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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS WORKFORCE COMMISSION
AUSTIN, TEXAS

PUBLIC MEETING)
FOR THE TEXAS)
WORKFORCE COMMISSION)

COMMISSION MEETING
TUESDAY, AUGUST 27, 2019

BE IT REMEMBERED THAT at 9:00 a.m. on
Tuesday, the 27th day of August 2019, the above-entitled
matter came on for hearing at the Texas Workforce
Commission, TWC Building, 101 East 15th Street, Room 244,
Austin, Texas, before BRYAN DANIEL, Chairman; JULIAN ALVAREZ
and AARON DEMERSON, Commissioners.

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REPORTER'S CERTIFICATE.....23

1 Discussion, Consideration and Possible Action
2 Regarding Tax Liability Cases Listed on the Texas Workforce
3 Commission Docket 35.

4 Cases were heard for Docket 35.

5 AGENDA ITEM NO. 5

6 Discussion, Consideration and Possible Action
7 Regarding Fair Housing Cases listed on the Texas Workforce
8 Commission Docket 35.

9 No cases heard on Docket 35.

10 AGENDA ITEM NO. 6

11 Discussion, Consideration and Possible Action
12 Regarding Higher Level Appeals in Wage Claim Cases Listed on
13 the Texas Workforce Commission Docket 35.

14 The Commission considered and took action on
15 all wage claim cases listed on Docket 35.

16 AGENDA ITEM NO. 7

17 Discussion, Consideration and Possible Action
18 Regarding Higher Level Appeals in Unemployment Compensation
19 Cases Listed on the Texas Workforce Commission Docket 35.

20 The Commission considered and took action on
21 all unemployment compensation cases listed on Docket 35.

22 AGENDA ITEM NO. 8

23 CHAIRMAN DANIEL: And we're back, back in
24 session. Let's start with, let's see, we're on Item 8,
25 Discussion, Consideration and Possible Action Regarding

1 Policy Concepts on Amendments to Unemployment Insurance
2 Rules, Employing Units: Common Paymaster (40 Texas
3 Administrative Code (TAC) Chapter 815, Unemployment
4 Insurance, Subchapter C, Tax Provisions). Jason Stalinsky.

5 MR. STALINSKY: Good morning Chairman Daniel,
6 Commissioner Alvarez, Commissioner Demerson, and Mr. Serna.
7 For the record, I'm Jason Stalinsky, Unemployment Insurance
8 Policy.

9 Before you today is a policy concept to amend
10 Chapter 815 Unemployment Insurance Rules. At its December
11 the 18th 2018 public meeting, the commission approved a
12 legislative initiative to amend the existing definition of
13 employing unit to include a common paymaster arrangement as
14 provided for in the Federal Unemployment Tax Act, or FUTA,
15 at 26USC, section 33.06(p). That proposal became Senate
16 Bill 2296 of the 86th Texas Legislature Regular Session.

17 On June 10, 2019, the Governor signed SB
18 2296, which amends the definition of employing unit in the
19 Texas Unemployment Compensation Act section 201.011,
20 subsection 11, to include a common paymaster as defined in
21 26USC section 3306(p) of FUTA.

22 SB 2296, which takes effect on January 1,
23 2020, also requires the commission to adopt rules necessary
24 to implement the new TUCA provision. To effectuate the
25 statutory requirements of SB 2296, staff proposes creating a

1 new section of the unemployment insurance rules, section
2 815.177, to provide clear guidelines for employers and the
3 agency regarding the circumstances in which an employer may
4 designate a common paymaster for state unemployment tax
5 reporting purposes. The proposed rules would align closely
6 with FUTA regulations as is practical.

7 Staff recommends the proposed rulemaking
8 address definitions for a common paymaster, what constitute
9 related corporations, and concurrent employment. Additional
10 areas of rulemaking which may benefit the agency and its
11 constituents would be a clear description and explanation of
12 the application procedures for a common paymaster, TWC's
13 method of allocation of taxes, and how the new tax
14 arrangement will affect claims for unemployment benefits.

15 To alleviate potential confusion regarding a
16 common paymaster relationship, staff also recommends
17 providing examples in rule of a common paymaster, what
18 constitutes related corporations and concurrent employment,
19 as is done in the federal regulations. Today staff seeks
20 approval to move forward with developing the proposed rules
21 as outlined in this policy concept.

22 With that, I am available for any questions
23 you may have.

24 CHAIRMAN DANIEL: Commissioner Alvarez.

25 COMM. ALVAREZ: No questions.

1 CHAIRMAN DANIEL: Commissioner Demerson.

2 COMM. DEMERSON: No questions here.

3 CHAIRMAN DANIEL: Is there a motion?

4 COMM. ALVAREZ: I move that we approve a
5 common paymaster policy concept as recommended by staff.

6 COMM. DEMERSON: Second.

7 CHAIRMAN DANIEL: It's unanimous.

8 AGENDA ITEM NO. 9

9 CHAIRMAN DANIEL: Okay, moving on to Item 9,
10 Discussion, Consideration and Possible Action Regarding
11 Approval of Proposed Rule Reviews Under Texas Government
12 Code Section 2001.039, Relating to Integrity of the Texas
13 Workforce System 40 TAC Chapter 802, 40 TAC Chapter 809, 40
14 TAC Chapter 823, and 40 TAC Chapter 845.

15 MR. VADEN: Good morning, commissioners. For
16 the record, Jason Vaden, Workforce Division.

17 State agencies are required to review their
18 rules every four years. During this rule review process an
19 assessment is made as to whether the reasons for adopting or
20 re-adopting rules continue to exist. Additionally, the
21 assessment includes the determination of whether rules are
22 obsolete, whether they reflect the current legal and policy
23 considerations, and whether they reflect the commission's
24 current procedures.

25 In accordance with the rule review

1 requirements, staff is seeking direction on publishing a
2 notice in the Texas Register, notifying the public of our
3 intent to review Chapters 802, 809, 823, and 845.

4 Upon your approval and after a 30-day public
5 comment period staff will bring forward the results of the
6 assessment.

7 Commissioners, this concludes my remarks, and
8 I'm happy to answer questions if you have any.

9 CHAIRMAN DANIEL: Commissioner Alvarez.

10 COMM. ALVAREZ: No questions, Chairman.

11 CHAIRMAN DANIEL: Commissioner Demerson.

12 COMM. DEMERSON: No questions.

13 CHAIRMAN DANIEL: Is there a motion?

14 COMM. ALVAREZ: Yes, sir. I move that we
15 file a Notice of Intent for rules with the Texas Register
16 for chapters 802, 809, 823, and 845, as recommended by
17 staff.

18 COMM. DEMERSON: Second.

19 CHAIRMAN DANIEL: I concur, we're unanimous.

20 AGENDA ITEM NO. 10

21 CHAIRMAN DANIEL: Let's see, this is Item 10,
22 Discussion, Consideration and Possible Action Regarding the
23 Annual 2019 Transition from Military Service to Employment
24 Report to the Governor, Lieutenant Governor, and Texas
25 Legislature, pursuant to Texas Labor Code Section 302.020.

1 MS. BALLAST: Good morning, commissioners and
2 Mr. Serna. Kerry Ballast, Workforce Development Division.

3 House Bill 257, which was passed in the 85th
4 Texas Legislature, requires TWC no later than September 1 of
5 each year to submit to the Governor, the Lieutenant
6 Governor, the Speaker of the House, and the chairs of
7 legislative committees with appropriate jurisdiction, a
8 report that identifies the five most common military
9 occupational specialties, which we often refer to as MOSs,
10 of transitioning services members.

11 The five occupations for which the most
12 common MOS is best offer transferable skills and any
13 industry-based certifications that align with military
14 occupational specialties identified.

15 The report also includes information
16 regarding programs administered by TWC to support the
17 transition of service members and veterans into the
18 occupations identified.

19 Today I submit the report to you for final
20 approval and for posting by our September 1 deadline. I'm
21 happy to answer any questions you have.

22 CHAIRMAN DANIEL: Commissioner Alvarez.

23 COMM. ALVAREZ: No questions, Chairman.

24 CHAIRMAN DANIEL: Commissioner Demerson.

25 COMM. DEMERSON: Just one real quick here.

1 You mentioned that first will it define the most common
2 military occupation specialties, better known as what? What
3 did you say?

4 MS. BALLAST: MOSs.

5 COMM. DEMERSON: MOSs, okay. Thank you.

6 MS. BALLAST: Yeah.

7 COMM. DEMERSON: No questions, further
8 questions.

9 CHAIRMAN DANIEL: Is there a motion?

10 COMM. ALVAREZ: Yes, Chairman. I move that
11 we approve the 2019 Report on the Transition for Military
12 Service to Employment as recommended by staff.

13 COMM. DEMERSON: Second.

14 CHAIRMAN DANIEL: I concur. We're unanimous.

15 AGENDA ITEM NO. 11

16 CHAIRMAN DANIEL: All right. Adam, it's your
17 turn to present Item 11, Discussion, Consideration and
18 Possible Action Regarding Program Year 2019 AEL Grantee
19 Performance Measures and Targets.

20 MR. LEONARD: Good morning, commissioners.

21 For the record, Adam Leonard, Operational Insight.

22 Today I am here to present staff
23 recommendations for performance measures, targets, and in
24 particular the target methodologies for the PY '19 Adult Ed
25 grantees. The measures in question are the same ones as

1 last year. There are three sets. One, that focus on the
2 participants to be served and the different types of
3 programs in which they would be served. Another that
4 focuses on the measurable skills game, which is the way that
5 we primarily know whether or not people are making
6 acceptable progress towards improving their literacy and
7 numeracy and other skills. And then, lastly, a set of
8 outcome measures that focuses on what happens in the year
9 following exit, so whether or not these people are becoming
10 employed or enrolled in post-secondary education and whether
11 or not they're achieving recognized credentials.

12 I'm happy to answer any questions you have.
13 The only thing I wanted to kind of mention here that's a
14 little different from what we've done in the past, is that
15 within the targets for participants served we have the base
16 targets, if you will, based on this year's allocations, but
17 we also have some carryforward targets.

18 So these are targets where a board, I'm
19 sorry, grantee may not have quite met their performance last
20 year in terms of the number to be served, and so we're
21 carrying some of that forward and saying, Okay, this year
22 you need to make up that gap.

23 In doing so, we kind of -- rather than just
24 say, Well, if you were 20 short in this category we're going
25 to put you down for another 20 in that category. We actually

1 looked at the negotiation with the grantees. So we looked
2 to see how they wanted their new year case mix to look, and
3 then distributed the amounts that were owed across those in
4 a consistent manner.

5 And part of this process had us really
6 thinking about the negotiations and the idea that, you know,
7 there's a certain element of planning here that the grantees
8 go through, but there's also an instance where plans can
9 change during the course of the year, and so we wanted the
10 authority to go ahead and kind of renegotiate later in the
11 year if it turns out that some of those best laid plans
12 don't quite work out.

13 For instance, you might have -- they might
14 have been planning on doing a special intensive program in
15 the spring and then employer they were partnering with is
16 unable to do so. Or, perhaps, the reverse could happen.
17 You could have a new employer come in and say, I'd really
18 like to develop something with you guys. And that wasn't
19 known when we negotiated.

20 So that's what we're looking today, is
21 approval on measures, methodology, and targets going
22 forward.

23 CHAIRMAN DANIEL: All right. Commissioner
24 Alvarez, comments or questions?

25 COMM. ALVAREZ: No questions.

1 CHAIRMAN DANIEL: Commissioner Demerson.

2 COMM. DEMERSON: I think the flexibility for
3 reality is a good thing.

4 CHAIRMAN DANIEL: Is there a motion?

5 COMM. ALVAREZ: Yes, sir. I move that we
6 approve staff recommendations for Program Year 2019 AEL
7 Grantee Performance Measures, and the outlying target
8 methodologies, and allow staff re renegotiate participant-
9 served targets as appropriated to account for shifts in
10 demand and program development.

11 COMM. DEMERSON: Second.

12 CHAIRMAN DANIEL: I concur. Motion passes.

13 AGENDA ITEM NO. 13

14 CHAIRMAN DANIEL: Let's see. I'm not showing
15 anything for Item 12, is that correct?

16 MR. SERNA: Yes, sir.

17 CHAIRMAN DANIEL: That's correct. Moving on
18 to Item 13, Ms. Troke, Discussion, Consideration and
19 Possible Action Regarding Guidance on Resource Utilization
20 and Implementation of Services and Strategies, Including
21 Those Funded with the Department of Labor's Disaster
22 Dislocated Worker Grant, in Response to Hurricane Harvey-
23 Hurricane Harvey New Period of Performance, Funding Request,
24 and Waiver.

25 MS. TROKE: Good morning, commissioners. For

1 the record, Jen Troke, Workforce Grants and Contracts.

2 To date, the Texas Workforce Commission has
3 awarded grants totaling approximately \$31 million to local
4 boards, and TWC continues to work closely with these
5 workforce areas on Hurricane Harvey rebuilding efforts. TWC
6 and boards have been in frequent contact throughout the
7 grant period to determine when additional funds might be
8 needed to continue providing services. Deep East,
9 Southeast, Golden Crescent, and Coastal Bend have identified
10 a need for additional DWG funding. The current grant has
11 approximately \$1,024,683 in unobligated funds, and we're
12 seeking approval to award those funds as our first decision
13 point today.

14 In addition, we are seeking approval to move
15 a Grant Modification Request forward to DOL that includes \$1
16 million in additional funding, and extension of the grant
17 awards for an additional year through December 2020, and a
18 waiver to allow participants to extend temporary employment
19 for an additional 12 months to continue the important work
20 of recovery.

21 Staff seeks approval on both of these items
22 today. Any questions?

23 CHAIRMAN DANIEL: Commissioner Alvarez.

24 COMM. ALVAREZ: I do have a comment,
25 chairman. I would like detailed updates, Jen, about the

1 ongoing Workforce Counseling and Assistance provided to
2 these temporary disaster relief workers from the boards and
3 the employers that receive grant funds. The boards and
4 employers should be helping these temporary relief workers
5 transition from temporary work to genuine positions of
6 permanent employment.

7 MS. TROKE: Yes, sir. And I -- and I -- and
8 I agree with that. And that is definitely our goal. We
9 will definitely talk to the boards about that, thank you.

10 COMM. ALVAREZ: Thank you.

11 CHAIRMAN DANIEL: Commissioner Demerson.

12 COMM. DEMERSON: No questions.

13 CHAIRMAN DANIEL: Is there a motion?

14 COMM. ALVAREZ: Yes, Chairman. I move that
15 we award the current un-obligated balance of Disaster
16 Dislocated Worker Grant Funds to the -- in the amount of 1-
17 million, 22-hundred -- \$1,024,683 for the Workforce
18 Development Boards to continue implementing Harvey Disaster
19 Grant Funded strategies as recommended by staff. I further
20 move that we submit a grant modification to DOL for a 12-
21 month period of performance modifications through December
22 2020 an additional \$1 million from DOL to support a third
23 year of grant implementation, and a waiver of maximum number
24 of hours worked in temporary disaster relief employment, as
25 recommended by staff.

1 COMM. DEMERSON: Good. I second.

2 CHAIRMAN DANIEL: I concur. Motion passes.

3 MS. TROKE: Thank you.

4 AGENDA ITEM NO. 14

5 CHAIRMAN DANIEL: Ms. Williams, you're up
6 next. Item 14, Discussion, Consideration and Possible
7 Action Regarding Approval of Local Workforce Development
8 Board Nominees.

9 MS. WILLIAMS: Yes. Good morning,
10 commissioners. Good morning, Mr. Serna. I'm Shunta
11 Williams with the Workforce Development Division.

12 And before you for consider -- for
13 consideration and approval are Workforce Development Board
14 Nominations for Workforce Solutions Cameron County, Golden
15 Crescent, Central Texas, and Southeast Texas. Also, we are
16 pulling number 7 for Workforce Solution Central Texas for
17 further review. Therefore, staff are recommending all
18 nominations for central -- or all other nominations for
19 Central Texas, Cameron County, Golden Crescent, and
20 Southeast Texas to be approved.

21 CHAIRMAN DANIEL: Commissioner Alvarez,
22 comments or questions.

23 COMM. ALVAREZ: No questions, sir.

24 CHAIRMAN DANIEL: Commissioner Demerson.

25 COMM. DEMERSON: None here.

1 CHAIRMAN DANIEL: Is there a motion?

2 COMM. ALVAREZ: I move that we approve the
3 board nominees for Cameron County, Golden Crescent, Central
4 Texas, and Southeast Texas, as recommended by staff.

5 COMM. DEMERSON: Second.

6 CHAIRMAN DANIEL: I concur. Motion passes.

7 AGENDA ITEM NO. 17

8 CHAIRMAN DANIEL: Okay, Items 15 and 16, Tom
9 is there anything on that? Mr. Serna?

10 MR. SERNA: No, sir.

11 CHAIRMAN DANIEL: All right. Let me look
12 here. The time is 10:40. The Texas Workforce Commission is
13 not going into executive session to discuss: The
14 Appointment, Employment, Evaluation, Reassignment, Duties,
15 Discipline, or Dismissal of the Executive Director, Internal
16 Auditor, Executive Staff, and other Personnel pursuant to
17 Texas Government code 551.074(a)(1).

18 CHAIRMAN DANIEL: All right, the Executive
19 Session is not concluded. The time is 10:59. I believe we
20 have a motion resulting from our discussion in Executive
21 Session.

22 COMM. ALVAREZ: Yes, Mr. Chairman. Mr.
23 Chairman, I move that we appoint Ed Serna our Executive
24 Director of the Texas Workforce Commission pursuant to
25 section 301.041 of the Texas Labor Code at his current

1 compensation.

2 CHAIRMAN DANIEL: Is there a second?

3 COMM. DEMERSON: I second that motion.

4 CHAIRMAN DANIEL: All right, with that motion
5 on the table, I do believe it'd be appropriate to discuss
6 the motion. Commissioner Alvarez, any discussion?

7 COMM. ALVAREZ: I'd just like to say that
8 during this past session we unfortunate in we lost Larry
9 Temple, a great leader that led this agency for many years,
10 but I was glad to see our backup quarterback, Ed Serna,
11 perform the duties not just what he was asked to do, but
12 beyond that. We came out with a great session.

13 And with that, I'm very pleased with what
14 you've done, Ed, in allowing your directors to direct. And
15 so I have full confidence that you will lead this agency,
16 along with the help of my two fellow commissioners, to the
17 next level. So thank you.

18 MR. SERNA: Thank you, sir.

19 COMM. DEMERSON: And I'm just fortunate to
20 work with Ed, directly for him, as the Interim Executive
21 Director, and then with him in this capacity as Deputy
22 Executive Director. Known him for a number of years, and I
23 know he's going to do a fantastic job for us. And couldn't
24 be more proud, and more honored, to work with you.

25 MR. SERNA: Thank you, sir.

1 CHAIRMAN DANIEL: Mr. Serna, Larry Temple was
2 a personal friend. It was very hard for me personally and
3 professionally to lose him. But I've got to say, from my
4 perch in the Governor's Office where we were watching all
5 agencies, to borrow Commissioner Alvarez's, metaphor, I wish
6 Texas Tech had as good a backup quarterback as we had over
7 here.

8 I will tell you, this agency, through your
9 work and the work of your colleagues on the Executive Staff,
10 made it through the session not just well, but thriving.
11 And I think that we find this agency thriving to this very
12 day. There's no question that, moving forward, you know,
13 certainly the reigns are yours, and we anticipate seeing,
14 you know, enhancements to our executive team and otherwise
15 in the agency as you fill some vacant positions and make
16 some decisions with regard to how this agency leads.

17 I think it's fair to say, and I don't mind
18 speaking on behalf of the other two commissioners, that you
19 have our utmost confidence in this endeavor, and we're very
20 much looking forward to working, with you with that interim
21 title dropped off, with you as the Executive Director.

22 So, with that, I think we need to vote on the
23 motion. Commissioner Alvarez.

24 COMM. ALVAREZ: So I move that we make Ed
25 Executive Director as I referenced earlier.

1 COMM. DEMERSON: And it's been seconded, and
2 I'm in favor of it.

3 CHAIRMAN DANIEL: And that vote is unanimous.
4 Congratulations, Mr. Serna.

5 (Applause)

6 COMM. ALVAREZ: Is he allowed to say a few
7 words?

8 CHAIRMAN DANIEL: Unless the General Counsel
9 shakes his head at me, I think it would be appropriate for
10 you to say a few words, if you'd like.

11 MR. SERNA: I appreciate the opportunity to
12 continue to work with the staff. It has been a challenge,
13 but it's been a very rewarding challenge.

14 Having the interim drop off, gives a whole
15 lot more stability, and I do appreciate the confidence of
16 the commission. Look forward to continuing to work with you
17 all to advance TWC. We have a really great base, and we're
18 going to build on that base, with the executive staff and
19 with the board, continue to make TWC and the services we
20 provide fantastic for the State of Texas. So I appreciate
21 your support.

22 CHAIRMAN DANIEL: All right. Thank you very
23 much. Are there any other items that need to come before
24 us? Do we have a motion to adjourn?

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AGENDA ITEM NO. 18

CHAIRMAN DANIEL: Do we have a motion to adjourn?

COMM. ALVAREZ: I move that we adjourn, Chairman.

COMM. DEMERSON: I second.

CHAIRMAN DANIEL: I concur. It's unanimous. We're adjourned.

(Proceedings concluded at 11:04:00 a.m.)

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C E R T I F I C A T E

STATE OF TEXAS)

COUNTY OF TRAVIS)

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 1st day of September, 2018.

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

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