

CJA Revisions to Staff Rule Proposal
CHAPTER 803. SKILLS DEVELOPMENT FUND

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND

§803.1. Scope and Purpose.

(a) Purpose. The purpose of the Skills Development Fund is to develop customized training projects for businesses and trade unions and to support employers expanding or relocating to Texas by enhancing the ability of public community and technical colleges, Local Workforce Development Boards (Boards), and the Texas A&M Engineering Extension Service (TEEX) to respond to industry and workforce training needs and to develop incentives for Boards, public community and technical colleges, TEEX, or community-based organizations to provide customized assessment and training in a timely and efficient manner.

(b) Goal. The goal of the Skills Development Fund is to increase the skills level and wages of the Texas workforce.

§803.2. Definitions.

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

(1) Customized training project--A project that:

(A) provides workforce training, with the intent of either adding to the workforce or preventing a reduction in the workforce, and is specifically designed to meet the needs and special requirements of:

- (i) employers and employees or prospective employees of the private business or business consortium; or
- (ii) members of the trade union; and

(B) is designed by a private business or business consortium, or trade union in partnership with:

- (i) a public community college;
- (ii) public state college
- (ii) a technical college;
- (iii) TEEX;
- (iv) a Board; or

Deleted: CHAPTER 803. SKILLS DEVELOPMENT FUND¶ PROPOSED 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.¶

The Texas Workforce Commission (TWC) proposes following new section of Chapter 803, relating to the Skills Development Fund.¶ Subchapter A. General Provisions Regarding the Skills Development Fund, §803.4¶

TWC proposes amendments to the following sections of Chapter 803, relating to the Skills Development Fund:¶

Subchapter A. General Provisions Regarding the Skills Development Fund, §§803.1 - 803.2¶

Subchapter B. Program Administration, §803.11 and §§803.13 - 803.15¶

PART I. PURPOSE, BACKGROUND, AND AUTHORITY¶

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS¶

PART III. IMPACT STATEMENTS¶

PART IV. COORDINATION ACTIVITIES¶

PART I. PURPOSE, BACKGROUND, AND AUTHORITY¶

The purpose of the proposed Chapter 803 rule changes is to implement statutory changes related to the Skills Development Fund (SDF) program.¶

House Bill (HB) 700, 86th Texas Legislature, Regular Session (2019), amended sections of Texas Labor Code Chapter 303, relating to the SDF program. The bill amended §303.001(a) to add Local Workforce Development Boards (Boards) to the list of entities that are eligible to use SDF grants as an incentive to provide customized assessment and training.¶

Additionally, HB 108, 85th Texas Legislature, Regular Session (2017), amended the Texas Labor Code to add §303.0031 regarding the use of SDF grants to encourage employer expansion and recruitment. The section allows SDF grants to provide "an intensive and rapid response to, and support services for, employers expanding in or relocating their operations to this state, with a focus on recruiting employers that will provide complex or high-skilled employment opportunities in this state."¶

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS¶

(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.)¶

Texas Government Code §2001.039 requires that every four years each state agency review and consider for reoption, revision, or repeal each rule adopted by that agency. TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 803 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, proposes to readopt Chapter 803, Skills Development Fund, with amendments described in this proposed rulemaking.¶

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SKILLS DEVELOPMENT FUND¶

TWC proposes the following amendments to Subchapter A:¶

§803.1. Scope and Purpose¶

Section 803.1(a) is amended to provide a broad statement on the purpose of the SDF. This language reflects the statutory purpose in the Texas Labor Code, §303.001 and includes business expansion and relocation purpose in the Texas Labor Code, §303.003. The amended language removes references to required partnership[... [1]

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(v) a community-based organization only in partnership with the public community and technical colleges or TEEX.

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(2) Grant recipient--A recipient of a Skills Development Fund grant that is:

(A) a public community college;

(B) a technical college;

(c) public state college

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(C) TEEX;

(D) a Board; or

(E) a community-based organization only in partnership with the public community and technical colleges or TEEX.

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(3) Non-local public community and technical college--A public community, or technical college providing training outside of its local taxing district.

(4) Private partner--Sole proprietorship, partnership, corporation, association, consortium, or private organization that enters into a partnership for a customized training project with:

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(A) a public community college;

(B) a technical college;

(C) TEEX; or

(D) a community-based organization only in partnership with the public community and technical colleges or TEEX.

(5) Public community college--A state-funded, two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical, and academic courses for certification or associate's degrees.

(6) Public technical college--A state-funded coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate's degrees.

(7) Texas A&M Engineering Extension Service (TEEX)--A higher education agency and service established by the Board of Regents of the Texas A&M University System.

(8) Trade union--An organization, agency, or employee committee in which employees participate and which exists for the purpose of dealing with

employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(9) Training provider--An entity that provides training, including:

(A) a public community college;

(B) a technical college;

(C) TEEX;

(D) a community-based organization only in partnership with the public community or technical college or TEEX; or

(E) Sole proprietorship, partnership, corporation, association, consortium, governmental subdivision, or public or private organization with whom a Board, public community or technical college, or TEEX has subcontracted to provide training.

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Commented [DC3]: Sec. 303 SDF Labor Code only uses the term "individual" to refer to the employee being trained. Not used to refer to a training provider.

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§803.3. Uses of the Fund.

(a) The Skills Development Fund may be used by a grant recipient as start-up or emergency funds for the following purposes:

(1) to develop customized training projects for businesses and trade unions; and

(2) to sponsor small and medium-sized business networks and consortiums for the purpose of developing customized training.

(b) TEEX training activities shall focus on projects that are statewide or are not available from a local public community and junior college district, a local technical college, or a consortium of public community and junior college districts. In developing such projects, TEEX may participate in a consortium of public community and junior college districts or with a technical college that provides training under Texas Labor Code, Chapter 303.

(c) Technical college training activities shall focus on projects that are not available from a local public community college, except in the technical college's local service area, and shall be encouraged to focus on projects that are statewide.

(d) The Skills Development Fund may not be used:

(1) to pay the training costs and related costs of an employer that relocates the employer's worksite from one place in Texas to another;

(2) for the purchase of any proprietary or production equipment required for the training project of a single local employer;

(3) for wages for trainees; or

(4) to pay for trainee or instructor travel costs or trainee drug tests.

(e) The Skills Development Fund may not be used to pay for the lease of equipment if any one of the following four criteria is characteristic of the lease transaction:

- (1) The lease transfers ownership of the equipment to the lessee at the end of the lease term;
- (2) The lease contains a bargain purchase option;
- (3) The lease term is equal to 75% or more of the estimated economic life of the leased equipment; or
- (4) The present value of the minimum lease payments at the inception of the lease, excluding executory costs, equals at least 90% of the fair value of the leased equipment.

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§803.4. Use of Funds to Encourage Employer Expansion and Recruitment.

(a) Pursuant to Texas Labor Code §303.0031, the Skills Development Fund may be used to provide an intensive and rapid response to, and support services for, employers expanding in or relocating their operations to Texas, with a focus on recruiting employers that will provide complex or high-skilled employment opportunities in the state.

(b) Grant funds under this section may be used to:

- (1) provide leadership and direction to, and connections among, out-of-state employers, economic development organizations, Boards, public community technical colleges and public state colleges to support employers' recruitment and hiring for complex or high-skilled employment positions as necessary to facilitate the employers' relocation to or expansion of operations in Texas; and
- (2) award grants to public community, public state college or technical colleges that provide workforce training and related support services to employers that commit to establishing a place of business in Texas.

Commented [DC4]: Sec. 303.0031(c)(1) Skills statute allows public state colleges to participate in Recruit Texas

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Commented [DC5]: Add public state colleges to mirror statute

(c) Grant funds under this section may be used only to develop:

- (1) customized workforce training programs for an employer's specific business needs;
- (2) fast-track curriculum;
- (3) workforce training--related support services for employers; or
- (4) instructor certification necessary to provide workforce training.

Commented [DC6]: Mirror statute language

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(d) Notwithstanding the use of funds restrictions in §803.3(d)(2), grant funds may also be used to acquire training equipment necessary for instructor certification and employment.

(e) As a condition of receiving grant funds under this section, grant recipients shall agree to repay the amount received and any related interest if the Agency determines that the grant recipients did not use the funds for the purposes for which the funds were awarded.

(f) The commission may solicit and accept gifts, grants and donations from any public or private source for the purpose of this section. Gifts exceeding \$500 must be accepted as prescribed by Section 301.021 of the Labor Code and Chapter 575 of the Texas Government Code. The Commission reserves the right to refuse any donation it deems unsuitable.

Commented [DC7]: Section 303.0031(f) states "The Commission may solicit and accept gifts, grants, and donations from any public or private source for the purpose of this section. Section 301.021 of the Labor Code and Chapter 575 of the Texas Government Code require acceptance or acknowledgement of the donation or gift in an open meeting and require that the name of the donor, the description of the donation or gift and the statement of the purpose

13 **SUBCHAPTER B. PROGRAM ADMINISTRATION**

14 **§803.11. Grant Administration.**

15 Grant recipients must enter into an agreement with the Agency to comply with contract
16 requirements that include, but are not limited to:

- 17 (1) submitting all required reports, including financial and performance reports, in
18 the format and time frame required by the Agency;
- 19 (2) maintaining fiscal data needed for independent verification of expenditures of
20 funds received for the customized training project;
- 21 (3) cooperating and complying with Agency monitoring activities as required by
22 Chapter 802, Subchapter D, of this title (relating to Agency Monitoring
23 Activities); and
- 24 (4) submitting contract completion reports:
 - 25 (A) The final payment is contingent upon the executive director's, or
26 designee's, determination that a project has met the training objectives,
27 outcomes, and requirements (an attrition rate of up to 15% of the total
28 number of trainees in the contract is allowed).

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(B) The final payment of the contract will be withheld for 60 days after the completion of training and after receipt by the Agency of verification from the employer that the trainees are employed.

§803.12. Limitations on Awards.

The Agency may impose any or all of the following limitations on the amount of funds awarded under any specific grant:

- (1) A limit of \$500,000 for the training project of a single employer ~~(delete limitation) and insert: The Executive Director may limit the award amount of any single employer project.~~
- (2) A limit of 10% of the grant amount for the allowable purchase of any proprietary or production equipment required for the training project;
- (3) A limit of 10% for administrative costs related to direct training for the training project of a single employer; or
- (4) A limit of 15% for administrative costs related to direct training for the training project of entities other than a single employer.

Commented [DC8]: Eliminate \$500,000 limit? Internal Audit stated they were waiving too often. \$500,000 limit has been there since inception of the program. Instead input and recommend that the Commission may limit the amount of training dollars.

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§803.13. Program Objectives.

The program objectives in administering the Skills Development Fund are:

- (1) ~~to ensure that funds from the program are spent in all areas of this state and expand the state's capacity to respond to workforce training needs;~~
- (2) ~~to promote collaboration and awareness of potential workforce activities in workforce areas;~~
- (3) ~~to develop projects that, at completion of the training, will result in wages equal to or greater than the prevailing wage of individuals with similar knowledge and experience in that occupation in the local labor market for the participants in the customized training project;~~
- (4) ~~to prioritize the processing of grant requests from workforce areas where the unemployment rate is higher than the state's annual average unemployment rate;~~
- (5) ~~to sponsor creation and attraction of high-value, high-skill jobs for the state that will facilitate the growth of industry and emerging occupations; and~~
- (6) ~~to the greatest extent practicable, award Skills Development Fund grants as follows:~~
 - (A) Approximately 60 percent of the funds may be for job retention training.

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(B) The remaining funds may be for training for job creation.

§803.14. Procedure for Requesting Funding.

(a) After obtaining the review and comments of the Board in the applicable workforce area(s), where there is a significant impact on job creation or incumbent worker training, a private partner or a trade union, together with a public community, public state college or technical college or TEEEX, shall present to the executive director, or designee, a proposal requesting funding for a customized training project or other appropriate use of the fund provided that a local workforce board is not competing for an SDF grant application that targets the same employers and the development of the same skills.

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(b) A local workforce board shall not submit an SDF grant application unless it certifies that no other qualified organization was reasonable available to fill the boards contemplated role in the grant.

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(c) A private partner or a trade union, together with a Board, public community, public state college or technical college, or TEEEX, shall present to the executive director, or designee, a proposal requesting funding for a customized training project or other appropriate use of the fund.

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(d) TEEEX, or the public community, public state college or technical college that is a partner to a training proposal for a grant from the Skills Development Fund, may be non-local.

Commented [DC10]: LIT, Lamar State College Orange, Lamar State College Port Arthur

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(e) Proposals shall disclose other grant funds sought or awarded from the Agency or other state and federal entities for the proposed job training project.

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(f) Applicants shall indicate whether they are submitting concurrent proposals for the Skills Development Fund and the Texas Enterprise Fund. For the purposes of this subsection, "concurrent proposal" shall mean:

Deleted: (c) The training proposal shall not duplicate a training project available in the workforce area in which the private partner or trade union is located.

(1) a proposal for the Skills Development Fund that has been submitted and is pending at the time an applicant submits a proposal for the Texas Enterprise Fund; or

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(2) a proposal for the Texas Enterprise Fund that has been submitted and is pending at the time an applicant submits a proposal for the Skills Development Fund.

(g) Proposals shall be written and contain the following information:

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(1) The number of proposed jobs created and/or retained.

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(2) A brief outline of the proposed training project, including the skills acquired through training and the employer's involvement in the planning and design.

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- (3) A brief description of the measurable training objectives and outcomes
- (4) The occupation and wages for participants who complete the customized training project
- (5) A budget summary, disclosing anticipated project costs and resource contributions, including the dollar amount the private partner is willing to commit to the project
- (6) A signed agreement between the private partner or trade union and the [Board](#), public community or technical college, or TEEX outlining each entity's roles and responsibilities if a grant is awarded
- (7) A statement explaining the basis for the determination that there is an actual or projected labor shortage in the occupation in which the proposed training project will be provided that is not being met by an existing institution or program in the workforce area
- (8) A comparison of costs per trainee for the customized training project and costs for similar instruction at the public community or technical college, [TEEX](#), and [the Board](#)
- (9) A statement describing the private partner's or trade union's equal opportunity employment policy
- (10) A list of the proposed employment benefits
- (11) An indication of a concurrent proposal as required by subsection (e) of this section
- (12) Any additional information deemed necessary by the Agency to complete evaluation of a proposal

§803.15. Procedure for Proposal Evaluation.

- (a) The executive director, or designee, shall evaluate each proposal considering the purposes listed in §803.3(a) of this subchapter, the program objectives listed in §803.13 of this subchapter, and procedures in §803.14 of this subchapter, along with the prevailing wage for occupations in the local labor market area, the financial stability of the private partner, the regional economic impact, and any other factors unique to the circumstances that the Agency determines are appropriate.
- (b) The Agency shall notify [all eligible grant applicants](#) when the Agency is evaluating a proposal so as to [promote collaboration and awareness](#) of potential workforce activities in the workforce area.

1 (c) If the Agency determines that a proposal is appropriate for funding through the Skills
2 Development Fund, the executive director or designee shall enter into a contract with
3 the grant recipient on behalf of the Agency.

4 [\(d\) Skills Development Fund applicants on corrective action pursuant to Chapter 802,](#)
5 [Subchapter G, shall not be eligible to receive a Skills Development Fund grant.](#)

6 **SUBCHAPTER C. PROGRAM ADMINISTRATION AFTER AWARD OF CONTRACT**

7 **§803.31. Notice to Local Workforce Development Board.**

8 The Agency shall inform the Board in the applicable workforce area of final decisions
9 made regarding Skills Development Fund grants in the workforce area.

10 **§803.32. Waivers.**

11 The executive director, or designee, may suspend or waive a section of this chapter, not
12 statutorily imposed, in whole or in part upon a showing of good cause and a finding that
13 the public interest would be served by such a suspension or waiver.

