



The Senate Committee on
Veteran Affairs & Military Installations

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OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-44221-05

I.D. # 044221

Re: Interpretation of Section 302.062(g), Labor Code

Dear General Abbott:

Please accept this letter as a request for an opinion from your office on the correct interpretation of Section 302.062(g), Labor Code.

Section 302.062(g), Labor Code, states that block grant funding under Section 302.062 does not apply to a list of 14 programs. However, the Texas Workforce Commission has block granted several of those programs.

Attached is a memo dated May 13, 2004, from a Texas Workforce Commission attorney, explaining the Texas Workforce Commission's justification of block granting the programs.

I would greatly appreciate an opinion as to the correct interpretation of this statute. Please do not hesitate to contact me or my Committee staff should you have any questions or require additional information.

Regards,

Leticia Van De Putte, R.Ph.
Chair, Senate Committee on Veteran Affairs and Military Installations

EXECUTIVE ADMINISTRATION
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MAY 24 2005

ACTION BY Fuler
COPY TO _____

TEXAS WORKFORCE COMMISSION
Interoffice Memorandum

DATE: May 13, 2004

TO: Commissioners
Larry Temple, Executive Director
Gene Crump, Deputy Executive Director
Luis Macias, Director of Workforce Development

FROM: John Moore, General Counsel *jm*
Office of General Counsel

SUBJECT: Blockgranting, Allocation and Distribution of Funds by the Texas
Workforce Commission

In response to a request from Commissioner Congleton regarding the concept paper on proposed amendments to 40 T.A.C. Chapter 800, I have reviewed state laws relating to the blockgranting, allocation and distribution of funds by the Texas Workforce Commission (Commission) to determine whether the Commission is prohibited from blockgranting, allocating or distributing funds related to the programs listed in Section 302.0629(g) of the Texas Labor Code. My review of the law indicates that the Commission is not prohibited in its ability to blockgrant, allocate or distribute funds under Section 302.062 of the Texas Labor Code. (A copy of this section is attached as Exhibit A.)

Proposed Amendments to 40 T.A.C. Chapter 800:

Staff has brought forth a concept paper to the Commission which proposes amendments to the following sections of Chapter 800 of the Commission Rules: Subchapter A, General Provisions, Section 800.2 Definitions; Subchapter B (Allocations and Funding), Section 800.51 (Scope and Purpose), Section 800.52 (Definitions) Section 800.53 (Choices), Section 800.54 (Food Stamp Employment and Training), Section 800.63 (Workforce Investment Act Allocations), Section 800.71 (General Deobligation and Reallocation Process), Section 800.72 (Reporting Requirements), Section 800.73 (Expenditure, Local Match, and Obligation Levels), Section 800.74 (Deobligation of Funds), Section 800.75 (Reallocation of Funds), new Section 800.65 (Project Reintegration of Offenders [RIO]), Section 800.66 (Veterans' Employment and Training), Section 800.67 (Trade Act programs), repeal of Section 800.61 (Welfare-to-Work) and Section 800.62 (School to Careers).

The purposes of the changes proposed by staff are to enhance satisfaction of the legislative requirement embodied in Texas Labor Code, Section 301.001, as amended by S.B. 280, 78th Texas Legislature, Regular Session, which directs the Commission to operate an integrated workforce development system in this state, in particular through

the consolidation of job training, employment, and employment-related programs; to standardize, simplify, and make more consistent the procedure of determining allocations and funding distributions on the basis of the universe of need; and to streamline and achieve administrative efficiency and effectiveness in granting allocated and distributed funds in order to foster the integration of workforce development programs, minimize administrative burdens and costs, and maximize the proportion of funding available for services.

In bringing forth the concept paper, staff points out that Texas Labor Code, Section 301.001, as amended by S.B. 280, 78th Texas Legislature, Regular Session, requires the Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs. Texas Labor Code, Section 302.002, directs the executive director of the Commission to consolidate the administrative and programmatic functions of the programs under the authority of the Commission, to achieve efficient and effective delivery of services, and also to contract with local workforce development Boards for program planning and service delivery. In order to most effectively achieve an integrated workforce development system—wherein disparate and distinct programs are blended into a functionally unified whole—staff indicates that the Commission should make allocations and funding distributions that support integrated and consolidated workforce programs, administer grants of allocated and distributed funds simplifying (to the maximum extent feasible) the current incongruent and confounding array of disparate federal and state programmatic requirements, funding periods, and other impediments, and advocate and enhance achievement of integrated and consolidated workforce development by workforce development Boards. By standardizing, simplifying, and making more consistent the procedure of determining allocations and funding distributions on the basis of the universe of need, the Commission will support the integration and consolidation of workforce development programs. By streamlining and achieving administrative efficiency and effectiveness in granting allocated and distributed funds—including administering consolidated workforce development grants according to a unified program year and utilizing enhanced grant closeout procedures—the Commission would facilitate the most effective use of the cash draw system, accelerate contracting in general and accomplish greater efficiency in contracting, thereby setting the stage for lower Commission and Board administrative costs.

Programs under Section 302.062 of the Texas Labor Code Impacted by the Allocation Rules:

The proposed amendments to 40 T.A.C., Chapter 800 impact the following programs:

1. Choices
2. Food Stamp Employment and Training
3. Workforce Investment Act Allocations
4. Project Reintegration of Offenders (RIO)
5. Veterans' Employment and Training
6. Trade Act programs

The Choices Program, the Food Stamp, Employment and Training Program and the Workforce Investment Act (WIA) Program are all allocated to this state through the application of an established formula. (Note: The Governor's WIA statewide discretionary funding is not subject to the funding formulas for the other three WIA funding streams.) The Commission blockgrants the funding of these programs to the Boards as required by Section 302.062(b) of the Texas Labor Code.

Programs Not Blockgranted under Section 302.062 of the Texas Labor Code:

Section 302.062(g) of the Texas Labor Code states that the following programs cannot be blockgranted under Section 302.062 of the Texas Labor Code:

1. Subsection (5) the reintegration of offenders program under Chapter 306 of the Texas Labor Code.
2. Subsection (13) the Trade Adjustment Assistance Program under Part 2, Subchapter II, Trade Act of (1974) (19 U.S.C. Section 2271 et seq.)
3. Subsection (14) the programs to enhance the employment opportunities of veterans.

Statutory Construction:

What does the prohibition under Section 302.062(g) mean? Although an argument can be made that funds for these programs cannot be blockgranted, allocated or otherwise distributed to the Boards in any manner, a much stronger argument exists that the Commission must blockgrant, allocate or otherwise distribute these funds to the Boards as allowed under Texas law in order to accomplish the goals of the legislation governing the Commission. The Commission's authority to approve "funding distributions" of Project RIO, Veterans' Employment and Training, WIA Alternative Funding for Statewide Activities, and Trade Act programs to local workforce development Boards is supported by Texas Labor Code, Sections 301.001 and 302.002. Texas Labor Code, Section 301.001, as amended by S.B. 280, 78th Texas Legislature, sets out the Purpose and Agency Goals of the Commission and charges the Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs. Texas Labor Code, Section 302.002, which contains the General Powers and Duties of the Commission and executive director, directs the executive director to consolidate the administrative and programmatic functions of the programs under the authority of the Commission, to achieve efficient and effective delivery of services, and also to contract with local workforce development Boards for program planning and service delivery. Section 302.021 of the Texas Labor Code specifically references Project RIO (Subsection (a)(11)), Trade Act programs (Subsection (a)(17)) and Veterans' programs (Subsection (b)(1) as workforce development programs to be administered by the Workforce Development Division of the Commission. Therefore, in light of these provisions, the Commission has the authority to distribute funding to the Boards of the programs not blockgranted under Section 302.062(g) of the Texas Labor Code.

The Veterans' Employment and Training program is allocated to states based upon the ratio of the general unemployment level in each state compared with the unemployment level in all states, and the ratio of veterans in the civilian labor force in each state with the total number of veterans in the civilian labor force in all states. Trade Act programs are allocated to all states on the basis of the following procedure: 75% of all funds are allocated pursuant to a formula that distributes 80% based on the average amount of funds allocated to states during the three previous years, and 20% based on the average number of program participants for the previous three years, with an 85% "hold harmless" calculation. The remaining 25% of all funds are reserved to be distributed to states on an as-needed basis.

Project RIO, which is largely state funded, has no federal allocation procedure.

TEGL No. 6-03 (October 1, 2003) provides that for FY 2004, the Employment and Training Administration (ETA) will implement an allocation process for disbursing Trade Adjustment Assistance (TAA) training funds to include the following:

TAA Formula Funds: 75% of the \$220 million available for TAA training—or \$165 million—will be distributed to states using the following formula:

- 80% of TAA formula funds, or \$132 million, will be distributed based on the average amount of funds allocated to states for TAA training in the previous three years.
- 20% of the TAA formula funds, or \$33 million, will be distributed to states based on the average number of program participants for the previous three years for which complete data are available. Participant data will reflect information reported by states on the ETA-563/OMB approval number 1205-0016 (Quarterly Determinations, Allowance Activities and Employability Services, Under Trade Act).
- To minimize significant fluctuations in state funding from prior years, the formula will contain a "hold harmless" feature. The "hold harmless" factor will ensure that each state's planning estimate is at least 85% of the amount the state would have received last fiscal year had the new formula been in place (i.e., 85% of the three-quarters of the TAA training funds received by the state in the previous year).

TAA Reserve Funds: 25% of the \$220 million available for TAA training—or \$55 million—will be designated for reserve funding. Reserve funds will be distributed to states on an as-needed basis and are designed to provide funding to those states that experience large, unexpected layoffs.

In reviewing the allocations to the Commission under the Veterans' and Trade Act programs, it is clear that there is no federal limitation on how the Commission can distribute funding for these programs to the Boards. In addition, Chapter 306 of the Texas Labor Code offers no prohibition against the distribution of funds to the Boards for Project RIO as envisioned by the Commission.

Possible Risks:

There does exist some risk concerning the blockgranting, allocation or distribution of funding to those programs listed under Section 302.062(g) of the Texas Labor Code. Because the governing statutes appears to be silent as to allocating, blockgranting or distributing methodologies, there is a possibility that if our funding methodologies are challenged, there may be determinations of disallowed costs by the appropriate reviewing agency. However, since the federal and state agencies, Congress and the Texas state legislature have had the opportunity to review and pass on these funding methodologies, the stronger argument appears to be that these methodologies meet with the approval of these various entities. Having had notification of the funding methodologies, those entities with authority over the programs and how funds are distributed under the programs have tacitly approved the Commission funds distribution methodologies.

CONCLUSION:

In conclusion, it would appear that the funding distributions proposed in the amendments to the Commission's Allocation Rules under 40 T.A.C., Chapter 800 are allowable under state law.

Attachment:
Exhibit "A"

EXHIBIT A

Section 302.062 of the Texas Labor code read as follows:

Sec. 302.062. Block Grants to Local Workforce Development Areas

- (a) Effective July 1, 1996, the commission shall provide to the local workforce development areas in which local workforce development boards have been certified and local plans approved by the governor, through a block grant process, funds available to the commission for workforce training and employment services, unless superseded by federal law. Administrative costs under this subsection may not exceed five percent of the total amount of funds available to the commission for block grants for workforce training and services.
- (b) In the case of funds that are allocated to this state or regions of this state through the application of established formulas, the commission shall allocate amounts across the state using the same formula that was used to provide the funds to the state or that region.
- (c) In the case of funds that are not allocated by formula to this state or regions of this state, the commission shall develop a need-based formula that will equitably allocate funds among local workforce development areas throughout this state.
- (d) Contingent on the availability of funds, in any state fiscal biennium, the commission may not allocate to a local workforce development area less than 90 percent or more than 125 percent of the amount received by that area during the preceding state fiscal biennium.

(e) In each area of the state not yet designated as a local workforce development area or that has been so designated but in which a local workforce development board has not been certified and a local plan approved by the governor, the executive director shall:

- (1)** provide workforce training and services in that area to the extent allowed by federal law; and
- (2)** specify an entity, which may be the commission, for the performance of employment services in that area.

(f) At least 80 percent of the funds available to the commission for workforce training and services in an area shall be provided to the local workforce development board under Subsection (a) or, in an area in which a local workforce development board has not been certified and a local plan approved by the governor, to the entity specified by the executive director under Subsection (e). If a local workforce development board has been certified and a local plan approved by the governor, the funds shall be provided through the block grant process described by this section. Unless superseded by federal law, total administrative costs for local workforce training and services may not exceed 15 percent of the funds allocated under this subsection, whether the training and services are provided through a local workforce development board or through the commission or other entity specified under Subsection (e).

(g) Block grant funding under this section does not apply to:

- (1)** the work and family policies program under Chapter 81;
- (2)** a program under the skills development fund created under Chapter 303;
- (3)** the job counseling program for displaced homemakers under Chapter 304;
- (4)** the Communities In Schools program under Subchapter E, Chapter 33, Education Code, to the extent that funds are available to the commission for that program;
- (5)** the reintegration of offenders program under Chapter 306;
- (6)** apprenticeship programs under Chapter 133, Education Code;
- (7)** the continuity of care program under Section 501.095, Government Code;
- (8)** employment programs under Chapter 31, Human Resources Code;

- (9) the senior citizens employment program under Chapter 101, Human Resources Code;
- (10) the programs described by Section 302.021(b)(3);
- (11) the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);
- (12) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);
- (13) the programs to enhance the employment opportunities of veterans; and
- (14) the functions of the State Occupational Information Coordinating Committee