

Chapter 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) proposes amendments to and review of §800.2, relating to Definitions, and §800.191, relating to Appeal; as well as new §800.178, relating to Sanctions Under the Workforce Investment Act (WIA).

Background And Purpose. As provided by WIA (29 U.S.C. §2801 et seq.) and the federal regulations governing WIA (including 20 CFR 666.100 *et. seq.*), the State is responsible for the monitoring and oversight of WIA-funded activities administered by the local workforce development boards (Boards) and, when necessary, imposing sanctions for certain violations of the statute or regulations. The State developed the WIA sanctions rules to meet these statutory and regulatory requirements.

The purpose of the changes is to provide a framework of oversight reflective of the WIA principles and the principles of Texas' vision as outlined in the Texas Strategic Five-Year State Workforce Investment Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act for the Period of July 1, 1999--June 30, 2004 - Transition Plan (State Plan). Specifically, the WIA principles are: streamlining services; empowering individuals; universal access; increased accountability; strong role for Boards and the private sector; and state and local flexibility. The four principles of Texas' vision are: limited and efficient state government; local control; personal responsibility; and support for strong families.

WIA and its implementing regulations have imposed on the Boards a number of duties and responsibilities for the administration of WIA-funded activities, including maintaining adequate fiscal systems, complying with the uniform rules for administration of grants and agreements, meeting the contract performance measures, and complying with all applicable state and federal statutes and regulations. The Commission is responsible for oversight of the Boards' activities and for identifying failure to meet contract performance levels or noncompliance with WIA or the State Plan.

The proposed rules emphasize the partnership between the Commission and the Boards in assuring compliance with WIA requirements. Proposed §800.178 describes the involvement of the Commission in preventive maintenance and related requirements under WIA to provide services through a One-Stop Service Delivery Network. The Commission requires that all workforce services, such as those funded under the Department of Labor, Welfare-to-Work (WtW) block grant, be integrated into the One-Stop Centers, and will withhold WIA administrative funds for failure to establish a fully integrated One-Stop Service Delivery Network, which includes WtW, among other services for which the Boards receive funds under contract with the Commission. The purpose of preventive maintenance is to assist the Boards in correcting deficiencies and meeting WIA statutory, regulatory and contract responsibilities. If preventive maintenance and initial corrective actions are not successful in assisting the Boards with compliance, the Commission will consider the sanction actions described in §800.178 to ensure that WIA services continue to be available in the workforce areas and that there is no interruption of services. The proposed amendment to §800.191 is to clarify that appeals to sanctions relating to WIA are not governed by §800.191 and that the hearing officer submits the proposal for decision to the Commission's executive director for final decision. Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rules; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Randy Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because any regulatory burdens or impact on small businesses (including micro-businesses) as well as foreseeable adverse economic effects or costs, if any, would be a result of federal statute and regulations, which are the basis for these proposed rules, and second, as far as can be determined, small businesses (including micro-businesses) are not required to do anything as a result of these rules.

Jean Mitchell, Director of Workforce Development, has determined that for each year of the first five years that the rules will be in effect the public benefit anticipated as a result of the adoption of the proposed rules will be to improve customer service and ensure continued federal funding by strengthening the partnership between the

Commission and the Boards through preventive maintenance and corrective action to assure compliance with WIA requirements.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of these proposed rules.

Comments on the proposed sections may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas 78778; Fax Number (512) 463-3424; or E-mail to barbara.cigainero@twc.state.tx.us . Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register* .

Subchapter A. GENERAL PROVISIONS

40 TAC §800.2

The amendment is proposed under Texas Labor Code §§301.061 and 302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposal affects the Texas Labor Code, Title 4.

§800.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)

Commission -- The Texas Workforce Commission as established in the Texas Labor Code §301.001 .

(2)

Board -- Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117, including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i) (also referred to as an LWDB).

(3)

TCWEC -- Texas Council on Workforce and Economic Competitiveness appointed by the Governor pursuant to Texas Government Code § 2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce Investment Act §111(e). In addition, pursuant to the Workforce Investment Act §194(a)(5), TCWEC maintains the duties, responsibilities, powers and limitations as provided for in the Texas Government Code §§2308.101 - 2308.105.

(4)

WIA -- Workforce Investment Act, Public Law 105-220, 29 U.S.C.A. §2801 *et seq.*

(5)

WIA program year -- The period of time from July 1 of one year through June 30 of the following year.

(6)

Workforce area -- A local workforce development area designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (also referred to as an LWDA).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on March 13, 2000.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: April 23, 2000

For further information, please call: (512) 463-8812

Subchapter E. SANCTIONS RULES

40 TAC §800.178, §800.191

The amendment and new section are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposal affects the Texas Labor Code, Title 4.

§800.178. Sanctions Under the Workforce Investment Act (WIA).

(a)

Preventive Maintenance.

(1)

If a Board fails to meet contract performance measures for youth activities in WIA, Title I, Chapter 4; adult employment and training activities in WIA, Title I, Chapter 5; or dislocated worker employment and training activities in WIA, Title I, Chapter 5, in any WIA program year, the Commission may require that, within a specified period of time, the Board:

(A)

complete a performance improvement plan.

(B)

modify its local plan, or

(C)

take other action designed to improve the Board's performance.

(2)

A Board's failure to complete the corrective measures described in subsection (a)(1) of this section within the specified time limits may result in the Commission imposing sanctions under this subchapter and withholding WIA payments to the Board.

(b)

Sanctions for Second-Year Nonperformance. If a Board fails to meet the contract performance measures for youth activities in WIA, Title I, Chapter 4; adult employment and training activities in WIA, Title I, Chapter 5; or dislocated worker employment and training activities in WIA, Title I, Chapter 5, for one or more of the same measures for two consecutive WIA program years in a two-year period beginning on or after July 1, 2001, the Commission shall make a recommendation to TCWEC that it impose a reorganization plan for the workforce area which may include:

(1)

restructuring the Board, including decertification of the current Board and appointment and certification of a new Board.

(2)

prohibiting the use of particular service providers, including state agencies, and one-stop operators.

(3)

merging the workforce area into one or more other workforce areas, or

(4)

taking such other actions as determined appropriate.

(c)

Sanctions for Second-Year Nonperformance During Transition. If a Board fails to meet the contract performance measures for 50% or more of the measures for youth activities in WIA, Title I, Chapter 4; adult employment and training activities in WIA, Title I, Chapter 5; or dislocated worker employment and training activities in WIA, Title I, Chapter 5, for two consecutive WIA program years in a two-year period beginning on or after July 1, 1999 and ending on or before June 30, 2002, the Commission shall make a recommendation to TCWEC that it impose a reorganization plan for the workforce area which may include:

(1)

restructuring the Board, including decertification of the current Board and appointment and certification of a new Board.

(2)

prohibiting the use of particular service providers, including state agencies, and one-stop operators.

(3)

merging the workforce area into one or more other workforce areas, or

(4)

taking such other actions as determined appropriate.

(d)

Sanctions for Noncompliance with Requirements.

(1)

Each workforce area, including the Board, chief elected officials, one-stop operators and service providers receiving WIA funds, shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving funds as promulgated in circulars or rules of the Office of Management and Budget's Uniform Grant Management Standards.

(2)

Each workforce area, including the Board, chief elected officials, one-stop operators, and service providers receiving WIA funds, must comply with Title I of WIA, as well as all other federal and state laws and regulations.

(3)

If the Commission finds that a Board is not in compliance with the requirements of subsection (d)(1) of this section, or is in substantial violation of subsection (d)(2) of this section, the Commission shall require corrective action to secure prompt compliance and may impose sanctions as provided under this subchapter.

(4)

If the Commission finds that a Board has not taken the required corrective action in the time specified, the Commission shall make a recommendation to TCWEC that TCWEC:

(A)

Issue a notice of intent to revoke all or part of the local plan.

(B)

Issue a notice of intent to cease immediately reimbursement of local program costs.

(C)

Select an alternate entity to administer WIA for the Board involved.

(D)

Restructure the Board including decertification of the current Board and appointment and certification of a new Board.

(E)

Prohibit the Board from using particular service providers, including state agencies, and one-stop providers.

(F)

Merge the workforce area into one or more other workforce areas, or

(G)

Make such other changes as deemed necessary to secure compliance.

(e)

Sanctions for Failures Regarding the One-Stop Service Delivery Network. Failure of a Board to ensure the establishment and operation of a one-stop service delivery network as required by WIA §121 and 40 TAC Chapter 801, Subchapter B, One-Stop Service Delivery Network, may result in the imposition of sanctions as provided in 40 TAC Chapter 800, Subchapter E, Sanctions, and the Commission's withholding of payment for any WIA administrative expenses until the Board can demonstrate to the satisfaction of the Commission that all of the required elements of a One-Stop Service Delivery Network are operational.

(f)

Repayment. The Board and chief elected officials shall be jointly and severally liable for repayment to the Commission from nonfederal funds for WIA expenditures in the workforce area which are found by the Commission not to have been expended in accordance with the WIA.

(g)

Other Sanctions. In addition to the preventive maintenance and sanctions provisions in §800.178(a)-(f), in the administration and provision of WIA services, Boards and contractors receiving WIA funds shall also be subject to all sections of Subchapter E, relating to Sanctions Rules.

§800.191. Appeal.

(a)

Boards may appeal the actions [~~decision~~] of the Commission's executive director; however, a recommendation to another entity by the Commission under §800.178 of this section, relating to Sanctions Under the Workforce Investment Act, may not be appealed under this section [~~Commission~~].

(b)

Requests for appeal must be submitted within ten working days of the date of notice to the General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778.

(c)

Requests for appeal will be referred to a hearing officer. The hearing officer will receive oral and written evidence from both parties and prepare a written proposal for decision to be submitted to the Commission's executive director for final decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on March 13, 2000.

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J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-8812