

CJA REVISIONS TO CHAIR DANIEL 803 RULES PROPOSAL REQUESTED REVISIONS

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 enhance the ability of public state colleges, 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 by developing projects 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.

*Need to include Sec. 803.1 (b) "Goal of the Skills Development Fund is to increase the skills level and wages of the Texas workforce," because the statute 303.004 (b)(1)(A) requires review of the effectiveness of the programs in improving the wages of participants who complete the programs. We are expending taxpayer dollars need to ensure that this will result in wage increase to employee, not leave the person in poverty. (JDC)*

§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) a technical college;

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Deleted: only in partnership with the public community and technical colleges or TEEX

Commented [DC2]: add public state colleges per statute. Okay to change scope to mirror statute but add public junior college

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(iii) public state college.

(iii) TEEX;

(iv) a Board; or

(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) TEEX;

(D) public state college.

(E) a Board; or

(F) 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--An individual, sole proprietorship, partnership, corporation, association, consortium, or private organization that enters into a partnership for a customized training project with:

(A) a public community college;

(B) a technical college;

(C) public state college.

(D) TEEX; or

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

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(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.

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- 1 (6) Public technical college--A state-funded coeducational institution of higher
- 2 education offering courses of study in vocational and technical education, for
- 3 certification or associate's degrees.
- 4 (7) Texas A&M Engineering Extension Service (TEEX)--A higher education
- 5 agency and service established by the Board of Regents of the Texas A&M
- 6 University System.
- 7 (8) Trade union--An organization, agency, or employee committee in which
- 8 employees participate and which exists for the purpose of dealing with
- 9 employers concerning grievances, labor disputes, wages, rates of pay, hours of
- 10 employment, or conditions of work.
- 11 (9) Training provider--An entity or individual that provides training, including:
- 12 (A) a public community college;
- 13 (B) a technical college;
- 14 (C) TEEX;
- 15 (D) public state college;
- 16 (E) a community-based organization only in partnership with the public
- 17 community, or technical college or TEEX; or
- 18 (F) Sole proprietorship, partnership, corporation, association, consortium,
- 19 governmental subdivision, or public or private organization with whom a
- 20 Board, public community, public state college, or technical college, or
- 21 TEEX has subcontracted to provide training.

22 §803.3. Uses of the Fund.

- 23 (a) The Skills Development Fund may be used by a grant recipient as start-up or
- 24 emergency funds for the following purposes:
- 25 (1) to develop customized training projects for businesses and trade unions; and
- 26 (2) to sponsor small and medium-sized business networks and consortiums for the
- 27 purpose of developing customized training.
- 28 (b) The Skills Development Fund may be used by public hospitals and not for profit
- 29 hospitals or private employers in partnership with a Board, public state college, public
- 30 community or technical college, or TEEX to provide training in healthcare
- 31 professions. Delete this section it is not needed because Section 803.32 provides
- 32 waiver authority to the Executive Director to suspend or waive a section of this
- 33 chapter not statutorily imposed upon a showing of good cause a finding that the
- 34 public interest would be served by such a suspension or waiver.

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

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

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10 (e) The Skills Development Fund may not be used:

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- 11 (1) to pay the training costs and related costs of an employer that relocates the  
12 employer's worksite from one place in Texas to another;
- 13 (2) for the purchase of any proprietary or production equipment required for the  
14 training project of a single local employer;
- 15 (3) for wages for trainees; or
- 16 (4) to pay for trainee or instructor travel costs or trainee drug tests.

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

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

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#### 27 §803.4. Use of Funds to Encourage Employer Expansion and Recruitment.

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

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

1 (1) provide leadership and direction to, and connections among, out-of-state  
2 employers, economic development organizations, Boards, public state colleges,  
3 community and technical colleges to support employers' recruitment and hiring  
4 for complex or high-skilled employment positions as necessary to facilitate the  
5 employers' relocation to or expansion of operations in Texas; and

Commented [DC7]: Add public state colleges

6 (2) award grants to public state colleges, community and technical colleges that  
7 provide workforce training and related support services to employers that  
8 commit to establishing a place of business in Texas.

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

10 (1) customized workforce training programs for an employer's specific business  
11 needs;

12 (2) fast-track curriculum;

13 (3) workforce training--related support services for employers;~~Or~~

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14 (4) instructor certification necessary to provide workforce training.

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

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

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

Commented [DC11]: Agency process for acceptance of gifts and permission to reject gift.

## 27 SUBCHAPTER B. PROGRAM ADMINISTRATION

### 28 §803.11. Grant Administration.

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

31 (1) submitting all required reports, including financial and performance reports, in  
32 the format and time frame required by the Agency;

33 (2) maintaining fiscal data needed for independent verification of expenditures of  
34 funds received for the customized training project;

(3) cooperating and complying with Agency monitoring activities as required by Chapter 802, Subchapter D, of this title (relating to Agency Monitoring Activities); and

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(4) submitting contract completion reports:

(A) The final payment is contingent upon the executive director's, or designee's, determination that a project has met the training objectives, outcomes, and requirements (an attrition rate of up to 15% of the total number of trainees in the contract is allowed).

(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.**

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

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(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.

Commented [DC12]: Delete limitation. Internal Audit noted that they had too many waivers on this section.

(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.

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(b) The training proposal shall not duplicate another training project available in the workforce area in which the private partner or trade union is located.

Commented [DC13]: Shall not duplicate another training project? What if there is a need due to capacity? So. Texas LNG/s and SpaceX, Red River Steel

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(c) Skills Development Fund applicants on corrective action pursuant to Chapter 802, Subchapter G, shall not be eligible to receive a Skills Development Fund grant.

Commented [DC14]: Move section to 803.15 Procedural for Proposal Evaluation

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**§803.13. Program                      Objectives.**

Every two years, the Commission shall approve program guidelines and objectives used to guide program operations for the designated biennium. Need to have goals and objectives for the program in rule for clarity for program participants. Contracts may last 2 years. Guidance means you may or may not have to follow, it is permissive. Rule specific regarding expectations as set forth by the statute. Child Care guidelines are every four years.

Commented [DC15]: Important goals and objectives of the program need to be stated in Rule to provide clarity for program participants. Creation of high value, high skills jobs for the state, projects resulting in wage progression or resulting in 60% job retention are all important goals. These are taxpayer training dollars and we need to make sure we have results and program participants are aware of those goals and that the Agency stands behind those goals.

Commented [DC16]: Need to have goals and objectives for the program in rule for clarity for program participants. Contracts may last 2 years. Guidance means you may or may not have to follow, it is permissive. Rule specific regarding expectations as set forth by the statute. Child Care guidelines are every four years.

Reinsert goals but change workforce board areas back to original language "area" since Comptroller requires reporting by comptroller areas [803.13(1)] and change (2) to promote collaboration, awareness, and develop projects in all areas of the state.

**Commented [DC17]:** Reinsert goals as in proposed rule but change workforce board areas back to original language "area" since Comptroller requires reporting by comptroller areas [803.13(1)] and change (2) to promote collaboration, awareness, and develop projects in all areas of the state.

**§803.14. Procedure for Requesting Funding and Proposal Evaluation**

**Commented [DC18]:** Need to make sure that basic concepts are kept in tact to provide certainty for administering the grant. Still want to make sure that funding is spent all over the state, ensure collaboration, ensure prevailing wage because that is required in statute, prioritization for high unemployment areas, they set broader parameters that must be met by law. (6) 60% expenditure for job retention training is in statute as well as spending most of the money for job retention or job creation. Establishes clarity based on statutory language. Program objection is to develop projects not just collaboration that doesn't result in a project.

(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 TEEX, 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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(1) To ensure that funds from the program are spent in all local workforce development areas (workforce areas) of this sta ... [1]

(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 TEEX, 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) 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.

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(e) The executive director, or designee, shall evaluate each proposal considering the purposes listed in §803.3(a) of this subchapter, the program objectives developed and pursuant to §803.13 of this subchapter, and procedures in §803.14 of this subchapter.

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

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(g) TEEX, 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.

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(h) 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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1 **§803.15. Concurrent Applications.**

2 (a) Applicants submitting concurrent SDF and Texas Enterprise Funds are required to indicate  
3 that the applications are concurrent.

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

5 **§803.31. Notice to Local Workforce Development Board.**

6 The Agency shall announce final decisions made regarding Skills Development Fund  
7 grants.

8 **§803.32. Waivers.**

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

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(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 developed and pursuant to §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 the Board in the applicable workforce area when the Agency is evaluating a proposal so as to promote collaboration and awareness inform the Board of potential workforce activities in the workforce area.¶

(C) IF THE AGENCY DETERMINES THAT A PROPOSAL IS APPROPRIATE FOR FUNDING THROUGH THE SKILLS DEVELOPMENT FUND, THE EXECUTIVE DIRECTOR, OR DESIGNEE, SHALL ENTER INTO A CONTRACT WITH THE GRANT RECIPIENT ON BEHALF OF THE AGENCY.¶

(d) Skills Development Fund applicants on corrective action pursuant to Chapter 802, Subchapter G, shall not be eligible to receive a Skills Development Fund grant.¶

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