



**MEETING OF THE
TEXAS WORKFORCE COMMISSION**

July 7, 2020

1 TUESDAY, JULY 7, 2020

2 CHAIRMAN DANIEL: Good morning, everyone.

3 This meeting is called to order. Mr. Trobman, has anyone signed
4 up for any public comment?

5 Mr. Trobman: Good morning. We do not have
6 anyone signed up for public comment this morning.

7 CHAIRMAN DANIEL: Okay. Thank you very
8 much. Good morning, Ms. Miller.

9 CHAIRMAN DANIEL: Okay. Then let's move to
10 Agenda Item 8, discussion, consideration and possible action
11 regarding publication for public comment of proposals relating
12 to contracts and purchasing [unintelligible] Texas
13 administrative code Chapter 800.

14 SUSAN DURSO: Good morning, Commissioners
15 and Mr. Serna. This is Susan Durso. For the record, I'm Susan
16 Durso, the Director for Procurement and Contract Services.
17 Before you today I have a proposed rule amendment to Chapter 800
18 related to contracts and procurement. These rules are required
19 by certain sections in the Texas Government Code.

20 Section 2261253 requires agencies to
21 establish by rule a procedure to identify contracts that
22 required enhanced contract performance monitoring. We have that
23 policy and procedure in place. We just now need the rule.
24 Section 2155076 requires agencies to establish by rule
25 procedures for resolving vendor protests related to purchasing

1 issues. Again, we have that procedure in place. We need the
2 rule. And section 2252202 requires agencies to adopt rules that
3 promote compliance with a requirement that iron and steel
4 products used in our projects be produced through the United--in
5 the United States. And, lastly, we have a rule amendment to
6 800.3 to correct a citation regarding historically underutilized
7 business program and controller division references.

8 If approved today, these rules will be
9 published for comment in the Texas Register. I'm happy to
10 answer any questions you might have.

11 CHAIRMAN DANIEL: Comments or questions?

12 COMMISSIONER ALVAREZ: None, Chairman.

13 COMMISSIONER DEMERSON: None here.

14 CHAIRMAN DANIEL: Do we have any motions?

15 COMMISSIONER ALVAREZ: I move that we
16 publish the proposed rules for amendments to Chapter 800
17 regarding contracting and purchasing to the Texas Register as
18 discussed by staff.

19 COMMISSIONER DEMERSON: Second.

20 CHAIRMAN DANIEL: It's been moved and
21 seconded and we're unanimous.

22 SUSAN DURSO: Thank you.

23 CHAIRMAN DANIEL: Let's move to Agenda Item
24 9, discussion, consideration, and possible action regarding
25 publication for public comment of proposed rules pertaining to

1 the Agricultural Improvement Act of 2018 and the Supplemental
2 Nutrition Assistance Program in employment and training good
3 cause process. That's [unintelligible] Chapter 813.

4 JOEL MULLINS: Good morning, Chairman,
5 Commissioners, Mr. Serna. For the record, this is Joel Mullins
6 with Work Force Development. The Federal Agricultural
7 Improvement Act of 2018 reauthorized the Supplemental Nutrition
8 Assistance Program and [unintelligible] to the employment and
9 training component of that program. The Act contains provisions
10 that affect program administration, including changes mandated
11 by the law and provisions that provide additional flexibility to
12 states.

13 To comply with the Act, TWC must
14 incorporate the relevant provisions into our Chapter 813 rules,
15 including clarifying language [unintelligible] in case
16 management and job retention services, an expanded definition of
17 a work program as it relates to veterans, clarification of the
18 role of the employment and training provider in the good cause
19 determination process, and the removal of certain services and
20 addition of other allowable services. A policy concept was
21 approved on January 7 outlying potential rule amendments and was
22 posted for a three-week board comment period, however no
23 comments were received.

24 This morning staff are seeking direction on
25 proposed amendments to the Commissioner's Chapter 813, rules for

1 publication in the Texas Register for a 30-day public comment
2 period. And I'll be happy to answer any questions.

3 CHAIRMAN DANIEL: Do we have any comments
4 [unintelligible]?

5 COMMISSIONER ALVAREZ: None here,
6 [unintelligible].

7 CHAIRMAN DANIEL: Oh. Any motions?

8 COMMISSIONER ALVAREZ: I move that we
9 publish the [unintelligible]--I move that we publish the
10 proposed rules relating to the Supplemental and Nutrition
11 Assistance Program employment and training to the Texas Register
12 as discussed.

13 COMMISSIONER DEMERSON: Second.

14 CHAIRMAN DANIEL: Been moved and seconded.
15 We're unanimous. Thank you.

16 JOEL MULLINS: Thank you.

17 CHAIRMAN DANIEL: Commissioner Alvarez,
18 it's like announcing a football game in an open stadium. You
19 have to--that echo gets me, too, so.

20 COMMISSIONER ALVAREZ: Can you all hear an
21 echo?

22 CHAIRMAN DANIEL: I was, yeah.

23 COMMISSIONER ALVAREZ: Me, too. I heard an
24 echo on that one, as well.

25

1 CHAIRMAN DANIEL: Yeah, it's kind of weird
2 sometimes. The joys of technology on some days. Okay, let's--
3 actually, we're gonna take up Agenda Item 10. Mr. Serna, it's
4 my understanding that we're all waiting additional guidance from
5 the Federal Department of Labor and would need to not address
6 this today and bring this back in a later time.

7 ED SERNA: Yes, sir, that's correct. Staff
8 would like to defer this item pending the DOL additional
9 guidance.

10 CHAIRMAN DANIEL: All right. Give me just
11 a second. I'm moving to the next item on the agenda. All
12 right.

13 COMMISSIONER ALVAREZ: Chairman, how many
14 computers do you have on?

15 CHAIRMAN DANIEL: Too many. Too many.
16 This is gonna bring us to Item 11--

17 COMMISSIONER ALVAREZ: He's going back and
18 forth. You can see him go like this.

19 CHAIRMAN DANIEL: Discussion,
20 consideration, and possible action regarding TRS for your review
21 and amendments to Chapter 809, also postponing this--

22 UNKNOWN MALE: Yes, sir, we're deferring
23 this one. So we can have Item 12 next.

24 CHAIRMAN DANIEL: You know, I know that and
25 you know that, but this computer is not agreeing with us. How

1 about this, Item 12, discussion, consideration, and possible
2 action regarding policy concepts on amendments to Chapter 806,
3 that's 40 [unintelligible] Chapter 806, [unintelligible] from
4 people with disabilities.

5 UNKNOWN MALE: Michael?

6 COMMISSIONER DEMERSON: Gonna need to
7 unmute him, or he needs to unmute.

8 UNKNOWN MALE: Mr. Chairman, I'm gonna--

9 MICHAEL HOOKS: I've got it. I've
10 [unintelligible].

11 COMMISSIONER ALVAREZ: There he is.

12 MICHAEL HOOKS: Good morning,
13 Commissioners, Mr. Serna. For the record, I'm Michael Hooks
14 with the VR division. Today I'm [unintelligible] for your
15 consideration and possible action policy that [unintelligible]
16 amendments to Chapter 806 for the purchasing from people with
17 disabilities program. [Unintelligible] making this twofold.
18 One is to incorporate into rule requirements established by
19 Senate Bill 753, the [unintelligible] legislature regarding
20 elimination of [unintelligible] minimum wage as a payment to
21 persons with disabilities working in the CC--or the
22 [unintelligible] program.

23 The second is to revise and add ruling
24 which should improve the effective operation [unintelligible] of
25 the PPD program.

1 COMMISSIONER ALVAREZ: Gonna be listening
2 to this one.

3 MICHAEL HOOKS: The policy lays out 12
4 issues for commission consideration. I recommend that I present
5 the 12 and the decision points to allow you to be able to take a
6 vote on the entirety, but I can certainly do it and have you
7 take a vote on each one if you would prefer.

8 CHAIRMAN DANIEL: I would--I agree with
9 doing it in its entirety. All right.

10 COMMISSIONER ALVAREZ: I agree, as well,
11 Chairman.

12 CHAIRMAN DANIEL: All right, well then
13 let's do it that way.

14 MICHAEL HOOKS: Super. All righty, so I'll
15 start with issue number one, requirements of the transition and
16 retention plans, or TRPs. [Unintelligible] must assist their
17 community rehab programs, or CRPs, and developing transition and
18 retention plans, including having them refer to the VR program.
19 We're seeking direction on amending 806 to include the
20 requirements [unintelligible], the goal of full transition by
21 January 1 of 2022, and expectations for compliance
22 [unintelligible].

23 Issue number two is extensions of TRP
24 deadlines and withdrawals from the PPD program. Senate Bill 753
25 allows but does not require TWC to extend deadlines for

1 compliance. We're seeking direction on amending 806 to allow
2 CRPs to request by March 1 of '22 an extension through April 30,
3 '23. If the CRP has met requirements for extension as specified
4 in Senate Bill 753, met the TRP requirements and requested
5 technical assistance before requesting the extension. Requires-
6 -it also requires TRPs to notify TWC no later than March 1 that
7 the CRP intends to withdrawal [unintelligible] program. And
8 then allow CRPs to appeal if TWC does not grant a requested
9 extension.

10 Number three, item--issue number three, the
11 Senate Bill 753 states that the new CRPs certified before the
12 statutory deadline of September 1 of '22 [unintelligible] not
13 have to meet 753 requirements to be eligible to participate
14 prior to that statutory deadline or an extension date granted by
15 TWC, whichever is later. The maximum extension that we can
16 extend is one year. We're seeking direction on amending 806 to
17 require that all entities that do not meet minimum wage
18 requirements and that request CRP certification after the
19 statutory date request extension of March 1, 2022 and meet
20 minimum wage requirements by September 1, '22.

21 Item number four, [unintelligible]
22 exemptions from the minimum wage requirements. Senate Bill 753
23 allows but doesn't require TWC to exempt CRP employee from
24 minimum wage requirements based on certain circumstances. We're
25 seeking direction on amending 806 to allow extensions to the

1 minimum wage requirement and to establish criteria and the
2 processes for granting those exemptions to the minimum wage
3 requirements.

4 Issue number five, WIOA referrals to
5 community rehab programs. 753 establishes a connection to VR,
6 but WIOA requirement for competitive integrated employment
7 prevents CRPs from working with VR to offer employment
8 opportunities due to the current 75 percent direct labor hour
9 contribution by individuals with disabilities requirement in
10 rule. [Unintelligible] the 75 percent requirement is not a
11 statutory requirement but one in rule. We're seeking direction
12 on amending 806 to allow TWC to establish a percentage different
13 than the 75 percent for a CRP that proposes to participate in
14 the PPD program and offer employment opportunities for
15 individuals with disabilities that meet the WIOA definition of
16 competitive integrated employment.

17 Number six, compliance with state law.
18 There is requirement and law or rule that CRPs must comply with
19 other laws, regulations, and agency requirement. We're seeking
20 direction on amending 806 to require CRPs participating in PPD
21 to be clear of any debts related to unemployment insurance,
22 taxes, wage claims, and to meet state licensing, regulatory, and
23 tax requirements applicable to the community rehab program. A
24 CRP that does not meet these requirements would be involuntarily

1 removed by relocation of their certification to participate in
2 the program.

3 Number seven, the PPD advisory committee.
4 Current rules address the role of the advisory committee but do
5 not address how the committee's activity, advice, or
6 recommendations, will be communicated to the commission. We're
7 seeking direction on amending 806 to clarify the method of
8 communicating advice, activities, and/or recommendations of the
9 advisory committee to the commission.

10 Number eight, the commission approval of
11 products and services. [Unintelligible] code does not require
12 that the commission approve products and services, the rule
13 does. We're seeking direction on amending 806 to allow the
14 review and approval of products and services be conducted by the
15 TWC's executive director or deputy executive director rather the
16 commission.

17 Item--issue number nine, determination of a
18 worker with a disability. The human resources code and rule
19 define disability for the PPD program but do not address who can
20 make the determination that someone has a disability. We're
21 seeking direction on amending 806 to further clarify disability
22 determination requirements by the effective date of Chapter 122
23 to include the following: the qualifications for the individuals
24 or entities that determine and document whether an individual
25 meets the definitions of a work-related disability and the

1 requirement that the individual or entity making that
2 determination be an independent, not a CRP entity.

3 Issue number 10, use of contract labor.
4 Rule requires that CRPs maintain payroll records, human
5 resources, functions, and other administration functions but do
6 not specify that the CRP must be the employee unit. Staff seeks
7 direction on amending Chapter 806 to require that the CRP or
8 entity designated by the CRP to be the employment--employing
9 unit worker disabilities who are counted towards the CRP
10 certification for the PPD program.

11 Issue number 11, clarifying appreciable
12 contribution and value added by individuals with disabilities.
13 Rules define appreciable contribution and value added but do not
14 describe how the agency determines if that criteria is met.
15 We're seeking direction on amending 806 to provide criteria for
16 determining if duties performed by individuals with disabilities
17 qualify as value added. For example, consideration of value
18 added may afford some flexibility regarding labor and market
19 conditions relative to the proposed good or service in the
20 degree to which duties and tasks performed by the individuals
21 with disabilities employed by CRPs are transferable to the labor
22 market.

23 And, finally, issue number 12, rule review
24 of Chapter 806. Texas Government Code requires that every four
25 years every state agency review and consider [unintelligible]

1 revisionary appeal each rule adopted by that agency. The issues
2 [unintelligible] this policy concept result from a review of
3 Chapter 806 consistent to the requirement of the Texas
4 Government Code. We're seeking direction on including in the
5 preamble of the rule amendments of Chapter 806 outlined in this
6 policy concept a statement that the rules have been reviewed and
7 [unintelligible] to Texas Government Code.

8 That concludes all 12 items of the policy
9 concept. I'm open to any questions that you may have.

10 CHAIRMAN DANIEL: All right, comments or
11 questions?

12 COMMISSIONER ALVAREZ: None here, Chairman.

13 COMMISSIONER DEMERSON: None here.

14 CHAIRMAN DANIEL: Thank you. Are there any
15 motions?

16 COMMISSIONER ALVAREZ: I move that we
17 approve the policy concept for amendments to Chapter 806 as
18 discussed by staff.

19 COMMISSIONER DEMERSON: Second.

20 CHAIRMAN DANIEL: It's been moved and
21 seconded and the motion carries.

22 MICHAEL HOOKS: Thank you for your time.

23 CHAIRMAN DANIEL: Thank you. Let's see, we
24 have nothing under Agenda Item 13, statewide initiatives. Let's
25 move to Agenda Item 14, discussion, consideration, and possible

1 action regarding guidance on resource utilization and
2 implementation of services and strategies to target disaster
3 relief efforts and public health emergencies, including those
4 funded with the Department of Labor's Disaster Dislocated Worker
5 grant.

6 ED SERNA: Mr. Chairman, Commissioners,
7 this is Ed Serna, Executive Director. We really have no
8 significant changes to report under this item, either in
9 employment services or unemployment insurance or childcare, but
10 I will say that we are seeing--continue to see a slight increase
11 or uptick in the number of individuals that are returning into
12 the system to file claims, continuing claims. Staff is also
13 doing very good with regard to handling the workload that we are
14 dealing with, but we have nothing else to report.

15 CHAIRMAN DANIEL: Okay. We'll move, then,
16 to Agenda Item 15, discussion, consideration, and possible
17 action regarding approval of a local Workforce Development Board
18 nominees.

19 SHUNTA WILLIAMS: Good morning, Chairman
20 Daniel. Can you hear me?

21 CHAIRMAN DANIEL: I can.

22 SHUNTA WILLIAMS: Okay. Perfect. So good
23 morning, good morning, Commissioner Alvarez, Commissioner
24 Demerson, and Mr. Serna. For the record, Shunta Williams with
25 the Workforce Development Division. And before you for

1 consideration, we have Workforce Board nominees for Workforce
2 Solutions, **Brazos Valley, Cameron County, East Texas, North**
3 **Central Texas, the Heart of Texas, Permian Basin, and Rural**
4 **Capital Area.** Staff recommends that all nominees be approved at
5 this time, and I'm here to answer any questions you may have.

6 CHAIRMAN DANIEL: Comments or questions?

7 COMMISSIONER ALVAREZ: No comments,
8 Chairman.

9 COMMISSIONER DEMERSON: None here.

10 CHAIRMAN DANIEL: Thank you. Do we have
11 any motions?

12 COMMISSIONER ALVAREZ: I move to approve
13 the board nominees for Brazos Valley, Cameron County, East
14 Texas, North Central Texas, the Heart of Texas, Permian Basin,
15 and Rural Capital Area.

16 COMMISSIONER DEMERSON: Second.

17 CHAIRMAN DANIEL: It's been moved and
18 seconded. We're unanimous. Thank you.

19 SHUNTA WILLIAMS: Thank you.

20 CHAIRMAN DANIEL: Do we have a legislature
21 report today?

22 TOM MCCARTY: Yes, sir, Mr. Chairman.

23 CHAIRMAN DANIEL: All right.

24 TOM MCCARTY: Good morning. Good morning,
25 Mr. Chairman, Commissioner Alvarez, Commissioner Demerson, and

1 Mr. Serna. For the record, Tom McCarty, External Relations.
2 Last night the U.S. House Appropriations Committee released the
3 draft text for their fiscal year 2021 Labor, Health, and Human
4 Services and Education Funding Bill. The House of
5 Appropriations' subcommittee of Labor, Health, and Human
6 Services and Education will be holding a markup on the bill
7 later today. The draft bill includes 196.5 billion in overall
8 funding, which is an increase of 2.4 billion above the fiscal
9 year 2020 enacted levels and 20.8 billion above the president's
10 fiscal year 2021 budget request.

11 A summary of the funding levels in
12 comparison to the president's budget proposal for fiscal year
13 2021 [unintelligible] year 2020 was sent to your offices last
14 night. We'll continue to monitor the two Congressional hearings
15 this week. Today at noon is the U.S. House Financial Services
16 subcommittee on national security. International development
17 and monetary policy will be holding a hearing on paycheck
18 security, economic perspectives on alternative approaches to
19 protecting worker's pay during COVID-19. And, then, as I
20 mentioned earlier, the U.S. House of Appropriations subcommittee
21 on Labor, Health, and Human Services and Education will have
22 their markup at 5:00 p.m. today.

23 We continue to monitor Congressional action
24 on potential legislation that would provide further assistance
25

1 to those affected by COVID-19. And I'm--this concludes my
2 remarks. I'm available if you have any questions to ask.

3 CHAIRMAN DANIEL: Okay, questions or
4 comments?

5 COMMISSIONER ALVAREZ: No questions for Tom
6 at this time.

7 COMMISSIONER DEMERSON: None.

8 CHAIRMAN DANIEL: All right. Thank you,
9 Tom.

10 TOM MCCARTY: Thank you.

11 CHAIRMAN DANIEL: Mr. Serna, do you have
12 anything on Executive Director's report?

13 COMMISSIONER DEMERSON: He's muted. Still
14 nice and muted.

15 ED SERNA: Here I am. Sorry. I didn't
16 want to interrupt Tom while he was talking. I--no, sir, I have
17 nothing else to report.

18 CHAIRMAN DANIEL: Okay. Anything else that
19 needs to come before the commission?

20 COMMISSIONER ALVAREZ: No, Chairman.

21 COMMISSIONER DEMERSON: None here.

22 CHAIRMAN DANIEL: Do we have a motion to
23 adjourn?

24 COMMISSIONER ALVAREZ: Chairman, I move
25 that we adjourn.

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COMMISSIONER DEMERSON: Second that motion.

CHAIRMAN DANIEL: It's been moved and
seconded to adjourn. We're unanimous and we're adjourned.
Thank you all.