

**TITLE 40. SOCIAL SERVICES AND ASSISTANCE
PART XX. TEXAS WORKFORCE COMMISSION
CHAPTER 800.GENERAL ADMINISTRATION
SUBCHAPTER H. AGENCY MONITORING ACTIVITIES**

§800.309 Commission Evaluation of Board Oversight Capacity

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON FEBRUARY 26, 2004 THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

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The Texas Workforce Commission (Commission) proposes new §800.309 regarding Commission Evaluation of Board Oversight Capacity.

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PART I. INTRODUCTION

A. Purpose. The purpose of the proposed rule is to set forth the processes and criteria used by the Commission to evaluate each local workforce development board's (Board) overall capacity to oversee and manage local funds and the delivery of local workforce services.

Texas Labor Code, Subchapter C, Chapter 302 was amended by Senate Bill 280, 78th Texas Legislature, Regular Session (2003) to add Section 302.048 entitled "Assessment of Local Workforce Development Board's Capacity to Oversee and Manage Local Funds and Delivery of Services."

The new section reiterates the Commission's responsibility to oversee and evaluate Boards, particularly as it relates to their capacity to fulfill their financial and oversight duties under federal and Texas law and rules.

B. Background. The Commission's strong history of Board oversight has enabled the Commission and the Boards continuously to improve the delivery of local workforce services. As part of this oversight, the Commission uses various monitoring methods to evaluate Board capacity to oversee and manage local funds and deliver local workforce services. These monitoring efforts are similar to the methods set out under the Texas Labor Code §302.048. For

example, the Commission's Performance Analysis and Reporting Department reports all Board and strategic plan performance measures on a monthly basis and makes them available for Boards, their staffs, and their contractors to use to manage, monitor, and improve their performance. The Commission also has various monitoring methods aimed at ensuring that Boards are exhibiting good fiscal management and oversight practices. Therefore, the Commission has approached development of this rule with the idea that it should build on existing efforts. Rather than add yet another bureaucratic and administrative burden to the Boards, from the beginning of the development of this proposed rule the Commission views this rule as an opportunity to tie together the results of various existing monitoring methods into a system to assist the Boards in their oversight and management of funds and delivery of local workforce services.

In developing the rule, the Commission is seeking to achieve several goals. The Commission believes that the system should be readily accessible to and understandable by the Boards, the general public and other interested parties. It is also important that to the extent possible, the system should rely upon objectively determinable factors. Additionally, it is important that the system be implemented without placing a significant burden, financial or otherwise, on either the Boards, their staff, their contractors, or the Commission. Finally, the Commission wants to ensure that the system criteria be defined broadly so that it will allow for growth and improvement over time.

C. Coordination Activities. On January 6, 2004, the Commission notified the Boards that it was seeking input on criteria to be used to evaluate Board capacity as required by Texas Labor Code §302.048. Boards were provided a concept paper which summarized the requirements of Texas Labor Code §302.048 and that laid out various goals that the Commission thought the final rule needed to achieve.

Boards were given until February 6, 2004 to provide input. On January 30, 2004, Commission staff held a conference call attended by staff from at least 14 Boards. During this call, Boards stated that they believed that the Commission's oversight activities, particularly those listed under Subchapter H of 40 T.A.C. Chapter 800, Agency Monitoring Activities, generally covered the duties that the new statutory language addressed. This was the general consensus of those participating and was consistent with the Commission's initial thoughts. In the week that followed the call, staff from seven Boards, including six executive directors, provided comments generally supporting this direction.

In addition to these initial coordination activities, Boards, along with other interested parties and individuals, will have the opportunity to provide input on the rule through the standard public comment process applicable to all Commission rule proposals.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

The proposed new rule, Section 800.309, is proposed to be added to Subchapter H. Agency Monitoring Activities.

Section 800.309, subsections (a) & (b) outline the process and criteria used by the Commission to evaluate each Board's overall capacity to oversee and manage local funds and the delivery of local workforce services. The six responsibilities listed under Section 800.309(b) correspond to

the six areas of responsibility that Texas Labor Code §302.048 requires to be addressed by the rule's criteria.

The Commission believes that standards, criteria, and requirements relating to the six listed responsibilities from §302.048(b) and incorporated into Section 800.309(b) are addressed in state and federal laws and regulations, the provisions of Board contracts and plans, and official directives issued by governing authorities. Examples of these directives include such documents as U.S. Department of Labor Training and Employment Guidance Letters, U.S. Department of Labor Training and Employment Informational Notices, U.S. Department of Health and Human Services Guidance Letters, and Texas Workforce Commission Workforce Development Letters.

These requirements change over time as laws, rules, and guidance directives are amended, repealed, or replaced or as new initiatives are implemented. Therefore, listing each statute, rule, or directive in this rule would be both redundant and inefficient. As Board responsibilities evolve based on actions of state and federal lawmakers and oversight agencies, the Commission would be faced with amending this rule to reference changes made elsewhere. Further, regardless of whether these requirements are specifically enumerated in this rule, they apply to the Boards. As such, Section 800.309(b) of the proposed rule explains that the Agency will conduct oversight activities, such as the monitoring process, that evaluate Board performance and compliance and mentions these governing laws, regulations, and directives and make findings as appropriate.

While each of the six responsibilities listed in §302.048 and incorporated into Section 800.309(b) are important components of oversight and management, the Commission believes that one of the best ways that the Boards can demonstrate competence in these areas is by achieving desired outcomes. That is, nothing demonstrates a Board's capacity to succeed as much as the Board's success itself. With that in mind, while the criteria being outlined in this rule addresses the six areas of responsibility, the Commission will focus much of its monitoring and management efforts and ultimate Board ratings on performance and financial outcomes rather than administrative processes.

Section 800.309(c) outlines the four ratings that the Commission shall apply to the Boards. The ratings are based on performance outcomes, disallowed costs, and findings of noncompliance with applicable statutes, rules, directives and other governing documents such as Board Plan and Contract requirements. The four ratings, in descending order, are "Above Standards," "Within Standards," "Below Standards," and "Well Below Standards."

While Section 800.309(c) references achieving targets on performance measures, the Commission did not specify the measures in the rule. The Commission generally does not believe that it is appropriate to specify performance measures in rules. Doing so makes it more difficult to change measures or improve methodologies as statutes, priorities, or responsibilities change.

Finally, Section 800.309(d) provides that the Commission will post performance information and the results of its Board evaluations and the Board ratings on its website. This addresses requirements set out in §302.048(f) to post this information for the public. The legislation does not set out how often the Commission is to review and update performance information about Boards. Therefore, the Commission is interested in comments regarding how often the Commission should conduct reviews and update performance information. Moreover, the

Commission is interested in comments about whether there should be a different review schedule for conducting follow-up reviews for Boards that receive a "Below Standards" or "Well Below Standards" rating.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule will be 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 rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

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

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

There is no anticipated impact on small businesses because the Boards are provided local funds to implement the program locally and the reasonable and necessary costs of performing under a contract by a contracted workforce service provider would be paid through the contract.

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

Joann Benton, Director of Subrecipient Monitoring, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the new rules will be greater accountability and quality of oversight by Boards, particularly relating to fiscal, program, and performance management.

Comments on the proposed section may be submitted to John Moore, General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778; Fax Number 512-463-2220; or e-mailed to john.moore@twc.state.tx.us. Comments must be received by the Agency no later than thirty (30) days from the date this proposal is published in the *Texas Register*.

The new rules are proposed in response to and under the authority of the following sections:

Texas Labor Code §302.048 Assessment of Local Workforce Development Board's Capacity to Oversee and Manage Local Funds and Delivery of Services, added by §4.07 of Senate Bill 280, 78th Texas Legislature, Regular Session (2003). The Commission is required to adopt rules not later than May 1, 2004, to establish criteria to be used to evaluate each local workforce development board, and shall implement Texas Labor Code §302.048 not later than September 1, 2004.

Additionally, §301.0015, Texas Labor Code, provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment.

Section 302.002(d), Texas Labor Code, authorizes the Commission to adopt, amend, or repeal such rules in accordance with Chapter 2001, Texas Government Code, as necessary for the proper administration of the Workforce Development Division.

Section 302.021, Texas Labor Code, which consolidated under the jurisdiction of the Commission job-training, employment, and employment-related educational programs and other functions listed in this section including, but not limited to, the programs funded under the Workforce Investment Act of 1998 as amended (29 U.S.C. §2801 et seq.).

Texas Labor Code, Title 4, and primarily Chapters 301 and 302, will be affected by the proposed new rule.

Chapter 800. General Administration
Subchapter H. Agency Monitoring Activities

§800.309 Commission Evaluation of Board Oversight Capacity.

- (a) Purpose – This rule outlines the process and criteria used by the Commission to evaluate Board capacity to oversee and manage local funds and the delivery of local workforce services.
- (b) The Commission shall use oversight methods outlined in this chapter and elsewhere in the statute and rules to evaluate each Board’s performance and compliance with applicable laws, regulations, provisions of contracts and Board plans, and official directives. Examples of official directives include such documents as U.S. Department of Labor Training and Employment Guidance Letters, U.S. Department of Labor Training and Employment Informational Notices, U.S. Department of Health and Human Services Guidance Letters, and Texas Workforce Commission Workforce Development Letters. In particular, the Commission shall evaluate and make findings as appropriate relating to Board fulfillment of responsibilities relating to:
 - (1) developing, maintaining, and upgrading comprehensive fiscal management and accountability systems;
 - (2) hiring, training, and retaining qualified staff to carry out the Board's oversight activities;
 - (3) selection and oversight of local contractors to improve delivery of workforce services;
 - (4) oversight and improvement of operation of local career development centers in the area served by the Board;
 - (5) managing contractors' performance across multiple Board programs and achieving required performance standards; and
 - (6) identifying and resolving long-standing oversight problems of the Board and performance problems of contract providers.

- (c) The Commission shall rate each Board's capacity as Above Standards, Within Standards, Below Standards or Well Below Standards. The following criteria shall be used to set the rating.
- (1) A Board will be rated as Above Standards if:
 - (A) the Board's performance on 90% of contracted measures is at or above 95% of target with no single measure at less than 90% of target;
 - (B) there are no disallowed costs; and
 - (C) there are no repeat findings.
 - (2) A Board will be rated as Within Standards if:
 - (A) the Board's performance on 80% of contracted measures is at or above 95% of target with no single measure at less than 85% of target;
 - (B) disallowed costs do not exceed 1% of allocation; and
 - (C) there are no repeat findings.
 - (3) A Board will be rated as Below Standards if the Board is found to not be Above or Within Standards.
 - (4) Notwithstanding subsection (c)(3), a Board shall be rated as Well Below Standards if:
 - (A) the Board is found not to be Above or Within Standards for two consecutive years;
 - (B) the Board's performance on 25% of contracted measures is below 80% of target based on the end of year report;
 - (C) disallowed costs exceed 3% of allocation; or
 - (D) there are significant findings.
- (d) At least annually, the Commission shall post the results of its evaluation of each Board and each Board's performance on its internet site with explanation of the rating, rating criteria, and performance measures in a format that is readily accessible to and understandable by a member of the public.