

Implementing Senate Bill 642

**Building a Local Workforce
Development Board:
The Key Steps**

Paper 3 in a Series of 4

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Preface

This is the third in a series of four papers on issues related to the implementation of Texas Senate Bill 642, the Workforce and Economic Competitiveness Act of 1993.

This law fundamentally restructures the way labor market services are planned and delivered in Texas. At the state level, it consolidates the strategic planning, oversight and evaluation functions for a number of separate workforce development programs in single state agency, the Texas Council on Workforce and Economic Competitiveness. The law requires state agencies represented on the council to use its strategic plan to guide budgeting and operational planning decisions for the workforce programs they administer. Further, these agencies must implement all council recommendations approved by the governor provided they do not violate federal or state laws or regulations.

At the local level, Senate Bill 642 encourages mayors and county judges—as representatives of units of general local government—to both establish workforce development boards with functions similar to those of the new state council and design service delivery systems based on the “one-stop” approach outlined in the bill. If they respond to this challenge, much of the state’s authority and control over workforce development activities will be decentralized to local areas throughout the state. This not insignificant shift of power will enable local decision makers to fashion workforce systems that better address the unique labor market needs of employers and workers in their respective locales.

This combination of consolidation and decentralization lays the foundation for building an integrated workforce development system in Texas that improves access for those who need labor market services and enhances the quality and appropriateness of the services they receive. Building such an integrated system from the existing array of separately funded education, training and employment programs is a major undertaking that will require strong commitment and a sustained effort over several years.

Understandably, the scope and magnitude of these changes will threaten many of those currently associated with the various workforce programs. They will have questions and concerns about the new approach and will need substantive information describing the benefits of an integrated system, what it will look like and how it will work. Even so, it will take time for the benefits of reform to outweigh their fear of the unknown and natural resistance to change.

This series focuses on the most important elements of the workforce system outlined in Senate Bill 642. The individual papers are not written as technical assistance guides. Rather, each describes a key component of the new system and explores the major opportunities and challenges associated with its implementation. Together, they provide a framework and offer a possible course of action for those who see the advantages of building an integrated workforce system in Texas. Other papers in the series are:

- Paper 1 The Local Option: A Stronger Role in Workforce Development
- Paper 2 A Labor Market Approach to Workforce Development
- Paper 4 Designing the Local Service Delivery System

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Implementing Senate Bill 642

Building a Local Workforce Development Board: The Key Steps

Introduction

Building the statewide workforce system envisioned in Senate Bill 642 will require a number of strategic decisions by state and local officials. The first, and one of the most important, is the designation of local workforce development areas, an issue addressed at considerable length in the second paper in this series.¹ The second critical systems building decision will be made by the chief elected officials in each designated area, once the governor has officially subdivided the state.² They must decide whether to create a local workforce development board or do nothing, thereby allowing the various workforce programs in their area to continue operating without change.

The decision local elected officials make will determine whether or not their part of the state actively participates in the development of the workforce system envisioned for Texas. If they respond affirmatively, their subsequent decisions as they comply with the requirements of the new law will establish the governance structure of their area's workforce system.³ The agreements local elected officials reach among themselves, the makeup of the workforce board they create and the relationship they define with that board will set the framework for assigning management authority and responsibility and for designing the local service delivery system. A well-defined governance structure is absolutely

¹See McPherson, Robert, *A Labor Market Approach to Workforce Development* (1994).

²Rules promulgated by the Texas Council for Workforce and Economic Competitiveness (TCWEC) designate county judges and the mayors of cities with populations of 100,000 or more as *chief elected officials* for the purpose of entering into agreements to form local workforce boards.

³Determining the local governance structure is one of three key local systems design decisions that must be made. The other two involve the delineation of management functions (e.g., planning, program operations, evaluation) and the design of the local service delivery system (e.g., the arrangement of services and activities to be provided, from outreach and intake to post-program follow-up).

essential. Without a viable focal point for local decision making, a critical feature of a decentralized workforce development system is missing.

This paper focuses on the steps involved in establishing a local governance structure and dividing management functions between the chief elected officials and their appointed board. The next and final paper in the series will explore the creation of local service delivery systems based on the one-stop approach outlined in Senate Bill 642.

Requirements for Local Workforce Boards

While the decision to form a local board is optional, local officials electing to do so must comply with several requirements in the new state law regarding appointing and certifying the board, guaranteeing its independence and adopting the one-stop approach to service delivery. These requirements—imposed in the interest of building an integrated workforce development system for the entire state—place some constraints on local flexibility, but there is without question a net gain in autonomy, authority and control.

Appointing and Certifying the Local Board

The first requirement regards the formation of the workforce board. Under Senate Bill 642, the local workforce boards also function as private industry councils for federal Job Training Partnership Act (JTPA) funds, so they must meet JTPA requirements in the composition of their membership and the process by which individuals are nominated and appointed. To this end, the governor must review the composition of each board as well as the local selection process and certify that federal rules have been followed. Since local officials must already comply with these JTPA rules, incorporating them in Senate Bill 642 does not represent any new or additional state limits on local decision making.

Guaranteeing Independent Decision Making

Two separate but related provisions of Senate Bill 642 represent the second requirement, guaranteeing the local workforce boards' independence. One provision requires that the new boards have staff that is separate and independent of any workforce program operating in the local area. The second prohibits local boards from providing workforce services directly to either employers or workers.⁴ Together, these provisions guarantee local boards the independence and objectivity to carry out their primary responsibilities—strategic planning, oversight and evaluation—and to function much like corporate boards of directors, well above the administrative and operational details of any single workforce program. From this broader vantage point, local boards will be better able to assess workforce needs, set priorities, identify resources and build local workforce systems that truly respond to local labor market needs. Equally important, the effective decentralization of decision making thus achieved sets the stage for breaking local dependence on any single federal or state funding source and shifting the focus of local workforce programs from compliance to client services.

Meeting these two provisions of Senate Bill 642 will require substantial change in the way local JTPA programs in Texas currently operate. Elected officials will have to make difficult choices in delineating local authority, roles and responsibilities, especially in those cases where the staff of a single administrative entity provides support to the private industry council, manages the local program and also delivers services directly to clients.

Senate Bill 642 does allow local elected officials to seek waivers of both provisions. The language of the bill and a subsequent letter clarifying legislative

⁴Requiring local boards to contract out for client services is a deliberate move to address one of the most long standing and insidious patterns in public employment and training programs, a pattern most recently illustrated by the way private industry councils function under JTPA. Under federal law, these local councils have considerable discretion to view all related employment and training programs through a wide-angle lens and coordinate their activities. Instead, they tend to narrow their attention to the one program with which they are most closely identified, JTPA. Consequently, they get mired down in the technical details of one program and lose sight of the bigger picture. From this limited perspective, they are unable to perform one of the major functions that justifies their existence—orchestrating the activities of related programs to meet local needs—and one of the main benefits of decentralizing decision making is lost.

intent make it clear, however, that such waivers should be granted only in cases where limited local service capacity precludes effective implementation of the bill as it is written.⁵ Waivers offer only a temporary accommodation for special circumstances in some rural areas of the state where no viable alternatives can be found.

Adopting a One-Stop Approach to Service Delivery

The final requirement of Senate Bill 642 is that chief elected officials who choose to create local workforce boards establish workforce development centers modeled on a one-stop approach to service delivery.⁶ While the legislation does not define the term “one-stop,” it lists the services to be provided by the workforce centers and makes it clear that one-stop service delivery requires a common point of access, not only for labor market information, but for **all workforce services available in the local system for which individuals are eligible.**

Among the services one-stop centers must provide clients are independent assessments of their needs. To meet the test of independence and objectivity, such assessments would have to be made by an entity separate from the providers of other workforce services in the area.

Thus, implementing Senate Bill 642’s one-stop approach requires consolidating under a single entity the intake, eligibility determination, testing, assessment, counseling, case management and referral services for all workforce

⁵See Sections 4.08 and 4.10 of Senate Bill 642 and the September 8, 1994, letter from Texas Senator Rodney Ellis to Tom Frost, chairman of TCWEC.

⁶How restrictive Senate Bill 642’s one-stop provision proves to be will depend heavily on how state rules define the term. An interpretation that allows service delivery concepts commonly referred to as “co-location” and “no wrong door” to qualify could be met with few adjustments to current operations in most local areas. While some might view these less ambitious approaches as steps in the right direction, they do not come close to meeting the test of a truly integrated service delivery system. One, they do not tie resources to the individual client and are, therefore, mostly information and referral systems. Two, they may improve access to services for some but do not meet the criteria of a fully integrated system—improved customer services, efficiency and effectiveness. Interpreting the legislation’s one-stop provisions conservatively, as I prefer, will require more substantive changes in the way workforce services are currently delivered across the state.

training programs in an area and separating these “front-end” functions from the developmental services such as education and training. Equally important, in order for referrals to be effective, professionals in the workforce centers must have the authority to tie resources (e.g., dollars and/or available training slots) to clients based on individual needs. This component is absolutely essential. It is the linchpin. Without it, any real integration of workforce services is stillborn.

Complying with Senate Bill 642’s requirements regarding appointing and certifying local workforce boards, guaranteeing their independence and adopting the one-stop model will require a significant realignment of resources and roles in many local areas. In making their decision about forming local boards, elected officials must weigh the political difficulties of making this shift against the benefits their constituents and communities would derive from increased local control over workforce development programs.

Key Steps in Creating Local Workforce Boards

Once local officials have decided in the affirmative, creating the local workforce boards authorized under Senate Bill 642 entails several important steps. They include:

- Developing an interlocal agreement among the chief elected officials in each workforce area;
- Appointing the local workforce board;
- Making application for state certification;
- Developing an agreement between the chief elected officials and the board; and
- Developing a transition plan for realigning local authority and responsibilities in the new workforce system.⁷

⁷The question arises as to whether *all* chief elected officials in a designated area must agree before a local workforce board can be formed. Senate Bill 642 is silent on this issue. It is clear that to

Developing the Interlocal Agreement

The authors of Senate Bill 642 crafted the criteria for designating local workforce areas to promote a labor market, or regional, approach to workforce development throughout the state. As a result, all the substate areas designated so far have been geographical areas including at least one city with a population of 100,000 and one or more counties.⁸ This means that more than one chief elected official will be involved in the decisions regarding the formation of a local workforce board in each of these areas. The first matter of business, therefore, is the development of an interlocal agreement that spells out how local control over workforce development programs will be shared.

While there may be a strong temptation to proceed quickly and informally, especially in those areas of the state where local officials traditionally have worked cooperatively, this agreement should be carefully developed, formalized and officially ratified by the governing boards of each government entity that will be a party to the agreement. Going through a more structured process will ensure that each party clearly understands the scope of its new authority and responsibilities and becomes fully aware of the potential liabilities associated with assuming a stronger role in workforce development.

The interlocal agreement, after all, sets the framework for governing and managing the local system and delineates the relationship among the member governments, the role of the chief elected officials and the relationship between the local governments and their appointed board. At a minimum, the interlocal agreement should address the following issues and related questions:

meet JTPA requirements, however, all chief elected officials representing local governments with populations of 200,000 or more would have to agree to the idea. Rules promulgated by TCWEC state that only a simple majority of the chief elect officials in an area must agree to explore the creation of a local board. As a practical matter, that majority would have to include all of those representing local governments with populations of 200,000 or more. TCWEC rules are otherwise silent on this issue. TCWEC's decision that a majority is sufficient to initiate action to form a local board clearly implies that something less than unanimous agreement among the chief elected officials is an acceptable base for establishing a local workforce board.

⁸See footnote 2, page 1.

- *Nature of the agreement.* Is this an agreement among qualified units of general local government or among the chief elected officials of those local governments?
- *Purpose and scope.* Why are the members choosing to come together? What is the nature of the problem to be addressed? What are the expected benefits from joint action?
- *Organizational structure.* Will the chief elected officials organize themselves as a board to work in partnership with the local workforce board, or will they designate one of their members to represent them and simply perform the perfunctory tasks required by the various federal or state workforce laws? If they organize in a board, how will it make decisions (e.g., by majority vote of the members, by two-thirds majority, or by a majority of the members present at each meeting)?
- *Power sharing.* Will each member government have an equal voice or will their power be weighted to take into account factors such as their relative size in terms of population, the amount of workforce dollars they receive or some other measure of relative size? Equally important, how will liabilities (e.g., for disallowed expenditures) be shared?
- *Sharing workforce resources.* How will the available workforce dollars be shared across the area? How can local officials be guaranteed that residents of their separate jurisdictions receive a fair share of the services available? How will “fair share” be measured?
- *Workforce board appointments.* What will be the initial size of the local board? How will appointments to it be apportioned among the member governments? What will be the local process for nominating and selecting board members? How long will the terms of appointment run? How will a chairman and other officers of the board be selected? How will members be removed? How will vacancies be filled? What might be the process for changing the size of the board?

- *Local roles and relationships.* What will be the role of the local workforce board? The relationship between the chief elected officials and the local board? Who will have responsibility for what relative to planning, overseeing and evaluating the local workforce system and the services it provides?
- *Choosing the fiscal agent.* What process will be used to select the fiscal agent responsible for managing all funds that come directly to the local workforce board?
- *Accommodating change.* What will be the procedures for reviewing and amending the agreement? For adding a new member government or handling the withdrawal of an exiting member? Under what conditions and how might the agreement be terminated?

Appointing the Local Workforce Board

The second step in the process involves the nomination and appointment of board members. For the present, local workforce boards must function also as private industry councils for JTPA programs, so their composition and the process by which members are nominated and appointed must meet the JTPA provisions. Senate Bill 642 simply adopts the federal JTPA requirements as the criteria for local workforce boards.

While the requirements are fairly straightforward and spelled out in detail in the law, navigating them will take diligence if local workforce boards are to avoid the pitfalls that have trapped the private industry councils in shortsightedness and micro management (see footnote 4, page 3). These three trouble spots can be avoided if local elected officials recognize the critical importance of the nominations and appointments process and get actively involved. From the beginning, they must communicate clearly the purpose of the local workforce board, the caliber of people they want as members and their concerns with potential conflicts of interest.

The first potential trap lies in the prescribed categories of membership—business, labor, community-based organizations, education institutions and state agencies offering workforce or related services. Inherent in them is the likelihood of local boards being dominated by service providers. While they do not constitute a majority of the membership, the provider groups have a clear advantage over the others because of their knowledge of local programs and how government works as well as their capacity to “stay the course” through interminable meetings.

While it is important to have local service providers involved, the challenge lies in not letting their participation evolve into control of either the board or the local workforce system. Appointing representatives of local service providers as *ex officio*, non-voting members of the local board offers a mechanism for limiting their influence and should be aggressively pursued, even to the point of applying for waivers of federal law and regulations, if necessary.

Second, given the board’s planning and resource allocation responsibilities, serious conflicts of interest are likely for some of the appointees, particularly those who represent local education and community-based organizations which provide workforce services funded from sources under the board’s discretion.

A third pitfall lurks in the nominations process itself. Local elected officials must make their appointments either from a list of nominations submitted by organizations representative of any given category (e.g., local chambers of commerce for business appointments) or from recommendations made by interested organizations in the community. As a result, local officials are put in the position of appointing members from a predetermined list not of their making. If not carefully managed, this could adversely affect both the quality of the local board and the direction for the local workforce system for years to come. Nothing, however, prevents elected officials from soliciting additional nominees if they are not satisfied with those who are recommended initially.

Appointing the local workforce board is the most important decision chief elected officials will make in creating a workforce system for their area. It offers them an unsurpassed opportunity to improve the way workforce education, training and employment services are provided to their constituents. It gives

them the chance to name an independent board of community leaders who are motivated by the interests of the workforce system's primary customers—employers, workers and the larger community.⁹

At the same time, the appointments process offers an occasion to link workforce efforts with other, closely related activities, namely education and economic development. For example, appointing members of local education boards to the workforce board would forge working relationships with education-related systems. Appointing leading employers and those in the forefront of local economic development efforts would provide a link to quality jobs.

Applying for State Certification

Under Senate Bill 642 and rules subsequently adopted by the Texas Council on Workforce and Economic Competitiveness, a local workforce board cannot assume power or even convene a meeting until it has been approved by TCWEC and certified by the governor. This requirement is meant to ensure that the composition of the board and the process used for selecting its members meet the requirements of federal and state laws and regulations and that the chief elected officials have gone through a public process to consider the views of the affected parties in the area.

This step in the process is not an opportunity for the state to second guess elected officials' decisions regarding individual appointments to local boards. If established rules have been followed and the requirements of the law have been met, the governor must certify the local board.

Prior to submitting the application for state certification of their area's board, the local elected officials must first go through a three-part pre-application process. First, if a majority are interested in forming a board, they must request pre-application status from the executive director of TCWEC. Second, they must

⁹Board appointments will largely determine whether the local system is driven by supplier or customer demands. This is one of the major issues underlying current efforts to change the way workforce services are delivered in Texas. To date, the suppliers of workforce services have been in control. Senate Bill 642 shifts the state toward a demand-driven delivery system where the customers—employers and workers—determine the mix and quality of services available.

conduct a local process to consider the views of all organizations likely to be affected by the decision to form a local board, including private industry councils and quality workforce planning committees. Third, they must hold a formal public hearing to gather additional information and discuss forming of a board.

Once this initial process is complete, local officials must submit to TCWEC a formal application for board certification that includes:

- An interlocal agreement to form a workforce board signed by the chief elected officials in the designated area;¹⁰
- Evidence they have considered the views of local organizations which might be affected and have held the required public hearing;
- Evidence the board is prepared to develop a single plan for addressing the workforce needs of the area and can have local workforce development centers operational within 180 days after its certification;
- Evidence the board is prepared to assume the duties and responsibilities of the local education, job training and employment boards and committees consolidated as result of the formation of a local workforce board;
- A plan for providing independent staff to support the board and its activities as well as a description of the methods to be used for procuring workforce services, if necessary; and
- A statement of how the local workforce board will be financed, which should presumably include naming a fiscal agent to manage any funds received by the board.¹¹

¹⁰See footnote 7, page 5.

¹¹While TCWEC rules do not require local officials to select a fiscal agent for the local board as a part of the application for board certification, it would be an appropriate requirement. The Texas Department of Commerce, the state agency which administers JTPA, must approve the board's fiscal agency before it disburses any federal or state workforce funds to the local board.

The application and required documentation will be reviewed by the state council and forwarded to the governor with a recommendation for or against certification. The certification request must be approved or denied no later than 30 days after its submission.

Developing the Local Partnership Agreement

Once the local workforce board is certified by the governor, the next step in the process is developing a formal partnership agreement that differentiates the roles and responsibilities of the new board from those of the chief elected officials. This is the document that spells out how local authority for governing and managing the area's workforce system will be shared. The provisions of this agreement will draw heavily from the interlocal agreement reached earlier among the chief elected officials.

The basic issues and related questions that must be addressed in this partnership agreement include the following:

- *Purpose.* What is the purpose of the partnership agreement? What is it expected to achieve?
- *Delineation of authority and responsibilities.* How will the policy development, planning, oversight and evaluation responsibilities be shared between the chief elected officials and the board? Over which functions will the board have final decision-making authority? When will authority be shared with the elected officials and when will the local board only make recommendations? These questions need to be asked—and answered—as regards:
 - Determining the structure of the local service delivery system;
 - Selecting the grant recipient and administrative entity for the JTPA program and determining their respective duties and responsibilities;

- Determining how the local workforce plan will be developed;
 - Establishing a process for reviewing, approving and submitting the local workforce plan to the state;
 - Determining how the oversight and evaluation functions will be carried out'
 - Proposing a fiscal agent for managing any workforce funds allocated directly to the local board; and
 - Establishing a process for developing the budget and approving funding for the local board and its staff.
- *Accommodating change.* What will be the process for amending the agreement? Under what conditions and how might it be terminated?

Developing a Transition Plan

Once the partnership agreement has been signed, the local board can go to work. It will face a number of immediate challenges. These include hiring an executive director and other professional staff and addressing organizational issues such as selecting officers of the board (if not specified in the interlocal agreement), developing by-laws, determining the committee structure and specifying voting procedures.

Next comes the important challenge of developing a plan for transferring the governance and managerial responsibilities of current workforce programs to the new board. Two key elements must be taken into consideration in planning the transition. The first relates to timing. The transfer of functions must be timed so that it does not disrupt the delivery of services and poses minimal inconvenience to staff working in the local programs. Therefore, the board must decide early on when their planning decisions will first affect local program operations.

The board's assumption of its planning responsibilities must also be timed to coincide with the planning and funding cycles of the system's major funding sources.

A final timing consideration comes from Senate Bill 642. It requires that workforce development centers modeled on a one-stop approach to service delivery be operational within 180 days of a local board's certification by the governor. Given the magnitude of the changes required to shift to the one-stop approach, planning for the workforce centers needs to be well along before the local board is officially certified in order to meet this legislative deadline. Whatever the case, planning an orderly transition is essential.

The second key element for consideration regards funding. Once operational, funding for the local workforce board and its staff will be considered as part of the local planning process. Given Senate Bill 642's requirement that a number of other workforce-related boards be abolished as the new board is created, there should be ample funding to support its ongoing responsibilities.

Funding to create the new board, support its activities during the transition and underwrite the development of local workforce development centers is another matter. The state council has responded to this need in two ways. First, it earmarked \$400,000 to support the development of local workforce boards and one-stop centers authorized under Senate Bill 642. It subsequently issued a request-for-proposals (RFP), and seven areas of the state are currently slated to receive funding for developmental purposes. Second, the state council competed for and won \$5 million in federal funding to promote the implementation of various one-stop approaches in Texas. This money will likely be used to provide additional funding to those seven areas already awarded planning grants as well as to fund areas of the state which are moving to the one-stop approach without creating local boards. Together, these two initiatives could provide financial assistance to ten to 12 local areas over the coming year.

While notable, this leaves more than half the local areas in Texas without immediate financial assistance and only limited technical support from the state. Moreover, several of those areas targeted for financial assistance are likely to get only small grants, not enough to really do the job of assuming control over and

consolidating the delivery of local workforce services. Every substate area will be challenged to piece together funding from other sources to make an effective transition to the new system.

TCWEC itself needs to develop a coherent plan, one that gives priority—if not exclusive rights—to those areas implementing Senate Bill 642. The TCWEC plan should include an up front commitment to provide additional financial incentives and technical assistance to support the formation of local boards and their initial planning activities as well as the development and operation of local workforce centers for the first year at least. To be most effective, this plan must also include a commitment to identifying barriers and securing any necessary waivers so that the federal and state funds available to local areas, including JTPA monies, may be used to support local workforce boards during their transition to the new system.

Prospects for funding such a plan are good. Winning the first round of the federal competition for one-stop monies puts Texas in line for at least another \$12-15 million to support state implementation efforts over the next three years.

Conclusion

The decisions made by local elected officials as they develop interlocal agreements, build workforce development boards and move to a one-stop approach to providing services will affect the quality of workforce service available in Texas for years to come. In the aggregate, their decisions will determine whether workforce development assumes the status of an equal partner in the state's economic development efforts or remains at best a marginal contributor.

