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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
TEXAS WORKFORCE COMMISSION  
AUSTIN, TEXAS

PUBLIC MEETING )  
FOR THE TEXAS )  
WORKFORCE COMMISSION )

COMMISSION MEETING  
TUESDAY, FEBRUARY 5, 2019

BE IT REMEMBERED THAT at 8:30 a.m. on  
Tuesday, the 5th day of February, 2019, the above-entitled  
matter came on for hearing at the Texas Workforce  
Commission, TWC Building, 101 East 15<sup>th</sup> Street, Room 244,  
Austin, Texas, before RUTH R. HUGHS, Chair; JULIAN ALVAREZ  
and ROBERT D. THOMAS, Commissioners.

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1 Commission Docket 6.

2 The Commission considered and took action on  
3 all tax liability cases listed on Docket 6.

4 AGENDA ITEM NO. 5

5 Discussion, Consideration and Possible Action  
6 Regarding Fair Housing Cases listed on the Texas Workforce  
7 Commission Docket 6.

8 No Discussion.

9 AGENDA ITEM NO. 6

10 Discussion, Consideration and Possible Action  
11 Regarding Higher Level Appeals in Wage Claim Cases Listed on  
12 the Texas Workforce Commission Docket 6.

13 The Commission considered and took action on  
14 all wage claim cases listed on Docket 6.

15 AGENDA ITEM NO. 7

16 Discussion, Consideration and Possible Action  
17 Regarding Higher Level Appeals in Unemployment Compensation  
18 Cases Listed on the Texas Workforce Commission Docket 6.

19 The Commission considered and took action on  
20 all unemployment compensation cases listed on Docket 6.

21 AGENDA ITEM NO. 8

22 CHAIR HUGHS: All right. We are back in  
23 session, there is nothing for Items 8, 9 and 10.

24 AGENDA ITEM NO. 11

25 CHAIR HUGHS: Item 11, Discussion,

1 Consideration and Possible Action Regarding Adoption Rules  
2 Relating to the Savings Incentive Program of State Agencies  
3 Previously Published for Public Comment in the Texas  
4 Register on December 14, 2018 TAC Chapter 800, Subchapter A.  
5 Joel Mullins, good morning.

6 MR. MULLINS: Good morning Chair Hughs,  
7 Commissioners, Mr. Serna. For the record, my name's Joel  
8 Mullins with Workforce Development.

9 For the record, I'm Joel Mullins with  
10 Workforce Development. Senate bill 132 was passed into law  
11 during the 85th legislative session, making changes to  
12 Section 1108.103 of the Texas Government Code regarding the  
13 state agency Savings and Senate Program, and this bill also  
14 required state agencies to adopt rules to implement the  
15 program. Proposed rules adding new Subchapter C to the  
16 Commission's Chapter 800 General Administration Rules, which  
17 defines key terms and outlines the procedure for  
18 implementing the program, were approve on November 26, 2018,  
19 and were published in the Texas Register for a 30-day public  
20 comment period. No comments were received.

21 This morning staff seeks direction on final  
22 adoption of Subchapter C of the Chapter 800 General  
23 Administration Rules as set forth in your materials. And  
24 I'm happy to answer any questions.

25 CHAIR HUGHS: And question, commissioners?

1                   COMM. ALVAREZ: No questions.

2                   CHAIR HUGHS: Okay. All right, do I have a  
3 motion?

4                   COMM. THOMAS: I move to adopt the rules as  
5 submitted by staff today in our materials.

6                   COMM. ALVAREZ: I'll second that.

7                   CHAIR HUGHS: We are unanimous. Thank you.

8                   MR. MULLINS: Thank you.

9                                   AGENDA ITEM NO. 12

10                   CHAIR HUGHS: Item 12, Discussion,  
11 Consideration and Possible Action Regarding Adoption of  
12 Rules Relating to Historically Underutilized Businesses  
13 Purchasing Previously Published for Public Comment in the  
14 Texas Register on December 14, 2018 (40 TAC Chapter 800,  
15 Subchapter C).

16                   MR. MULLINS: Once again, for the record, I'm  
17 Joel Mullins with Workforce Development.

18                                   Pursuant to Government Code Section 2161.003,  
19 all state agencies are required to adopt these state  
20 comptrollers rules described in government code Section  
21 2161.002 relating to increasing agency contract awards to  
22 historically underutilized businesses. When administration  
23 of vocational rehabilitation services was transferred from  
24 the Texas Department of Assistive and Rehabilitative  
25 Services to TWC, the administrative rules shared by DARS

1 programs were duplicated into Chapter 850.

2 Chapter 850 is currently being amended in a  
3 separate rulemaking, which includes moving rules related to  
4 historically underutilized businesses to Chapter 800.

5 The proposed rules for Chapter 800 were  
6 approved on November 26, 2018, and were published in the  
7 Texas Register for a 30-day public comment period, no  
8 comments were received.

9 This morning staff seeks direction on final  
10 adoption of the commission's Chapter 800 General  
11 Administration rules related to historically under-utilized  
12 businesses as set forth in your materials. Happy to answer  
13 any questions.

14 CHAIR HUGHS: Any questions, Commissioners?

15 COMM. ALVAREZ: No questions.

16 CHAIR HUGHS: Okay. Do I have a motion?

17 COMM. ALVAREZ: I move that we adopt the  
18 amendments to Chapter 800 rules regarding this work with  
19 underutilized businesses as previously published in the  
20 Texas Register.

21 COMM. THOMAS: Seconded.

22 CHAIR HUGHS: We are unanimous. Thank you.

23 MR. MULLINS: Thank you.

24 AGENDA ITEM NO. 14

25 CHAIR HUGHS: Understand Item 12 has been



1 postponed by staff. That brings us to Item 14. Discussion,  
2 Consideration and Possible Action Regarding Policy Concepts  
3 on Amendments to Texas Payday Rules, Withdrawal of Wage  
4 Claims.

5 MR. ROSS: Good morning Chair Hughs,  
6 Commissioner Alvarez, Commissioner Thomas, Mr. Serna. For  
7 the record, I'm Chuck Ross, Deputy Director Regulatory  
8 Integrity Division.

9 Today you have before you a policy concept to  
10 amend the Chapter 821 Texas Payday Rules. As currently  
11 written Commission Rule 821.43 allows a wage claimant to  
12 withdraw a wage claim whether or not it has become final.  
13 When a withdrawal request is submitted and approved TWC no  
14 longer enforces any order issued, including administrative  
15 penalties, and releases all liens and freezes.

16 In consultation with and advice from the  
17 Office of the General Counsel, staff have determined that  
18 Section 821.43(a)(2) of the rule creates legal challenges by  
19 implying that a final order may be altered or set aside by  
20 the wage claimant, him or herself.

21 On January 14th of this year the Regulatory  
22 Integrity Division issued a letter addressing this issue by  
23 creating a new process whereby a wage claimant may file a  
24 Satisfaction Payment Declaration to halt collection action  
25 on a final wage claim decision in lieu of a withdrawal.

1                   This morning staff seeks approval to move  
2 forward with proposed rules as outlined in this policy  
3 content, specifically amending Chapter 821 to conform with  
4 the statute by clarifying that a wage claim may be withdrawn  
5 only when the order has not yet become final.

6                   The preamble exception amendment would  
7 clarify that the satisfaction of payment declaration differs  
8 from a withdrawal in that TWC must still pursue  
9 administrative penalties on the claim as a debt to the  
10 state, as required by law, and that the employer will still  
11 be credited with violation.

12                   A withdrawn wage claim would continue to be  
13 treated as if the wage claim were never filed, meaning there  
14 would be no penalties or violations as permitted under the  
15 statute. I'm here this morning as a resource, and can  
16 answer any technical questions you may have.

17                   CHAIR HUGHES: The last part of your comment,  
18 a withdrawal before a final determination would have no  
19 penalties. Right?

20                   MR. ROSS: Yes ma'am. That's correct.

21                   CHAIR HUGHES: Commissioners, do you all have  
22 any comments or questions? I do, but I wanted to give you  
23 both an opportunity if you have some as well.

24                   COMM. THOMAS: No. Thank you.

25                   CHAIR HUGHES: My concern about those, Chuck,

1 as you know, is the portion where the employer's flagged in  
2 violation even after the claimant has certified that a  
3 settlement of the wage claim is acceptable to them with the  
4 satisfaction and payment operation. So while I think that  
5 first step makes sense in terms of clarity after it's done a  
6 final wage claim, currently when a withdrawal, as you  
7 mentioned, if a wage claim after a final decision happens it  
8 nullifies all related wage claim determinations against the  
9 employer.

10 It seems to me that if the employer has shown  
11 sufficient good faith in paying the claimant to the point  
12 where the claimant voluntarily decides to certify the wage  
13 payment then our agency could recognize that as sufficient  
14 good faith on the employer's part to reverse the violation  
15 determination as well. So I think we just need a further  
16 analysis on the second part of what happens, you know, in  
17 addition the Statement of Payment Declaration, whether we  
18 could also, at that point, as the practice is today, not  
19 have that administrative penalty and violation, because it  
20 may take away incentives for the good faith that employers  
21 are showing, and actually penalize them, so I would ask for  
22 OTC to further evaluate that second part and my colleagues  
23 would be amenable to maybe moving this to have that  
24 evaluation brought back to us.

25 COMM. THOMAS: I'm certainly amenable, but in

1 light of -- in light of the Chair's concern, can you give me  
2 some context here about how this -- how her concern might  
3 actually manifest itself in practice here at the agency?

4 MR. ROSS: These types of--when a claimant is  
5 requesting withdrawal of the wage claim after finality,  
6 generally will occur when the wage claim is in judicial  
7 review and the parties are trying to come up with a  
8 resolution, rather than going through the judicial process.

9 And so it may be that a claimant would like  
10 to withdraw the claim, and as part of that solution the  
11 penalties might go away as well. I would have to defer to  
12 general counsel per the Chair's request with regard to the  
13 fact that this -- this would be a -- a situation where the  
14 order is final, and attached to finality is also a penalty -  
15 - a penalty decision, and so I would, again, I would have to  
16 defer to the general counsel with regard to the agency's  
17 latitude to wave those types of things, but --

18 CHAIR HUGHS: Sure, and I think we just don't  
19 have that part of the analysis and this might give us an  
20 opportunity to have that before we make a ruling that  
21 actually is not necessarily -- doesn't put employers in a  
22 better place than they were before we have this.

23 COMM. THOMAS: I guess what I'm saying is,  
24 I'm not sure I understand that, based on the briefings and  
25 reviewing the materials, that this really is a mechanism to

1 facilitate resolution between the parties, which we should  
2 encourage. I'm still having a disconnect on the Chair's  
3 concerns. I'm not seeing that I understand that,  
4 necessarily. So I guess what I'm saying is I support the  
5 Chair's request, but my focus is less on procedurally what  
6 happens once it becomes final and more to the understanding  
7 of the rule and the context of this.

8           From my litigation background I'm always  
9 going to support anything that facilitates resolution ahead  
10 of time.

11           I'm concerned and -- I'm concerned that we  
12 recognize an issue that needs to be resolved, to facilitate  
13 the parties resolving a dispute, but I also want to  
14 understand it in the context of what our Chair is saying. I  
15 don't want the tail to wag the dog. I want to make sure we  
16 can move this forward, but I want to make sure we  
17 understand, give -- in other words once it becomes  
18 procedurally final it's done. I mean, there -- there is a  
19 mechanism to take that forward, so I'm -- that's the  
20 disconnect, and I think I'd like clarity in my office on it,  
21 please.

22           CHAIR HUGHS: Okay, so with that I think we  
23 have some agreement to maybe bring this back. How much time  
24 would OTC need to review this, or do you want to just set it  
25 back on an agenda item in the near future and let us know?

1 MR. TROBMAN: In a future meeting.

2 CHAIR HUGHS: Okay, all right, so we'll bring  
3 this item back, and thank you for that briefing, Chuck, I  
4 appreciate it.

5 MR. TROBMAN: Yeah. Uh-huh.

6 AGENDA ITEM NO. 15

7 CHAIR HUGHS: All right. That brings us to  
8 Item 15, Discussion, Consideration and Possible Action  
9 Regarding the Acknowledgement of Gifts and Donations of \$500  
10 or more in value given to the Texas Workforce Commission in  
11 accordance with Section 302.021 of the Texas Labor Code, and  
12 Chapter 575 of the Texas Government Code.

13 MS. ORIA: Good morning Chair, commissioners,  
14 Mr. Serna. For the record, Nicole Oria, with the Office of  
15 General Counsel.

16 Before you here are the gifts and donations  
17 of \$500 or more in value given to the Texas Workforce  
18 Commission for the fourth quarter of calendar year 2018, for  
19 your acknowledgement and acceptance.

20 The last page of Tab 15 is a spreadsheet  
21 showing gifts and donations. Staff is recommending approval  
22 of Items 1 through 3. Thank you for your consideration.  
23 I'm available if you have any questions.

24 CHAIR HUGHS: Thank you. Any questions or  
25 comments? Do I have a motion?

1                   COMM THOMAS: I move to accept staff's  
2 recommendations.

3                   COMM ALVAREZ: I'll second that.

4                   Chair Hughs: We are unanimous. Thank you.

5                                   AGENDA ITEM NO. 17

6                   CHAIR HUGHS: There's nothing for Item 16.  
7 Item 17, Discussion, Consideration and possible Action  
8 regarding approval of local Workforce Development Board  
9 nominees.

10                   MR. BELL: Morning Madam Chair,  
11 commissioners, Mr. Serna. Cameron Bell, Workforce  
12 Development Division.

13                                   Before you for consideration and approval are  
14 Workforce Development Board nominations for Workforce  
15 Solutions Alamo, Capital Area, Poncho Valley, Deep East  
16 Texas, Golden Crescent, and Permian Basin.

17                   CHAIR HUGHS: Comments or questions? Do I  
18 have a motion?

19                   COMM. ALVAREZ: I move that we approve board  
20 noms for Alamo, Capital Area, Poncho Valley, Deep East  
21 Texas, Golden Crescent, and Permian Basin.

22                   COMM. THOMAS: Second.

23                   CHAIR HUGHS: We are unanimous. Thank you.

24                   MR. BELL: Thank you.

25                                   AGENDA ITEM NO. 19

1                   CHAIR HUGHS:    There's nothing for Item 18.  
2   Are there any updates regrading enacted, proposed, or  
3   considered federal or state legislation?

4                   MR. BRITT:    Good morning Chair Hughs,  
5   commissioners.   For the record, Michael Britt, Governmental  
6   Relations.

7                   As you're aware House Joint Resolution 28,  
8   which funded portions of the federal government that were  
9   previously shut down will expire next Friday, on February  
10  15<sup>th</sup>.

11                  This evening President Trump -- Trump will  
12  deliver the State of the Union Address at 8:00 p.m. Central  
13  Time.   Also this morning Governor Abbott will deliver his  
14  State of the State Address before a joint session of the  
15  Texas Legislature at 11:00.

16                  Also yesterday House Appropriations Chairman,  
17  Representative John Zerwas, announced subcommittees for the  
18  86<sup>th</sup> Texas Legislature.   The subcommittee on Article 6, 7 and  
19  8, which covers TWC, is representative Toni Rose as the  
20  chair.   Representative Cecil Bell as the Vice Chair, and  
21  includes members Representative Ina Minjarez, Representative  
22  Steve Toth, Representative Terry Wilson.   Representative  
23  Sergio Munoz, and Representative Reggie Smith.   We are  
24  hearing that the subcommittee will take up TWC on Monday,  
25  February 11<sup>th</sup>, and that the hearing will start at 7:30 a.m.



1                   This concludes my remarks, and I'm happy to  
2 answer any questions.

3                   CHAIR HUGHS: Any questions?

4                   MR. BRITT: Thank you.

5                   CHAIR HUGHS: Thank you, Michael.

6                   AGENDA ITEM NO. 20

7                   CHAIR HUGHS: Item 20, do we have an updates,  
8 Mr. Serna?

9                   MR. SERNA: Just very quickly, staff's  
10 working on detailed responses to the both Chair Nelson and  
11 Senator West's questions that they raised at our Senate  
12 Finance Hearing last week. We'll run those responses by the  
13 three offices, and we're also trying to schedule meetings  
14 first with Senator Nelson, and then we have a scheduled  
15 meeting with Senator West on the 15<sup>th</sup> of February.

16                   CHAIR HUGHS: Okay. All right. Thank you  
17 for that update.

18                   AGENDA ITEM NO. 21

19                   CHAIR HUGHS: Is there a motion to adjourn?

20                   COMM. THOMAS: So moved.

21                   COMM ALVAREZ: Second.

22                   CHAIR HUGHS: Thank you. We are adjourned.  
23 Have a great day.

24                   (Proceedings concluded at 9:10 a.m.)

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C E R T I F I C A T E

STATE OF TEXAS       )  
COUNTY OF HARRIS    )

I, Kimberly C. McCright, Certified Vendor and Notary in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of February, 2019.

/s/ Kimberly C. McCright  
Kimberly C. McCright  
Certified Vendor and Notary Public

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