

## **CHAPTER 837. APPRENTICESHIP TRAINING PROGRAM**

**ADOPTED 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*.**

ON **MAY 27, 2014**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: June 13, 2014

The rules will take effect: June 16, 2014

The Texas Workforce Commission (Commission) adopts the following new sections to Chapter 837, relating to the Apprenticeship Training Program, *without* changes, as published in the March 14, 2014, issue of the *Texas Register* (39 TexReg 1918):

Subchapter B. Funding, §837.28

Subchapter C. Compliance Monitoring, §837.41

The Commission adopts amendments to the following sections of Chapter 837, relating to the Apprenticeship Training Program, *without* changes, as published in the March 14, 2014, issue of the *Texas Register* (39 TexReg 1918):

Subchapter A. General Purpose and Definitions, §837.2

Subchapter B. Funding, §837.22 and §837.24

The Commission adopts the repeal of the following sections of Chapter 837, relating to the Apprenticeship Training Program, *without* changes, as published in the March 14, 2014, issue of the *Texas Register* (39 TexReg 1918):

Subchapter C. Compliance Monitoring, §837.41 and §837.42

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

**PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES**

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

Under Texas Government Code §2001.039, every four years each state agency must review and consider for readoption each rule adopted by that agency. Based on the review, the following are issues and recommendations for amendments to Chapter 837, the Commission's Apprenticeship Training Program rules.

The apprenticeship training program serves employers and job seekers by training workers for well-paying jobs with promising futures. Apprentices are full-time, paid employees who earn while they learn. The Commission is authorized under Texas Education Code, Chapter 133, and receives an appropriation from the Texas legislature, to grant funds to local public educational

institutions to support the costs of related classroom instruction in registered apprenticeship training programs. Local education agencies act as fiscal agents for registered apprenticeship training programs.

To qualify for funds, apprenticeship training programs and apprentices must be registered with the US Department of Labor (DOL) Office of Apprenticeship.

Since Fiscal Year 2010 (FY'10), the Commission has supported Chapter 133 by contributing approximately \$1 million in Workforce Investment Act (WIA) funds each year to support the increasing number of apprentices receiving training. Additionally, the Commission leverages funds from other programs, such as the Noncustodial Parent Choices program and Supplemental Nutrition Assistance Program, to maximize the funds available to support apprentice training.

## **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES**

(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.)

**Comment:** Eighteen commenters expressed support of the proposed rules. Of these, five expressed appreciation for the Commission's efforts to strengthen the rules and regulations governing the evaluation and operation of all programs applying to the Commission for funding.

**Response:** The Commission appreciates the comments and the support for the apprenticeship training program.

### **SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS**

**The Commission adopts the following amendments to Subchapter A:**

#### **§837.2. Definitions**

Section 837.2(2), the definition of "apprentice," replaces the reference to DOL's "Bureau of Apprenticeship and Training" with the current name, "Office of Apprenticeship."

Section 837.2(4), the definition of "apprenticeship training program":

--replaces the reference to DOL's "Bureau of Apprenticeship and Training" with the current name, "Office of Apprenticeship," and

--adds that as required by Texas Education Code §133.002(c), an apprenticeship training program must be under the direction of an apprenticeship committee.

Section 837.2(5), the definition of "Bureau of Apprenticeship and Training," replaces the name of Bureau of Apprenticeship and Training with the current name, "Office of Apprenticeship."

### **SUBCHAPTER B. FUNDING**

**The Commission adopts the following amendments to Subchapter B:**

### **§837.22. Eligible Applicants**

New §837.22(b)(3) sets forth that approved local education agencies must apply for funds for each apprenticeship committee and its apprenticeship training program(s) from either the Commission or the Texas Higher Education Coordinating Board (THECB). Applications are specifically for the following three levels of training:

1. related classroom training;
2. supplementary instruction; or
3. preparatory instruction.

Apprenticeship training programs can receive funding from one of two sources: the Commission (through Chapter 133) or THECB. THECB's *Guidelines for Instructional Programs in Workforce Education* provides that "state funds are available for job-related classroom instruction cost only, never for the on-the-job-training portion of an apprenticeship program. State funds may be accessed from either the TWC or the Texas Higher Education Coordinating Board, but not both."

Currently, due to limited funding, the Commission provides funding (Chapter 133) only for related classroom instruction. If a training program chooses to receive related classroom instruction funding through the Commission, it cannot receive related classroom instruction funding through THECB. However, apprenticeship training programs receiving funding from the Commission for related classroom instruction can still access THECB funding for supplementary instruction or preparatory instruction training.

### **§837.24. Funding Qualifications for Apprenticeship Training Programs**

Section 837.24(2) and (3) replaces the reference to the DOL's "Bureau of Apprenticeship and Training" with the current name, "Office of Apprenticeship."

### **New §837.28. Performance**

New §837.28:

- (1) authorizes the Commission to develop and adopt annual performance measures and targets for apprenticeship training programs; and
- (2) changes the funding mechanism from strictly an application process and authorizes the Commission to consider past performance of apprenticeship training programs in determining eligibility for funding.

The Commission strives to be a diligent and responsible steward of public funds, with a commitment to transparency and accountability. Measuring program performance allows the Agency to evaluate the effectiveness of programs and make data-driven decisions.

The Commission has a Legislative Budget Board performance target of 3,600 apprentices served/trained per year and has exceeded this performance target since Fiscal Year 2008. While the Commission does not currently impose performance measures on individual apprenticeship training programs, this new section authorizes the Commission to do so for future years.

Currently, all interested apprenticeship training programs complete an application process and, if

they meet the requirements, register with DOL's Office of Apprenticeship, and receive Chapter 133 funding.

In consideration of potentially diminishing resources and increasing demand for funding, providing the Commission authority in rule to establish annual performance measures and targets ensures that Commission funds:

- are being used in the most efficient and effective manner; and
- are focused on the most productive and successful apprenticeship training programs.

Any required performance will be collected for apprenticeship training programs and not for local education agencies serving as fiscal agents.

**Comment:** One commenter expressed concern that the Commission intends to require program performance measures above and beyond those currently required, and suggested that Apprenticeship Training Councils and the local education agency (LEA) must be involved in their development.

The commenter stated that proposed performance measures and criteria must be valid and reliable if they are to be used to evaluate individual programs or influence program funding. The commenter stated that the Commission's efforts to objectively and fairly determine "the most productive and successful apprenticeship programs" will be fraught with difficulty. The commenter further alleged that allocating federal and state funds based on such measures will make it even more difficult to guarantee compliance, and that Commission focus might be better given to identifying, rewarding, and promoting innovative apprenticeship programs.

Finally, the commenter expressed concern that new §837.28 will impose additional data collection responsibilities on the LEAs and Apprenticeship Training Councils, without regard to the cost of creating and/or collecting such data.

**Response:** The intent of new §837.28 is to provide the Commission with authority in rule to establish annual performance measures and targets. Currently, however, the Commission only collects data that identifies the training programs and their apprentices; it has not established any performance measures for apprenticeship training programs.

The Commission, which develops and maintains performance measures for multiple training programs under its purview, agrees that to fairly evaluate program performance all measures must be valid and reliable. Performance measures are an effective component of continual improvement and an essential tool to direct diminishing funds to the most successful training programs.

The Commission's development of any performance measures for apprenticeship training programs will also be open and transparent to allow for stakeholders' input.

The Commission collects and has access to large amounts of data, including employer and wage data, that is not provided by LEAs or apprenticeship training programs. It is

this data that may be used to develop performance measures; however, the Commission does not anticipate placing additional reporting requirements on LEAs or apprenticeship training programs in the development of such measures.

## **SUBCHAPTER C. COMPLIANCE MONITORING**

**The Commission adopts the following amendments to Subchapter C:**

### **New §837.41. Funds Management and Accountability**

New §837.41 requires local education agencies to comply with the applicable rules in Chapter 802 of this title, regarding the Integrity of the Texas Workforce System, specifically:

- (1) Subchapter D, relating to Agency Monitoring Activities;
- (2) Subchapter F, relating to Performance and Accountability;
- (3) Subchapter G, relating to Corrective Actions; and
- (4) Subchapter H, relating to Remedies.

Section 802.2(1) defines "Agency grantees" as "Grantees that receive funding from the Agency, such as Skills Development Fund, Wagner-Peyser 7(b), and WIA statewide, to provide workforce services." LEAs meet this definition and thus are considered Agency grantees; as such, they must adhere to the applicable requirements set forth in Chapter 802.

### **§837.41. Program and Fiscal Monitoring**

Section 837.41 is repealed; the information contained in this section is located in Chapter 802 of this title, regarding the Integrity of the Texas Workforce System.

### **§837.42. Corrective Action**

Section 837.42 is repealed; the information contained in this section is located in Chapter 802 of this title, regarding the Integrity of the Texas Workforce System.

#### **COMMENTS WERE RECEIVED FROM:**

Trey Berryman

Dr. Vernon Beuke, Dallas County Community College District

Robert M. Chadwick, Insulators Local 22 JATC

George W. Cox, Sr., Young & Pratt, Inc.

Mike Defee, Newtron Beaumont L.L.C.

Cassie Dober, Pipefitters Local Union 195

Billy Griffen

Jeff Henkener, Dynamic Systems, Inc.

Brent Laborde, Goldcrest Electric

Phil Parker, Crippen Sheet Metal Inc.

S. Picard, Gulf Coast Electric

Danny Prosperie, Beaumont Electrical JATC

Chris Reeves, IBEW Local 479

Dalton Senegal, Local 479

Richard Stanfield, Houston Area Sheet Metal JAC

David Thomas, Newtron Beaumont L.L.C.

James C. Williamson, United Association Local Union 195

Trey Wattinger, CEO/President, Wattinger Company, Inc.  
David Zern, Vice President, Young & Pratt, Inc.

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

The rules are adopted 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 adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302 and Texas Education Code, Chapter 133.

## **CHAPTER 837. APPRENTICESHIP TRAINING PROGRAM**

### **SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS**

#### **§837.2. Definitions.**

In addition to the definitions contained in §800.2 of this title, and the definitions contained in Texas Education Code, §133.001 and 29 C.F.R. §29.2 relating to apprenticeship training, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Administrator's Guide--The Administrator's Guide supplements this chapter by providing all required operational details and procedures for planning and submitting an application for apprenticeship training program funding, as well as the annual timeline for submission. The Administrator's Guide may be accessed on the Agency's Web site at [www.texasworkforce.org](http://www.texasworkforce.org).
- (2) Apprentice--A full-time paid worker, at least 16 years of age except where a higher minimum age standard is otherwise fixed by law, who is employed in the private sector, registered with the US Department of Labor's Office of Apprenticeship, and receives related instruction training to learn a skill in a certified apprenticeable occupation.
- (3) Apprenticeship committee--An autonomous local group consisting of members appointed by one or more employers of apprentices, or by one or more bargaining agents representing members of an apprenticeable trade, or by a combination of the two. An apprenticeship committee is designated for each apprenticeship training program to establish instruction standards and goals for a particular craft or crafts, interview and select applicants, and monitor the program and apprentices as described in Texas Education Code §133.003.
- (4) Apprenticeship training program--A training program that provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in a trade that has been certified as an apprenticeable occupation by the US Department of Labor, Office of Apprenticeship. As required by Texas Education Code §133.002(c), an apprenticeship training program shall be under the direction of an apprenticeship committee. The program is a structured system of training designed to prepare individuals for occupations in skilled trades and crafts by combining training under the supervision of an experienced journeyworker with job-related classroom instruction.
- (5) Office of Apprenticeship--The US Department of Labor, Office of Apprenticeship.
- (6) Contact-hour rate--A method used to distribute apprenticeship training funds to

local education agencies. The total available funds are divided by the statewide total number of contact hours of apprenticeship training instruction classes submitted to the Agency.

- (7) Local education agency--For purposes of Chapter 837, a public school district or state postsecondary institution, under Texas Education Code, Chapter 133, that serves as a sponsor for an apprenticeship training program pursuant to a contract between the local education agency and an apprenticeship committee.

## **SUBCHAPTER B. FUNDING**

### **§837.22. Eligible Applicants.**

- (a) Local education agencies are the entities eligible to apply to the Agency for apprenticeship training funding.
- (b) Approved local education agencies shall:
  - (1) be the fiscal agents for the funds and are subject to the audit procedures set forth in Texas Education Code §133.005;
  - (2) contract with the local apprenticeship committee to fund job-related classroom instruction for a registered apprenticeship training program; and
  - (3) apply for funds for each apprenticeship committee and its apprenticeship training program(s), specifically for related classroom training, supplementary instruction, or preparatory instruction from only one of the following entities:
    - (A) the Commission; or
    - (B) the Texas Higher Education Coordinating Board.

### **§837.24. Funding Qualifications for Apprenticeship Training Programs.**

To qualify for funding, each apprenticeship training program shall:

- (1) be sponsored by a local education agency pursuant to a contract between the local education agency and an apprenticeship committee;
- (2) be certified and registered by the Office of Apprenticeship prior to the applicable fiscal year;
- (3) provide the local education agency with a validated copy of its written, national standards as approved by the Office of Apprenticeship (or where national standards do not exist, individual program standards approved by the Office of Apprenticeship); and

- (4) comply with Commission rules and Texas Education Code, Chapter 133.

**§837.28. Performance.**

The Commission may:

- (1) develop and adopt annual performance measures and targets for apprenticeship training programs; and
- (2) consider past performance of apprenticeship training programs in determining eligibility for funding.

**SUBCHAPTER C. COMPLIANCE**

**§837.41. Funds Management and Accountability.**

Local education agencies shall comply with the applicable rules in Chapter 802 of this title, regarding the Integrity of the Texas Workforce System, specifically:

- (1) Subchapter D, relating to Agency Monitoring Activities;
- (2) Subchapter F, relating to Performance and Accountability;
- (3) Subchapter G, relating to Corrective Actions; and
- (4) Subchapter H, relating to Remedies.