

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1096

SPONSOR: Commerce and Economic Opportunities Committee

SUBJECT: Workforce Development; One-Stop Career Centers

DATE: March 8, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Robinson Pierce</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The committee substitute delineates the relationship between the Department of Labor and Employment Security (DLES) and regional workforce development boards at One-Stop Career Centers governing delivery of employment services under the federal Wagner-Peyser Act. The committee substitute revises the requirements of memorandums of understanding (MOUs) entered into between the two entities and requires One-Stop Career Center operators to submit to DLES employee performance reports on DLES staff located at One-Stop Career Centers. DLES is required to consider information submitted by One-Stop Career Center operators in conducting performance appraisals of the employees.

At the election of a regional workforce development board, the committee substitute also permits the leasing of DLES employees to a One-Stop Career Center operator for the delivery of employment services at a One-Stop Career Center. If a lease agreement is entered into between a regional workforce development board and DLES, the committee substitute prescribes that a DLES employee retains the position classification and state personnel rights or benefits associated with the position that he or she held on the day before the lease agreement takes effect. The committee substitute specifies the minimum requirements of the lease agreement and allows leased DLES staff to deliver other workforce services funded by federal or state programs that are mandatory or discretionary partners at the One-Stop Career Centers if these services are provided under a cost-allocation formula. This committee substitute requires the Department of Management Services (DMS) to assist the regional workforce development board and DLES with the implementation of the lease agreement provisions.

The committee substitute prescribes One-Stop Career Centers, established under the federal Workforce Investment Act, as the primary system for the delivery of employment services in the state. The committee substitute also allows the Governor, after consultation with the Workforce Development Board of Enterprise Florida, Inc., to designate DMS as an alternative agency for delivery of employment services under the federal Wagner-Peyser Act. The Governor would be required to pursue a budget amendment consistent with the provisions of ch. 216, F.S., to

effectuate the transfer. In the event of such designation of DMS by the Governor, the committee substitute requires the regional workforce development boards to execute memorandums of understanding with DMS as prescribed by the Workforce Investment Act and state law.

The committee substitute corrects references to the Division of Jobs and Benefits of DLES to reflect that the division has been renamed the Division of Workforce and Employment Opportunities.

The committee substitute amends the following sections of the Florida Statutes: 288.9951 and 443.181.

## II. Present Situation:

### Wagner-Peyser Act

Enacted in 1933, the federal Wagner-Peyser Act provides for the establishment of a national employment system and cooperation with the states to promote the system. (29 U.S.C. ss. 49-49I-1 (1998), *amended by* Pub. L. No. 105-220 (1998), ss. 301-311.) Through its secretary, the U.S. Department of Labor (USDOL) is designated to coordinate the state public employment services throughout the country. One method by which the Wagner-Peyser Act mandates that the USDOL increase the usefulness of employment services among the states is by developing and prescribing “minimum standards of efficiency.” The USDOL has interpreted the term to include the requirement that the delivery of employment services under the Wagner-Peyser Act is to be executed by merit-staffed employees funded under the act.

Florida has, by statute, accepted the provisions of the Wagner-Peyser Act. Section 443.181, F.S., establishes a state public employment service in the Division of Jobs and Benefits (the division) of the Department of Labor and Employment Security (DLES) and designates the division the state agency for purposes of the Wagner-Peyser Act. The division has the duty to cooperate with the Secretary of the USDOL to assist the state with providing public employment services, unemployment compensation information, and public labor exchange services. (s. 443.181, F.S., and 29 U.S.C. s. 49b.) The division is also vested with the authority to do and perform all things necessary to obtain the benefits of the act and to promote and maintain a system of public employment offices. (s. 443.181(1), F.S.) During the 1999 legislative session, the division was renamed the Division of Workforce and Employment Opportunities. (*See* s. 2, ch. 99-240, L.O.F.)

Employment services applicable under the Wagner-Peyser Act include:

- job search and placement services to job seekers, including counseling, testing, occupational and labor market information, assessment, and referral to employers;
- appropriate recruitment services and special technical services for employers;
- evaluation of programs;
- developing linkages between services funded under the Wagner-Peyser Act and related federal or state legislation, including the provision of labor exchange services at educational sites;

- providing services for workers who have received notice of permanent layoff or impending layoff, or workers in occupations that are experiencing limited demand due to technological change, impact of imports, or plant closures;
- developing and providing labor market and occupational information;
- developing a management information system and compiling and analyzing reports therefrom; and
- administering the work test for the state unemployment compensation system and providing job finding and placement services for unemployment insurance claimants.

(29 U.S.C. s. 49f(a).)

### **Workforce Investment Act; Florida Implementation**

In August 1998, the federal Workforce Investment Act (WIA) was signed into law (Pub. L. No. 105-220), representing a sea change in federal policy governing job training and other workforce development activities. A core component of WIA is the emphasis on the delivery of workforce development services through a system of “one-stop” centers in local communities throughout the state. WIA prescribes the programs and activities that are required to be part of each one-stop center and authorizes each local board to select a One-Stop operator through a competitive process or designate a consortium that includes at least three of the federal One-Stop partners to operate the center. A memorandum of understanding (MOU) with the local board governs the role of the One-Stop operator. The One-Stop operator’s role may range from simply coordinating service providers within the center to being the primary provider of services within the center. However, the WIA Interim Final Rules specify that the role of the One-Stop operator is limited to one of guidance as it relates to staff delivering employment services under the Wagner-Peyser Act. As part of the MOU with the local board, One-Stop partners may agree to have staff receive guidance from the One-Stop operator regarding the provision of employment services. (64 Fed. Reg. 18763, April 15, 1999.) A mandatory One-Stop partner, the state agency designated with administrative responsibility under the Wagner-Peyser Act may agree to have its staff receive guidance from a One-Stop operator. However, personnel matters, including performance appraisals of merit-staff employees funded under the Wagner-Peyser Act, are to remain under the authority of the state agency. (64 Fed. Reg. 18763.)

During the 1999 legislative session, the Florida Senate considered a provision that required regional workforce development boards to assume responsibility and contract for the delivery, through One-Stop Career Center operators, of employment services funded through Wagner-Peyser. (*See* s. 3, CS/CS/SB 252, 1st Eng.) This provision raised several compliance and fiscal impact concerns and ultimately was not included in the Legislature’s final workforce development measure. The USDOL, Executive Office of the Governor, and DLES raised issues relating to loss of administration funds for the department; federal compliance issues, including the requirement that merit-staff employees deliver employment services; funding allocation; disruption of services; and program linkages.

In 1999, the Legislature did revise the statutory provisions governing One-Stop Career Centers. Section 288.9951(4), F.S., mandates that notwithstanding any other provision of law, effective July 1, 1999, regional workforce development boards must enter into an MOU with DLES for the delivery of employment services authorized by the Wagner-Peyser Act. This subsection further

states that employment services must be provided through One-Stop Career Centers, under the guidance of One-Stop Career Center operators.

Interim Project Report 2000-18, titled *Devolution of Employment Services*, by the Committee on Commerce and Economic Opportunities attempted to collaboratively develop an implementation plan, for consideration by the Legislature, governing devolution to the local level of certain employment services currently provided by DLES, and to provide recommendations on statutory changes necessary to effectuate such a plan. Differences in terminology used in federal WIA regulations versus correspondence from the regional office of the USDOL have raised questions regarding the extent to which merit-staffed local governments, such as employees of public school districts and community colleges, may be designated by regional boards to deliver employment services funded under the Wagner-Peyser Act. Because Wagner-Peyser Act funds may be jeopardized if employment services are administered in derogation of federal requirements, and because there remained some questions stemming from the applicable federal regulations and from correspondence with the USDOL regarding the involvement of merit-staff employees in the delivery of these services, the report did not make specific recommendations with respect to statutory action necessary to effectuate the implementation of a plan to devolve employment services to the local level.

The USDOL has not yet issued the WIA Final Rule, but is expected to do so in early 2000. On December 8, 1999, the USDOL issued three draft WIA papers providing summaries of the USDOL Employment and Training Administration's current policies on the final regulations, performance, and planning under WIA. The documents are described as reflecting the USDOL's current thinking in relation to key policy issues that have been identified in the development of the WIA Final Rule. In its paper on the *Workforce Investment Act Final Regulatory Process Update Summary*, the USDOL stated it intends to modify the federal regulations "to clarify that the merit-staff employees must be State merit-staff employees." (<http://usworkforce.org/pol-finalreg.htm>, visited March 3, 2000.)

### **Leasing of State Employees**

Section 110.191, F.S., outlines the actions the Executive Office of the Governor may take related to salaries and benefits of employees in those situations in which the Legislature has expressly authorized an agency to lease employees. These actions may only be accomplished if the direct costs of the action are to be paid or reimbursed within 30 days after payment by the entity or person to whom the employees are leased. Authorized actions are to:

- create a separate budget entity from which leased employees will be paid and transfer those positions to that budget entity;
- provide increases in the operating budget entity;
- authorize lump-sum salary bonuses to leased employees; however, any lump-sum salary bonus above the automatic salary increase which may be contained in the General Appropriations Act is funded from private sources;
- approve salary rate increases for leased positions; however, any salary rate above the automatic salary increases which may be contained in the General Appropriations Act is funded from private sources; and

- waive any requirement for automatic salary increases which may be contained in the General Appropriations Act.

Section 110.191, F.S., further mandates that positions in the Senior Management Service (SMS) System or the Select Exempt Service (SES) System on the day before the state employee lease agreement takes effect remain in the respective system if the duties performed by the position during the assignment of the state employee lease agreement are comparable as determined by the Department of Management Services. Those SMS and SES system positions which are not determined comparable by the department and positions which are in other pay plans on the day before the lease agreement takes effect shall have the same salaries and benefits provided to employees of the Executive Office of the Governor pursuant to s. 110.205(2)(k)2., F.S.

Section 110.205, F.S., states that the career service provisions of ch.110, F.S., apply to all positions unless specifically exempted. Section 110.205(2)(u), F.S., specifically exempts from career service those positions leased under a state employee lease agreement expressly authorized by the Legislature under s. 110.191, F.S.

### **III. Effect of Proposed Changes:**

The committee substitute requires each regional workforce development board annually to enter into a memorandum of understanding (MOU) with the Department of Labor and Employment Security (DLES) governing the delivery of employment services authorized by the Wagner-Peyser Act. This is a change from the previous effective date of July 1, 1999, for such MOUs.

The committee substitute mandates that One-Stop Career Center operators submit information relating to job performance of DLES employees, but specifies that personnel matters over DLES employees located at One-Stop Career Centers remain under the ultimate authority of DLES. The committee substitute also requires DLES to consider information submitted by One-Stop Career Center operators in conducting performance appraisals of the employees.

The committee substitute mandates that in addition to the elements required under s. 121, of Pub. L. No. 105-220, the MOU between the regional workforce development board and DLES, at a minimum, specify:

- the manner in which employment services are to be integrated into and coordinated with other services and activities performed under the management of the One-Stop Career Center operator and the other partners in the One-Stop Career Center;
- policies and procedures governing the guidance to be provided by the One-Stop Career Center operator to department employees delivering employment services at the One-Stop Career Center; and
- measures to assess the performance of the department and department employees in delivering employment services and sanctions for failure to meet those performance measures.

The committee substitute specifies that the performance measures and sanctions developed to assess the performance of the department and department employees in delivering employment

services must be consistent with the performance measures developed by the state Workforce Development Board.

At the election of a regional workforce development board, the committee substitute also permits the regional workforce development board to include in the MOU an agreement to lease to the One-Stop Career Center operator DLES employees who deliver employment services under the Wagner-Peyser Act. The committee substitute mandates that notwithstanding provisions of ch. 110, F.S., to the contrary, a department employee retains the position classification as a state employee that he or she held on the day before the lease agreement takes effect, as well as any state employee personnel rights or benefits associated with that position classification. A lease agreement under this section, at a minimum, must specify that:

- the department retains fiscal responsibility and accountability for the administration of funds allocated to the state under the Wagner-Peyser Act;
- while the department retains ultimate authority over personnel matters relating to an employee covered by the leasing agreement, the One-Stop Career Center operator provides day-to-day supervision over the employee;
- the One-Stop Career Center operator must provide the department information relating to the job performance of department employees; and
- an employee covered by the lease agreement who is providing employment services authorized under the Wagner-Peyser Act is paid using Wagner-Peyser Act funds.

An employee covered by a lease agreement under s. 288.9951(4), F.S., may also provide services under any other federal or state workforce program that is a mandatory or discretionary partner at the One-Stop Career Center. The committee substitute requires that the lease agreement provide that the employee will be compensated using funds appropriated for the administration of such other workforce development program and using cost-allocation formulas consistent with federal and state law.

The committee substitute requires the Department of Management Services (DMS) to assist the regional workforce development boards and DLES with the implementation of the lease agreement provisions. The committee substitute permits DMS to establish terms and conditions for inclusion in the lease agreement.

The committee substitute requires the state Workforce Development Board, in consultation with the Office of Program Policy Analysis and Government Accountability, to review the delivery of employment services under the Wagner-Peyser Act and the integration of those services with other activities performed at the One-Stop Career Centers. The state Workforce Development Board is required to provide recommendations to the Legislature for improving the effectiveness of delivery of employment services in Florida. The state Workforce Development Board is also required to submit a report and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2001.

The committee substitute eliminates obsolete language relating to the date for development of an implementation plan for Individual Training Accounts by the state Workforce Development Board and for the review of Individual Training Account Pricing Schedules. The state Workforce

Development Board is required to periodically review Individual Training Account pricing schedules.

The committee substitute amends s. 443.181, F.S., by correcting references to the Division of Jobs and Benefits within DLES to reflect that the division has been renamed the Division of Workforce and Employment Opportunities. The committee substitute states that notwithstanding any provisions in s. 443.181, F.S., to the contrary, and as consistent with Pub. L. No. 105-220 and s. 288.9951, F.S., the One-Stop Career Centers are the primary system for delivering employment services.

The committee substitute further amends s. 443.181, F.S., allowing the Governor, after consultation with the Workforce Development Board of Enterprise Florida, Inc., to designate DMS as the state agency for the delivery of employment services under the Wagner-Peyser Act. Before implementing the designation, the Governor must pursue a budget amendment consistent with the provisions of ch. 216, F.S., to effectuate the transfer of applicable responsibilities, personnel, and funds to DMS from DLES. The committee substitute requires that a detailed transition plan describing the transfer of responsibilities between the two departments be included in the budget amendment. Upon approval of the budget amendment, the Governor, with the assistance of the Workforce Development Board of Enterprise Florida, Inc., must submit any necessary amendments to or supplemental information for, plans that the state is required to maintain with the federal government. If the Governor exercises and fully implements the authority given to designate DMS as the state agency for delivery of employment services, the regional workforce development boards must execute memorandums of understanding with DMS as prescribed under Pub. L. No. 105-220 and s. 288.9951, F.S.

The committee substitute takes effect July 1, 2000.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

Authorizing the Governor to designate the Department of Management Services (DMS) as an alternative agency for the delivery of employment services may raise issues related the unlawful delegation of authority and the doctrine of separation of powers. Section 3, Art. II, of the Florida Constitution, divides the powers of the state government into legislative,

executive, and judicial branches and mandates that no person belonging to one branch shall exercise any powers appertaining to either of the other branches, unless explicitly provided in the constitution. Section 1, Art. III, of the Florida Constitution, vests the legislative power of the state in the Legislature. Designation of the state agency to deliver employment services under the Wagner-Peyser Act may be viewed as a non-delegable power, exclusively within the power of the Legislature. If so, the Legislature may be seen as giving up its power to the Governor, violating s. 1, Art. III, of the Florida Constitution. Moreover, if the Governor does designate DMS as the agency for the delivery of services, such action may be construed as an encroachment upon the legislative power to determine policies and programs. It would be necessary for the Governor to determine the policies and programs statutorily administered by the Department of Labor and Employment Security related to the delivery of employment services under the Wagner-Peyser Act and then have DMS administer these policies and programs. It may be argued that this action violates the doctrine of separation of powers under s. 3, Art. II of the Florida Constitution.

The provision does appear to be consistent with the federal Wagner-Peyser Act. The act mandates that a state shall, pursuant to state statute, accept the provisions of the act and that in accordance with the state statute, the Governor shall designate or authorize the creation of a state agency vested with all powers necessary to cooperate with the Secretary of the USDOL under the act. (29 U.S.C. s. 49c.)

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

None.

### **C. Government Sector Impact:**

The committee substitute authorizes the leasing of DLES staff to One-Stop Career Center operators. The department may experience administrative expenses associated with leasing department staff. The department may also experience less need for other DLES administrative staff acting in supervisory capacities over employees leased to One-Stop Career Center operators. The department states that the precise fiscal impact of these issues is not known at this time.

The committee substitute directs the Department of Management Services (DMS) to assist a regional workforce development board and DLES with the implementation of lease agreement provisions and permits DMS to establish terms and conditions for inclusion in the lease agreement. DMS indicates that the precise fiscal impact on these issues is unknown.

The committee substitute allows the Governor to designate DMS as an alternative agency for delivery of employment services. The Governor would be required to pursue a budget



amendment consistent with the provisions of ch. 216, F.S., to effectuate the transfer. In the event of such designation of DMS by the Governor, the committee substitute requires the regional workforce development boards to execute memorandums of understanding with DMS. Designating DMS as the agency for delivery of employment services would require a transfer of certain responsibilities, personnel, and funds to DMS from DLES.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The extent to which employment services delivered under the Wagner-Peyser Act may be devolved to the local level is still somewhat uncertain, in part because the U.S. Department of Labor (USDOL) has not issued the WIA Final Rule. The leasing of state employees compensated with Wagner-Peyser Act funds is an issue that will likely be reviewed by the USDOL to evaluate its compliance with the requirement that employment services under the Wagner-Peyser Act be delivered by merit-staff employees.

**VIII. Amendments:**

None.