



TEXAS HIGHER EDUCATION COORDINATING BOARD

P.O. Box 12788 Austin, Texas 78711

MEMORANDUM

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<http://www.theccb.state.tx.us>

TO: Negotiated Rulemaking Committee on Workforce Continuing Education

FROM: Mary E. Smith, Alternative Dispute Resolution Coordinator

DATE: September 22, 2017

RE: Appointment of Members to Negotiated Rulemaking Committee

House Bill 2994, 85th Texas Legislature, Regular Session, relating to workforce continuing education offered by public community colleges amends Texas Education Code Chapter 130 by adding Subchapter L, Workforce Continuing Education. The legislation requires the Texas Higher Education Coordinating Board ("THECB" or "Board") to adopt rules for the administration of this Subchapter using negotiated rulemaking.

On August 30, the THECB submitted a Notice of Intent (NOI) to engage in negotiated rulemaking to the *Texas Register*. This NOI included a list of stakeholders and proposed membership for the negotiated rulemaking committee. The NOI was published on September 8 for ten days with a public comment deadline of September 18. The THECB received no comments.

In accordance with Texas Government Code, Section 2008.54 (Negotiated Rulemaking Act, 1997), I hereby appoint the following 20 individuals to serve as committee members to represent affected parties and the THECB on the Negotiated Rulemaking Committee on Workforce Continuing Education:

Public Community Colleges

Anne Bartlett, Vice President, Industry and Community Resources, Brazosport College
Aubrey Sharpe, Dean, Continuing Studies and Executive Administrator-West Campus, Tyler Junior College

Djuna Forrester, Executive Director, Center for Workplace Learning, Grayson College

Hector Aguilar, Executive Dean, Continuing Education, Austin Community College

James Simpson, Dean/Executive Director, Continuing Education, Alvin Community College

Kerry Schindler, Senior Vice President, Instruction, Ranger College

Laura Sanchez, Associate Dean, Institutional Research and Effectiveness, South Texas College

Leonard Rivera, Dean, Continuing Education and Off-Campus Programs, Del Mar College

Lizza Trenkle, Vice President, Student Services, Hill College

Marta DeLa Fuente, Director, Continuing Education Health Programs, El Paso Community College

Nancy Cure, Associate Vice Chancellor, Academic Affairs, Tarrant County College District

Rose Galloway, Associate Vice President, Workforce and Continuing Education, Richland College
(Dallas County Community College District)

Sarah Janes, Associate Vice Chancellor, Continuing and Professional Development, San Jacinto College District

Shari Gould, Director of Continuing Education, Allied Health, Victoria College

Sherry Schumann, Senior Vice President of Academic, Workforce, and Enrollment Services,
Collin College District

Tamara Sealy, Continuing Education Corporate Training Coordinator, Wharton County Junior College

Teresa Chavez, Director, Continuing Education, Central Texas College

Terry Kidd, Dean, Division of Extended Learning, Houston Community College System

Vernell Walker, Dean, Professional and Technical Education, Alamo Colleges District

Texas Higher Education Coordinating Board

Rex Peebles, Assistant Commissioner, Academic Quality and Workforce



Texas Higher Education
Coordinating Board

1200 East Anderson Lane, Austin, Texas 78752

**Negotiated Rulemaking Committee on
Workforce Continuing Education**

October 30, 2017
9:30a – 4:30p
Lonestar Room

MEETING MATERIALS

Materials include the following:

- I. Meeting Agenda
- II. THECB Rules Relating to Negotiated Rulemaking
- III. Ground Rules for Negotiated Rulemaking
- IV. Convener's Report
- V. Notice of Intent Filed with the *Texas Register*
- VI. Facilitator's Bio
- VII. House Bill 2994
- VIII. THECB General Information
- IX. Box Lunch Menu

LUNCH

For committee members attending the meeting, we will be ordering individual box lunches. **Please email your lunch order to Laurie.Frederick@THECB.state.tx.us by October 23.** Payment for lunch will be collected at the meeting (exact change appreciated).



Texas Higher Education
Coordinating Board

1200 East Anderson Lane, Austin, Texas 78752

**Negotiated Rulemaking Committee on
Workforce Continuing Education**

October 30, 2017

9:30a – 4:30p

Lonestar Room

AGENDA

- I. Introductions
- II. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
- III. Brief Overview of Roles and Responsibilities
 - A. Role of Facilitator
 - B. Role of Sponsor Agency
 - Technical and administrative support
 - C. Role of Committee Members
 - Representative role
 - Commitment to negotiate in good faith
- IV. Consideration of Facilitator
- V. Procedural Issues
 - A. Discussion and Consideration of Ground Rules
 - B. Discussion and Consideration of Definition of Consensus
- VI. Discussion of Draft Rule Language on Workforce Continuing Education
- VII. Consideration of Proposed Rule Language on Workforce Continuing Education

THECB Adopted Rules Related to Negotiated Rulemaking

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

Section

- 1.1. Dates for Regular Quarterly Meetings of the Board
- 1.2. Authority of the Commissioner to Interpret Rules
- 1.3. Educational Data
- 1.4. Rules of Order
- 1.5. Coordinating Board Committees
- 1.6. Advisory Committees
- 1.7. Petition for the Adoption of Rules
- 1.8. Historically Underutilized Business (HUBs) Program
- 1.9. Training for Members of Governing Boards and Board Trustees
- 1.10. Administration of the Open Records Act
- 1.11. Protest Procedures for Resolving Vendor Protests Relating to Purchasing Issues
- 1.12. Foreign Travel
- 1.13. Internal Auditor
- 1.14. Negotiated Rulemaking
- 1.15. Authority of the Commissioner to Propose Board Rules
- 1.16. Contracts for Materials and Services
- 1.17. Authority of the Commissioner to Provide Direct Supervision of the Education Research Centers
- 1.18. Operation of Education Research Centers
- 1.19. Education and Training of Board Administrators and Employees

1.1 – 1.13 (No change.)

1.14. Negotiated Rulemaking

(a) Definitions. The following words and terms, when used in this rule, shall have the following meaning:

(1) Alternative Dispute Resolution coordinator – An agency employee appointed under Chapter 1, Subchapter B, Rule 1.22.

(2) Board or agency– Texas Higher Education Coordinating Board

(3) Commissioner – The Commissioner of Higher Education

(4) Consensus – The negotiated rulemaking committee has reached consensus on a matter only if the agreement is unanimous, unless the committee has unanimously agreed to define consensus in another manner. The absence or silence of a member at the time the final consensus vote is taken is equivalent to agreement. If consensus is achieved, negotiated rulemaking committee members may not thereafter withdraw their agreement.

(5) Institutions of higher education – As defined in Texas Education Code Section 61.003

(6) Private or independent institutions of higher education – As defined in Texas Education Code Section 61.003

(b) If the Assistant Commissioner whose Division has jurisdiction over the subject matter of the rule or rules to be adopted concludes that the agency may benefit from negotiated rulemaking, he or she shall request that the agency's Alternative Dispute Resolution (ADR) coordinator assist in determining whether it is advisable to proceed under the procedures established in Chapter 2008 of the Texas Government Code.

(1) Scope and Purpose. This rule also implements Texas Education Code Sections 61.0331, 61.0572, 61.058, and 61.07761 which require the Board to engage in negotiated rulemaking with institutions of higher education in accordance with the procedures established in Texas Government Code Chapter 2008 when adopting a policy, procedure, or rule relating to:

(2) the transfer of credit under Texas Education Code Section 61.827 or admission policies regarding:

(A) the common admission application under Texas Education Code Section 51.762;

(B) uniform admissions under Texas Education Code Section 51.807; or

(C) graduate and professional admissions under Texas Education Code 51.843; or

(3) the reevaluation of data requests under Texas Education Code Section 51.406;

(4) compliance monitoring under Texas Education Code Section 61.035;

(5) the standards for cost, efficiency, space need, and space use under Texas Education Code Sections 61.0572 and 61.058 in regards to:

(A) new construction, rehabilitation, repair of buildings and facilities at institutions of higher education; and

(B) the purchases of improved real property added to institutions of higher education's educational and general buildings and facilities inventory; or

(6) the allocation (including the allocation methodologies and related procedures) or distribution of funds, including financial aid or other trusteed funds under Texas Education Code Section 61.07761, to institutions of higher education and private or independent institutions of higher education. For rulemaking on this issue, the Board shall engage in negotiated rulemaking with both institutions of higher education and private or independent institutions of higher education, as applicable.

(A) With the exception of sections 1.14(a), (b), and (d)(3)-(4), this rule and the procedures set forth herein apply only to those matters, as set forth in (b-1), in which the Board is required to engage in negotiated rulemaking.

(B) In matters other than those addressed in (b-1), the Board retains the right to engage in negotiated rulemaking in accordance with the procedures established in the Texas Government Code, Chapter 2008.

(c) Appointment of Convener. The ADR coordinator will appoint an agency employee to serve as the convener to assist in negotiated rulemaking. The convener may not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the convener.

(d) Duties of Convener. (1) The convener will assist the ADR coordinator in identifying institutions of higher education (and private or independent institutions when rulemaking under 1.14(a)(5) is considered) and other stakeholders (such as students, state agencies, and accreditors) who are likely to be affected by the proposed rule(s), including identifying institutions and other stakeholders who may oppose the issuance of rule(s). The convener will discuss with institution representatives and other stakeholders whether they are willing to participate in negotiated rulemaking, which issues a negotiated rulemaking committee should address, and whether there are other institutions or persons the convener needs to identify who may be affected by the proposed rule(s).

(2) Where the Board is required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator the outcome of the above discussions.

(3) Where the Board is not required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator on the relevant considerations regarding negotiated rulemaking, including, but not limited to:

(i) the number of identifiable interests that would be significantly affected by the proposed rule(s),

(ii) the probable willingness and authority of the representatives of affected interests to negotiate in good faith,

(iii) the probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule(s),

(iv) the adequacy of Board, institution, and citizen resources to participate in negotiated rulemaking, and

(v) the probability that the negotiated rulemaking committee will provide a balanced representation between affected stakeholder interests.

(4) Where the Board is not required to engage in negotiated rulemaking, the convener shall also recommend to the ADR coordinator whether negotiated rulemaking is appropriate.

(5) The report and recommendations of a convener are public information and available on request to any member of the public.

(e) Publishing Notice of Proposed Negotiated Rulemaking. To initiate negotiated rulemaking, the Commissioner will publish a notice of intent to establish a negotiated rulemaking committee to prepare proposed rules. Such notice will be published both in the *Texas Register* and on the Board's website. The ADR coordinator will consider all comments received by the close of the comment period pursuant to the notice of intent. The notice of intent will include:

(1) a statement that the Board intends to engage in negotiated rulemaking;

(2) a description of the subject and scope of the rule(s) to be developed;

- (3) a description of the known issues to be considered in developing the rule(s);
 - (4) a list of the interests likely to be affected by the proposed rule(s);
 - (5) a list of the individuals the ADR coordinator proposes to appoint to the negotiated rulemaking committee to represent the Board and affected interests (each committee will include at least one agency staff representative);
 - (6) a request for comments on the proposal to engage in negotiated rulemaking, including a description of the issues the commenter believes will need to be addressed in developing the rule(s), as well as on the proposed membership of the negotiated rulemaking committee; and
 - (7) a description of the procedure through which an institution or person who will be significantly affected by the proposed rule(s) may, before the ADR coordinator appoints members to the negotiated rulemaking committee, apply for membership on the committee or nominate another to represent the institution's or person's interests on the committee (before nominating an individual to the committee, the nominator should confirm that the potential nominee can and will make the necessary time commitment to the negotiations).
- (f) Appointment of Negotiated Rulemaking Committee Members. After considering comments and nominations received in response to the notice of proposed negotiated rulemaking, the ADR coordinator will appoint members to a negotiated rulemaking committee to serve until the proposed rule(s) (if any) is adopted by the Board. The ADR coordinator will appoint members to the committee with a goal of providing adequate and balanced representation for the affected interests while keeping the size of the committee manageable. The ADR coordinator shall select individuals with demonstrated expertise or experience in the relevant matters under negotiations and who reflect the diversity of the identifiable interests which could be significantly affected by the proposed rule(s). An individual selected to serve on the committee will be expected to represent the interests of his or her entity, organization or group, and participate in the negotiations in a manner consistent with the goal of developing proposed rules on which the committee will reach consensus.
- (g) Costs of Participating in Negotiated Rulemaking.
- (1) The Board will provide appropriate administrative support to the negotiated rulemaking committee. Except as provided below, a member of a negotiated rulemaking committee is responsible for the member's own costs in serving on the committee. However, if:
- (A) The member certifies that he or she (or the entity, organization or group which the member represents) lacks sufficient financial resources to participate as a member of the committee and provides any requested proof of same; and
 - (B) The ADR coordinator determines that the member's service on the committee is necessary for the adequate representation of an affected interest,
 - (C) then, the Board may pay a member's reasonable travel and per diem costs related to the member's service on the committee at the rate set in the General Appropriations Act for state employees.

(2) The costs of the negotiated rulemaking facilitator described in subsection (h) shall be borne equally, on a pro rata basis, by all entities represented on the negotiated rulemaking committee, unless the negotiated rulemaking committee unanimously agrees to a different cost allocation; or the facilitator is an employee of the Board, in which event the costs of the facilitator shall be borne by the Board.

(h) Appointment of Negotiated Rulemaking Facilitator. The ADR coordinator will appoint a negotiated rulemaking facilitator who will utilize alternative dispute resolution skills to attempt to arrive at a consensus on a proposed rule(s). The ADR coordinator may appoint a Board employee or contract with another state employee or private individual to serve as the facilitator. The ADR coordinator's appointment of the facilitator is subject to the approval of the negotiated rulemaking committee and the facilitator serves at the will of the committee. The ADR coordinator will appoint the facilitator utilizing, among other things, the following criteria:

(1)The facilitator must possess the qualifications required for an impartial third party under Civil Practice and Remedies Code Section 154.052(a) and (b);

(2)The facilitator is subject to the standards and duties prescribed by Civil Practice and Remedies Code Sections 154.053(a) and (b) and has the qualified immunity prescribed by Civil Practice and Remedies Code Section 154.055, if applicable;

(3)The facilitator will not be the person designated to represent the Board on the negotiated rulemaking committee on substantive issues related to the rulemaking; and

(4)The facilitator will not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the facilitator.

(i) Duties of Negotiated Rulemaking Committee and Facilitator. The facilitator will preside over meetings of the negotiated rulemaking committee and assist the members of the committee to establish procedures for conducting negotiations and will utilize alternative dispute resolution skills to encourage a consensus on the proposed rule(s). The facilitator may not, however, compel or coerce the members to reach a consensus.

(j) Consensus and the Negotiated Rulemaking Committee's Report. If the negotiated rulemaking committee reaches a consensus, the committee will draft and send a report to the Board that contains the text of the proposed rule(s). If the committee determines that only a partial agreement on a proposed rule(s) has been reached, the committee will draft and send a report to the Board that describes the partial agreement achieved, lists the unresolved substantive issues, and includes any other information or recommendations of the committee. The committee's report is public information. If consensus is not achieved, the Board shall determine whether to proceed with proposed rule(s). If the Board decides to proceed with proposed rule(s), the Board may use language developed during the negotiations or develop new language for all or a portion of the proposed rule(s).

(k) Proposed Rulemaking under the APA. If the Board decides to proceed with rulemaking after receipt of the negotiated rulemaking committee's report, the Board shall initiate rulemaking under the regular Administrative Procedures Act (APA) procedures, as prescribed in Texas Government Code Chapter 2001, Subchapter B. In addition to the APA's requirements regarding the contents of notice of proposed rulemaking, the notice will also state that:

(1)the Board used negotiated rulemaking in developing the proposed rule, and

(2) the negotiated rulemaking committee report is public information and the report's location at which it will be available to the public.

All published proposed rules will conform to the agreements resulting from consensus, if any, achieved through negotiated rulemaking (as reflected in the negotiated rulemaking committee's report).

(l) Confidentiality of Certain Records and Communications. Civil Practice and Remedies Code (CPRC) Sections 154.053 and 154.073 apply to the communications, records, conduct, and demeanor of the facilitator and the members of the negotiated rulemaking committee as if the negotiated rulemaking were a dispute being resolved in accordance with CPRC Chapter 154. In the negotiated rulemaking context, the Texas Office of the Attorney General, subject to review by a Travis County district court, decides in accordance with CPRC Section 154.073(d) whether a communication or material subject to Section 154.073(d) is confidential, excepted from required disclosure, or subject to required disclosure. Notwithstanding CPRC Section 154.073(e):

(1) a private communication and a record of a private communication between a facilitator and a member or members of the committee are confidential and may not be disclosed unless the member or members of the committee, as appropriate, consent to the disclosure; and

(2) the notes of a facilitator are confidential except to the extent that the notes consist of a record of a communication with a member of the committee who has consented to disclosure in accordance with subdivision (1).

(m) The Board hereby delegates to the Commissioner the responsibilities and authority set forth in this section.

Ground Rules For Negotiated Rulemaking

I. GOAL

To reach consensus on the language of a proposed rule

II. REACHING DECISIONS

- A. Use of Consensus. Negotiations will be conducted with the intent of reaching a consensus decision.
- B. Consensus. Unless the Committee members agree unanimously to another definition at the outset of the process:

Consensus means that all Committee members concur in the decision because their major interests have been taken into consideration and addressed in a satisfactory manner. While committee members may differ in their acceptance of individual terms of the agreement, all committee members can support the final agreement given the trade-offs and current circumstances.

Committee members can reach consensus without embracing each element of the agreement with the same fervor as other members. Some parties may strongly endorse a particular solution while others may accept it as a workable agreement.

III. AGREEMENT

- A. Final Product/Proposed Rule. The Committee intends for its final work product to be the text of a proposed rule. If the Committee reaches consensus on a proposed rule, the agency will accept the proposed rule as its draft with the recommendation that it be published in the Texas Register as drafted.
- B. Failure to Reach Consensus. If the Committee is unable to reach consensus on a proposed rule, then the Committee will draft a report that specifies the issues on which consensus was reached, the issues that remain unsolved, and any other information that the Committee considers important.
- C. Support of Agreement. The Committee members agree not to take any action to inhibit the adoption or implementation of a rule that conforms to the consensus proposal of the Committee. Furthermore, members agree to advocate for the consensus rule to their membership and to other policy makers both during and after the negotiated rulemaking process. If a member fails to keep this agreement, all other members agree to submit comments to the agency, any other relevant state officials, government bodies, or Courts, stating that:
 - 1. All members concurred in the proposed rule; and
 - 2. All members supported approval of the final rule that conforms to the consensus proposal of the Committee.

IV. COMMITTEE MEETINGS

- A. Meeting Attendance
 - 1. The same Committee members listed at the end of this document need be present at each full meeting of the Committee.
 - 2. Scheduled meetings will proceed even if some members are absent.

3. Absent members are responsible for updating themselves in the proceedings of missed meetings.
4. After the negotiations have begun, additional members may join the Committee only with the concurrence of the Committee.

B. During the Meetings

1. Meetings will be open to the public. However, participation in negotiations will be limited to Committee members and invited experts.
2. Visitors are requested to respect the process and abide by these ground rules. This request will be stated at the beginning of each meeting.
3. Visitors who wish to comment during the negotiations may do so through the following avenues:
 - a. Channel comments through one of the Committee members;
 - b. Submit written comments to the Committee members; or
 - c. Submit comments through the website, if available.Further, a Committee member may invite a member of the audience to speak, as that member sees fit. Initial comments should be limited to three minutes and may be extended at the Committee's request.
4. The proceedings of the Committee will not be electronically recorded, but the facilitator may prepare draft summaries of the meetings for the convenience of the members. Such summaries shall not be approved by the Committee, and they are not to be construed to represent the official position of the Committee or any member on what transpired at a Committee meeting. Summaries will note issues discussed, any outcome to discussions, requests for data, and any other action items.

C. Caucuses

1. The facilitator may at any time request a confidential caucus with specific members or groups of members to attempt resolution of a specific issue.
2. Any member may request a caucus at any time to consult with other members, but such caucuses are to be used sparingly. The caucusing members will be asked to move into the hallway or another meeting area to conduct the caucus. The length of caucuses will be determined at the discretion of the facilitator who may serve as a mediator during such caucuses.

- D. Stakeholder Representatives.** Individual members acknowledge that they have been named to the Committee as the representative of all others in their stakeholder class, and not just themselves. To this end, the members pledge to communicate with other members of their organization or stakeholder class to ensure that the deliberations reflect the viewpoints of the stakeholder class as a whole.

V. NEGOTIATING

- A. All members agree to act in good faith in all aspects of these negotiations. Members agree to speak openly and commit to addressing each other's concerns and needs. Members may not use other members' specific offers, positions, or statements made during the negotiations for any purpose outside the negotiation.
- B. All members commit to share relevant information, which if excluded, would damage the credibility or outcome of the consensus. Members will make every effort to provide requested information reasonably in advance of scheduled meetings.
- C. All members will endeavor to tailor their statements during meetings to ensure the opportunity for all members to participate fully on issues in which they have an interest. Members agree

to speak one at a time and allow each other a reasonable opportunity for uninterrupted comments. All members will refrain from personal attacks.

- D. Any Committee member may withdraw from the negotiations at any time without prejudice. The remaining Committee members will then decide whether to continue the negotiations.

VI. COMMUNICATIONS

- A. When communicating with the press, Committee members agree to limit their statements to expressions of their own interests. Inquiries from the press may be referred to the facilitators. If the Committee decides to issue a press statement, the Committee will agree on the language of the press statement.
- B. In all communications outside of the Committee, including those to the press, members may give information concerning issues raised and actions taken but agree to refrain from attributing views or positions expressed in a non-public setting and identified as confidential to a particular group or individual, even if that party withdraws from negotiations.

Committee Members:

Name	Title	Community College/District
Anne Bartlett	Vice President, Industry and Community Resources	Brazosport College
Aubrey Sharpe	Dean, Continuing Studies and Executive Administrator- West Campus	Tyler Junior College
Djuna Forrester	Executive Director, Center for Workplace Learning	Grayson College
Hector Aguilar	Executive Dean, Continuing Education	Austin Community College
James Simpson	Dean/Executive Director, Continuing Education	Alvin Community College
Kerry Schindler	Senior Vice President, Instruction	Ranger College
Laura Sanchez	Associate Dean, Institutional Research and Effectiveness	South Texas College
Leonard Rivera	Dean, Continuing Education and Off-Campus Programs	Del Mar College
Lizza Trenkle	Vice President, Student Services	Hill College
Marta DeLa Fuente	Director, Continuing Education Health Programs	El Paso Community College
Nancy Cure	Associate Vice Chancellor, Academic Affairs	Tarrant County College District
Rex Peebles	Assistant Commissioner, Academic Quality and Workforce	Texas Higher Education Coordinating Board
Rose Galloway	Associate Vice President, Workforce and Continuing Education	Richland College (Dallas County Community College District)
Sarah Janes	Associate Vice Chancellor, Continuing & Professional Development	San Jacinto College District
Shari Gould	Director of Continuing Education, Allied Health	Victoria College
Sherry Schumann	Sr. Vice President of Academic, Workforce, and Enrollment Services	Collin College District
Tamara Sealy	Continuing Education Corporate Training Coordinator	Wharton County Junior College
Teresa Chavez	Director, Continuing Education	Central Texas College
Terry Kidd	Dean, Division of Extended Learning	Houston Community College System
Vernell Walker	Dean, Professional and Technical Education	Alamo Colleges District

To: Mary E. Smith, Ph.D., Alternative Dispute Resolution Coordinator
From: Laurie A. Frederick, Convener
Date: August 26, 2017
Re: Workforce Continuing Education

House Bill 2994, 85th Texas Legislature, Regular Session, relating to workforce continuing education offered by public community colleges amends Texas Education Code Chapter 130 by adding Subchapter L, Workforce Continuing Education. The legislation requires the Texas Higher Education Coordinating Board ("THECB" or "Board") to adopt rules for the administration of this Subchapter using negotiated rulemaking.

The procedure for negotiated rulemaking is found in Texas Government Code Chapter 2008, which contains requirements for notice and the duties of those involved. The convener is charged with responsibility for:

1. Assisting the agency in determining whether it is advisable to proceed with negotiated rulemaking;
2. Assisting in the identification of persons likely affected by the proposed rule;
3. Recommending to the agency whether negotiated rulemaking is feasible as a means to develop the proposed rule; and
4. Reporting to the agency on the relevant considerations.

In determining whether it is advisable to proceed with negotiated rulemaking, the agency need only refer to the recently enacted legislation, above, requiring negotiated rulemaking. It is recommended that negotiated rulemaking proceed.

In identifying persons likely affected by the proposed rule, a memo was sent via email to all presidents at public community colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus (see Attachment 1). From this effort, 21 individuals (see Attachment 2) volunteered or were nominated to participate on the workforce continuing education negotiated rulemaking committee. This presents a good probability that the identified interests will be adequately represented.

The positions held by the volunteers and nominees include deans, directors, and associate vice presidents of continuing education. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

Given the requirement of negotiated rulemaking, doing so will not unreasonably delay notice and eventual adoption of the proposed rule. Similarly, the adequacy of agency resources to participate and the willingness of the agency to accept the consensus of the negotiated rulemaking committee as the basis for the proposed rule is also compulsory in accordance with law.

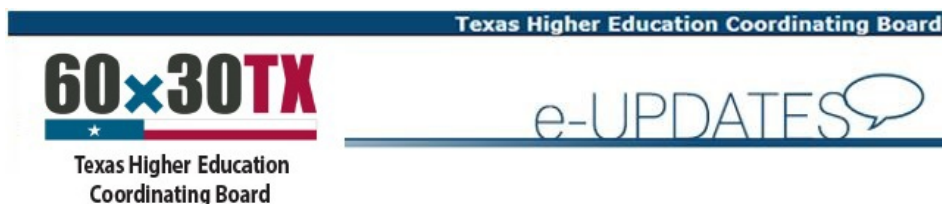
The probability that the negotiated rulemaking committee will provide a balanced representation between public and regulated interests is also good. As mentioned, memos were sent to all affected institutions and we have received nominations of 21 individuals for consideration to the negotiated rulemaking committee from throughout the state. The stakeholders who could be significantly affected by this rule and should be represented on this committee are:

1. Public Community Colleges; and
2. Texas Higher Education Coordinating Board.

The volunteers and nominees represent various institutional types and sizes, and geographic locations throughout the state.

With the above considerations, it is recommended that the THECB move forward with negotiated rulemaking. It is also recommended that a notice be posted for 10 days in the *Texas Register* for public comment in accordance with section 2008.053 of the Texas Government Code.

Attachment 1: Convening Memo



TO: Presidents, Texas Public Community Colleges

FROM: Laurie A. Frederick, Convener, Negotiated Rulemaking

RE: Nomination for the Negotiated Rulemaking Committee on Workforce Continuing Education

House Bill 2994, 85th Texas Legislature, relating to workforce continuing education offered by public community colleges amends Texas Education Code Chapter 130 by adding Subchapter L, Workforce Continuing Education. The legislation requires the Texas Higher Education Coordinating Board (THECB) to adopt rules for the administration of this Subchapter.

The THECB will engage public community colleges in developing these rules through the negotiated rulemaking process in accordance with Texas Government Code Section 2008 (Negotiated Rulemaking Act). Pursuant to the Act, I have been appointed to serve as the Convener for the negotiated rulemaking process.

The purpose of this memo is to solicit your willingness to participate on the **Negotiated Rulemaking Committee on Workforce Continuing Education** or to nominate a designee with leadership in continuing education from your campus for potential selection by the THECB's Alternative Dispute Resolution Coordinator. Please respond to me via email at Laurie.Frederick@thehb.state.tx.us by no later than 5 pm on August 25, 2017.

Targeted dates for convening the committee are October 23, 30, November 1, and 2 from 9:30 am to 4:30 pm at the THECB offices in Austin. We ask that you hold these dates on your calendar in the event you are selected to serve on this committee, or if you nominate someone from your institution, please share these dates with your nominee as well.

If you have questions or concerns, feel free to contact me at (512) 427-6446. Thank you in advance for your assistance in this matter.

Enclosures

c: Jacob Fraire, President, Texas Association of Community Colleges
Community College Chief Instructional Officers
Community College Liaisons

- [Government+Code%2C+Section+2008%2C+NRM+Act.pdf](#)
- [HB+2994%2C+Final.pdf](#)



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Attachment 2: Nominations

Name	Title	Community College/District
Anne Bartlett	Vice President, Industry and Community Resources	Brazosport College
Aubrey Sharpe	Dean, Continuing Studies and Executive Administrator-West Campus	Tyler Junior College
Djuna Forrester	Executive Director, Center for Workplace Learning	Grayson College
Hector Aguilar	Executive Dean, Continuing Education	Austin Community College
James Simpson	Dean/Executive Director, Continuing Education	Alvin Community College
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Laura Sanchez	Associate Dean, Institutional Research and Effectiveness	South Texas College
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Rex Peebles	Assistant Commissioner, Academic Quality and Workforce	Texas Higher Education Coordinating Board
Rose Galloway	Associate Vice President, Workforce and Continuing Education	Richland College (Dallas County Community College District)
Sarah Janes	Associate Vice Chancellor, Continuing & Professional Development	San Jacinto College District
Shari Gould	Director of Continuing Education, Allied Health	Victoria College
Sherry Schumann	Sr. Vice President of Academic, Workforce, and Enrollment Services	Collin College District
Tamara Sealy	Continuing Education Corporate Training Coordinator	Wharton County Junior College
Teresa Chavez	Director, Continuing Education	Central Texas College
Terry Kidd	Dean, Division of Extended Learning	Houston Community College System
Vernell Walker	Dean, Professional and Technical Education	Alamo Colleges District
Vernon Hawkins	Associate Vice President, Workforce Development	Brookhaven College (Dallas County Community College District)

TEXAS HIGHER EDUCATION COORDINATING BOARD
NOTICE OF INTENT TO ENGAGE IN NEGOTIATED RULEMAKING–WORKFORCE CONTINUING EDUCATION
(Texas Public Community Colleges)

House Bill 2994, 85th Texas Legislature, Regular Session, relating to workforce continuing education offered by public community colleges, amends Texas Education Code Chapter 130 by adding Subchapter L, Workforce Continuing Education. The legislation requires the Texas Higher Education Coordinating Board (“THECB” or “Board”) to adopt rules for the administration of this Subchapter. The THECB intends to engage in negotiated rulemaking to develop these rules.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents at Texas public community colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 21 individuals responded (out of approximately 83 affected entities) and expressed an interest to participate or nominated someone from their institution to participate on the negotiated rulemaking committee for workforce continuing education. The positions held by the volunteers and nominees include deans, directors, and associate vice presidents of continuing education. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for workforce continuing education:

1. Public Community Colleges; and
2. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 20 individuals to the negotiating rulemaking committee for workforce continuing education to represent affected parties and the agency:

Public Community Colleges

Vernell Walker, Dean, Professional and Technical Education, Alamo Colleges District
James Simpson, Dean/Executive Director, Continuing Education, Alvin Community College
Hector Aguilar, Executive Dean, Continuing Education, Austin Community College
Anne Bartlett, Vice President, Industry and Community Resources, Brazosport College
Teresa Chavez, Director, Continuing Education, Central Texas College
Sherry Schumann, Sr. Vice President of Academic, Workforce, and Enrollment Services, Collin College District
Rose Galloway, Associate Vice President, Workforce and Continuing Education, Richland College, Dallas County Community College District
Leonard Rivera, Dean, Continuing Education and Off-Campus Programs, Del Mar College
Marta DeLa Fuente, Director, Continuing Education Health Programs, El Paso Community College
Djuna Forrester, Executive Director, Center for Workplace Learning, Grayson College
Lizza Trenkle, Vice President, Student Services, Hill College
Terry Kidd, Dean, Division of Extended Learning, Houston Community College System
Kerry Schindler, Senior Vice President, Instruction, Ranger College
Sarah Janes, Associate Vice Chancellor, Continuing & Professional Development, San Jacinto College District
Laura Sanchez, Associate Dean, Institutional Research and Effectiveness, South Texas College
Nancy Cure, Associate Vice Chancellor, Academic Affairs, Tarrant County College District
Aubrey Sharpe, Dean, Continuing Studies and Executive Administrator-West Campus, Tyler Junior College
Shari Gould, Director of Continuing Education, Allied Health, Victoria College
Tamara Sealy, Continuing Education Corporate Training Coordinator, Wharton County Junior College

Texas Higher Education Coordinating Board

Rex Peebles, Assistant Commissioner, Academic Quality and Workforce

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

- *Name and contact information of the person submitting the application;
- *Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;
- *Name and contact information of the person being nominated for membership; and
- *Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for workforce continuing education. Comments and applications for membership on the committee must be submitted by September 18, 2017 to: Laurie A. Frederick, Convener, Negotiated Rulemaking, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711, Fax: (512) 427-6127, Email: laurie.frederick@theqb.state.tx.us.

TRD-201703422
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: August 30, 2017

Kristen Kramer, Ph.D.
Deputy Assistant Commissioner, Student Success
Division of College Readiness and Success
(B.A., The University of Texas at Austin; M.A., Ph.D., Duke University)

Kristen Kramer spent over a decade teaching and developing curriculum for undergraduate foreign language and literature and several years editing for a scholarly journal. Before her academic career, she coordinated academic enrichment programs for at-risk middle and high school students in Texas. She joined the staff of the Texas Higher Education Coordinating Board in 2007, focusing on college readiness initiatives and on developing strategies for implementing the Texas College and Career Readiness Standards. Still involved in working with colleges and school districts to improve alignment, Dr. Kramer currently oversees policy and programming development regarding college access, college and career readiness, developmental and adult education, student success, and postsecondary completion initiatives. She has completed mediation training from The Dispute Resolution Center of Austin.

AN ACT

relating to workforce continuing education offered by public junior colleges.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 130, Education Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. WORKFORCE CONTINUING EDUCATION

Sec. 130.301. DEFINITIONS. In this subchapter:

(1) "Adult" means a person who:

(A) has completed the person's sophomore year of high school;

(B) is 17 years of age and has been awarded a high school diploma or its equivalent; or

(C) is 18 years of age or older, regardless of the person's previous educational experience.

(2) "Avocational course" means a course of study in a subject or activity that is usually engaged in by a person in addition to the person's regular work or profession for recreation or in relation to a hobby. The term includes a community interest course.

(3) "Coordinating board" means the Texas Higher Education Coordinating Board.

(4) "Workforce continuing education" means a program of instruction that:

1 (A) is designed primarily for adults; and

2 (B) is intended, on completion by a participant,
3 to prepare the participant to qualify to apply for and accept an
4 employment offer or a job upgrade within a specific occupational
5 category or to bring the participant's knowledge or skills up to
6 date on new developments in a particular occupation or profession.

7 (5) "Workforce continuing education course" means a
8 course of instruction in workforce continuing education that is
9 approved by the coordinating board. The term does not include an
10 avocational course.

11 Sec. 130.302. FORMULA FUNDING FOR WORKFORCE CONTINUING
12 EDUCATION COURSES. Notwithstanding Section 130.003 or any other
13 law, contact hours attributable to the enrollment of a student in a
14 workforce continuing education course offered by a public junior
15 college shall be included in the contact hours used to determine the
16 college's proportionate share of state money appropriated and
17 distributed to public junior colleges under Sections 130.003 and
18 130.0031, regardless of whether the college waives all or part of
19 the tuition or fees for the course under Section 130.304.

20 Sec. 130.303. WORKFORCE CONTINUING EDUCATION FOR HIGH
21 SCHOOL STUDENTS. (a) A public junior college may offer, or may
22 enter into an agreement with a school district, organization, or
23 other person that operates a high school to offer, workforce
24 continuing education courses other than learning framework
25 courses, basic employability courses, and basic learning skills
26 courses to a person who:

27 (1) is enrolled in high school on the completion of the

1 person's sophomore year;

2 (2) is enrolled in a school that is not formally
3 organized as a high school and is at least 16 years of age; or

4 (3) is attending high school while incarcerated, is at
5 least 16 years of age, and is not eligible for release from
6 incarceration before the person's 18th birthday.

7 (b) This section does not prohibit a public junior college
8 from offering community interest continuing education courses
9 using local funds.

10 Sec. 130.304. WAIVER OF TUITION AND FEES FOR WORKFORCE
11 CONTINUING EDUCATION COURSES. A public junior college may waive
12 all or part of the tuition or fees charged to a student for a
13 workforce continuing education course only if:

14 (1) the student:

15 (A) is enrolled in high school or in a school
16 described by Section 130.303(a)(2);

17 (B) is 16 years of age or older, has had the
18 disabilities of minority removed, and is not enrolled in secondary
19 education; or

20 (C) is under the age of 18 and is incarcerated;

21 (2) all or a significant portion of the college's costs
22 for facilities, instructor salaries, equipment, and other expenses
23 for the course are covered by business, industry, or other local
24 public or private entities; or

25 (3) the course is taught in a federal correctional
26 facility and the facilities, equipment, supplies, and other
27 expenses for the course are funded by the federal government.

1 Sec. 130.305. RULES. The coordinating board shall adopt
2 any rules the coordinating board considers necessary for the
3 administration of this subchapter. In adopting those rules, the
4 coordinating board shall use the negotiated rulemaking procedures
5 under Chapter [2008](#), Government Code.

6 SECTION 2. This Act takes effect September 1, 2017.

H.B. No. 2994

President of the Senate

Speaker of the House

I certify that H.B. No. 2994 was passed by the House on April 28, 2017, by the following vote: Yeas 130, Nays 2, 4 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2994 on May 26, 2017, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2994 on May 28, 2017, by the following vote: Yeas 146, Nays 1, 1 present, not voting.

Chief Clerk of the House

H.B. No. 2994

I certify that H.B. No. 2994 was passed by the Senate, with amendments, on May 22, 2017, by the following vote: Yeas 28, Nays 3; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2994 on May 28, 2017, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor



Texas Higher Education Coordinating Board
1200 East Anderson Lane
Austin, Texas 78752
(512) 427-6101

Driving Directions to the THECB

From IH-35:

- Exit Hwy 183 South
- Turn East onto 183 South access road (Coming from the North, turn left; From the South, turn right)
- Get in far left lane and Make a U-Turn under 183 at Cameron Road (the first light)
- The Coordinating Board is on the right (after Luby's)

From Austin-Bergstrom International Airport:

- Take Hwy 71 West
- Exit to Hwy 183 North
- Continue along 183 North and take the Cameron Rd exit onto E Anderson Ln
- The Coordinating Board is on the right after the intersection (after Luby's)

Link to [Area Hotels](#)

Link to [Area Restaurants](#)

*For security reasons, visitors must enter the building using the front entrance only.

*Visitors must sign-in at security desk to obtain a visitor badge. The visitor (or institution ID) badge must be worn/visible while in the building.

*Free parking available.

NOTE: Information above can also be found on the THECB website at <http://www.thecb.state.tx.us/apps/events/>.

Box lunch selection due to Laurie.Frederick@THECB.state.tx.us by October 20.
Cost includes tea and delivery fee.

SANDWICH, PRESSATA AND WRAP BOX LUNCHES (\$15.00)

Premium Sandwich Box Lunch

Your choice of one delicious premium sandwiches.
Includes chips and a fresh-baked jumbo cookie.

- Curry Chicken on Ciabatta Roll
- Turkey with Tomato Confit on Focaccia
- Harissa Beef with Tomato Jam on Brioche Roll
- Buttermilk Baked Chicken on Jalapeño Roll
- Capri Chicken on Wheat
- Stacker on Focaccia
- Tuscan Turkey on Focaccia
- New England Chicken Salad on Raisin Walnut
- Mediterranean Vegetarian on Ciabatta Roll (v)
- Ham & Swiss on Marble Rye
- Tiger Thai Beef on Brioche Roll
- Vegetarian on Focaccia (v)
- California Club on Ciabatta Roll
- Monterey Chicken with Avocado on Jalapeño Roll
- Big Al's Club on Wheat

Traditional Sandwich Box Lunch

Your choice of one traditional sandwiches.
Includes chips and a fresh-baked jumbo cookie.

- Ham on Rye
- Turkey on Ciabatta Roll
- New England Chicken Salad on Wheat
- Roasted Chicken on Focaccia
- Beef Brisket on Jalapeño Roll

Wrap Box Lunch

Your choice of one delicious wraps.
Includes chips and a fresh-baked jumbo cookie.

- Asian Crispy Chicken in Spinach Tortilla
- Ancho BBQ Beef in Chipotle Tortilla
- Vegetarian in Honey Wheat Tortilla (v)
- Tuscan Turkey in Spinach Tortilla
- Santa Fe Chicken in Chipotle Tortilla
- Chicken Caesar in Wheat Tortilla

Gluten-Free Sandwich Box Lunch (+\$2.00)

Your choice of sandwich on gluten-free ancient grains bread. Includes chips and a housemade pistachio oatmeal bar. (Ancient grains bread is made with amaranth, quinoa, millet, sorghum and teff)

- Tuscan Turkey
- Vegetarian (v)
- Mediterranean Vegetarian
- Capri Chicken
- Curry Chicken
- California Club
- Big Al's Club
- Stacker
- Monterey Chicken with Avocado
- Black Russian Ham & Swiss
- Harissa Beef with Tomato Jam
- Tiger Thai Beef
- Roast Turkey
- Ham
- Brisket
- Roasted Chicken

Pressata Box Lunch

Your choice of one European grilled sandwiches.
Includes chips and a fresh-baked jumbo cookie.

- Pepper Jack Chicken
- Chicken Margherita
- The Antonio
- Honey Mustard BBQ Beef
- Chipotle Beef
- Turkey Provençal
- Vegetarian (v)

SALAD BOX LUNCHES (\$15.00)

Your choice of salad. Includes chips and a fresh-baked jumbo cookie.

Harissa Chicken

Fresh greens topped with a delicious combination of diced housemade green harissa curried chicken, roasted red peppers, cucumbers, confit tomatoes, arugula, pickled onions, sliced fresh mozzarella and crisp flatbread strips. Served with our curry yogurt dressing.

Chicken Caesar

Fresh romaine lettuce with tender roasted chicken breast, homemade croutons and shredded Parmesan cheese.

Caesar

Fresh romaine lettuce with shredded Parmesan, crisp homemade croutons and our own creamy Caesar dressing.

Mixed Green with Balsamic Vinaigrette

Premium mix of spring, romaine and leaf lettuces, cucumber, tomato and croutons. Served with ranch and balsamic vinaigrette dressings. (v)

Cobb with Ranch Dressing

Fresh greens with tender roasted chicken, tomatoes, bacon, diced eggs, avocado and cheddar cheese. Served with ranch dressing.

Mediterranean Chicken with Balsamic Vinaigrette

Spinach and spring mix, roasted chicken, red onions, tomatoes, green olives, roasted red peppers, feta cheese and flatbread crisps.

Pesto Chicken with Ranch Dressing

Romaine and spring mix topped with pesto-coated roasted chicken, cucumbers, tomatoes, shredded Parmesan cheese and flatbread crisps.

Trio Salad with Balsamic Vinaigrette

Fresh lettuce topped with housemade chicken salad, tuna salad and pasta salad, garnished with flatbread crisps.