

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Transportation and Economic Development Appropriations Committee

BILL: CS/CS/SB 1650

SPONSOR: Governmental Oversight and Productivity Committee, Commerce and Consumer Services Committee and Senator King

SUBJECT: Workforce Innovation

DATE: April 19, 2005                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gordon	Cooper	CM	<b>Fav/CS</b>
2.	Wilson	Wilson	GO	<b>Fav/CS</b>
3.	Martin	Martin	TA	<b>Favorable</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This committee substitute makes substantive and technical changes to the statutes related to the Agency for Workforce Innovation (AWI), Workforce Florida, Inc. (WFI), and regional workforce boards, including:

- Deleting descriptions of the specific duties of AWI and its offices;
- Imposing term limits on WFI board members; increasing the length of terms from 2 to 3 years; providing for staggered terms; and authorizing the board to conduct its meetings through any method of telecommunications;
- Granting WFI increased program flexibility in designing a workforce development strategy for the state, and requiring WFI to establish an operational plan to implement the state strategic plan;
- Authorizing regional workforce boards to conduct meetings through any method of telecommunications;
- Granting WFI the authority to establish a dispute resolution procedure to address disputes that may arise between the AWI and the regional workforce boards;
- Deleting descriptions of a limited number of regional workforce boards' specific duties;
- Deleting a number of references to obsolete or repealed programs;
- Repealing a number of unfunded or obsolete programs.

This committee substitute amends the following sections of the Florida Statutes: ss. 20.50, 445.003, 445.004, 445.006, 445.007, 445.009, 445.019, 445.020, 427.012, 445.005, 445.012, 445.0121, 445.0122, 445.0123, 445.0124, 445.0125, 445.013, 446.21, 446.22, 446.23, 446.24, 446.25, 446.26, and 446.27.

This committee substitute repeals the following sections of the Florida Statutes: 445.005, 445.012, 445.0121, 445.0122, 445.0123, 445.0124, 445.0125, 445.013, 446.21, 446.22, 446.23, 446.24, 446.25, 446.26, and 446.27.

## II. Present Situation:

During the 2000 Legislative Session, the Legislature passed the Workforce Innovation Act of 2000 to redress problems that existed within its workforce development system.<sup>1</sup> Before the passage of this act, Florida's workforce development system was highly fragmented, consisting of over 270 state and local organizations responsible for planning and delivering workforce services.

The act transferred responsibility for providing employment services under the federal Wagner-Peyser Act<sup>2</sup> from the Department of Labor and Employment Security to the newly created Agency for Workforce Innovation (AWI). The act also established requirements for performance measures and standards, an integrated data system, and employer participation. In addition, the act provided that state and regional entities govern the workforce development system.

Workforce Florida, Inc., (WFI) is responsible for developing statewide policies for the system while the AWI is responsible for implementing Workforce Florida, Inc.'s policies. Twenty-four regional workforce boards govern the delivery of program services at the local level. Currently 103 one-stop career centers provide employment services to job seekers and employers throughout the state.

However, since the passage of the Workforce Innovation Act, there have been few legislative revisions to reflect organizational changes within WFI, the AWI, and the regional boards.

## III. Effect of Proposed Changes:

### *Organizational Structure, Administration & Official Seal*

**Section 1** amends s. 20.50, F.S., to allow the AWI increased flexibility to organize.

Currently, s. 20.50, F.S., provides a detailed outline of the organizational structure, powers and duties of AWI and the offices within AWI. This section deletes specific descriptions of the duties of each office within the AWI, which is similar to the general organizational directives for other state agencies.

This section also:

- Renames the Office of Workforce Services as the Office of Unemployment Compensation;
- Authorizes the director of the AWI to establish assistant director and deputy director positions to assist in administering the agency's programs;

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<sup>1</sup> Chapter 2000-165, L.O.F.

<sup>2</sup> Title 29, Chapter 4b, Section 49, U.S.C.

- Deletes specific references to federal and state programs, while retaining the general directive to administer programs funded by federal or state appropriations;
- Deletes a requirement that the AWI provide training to employees of administrative entities and case managers of contracted providers, making the provision of such training discretionary; and
- Authorizes the AWI to adopt an official seal, which will assist the AWI in properly authenticating documents that may be used in courts or between agencies.

**Section 2** amends s. 445.003, F.S., to delete obsolete references or requirements, delete a reporting requirement, and make technical corrections. Specifically, this section:

- Deletes references to obsolete programs and acts including: the Performance-Based Incentive Fund,<sup>3</sup> the Minority Teacher Aide program,<sup>4</sup> the Certified Teacher Aide program, the Self-Employment Institute Program, and the Job Partnership and Training Act;
- Clarifies that reimbursement will be permitted for *training* materials, rather than classroom materials, for the Incumbent Worker Training program, and changes the requirement that a separate annual report be filed for the program (AWI represents that this report will be part of the annual AWI report customarily filed in December);
- Removes an obsolete requirement that the Office of Program Policy Analysis and Government Accountability (OPPAGA) submit a report to the Legislature by December 31, 2002, regarding the workforce development system; and
- Deletes an obsolete reference to the Department of Labor and Employment Security.

### ***Workforce Florida, Inc.***

**Section 3** makes several revisions to s. 445.004, F.S., which relates to the creation, purpose, membership, duties and powers of Workforce Florida, Inc.

Section 445.004(1), F.S., specifies that WFI is organized as a not-for-profit organization under ch. 617, F.S., and, as such, is not a unit or entity of state government. This section is amended to exempt WFI from ch. 120, F.S., the Administrative Procedure Act (APA), and ch. 287, F.S., (procurement of personal property and services) but shall adhere to procurement and expenditure provisions of federal law. Paragraph (4)(c) is redesignated as (4)(d) and amended to specify that all WFI contracts are exempt from s. 112.061, F.S., (per diem and travel expenses of public officer, employees, and authorized person) and chs. 120 and 287, F.S.

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<sup>3</sup> This program was created by the Government Performance and Accountability Act (ch. 94-249, L.O.F.) and funded with federal dollars. A recent Administrative Review Board (ARB) opinion, *Florida Department of Labor and Employment Security v. U.S. Department of Labor*, ARB Case No. 04-168, ALJ Case No. 99-JTP-16, slip op. (ARB. Feb. 28, 2005), reversed a Florida Administrative Law Judge (ALJ) opinion upholding Florida's use of federal Job Training Partnership Act (JTPA) funds to reward community colleges and school district programs for retraining certain qualified students, including dislocated workers under JTPA Title III. As a result of this opinion, Florida is required to repay the \$11.4 million dollars used to fund its performance-based program. The Legislature has already removed all substantive legislation related to this program in the DOE statute.

<sup>4</sup> According to the AWI, the USDOL found funding this program was an illegal use of federal money.

This section makes several changes to the provisions governing the Workforce Florida, Inc., board. Paragraph (3)(a) is amended to remove voting privileges from board members who are state agency heads or officials. According to the AWI, these members either often do not participate in meetings or send designees who cannot participate in board discussions. The AWI reports removing voting privileges from these members will help preserve a quorum.

Paragraph (3)(b) is amended to impose a term limit on the chair of the board, increase the length of terms of members appointed by the Governor from 2 to 3 years, and provide staggered terms for those members.

Currently, s. 445.004(3)(c), F.S., permits legislators to nominate members from the private sector. The committee substitute deletes the requirement that such nominations be submitted through the President of the Senate and the Speaker of the House of Representatives, and allows anyone, rather than only legislators, to nominate members.

This section is also amended to require that, of the business members appointed by the Governor, five must have economic development experience. Moreover, this section removes the requirement in s. 445.004(3)(d), F.S., that the Governor appoint members to the board within 30 days after a sufficient number of nominations is received.

Paragraph (4)(b) is amended to allow WFI board committees or subcommittees to use any method of telecommunications to conduct meetings, provided that proper notice is given to the public in order to allow for observation and participation by the public in the meeting.

Currently, s. 445.004(3)(g), F.S., permits the board to establish an executive committee to take action on certain issues. This section is amended to remove this authority from the board and transfer it to the chair.

Section 445.004, F.S., is also amended to authorize WFI to pay for promotional activities, incentives and awards for performance by Regional Workforce Boards where it deems appropriate. Expenditures for such activities must comply with Federal rules and regulations for the expenditure of federal funds.

This section also deletes several outdated references to the Work and Gain Economic Self-Sufficiency (WAGES)<sup>5</sup> which was replaced in 2000 with the Welfare Transition (WT) program.

Several references and program specifications related to the First Jobs/First Wages Council, the Better Jobs/Better Wages Council and the High Skills/High Wages Council in ss. 445.004(3)(h), (9)(b), and (10), F.S., are deleted, thereby granting WFI increased program flexibility in developing a workforce strategy for the state.<sup>6</sup> In 2000, the Select Committee on Workforce

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<sup>5</sup> Chapter 96-175, L.O.F., established the WAGES program to assist public benefits recipients in obtaining and maintaining employment.

<sup>6</sup> These programs are not federally mandated programs; instead, their creation stemmed from a Senate Select Committee Report on Workforce Innovation. *Infra*, note 7. First Jobs/First Wages is described in s. 445.004(10)(a), F.S., as the state's strategy for promoting successful entry into the workforce through education and workplace experience amongst Florida's youth. Section 445.004(10)(b), F.S., describes Better Jobs/Better Wages as the state's strategy for assisting employers in

Innovation recommended the regional workforce boards form these councils, but intended the councils be maintained only until September 30, 2002.<sup>7</sup>

This section deletes references to the Welfare to Work grant which was rescinded in January 2004 by P.L.108-199 and ended effective December 31, 2004.<sup>8</sup>

This section also removes references to certain programs that are now administered by the Department of Community Affairs. The programs include: programs authorized under the National and Community Service Act of 1990,<sup>9</sup> and the Service-America programs, the National Service Trust programs, the Civilian Community Corps, the Corporation for National and Community Service, the American Conservation and Youth Service Corps, and the Points of Light Foundation programs as well as employment and training activities carried out under the Community Services Block Grant Act.

Paragraph (4)(c) is created to authorize the AWI to adopt rules related to this section.

Paragraph (5)(g) is created to permit WFI to establish a grievance procedure to address disputes that may arise between the AWI and the regional workforce boards.

**Section 4** amends s. 445.006, F.S., to require WFI to develop an operational plan to implement its strategic plan. This section changes “strategic plan” to “operational plan” where contextually appropriate. This section requires Workforce Florida, Inc., to submit this plan to the Governor and Legislature along with its strategic plan. The operational plan must reflect the allocation of resources as appropriated by the Legislature for specific responsibilities enumerated in the law.

This section also provides that the performance-based payment structure used for all welfare transition program customers is now optional.

### ***Regional Workforce Boards***

**Section 5** amends s. 445.007(1), F.S., to permit regional workforce boards to conduct meetings either electronically or telephonically (which mirrors the proposed flexibility granted to WFI), subject to ch. 119, F.S., (public records) and ch. 286, F.S., (public business) and to limit the term of the board chair to serve no more than two terms, with a limit of two years per term.

Section (2) is amended to clarify that the military representative appointed to the local board must be ex-officio. The AWI reports that Department of Defense rules do not allow military members to vote as representatives of the military on any public or private board.

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updating the skills of their employees and assisting incumbent workers in improving performance by acquiring additional education and training. High Skills/High Wages is described in s. 445.004(1)(c), F.S., as the state’s strategy for aligning education and training programs with high-paying, high-demand occupations that advance careers, build a more skilled workforce and enhance Florida’s efforts to attract and expand businesses.

<sup>7</sup> The Florida Senate, Select Committee on Workforce Innovation, *The Workforce Innovation Act of 2000: Final Report*, (March 2003).

<sup>8</sup> U.S. Department of Labor, Employment Training Administration. *Welfare to Work Highlights*. 8 March 2005. <http://www.doleta.gov/wtw/>.

<sup>9</sup> 42 U.S.C. ss. 12501, et. seq.

Sections (6), (7), (8), and (9), are deleted to parallel similar streamlining changes made in this committee substitute to the AWI's duties and responsibilities. For example, the requirement that regional workforce boards create First Jobs/ First Wages, Better Jobs/Better Wages and High Skills/High Wages committees, as has been similarly required of WFI, is deleted to reflect the Senate Select Committee on Workforce Innovation's intention that the identically named statewide councils end in 2002.

Subsection (11) is amended and renumbered as (8) to authorize the regional board to "promote appropriate activities, incentives, and awards for performance by units of Florida's workforce system." However, related expenditures remain subject to applicable federal regulations for such federal funds.

Finally, this section removes language referencing the Work and Gain Economic Self-Sufficiency (WAGES) program<sup>10</sup> and any language signifying the transition from that program to the current structure.

**Section 6** amends s. 445.009, F.S., to remove references to the Florida Department of Labor and Employment Security and the requirement that the Office of Program Policy Analysis and Government Accountability (OPPAGA) report to the Legislature by December 31, 2002, on the delivery of employment services by the AWI.

Section 445.009(8), F.S., is amended to require WFI to develop a system to encourage the leveraging of appropriated resources for the workforce system and report on such efforts in its annual report. This provision replaced a requirement that WFI create a performance-based measure that, according to AWI representatives, was an inefficient data collection and review process.

**Section 7** amends s. 445.020, F.S., to authorize the Teen Parent and Pregnancy Prevention Diversion Program to assist teens in completing employment programs. Currently, the purpose of this program is to assist pregnant teens and teen parents in completing educational programs.

**Section 8** amends s. 445.020, F.S., to require the TANF state plan, rather than the Department of Children and Family Services rules, to address whether financial criteria, pursuant to federal regulations, should be used to determine financial need for workforce diversion programs.

**Section 9** amends s. 427.012, F.S., to replace an obsolete reference to the Department of Labor and Employment Security.

**Section 10** repeals the following sections of law:

- Section 445.005, F.S., which created the First Jobs/First Wages, Better Jobs/Better Wages, and High Skills/High Wages Councils of Workforce Florida, Inc. This is consistent with Section 3 of this committee substitute, which deleted references to these
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- programs and granted WFI increased program flexibility to develop a workforce strategy for the state.
- Sections 445.012, 445.0121, 445.0122, 445.0123, 445.0124, and 445.0125, F.S., which relate to the Careers for Florida's Future Incentive Grant Program, created in 2000. This program has never been funded.
  - Section 445.013, F.S., which established challenge grants in support of Welfare to Work Initiatives. Federal funding of this program ceased in 2004.
  - Sections 446.22, 446.23, 446.24, 446.25, 446.26, and 446.27, F.S., which relates to the "Florida Youth-at-Risk 2000 Pilot Program." This program has never been funded by the Legislature.

**Section 11** provides an effective date of July 1, 2005.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

AWI officials report that the objective of the amendments to s. 445.007(11), F.S., is to be able to provide tokens of appreciation for meritorious service and achievement. A variation of the

provisions in s. 110.1245, F.S., would also achieve those objectives without creating the potential that the chosen incentives are used as surrogates for additional compensation by officers or employees.

The bill also seeks an exemption from ch. 287, F.S., relating to purchasing by regional workforce boards. There are numerous exemptions to the procurement statutes as they relate to covered products or services.<sup>11</sup> There are fewer as they relate to governmental entities.<sup>12</sup> As drafted, the exemption would exclude the regional boards from adhering to any code of procurement practices. Such an across-the-board exemption would exclude regional board contracts from the following provisions of ch. 287, F.S.:

- Contingency statement on annual appropriations;
- Certification of minority businesses;
- Surcharge on users of state term contracts;
- Public entity criminal conviction purchasing disqualification; and
- Purchase of insurance and private attorney services.

Since one of the purposes of procurement statutes is the elimination of favoritism and lessening the opportunities for unethical and illegal behavior, the consequences of the void that is created by this section is reported.<sup>13</sup>

AWI officials also report their desire to develop alternative travel and per diem provisions that would allow reimbursement of meetings for only minimal expenses. They report that the current s. 112.061, F.S., on the subject can lead to unnecessary overnight stays when the meeting can easily be encapsulated in an eight-hour, single day time frame. However, the exemption method chosen in SB 1650 may yield a result that the regional workforce board has no travel policy and its reimbursements practices may fall either well below or well above the current statutory limits.

AWI officials also report their desire to be exempted from the provisions of the Administrative Procedures Act, ch. 120, F.S., and cite the creation of the non-profit corporation as proof. This is factually incorrect. Chapter 120, F.S., applies to governmental agencies and entities as provided in ss. 120.52(1), F.S. Exemptions not contained in that subsection are otherwise listed in ss. (15) as they functionally relate to the definition of a rule. As with the previous requests for exemptions from chs. 112, and 287, F.S., there is no requirement that the boards develop any published code of administrative practices.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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<sup>11</sup> Section 287.057, F.S.

<sup>12</sup> Section 287.012, F.S.

<sup>13</sup> Section 287.001, F.S.



## **VIII. Summary of Amendments:**

None.

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