAS WORKFORCE COMMISSION PROPOSED THE  
8 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

9  
10 Estimated Publication Date of the Proposal in the *Texas Register*: **December 14, 2018**  
11 Estimated End of Comment Period: **January 14, 2019**

12  
13 The Texas Workforce Commission (TWC) proposes adding the following new subchapter to  
14 Chapter 800, relating to General Administration:

15  
16 Subchapter C. Savings Incentive Program for State Agencies, §800.100 - §800.101

- 17  
18 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**  
19 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**  
20 **PART III. IMPACT STATEMENTS**  
21 **PART IV. COORDINATION ACTIVITIES**  
22

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

24 Chapter 800 is being amended to add rules on implementing the Savings Incentive Program for  
25 State Agencies, as required by amendments made to Texas Government Code §2108.103(f)  
26 under Senate Bill (SB) 132 enacted by the 85th Texas Legislature, Regular Session (2017).  
27

28 Effective September 1, 2017, SB 132 changed the Savings Incentive Program in Texas  
29 Government Code, Chapter 2108, to remove the 1 percent cap on funds allowed to be retained by  
30 an agency and to allow the agency to retain one-half of the savings, with the other half being  
31 returned to general revenue.

32  
33 SB 132 also:

- 34 --allows a state agency to spend the savings on bonuses, divided equally among eligible  
35 employees who directly contributed to the agency's savings or who worked in the agency  
36 department responsible for the savings;  
37 --establishes a tiered bonus structure that is based on the percentage of the agency's savings;  
38 --prohibits a state agency from giving the bonuses to agency employees in upper management  
39 positions;  
40 --requires an agency to pay off its general obligation bonds before issuing bonuses; and  
41 --limits an agency's spending to an activity or expense that does not create new services or  
42 expand services or will not require ongoing funding at a later date.  
43

44 Currently, TWC has no appropriated undedicated general revenue and, therefore, has no current  
45 savings to retain. However, consistent with revisions to Chapter 2108 of the Texas Government

1 Code, this section will govern any potential future savings realized from appropriated  
2 undedicated general revenue.

3  
4 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

5  
6 **SUBCHAPTER C. SAVINGS INCENTIVE PROGRAM FOR STATE AGENCIES**

7 **TWC proposes adding Subchapter C, Savings Incentive Program for State Agencies, as**  
8 **follows:**

9  
10 **§800.100. Definitions**

11 New §800.100 is added to define terms that apply to the Savings Incentive Program for State  
12 Agencies.

13  
14 **§800.101. Procedure**

15 New §800.101 is added to explain TWC's procedure for implementing the Savings Incentive  
16 Program for State Agencies. As required under Texas Government Code, Chapter 2108, the  
17 procedure includes verification by the comptroller of the amount of savings, retention and usage  
18 of the savings by TWC, and the awarding of bonuses by TWC.

19  
20 **PART III. IMPACT STATEMENTS**

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

23  
24 There are no additional estimated costs to the state and to local governments expected as a result  
25 of enforcing or administering the rules.

26  
27 There are no estimated cost reductions to the state and to local governments as a result of  
28 enforcing or administering the rules.

29  
30 There are no estimated losses or increases in revenue to the state or to local governments as a  
31 result of enforcing or administering the rules.

32  
33 There are no foreseeable implications relating to costs or revenue of the state or local  
34 governments as a result of enforcing or administering the rules.

35  
36 There are no anticipated economic costs to individuals required to comply with the rules.

37  
38 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural  
39 communities as a result of enforcing or administering the rules.

40  
41 Based on the analyses required by Texas Government Code §2001.024, TWC has determined  
42 that the requirement to repeal or amend a rule, as set forth in Texas Government Code  
43 §2001.0045, does not apply to this rulemaking.

44  
45 **Takings Impact Assessment**

1 Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects  
2 private real property, in whole or in part or temporarily or permanently, in a manner that requires  
3 the governmental entity to compensate the private real property owner as provided by the Fifth  
4 and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or  
5 §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in  
6 the absence of the governmental action, and is the producing cause of a reduction of at least 25  
7 percent in the market value of the affected private real property, determined by comparing the  
8 market value of the property as if the governmental action is not in effect and the market value of  
9 the property determined as if the governmental action is in effect. The Commission completed a  
10 Takings Impact Analysis for the proposed rulemaking action under Texas Government Code  
11 §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in  
12 this preamble, is to add rules on implementing the Savings Incentive Program for State Agencies  
13 as required by amendments made to Texas Government Code §2108.103(f) under SB 132,  
14 enacted by the 85th Texas Legislature, Regular Session (2017).

15  
16 The proposed rulemaking action will not create any additional burden on private real property.  
17 The proposed rulemaking action will not affect private real property in a manner that would  
18 require compensation to private real property owners under the United States Constitution or the  
19 Texas Constitution. The proposal also will not affect private real property in a manner that  
20 restricts or limits an owner's right to the property that would otherwise exist in the absence of the  
21 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas  
22 Government Code, Chapter 2007.

#### 23 24 Government Growth Impact Statement

25 TWC has determined that during the first five years the proposed amendments will be in effect:

- 26 --the proposed amendments will not create or eliminate a government program;
- 27 --implementation of the proposed amendments will not require the creation or elimination of
- 28 employee positions;
- 29 --implementation of the proposed amendments will not require an increase or decrease in future
- 30 legislative appropriations to TWC;
- 31 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 32 --the proposed amendments will not create a new regulation;
- 33 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 34 --the proposed amendments will not change the number of individuals subject to the rules; and
- 35 --the proposed amendments will not positively or adversely affect the state's economy.

#### 36 37 Economic Impact Statement and Regulatory Flexibility Analysis

38 TWC has determined that the rules will not have an adverse economic impact on small  
39 businesses or rural communities, as these rules place no requirements on small businesses or  
40 rural communities.

41  
42 Mariana Vega, Interim Director of Labor Market and Career Information, has determined that  
43 there is no significant negative impact on employment conditions in the state as a result of the  
44 rules.

1 Courtney Arbour, Director, Workforce Development Division, has determined that for each year  
2 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing  
3 the rules will be to more effectively incentivize TWC staff to create savings for the agency.

4  
5 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be  
6 within TWC's legal authority to adopt.  
7

8 **PART IV. COORDINATION ACTIVITIES**

9 In the development of these rules for publication and public comment, TWC sought the  
10 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the  
11 concept paper regarding these rule amendments to the Boards for consideration and review on  
12 June 14, 2018. During the rulemaking process, TWC considered all information gathered in  
13 order to develop rules that provide clear and concise direction to all parties involved.  
14

15 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce  
16 Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas  
17 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us).  
18 Comments must be received or postmarked no later than 30 days from the date this proposal is  
19 published in the *Texas Register*.  
20

21 The rules are proposed under Texas Government Code §2108.103(f), which requires state  
22 agencies to adopt implementing rules. In addition, Texas Labor Code §301.0015(a)(6) and  
23 §302.002(d), provide TWC with the authority to adopt, amend, or repeal such rules as it deems  
24 necessary for the effective administration of TWC services and activities.  
25

26 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.  
27

**CHAPTER 800. GENERAL ADMINISTRATION**

**SUBCHAPTER C. SAVINGS INCENTIVE PROGRAM FOR STATE AGENCIES**

**§800.100. Definitions.**

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) General appropriations act--a legislative act appropriating money for the operation of state government.
- (2) General obligation bond--a bond issued on behalf of the State of Texas, the repayment of which is guaranteed by the full faith and credit of the State of Texas and which has been authorized by the Texas Constitution. For purposes of this subchapter, the term does not include an unemployment insurance trust fund bond.
- (3) General revenue-dedicated--a subset of general revenue that is dedicated as a result of legislative action and may be appropriated only for the purpose to which the revenue is statutorily dedicated.
- (4) Undedicated general revenue--general revenue that does not fall under the definition of "general revenue-dedicated" and can be transferred for another use through a special provision to the general appropriations act.
- (5) Upper management--includes commissioners, executive director, deputy executive director, division directors, and deputy division directors.

**§800.101. Procedure.**

- (a) In any fiscal year, if the agency spends less of the undedicated general revenue derived from nonfederal sources than is appropriated to it by the general appropriations act, the agency shall notify the comptroller of the savings before October 30 following the end of the fiscal year in which the savings are realized.
- (b) Upon verification of savings by the comptroller, the agency may retain one-half of the verified amount of savings.
- (c) The verified amount of savings may be spent only on an activity or expense that does not:
  - (1) create new or expanded services; or
  - (2) require ongoing funding at a later date.

1  
2 (d) Of the verified savings retained by the agency, one-half:  
3

4 (1) shall be used to make additional principal payments for general obligation  
5 bonds issued by the agency or on behalf of the agency by the Texas Public  
6 Finance Authority; or  
7

8 (2) may be used to provide bonuses to a qualifying employee or employees of the  
9 agency, as set forth in Texas Government Code §2108.103(c)(2)(A) - (C), if  
10 there are no outstanding general obligation bonds issued by the agency or on  
11 behalf of the agency by the Texas Public Finance Authority.  
12

13 (e) In determining whether savings have been realized, the Agency's Finance  
14 department will consider the difference between lapsed funds and verifiable savings  
15 that are based on proactive efforts by an Agency employee or employees to reduce  
16 operational and other costs to the Agency.  
17

18 (f) If verified savings under this section are not needed for other Agency priorities, the  
19 savings may be awarded as bonuses as set out in Texas Government Code  
20 §2108.103(c)(2).  
21

22 (g) The Agency's Finance department will notify the Agency's executive director of the  
23 savings that may be distributed to provide bonuses.  
24

25 (h) The Agency's executive director may implement bonuses in accordance with the  
26 tiered bonus structure, as set forth in Texas Government Code §2108.103(d)(1) - (4).  
27 Before awarding the bonuses, the executive director will:  
28

29 (1) ensure that all financial obligations are met under Texas Government Code  
30 §2108.103(c)(2); and  
31

32 (2) verify that each employee who receives a bonus:  
33

34 (A) is a current full-time equivalent employee of the Commission;  
35

36 (B) worked for the Commission as a full-time equivalent employee for the  
37 entire fiscal year in which the savings were realized; and  
38

39 (C) is directly responsible for or worked in a department, office, or other  
40 division within the Commission that is responsible for the savings realized.  
41

42 (i) Employees of the Agency who serve in an upper management position are prohibited  
43 from receiving a bonus under this section.  
44

45