

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations

**BILL:** CS/CS/SB 1398

**INTRODUCER:** Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations; Commerce and Tourism Committee; and Senator Gardiner and others

**SUBJECT:** Regional Workforce Boards

**DATE:** February 29, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	<b>Fav/CS</b>
2.	Martin	Meyer, R.	BTA	<b>Fav/CS</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 1398 amends statutes related to Florida’s workforce system, and includes measures designed to increase the accountability of the workforce system.

Specifically the CS:

- Limits the total membership of each local regional workforce board to the minimum membership required under federal law. However, upon approval by the Governor the local elected official may appoint additional members. Additionally, if a public education or training provider is on the board, both a representative of a private non-profit provider and a representative of a private for-profit provider must be appointed to the board;
- Requires each member and the executive director or person responsible for the operational and administrative functions of a regional workforce board to file a disclosure of financial interest pursuant to s. 112.3145, F.S., if they are not already required to file a financial disclosure pursuant to s. 8, art. II, of the State Constitution, or s. 112.3144, F.S.;
- Provides authority for the Governor to remove any member of a regional workforce board or the executive director or person responsible for the operational and administrative functions of a regional workforce board for cause;

- Requires the regional workforce board to develop an annual budget for the purpose of carrying out its duties that must be approved by the local elected official and submitted to Workforce Florida, Inc., within 2 weeks of approval;
- Requires Workforce Florida, Inc., to evaluate the development of a single, statewide workforce-system brand for Florida and submit a report to the Governor by a date certain;
- Revives from expiration the provision which prohibits the regional workforce boards from utilizing state or federal funds for meals, food, beverages, entertainment, or recreational activities;
- Revives from expiration the provision which requires that any contract between a regional workforce board and a member of the board, or a contract between a board and a relative of a member or employee of the board, has to be approved by a two-thirds vote of the board;
- Requires the regional workforce board's procurement and expenditure procedures to comply with the policies of the Department of Economic Opportunity and Workforce Florida, Inc.;
- Provides that making smaller, multiple payments for a single purchase with the intent to avoid procurement and expenditure procedures is grounds for removal for cause;
- Requires at least 50 percent of the Title I funds for Adults and Dislocated Workers to be expended on Individual Training Accounts, including tuition, books, and fees of training providers and other related training services;
- Requires regional workforce boards to provide the greatest possible choice of training providers, and prohibits the boards from limiting choice due to costs, location, or historical training arrangements; and
- Saves from repeal a provision that provides that state workforce services participants in an adult or youth work experience activity are considered employees of the state for the purpose of workers' compensation coverage.

This CS amends ss. 445.003, 445.007, and 445.009, F.S.

## II. Present Situation:

### Florida's Workforce System

The Workforce Innovation Act of 2000 was passed in an effort to better connect the state's economic development strategies with its workforce development system.<sup>1</sup> The act established a three-tier system for the delivery of workforce services.<sup>2</sup>

The Department of Economic Opportunity (DEO) is Florida's lead state workforce agency.<sup>3</sup> However, Workforce Florida, Inc., (WFI) sets the state's workforce development policy and guidance.<sup>4</sup> Workforce services in Florida are provided by 24 regional workforce boards (RWB or board) who deliver services through nearly 90 One-Stop Career Centers around the state.

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<sup>1</sup> Chapter 2000-165, L.O.F. See staff analysis for SB 2050 and HB 1135 (2000).

<sup>2</sup> See ch. 445., F.S.

<sup>3</sup> Primarily through the Division of Workforce Services.

<sup>4</sup> WFI is Florida's state workforce investment board. See 29 U.S.C. 2821.

WFI is a nonprofit corporation that provides state-level policy, planning, performance evaluation, and oversight to DEO and the 24 regional workforce boards.<sup>5</sup> DEO manages the performance-based contract with WFI for the statewide administration and coordination of workforce services. DEO assists WFI in developing and disseminating policies, providing technical assistance, and monitoring a variety of workforce programs.

DEO is the state agency which receives the federal funds for employment-related programs, such as Welfare to Work, Temporary Assistance to Needy Families, and the Workforce Investment Act, and distributes these funds to the state's 24 RWBs. The workforce services programs are over 96 percent federally funded.<sup>6</sup> DEO is responsible for financial and performance reports which are provided to the U.S. Department of Labor and other federal organizations.

Each RWB develops a local plan for using the funds provided by DEO and oversees workforce development activities in the region. The boards also select contractors to operate local One-Stop Career Centers. The One-Stop Career Centers deliver employment services to job seekers and employers. Services include job placement and recruitment assistance as well as funding for skills training.<sup>7</sup>

Each RWB operates under a charter approved by WFI; they also enter into performance based memorandums of understanding for program support services provided by DEO.<sup>8</sup> DEO monitors the RWB and One-Stop Career Center activities to ensure that they comply with federal and state requirements. DEO provides One-Stop Program Support services (workforce program information, guidance, training, and technical assistance) to the RWBs.

### **Regional Workforce Boards**

The service areas of the RWBs align with community college system.<sup>9</sup> Approval of each RWB's service plan and budget is done by the local government or local coalition (for boards whose service areas serve multiple counties).<sup>10</sup> Each board is allowed to implement the policies based upon the economic development, business, and workforce needs of its particular region of the state.<sup>11</sup>

The county or city governing bodies, within an RWB's designated service area, enter into an inter-local agreement to establish the local parameters under which the RWB will operate. This includes the manner in which board members are appointed. Once board appointments are made, board members select a chair. The board chair may serve for a term of not more than 2 years and cannot serve more than two terms. Board membership must comply with the requirements outlined in federal workforce law.<sup>12</sup> Specifically, the Governor of the state, in partnership with the state board, shall establish criteria for use by chief elected officials in the local areas for

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<sup>5</sup> Section 445.004, F.S.

<sup>6</sup> Data from the Sunset Review Report for the Agency for Workforce Innovation (June 30, 2010), on file with the Commerce and Tourism Committee.

<sup>7</sup> Sections 445.007 and 445.009, F.S.

<sup>8</sup> Section 445.009(3), F.S.

<sup>9</sup> See also 29 U.S.C. 2831.

<sup>10</sup> 29 U.S.C. s. 2832(3). Additionally, each local plan is required to be submitted to the Governor for approval. 29 U.S.C. 2833.

<sup>11</sup> See s. 445.003, F.S.

<sup>12</sup> 29 U.S.C. s. 2832.

appointment of members of the local boards. Such criteria shall require, at a minimum, that the membership of each local board shall include the following:

- Representatives of business in the local area, who:
  - Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;
  - Represent businesses with employment opportunities that reflect the employment opportunities of the local area; and
  - Are appointed from among individuals nominated by local business organizations and business trade associations;
- Representatives of local educational entities, including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and postsecondary educational institutions (including representatives of community colleges, where such entities exist), selected from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities;
- Representatives of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations, or (for a local area in which no employees are represented by such organizations), other representatives of employees;
- Representatives of community-based organizations (including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present);
- Representatives of economic development agencies, including private sector economic development entities;
- Representatives of each of the one-stop partners; and
- Other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

The appointment of an executive director to staff a regional workforce board is made by the board members. Additionally, the chairman of the regional workforce board is elected by its members and is not subject to Senate confirmation.

Federal law defines the “chief elected official” as the chief elected executive officer of a unit of general local government in a local area.<sup>13</sup> In a case in which a local area includes more than one unit of general local government, an agreement must be reached specifying each chief elected official’s role. In general, the chief elected official in a local or regional area shall serve as the local grant recipient for, and shall be liable for any misuse of, the grant funds allocated to the local or regional area.<sup>14</sup>

### **Contract Approval and Spending Prohibitions**

Section 445.007(11), F.S., expired July 1, 2011, and had required that if a board enters into a contract with an organization or individual represented on the board of directors, (1) the contract must be approved by a two-thirds vote of the board, a quorum having been established, and (2)

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<sup>13</sup> 29 U.S.C. s. 2801(6).

<sup>14</sup> 29 U.S.C. s. 2832(3).

the board member who could benefit financially from the transaction must abstain from voting on the contract. In August 2011, WFI approved a policy prohibiting contracts between a board and a member of the board that has a relationship with the vendor, with certain exceptions.<sup>15</sup>

Section 445.007(10), F.S., expired July 1, 2011, and had prohibited state and federal funds from being used to pay for meals, food, or beverages for staff or board members of the RWBs, DEO, or WFI. However, preapproved, reasonable, and necessary per diem allowances and travel expenses were allowed for reimbursement as established in s. 112.061, F.S. Further, the section prohibited the use of state or federal funds for entertainment costs or recreational activities for RWB members and staff.

Additionally, proviso language in the FY 2011-12 General Appropriations Act related to funding for boards set certain requirements:<sup>16</sup>

- Any expenditures by boards for “outreach,” “advertising,” or “public relations” must have a direct program benefit and shall be spent in strict accordance with all applicable federal regulations and guidance. Costs of promotional items, including but not limited to capes, blankets, clothing, and memorabilia, including models, gifts, and souvenirs, which exceed \$5,000 for outreach purposes must be approved prior to purchase by DEO.
- No funds may be used directly or indirectly to pay for meals, food, or beverages for board members, staff, or employees of regional workforce boards, WFI, or DEO except as expressly authorized by state law. Preapproved, reasonable, and necessary per diem allowances and travel expenses may be reimbursed.<sup>17</sup>
- No funds may be used for entertainment costs and recreational activities for board members and employees as these terms are defined in 2 C.F.R. part 230.<sup>18</sup>
- No funds may be used for any contract exceeding \$25,000 between a board and a member of that board that has any relationship with the contracting vendor, unless the contract has been reviewed by AWI and WFI.<sup>19</sup>

### **U.S. Department of Labor Investigation**

Currently, the U.S. Department of Labor is conducting an on-going statewide investigation for mispending funds and fraud. The following boards have received subpoenas:

- Region 8 – First Coast Workforce Development, Inc. – Baker, Clay, Duval, Nassau, Putnam, St. Johns counties
- Region 11 – Center for Business Excellence – Flagler/Volusia counties
- Region 12 – Workforce Central Florida – Orange, Osceola, Seminole, Lake and Sumter counties
- Region 14 – Worknet Pinellas – Pinellas County
- Region 15 – Tampa Bay Workforce Alliance – Hillsborough County
- Region 17 – Polk County Workforce Development Board – Polk County
- Region 19 – Heartland Workforce – DeSoto, Hardee, Highlands counties

<sup>15</sup> See materials from WFI Board of Directors meeting on August 18, 2011, available at <http://www.workforceflorida.com/Calendar/calendar2011.php> (last visited 1/20/2012).

<sup>16</sup> Line 2006, s. 6, ch. 2011-69, L.O.F.

<sup>17</sup> Previously included in FY 2010-11 General Appropriations Act.

<sup>18</sup> Id.

<sup>19</sup> Id.

- Region 21 – Workforce Alliance – Palm Beach County
- Region 22 – Workforce One – Broward County
- Region 23 – South Florida Workforce Investment Board – Miami-Dade/Monroe counties

### **Recent Spending Disallowed**

As part of the state monitoring requirements, DEO also investigates complaints of misspending by RWBs. In recent years, spending was disallowed by the former Agency for Workforce Innovation (AWI) (calendar years 2010-2011), including:

- Tampa Bay Workforce Alliance –
  - AWI disallowed \$147,128.18 for food purchases and expenditures for activities, meetings, sponsorships, and the purchase of promotional materials by the board.
- Workforce Central Florida –
  - AWI disallowed a total of \$38,875.60 that the board could have saved by reimbursing employees instead of purchasing 20 cars for \$258,800.
  - AWI and the U.S. Department of Justice disallowed \$739,605 improperly spent on a legal settlement with SunTrust over a broken lease agreement.
- Polk County Workforce Development Board (Polk Works) –
  - AWI disallowed \$155,559 for revocations done to local One-Stop Career Centers because the board did not correctly seek bids for the upgrades and repairs.

Additionally, in the spring of 2010, AWI conducted a survey of boards, at the request of Senator Fasano, to determine the value of contracts and individual training accounts entered into between the board and board members or their relatives. The survey found:

- 574 related party contracts, about \$55.4 million (60 percent with public organizations (like community colleges); 22 percent with private non-profits; and 18 percent with private for-profits); and
- Compliance with state law about related party contract approval was inconsistent.

Funds disallowed and found to be misspent must be repaid; because of the federal law, if the regional workforce board cannot repay the fund, the responsibility may fall to the local governments.<sup>20</sup>

In September 2011, Governor Rick Scott placed the Workforce Central Florida RWB on a two week probationary period, after which if certain steps had not been taken the board would have been subject to decertification.<sup>21</sup> The required steps included that certain senior executive staff be relieved of their duties, including the CEO and president of the board, and that the then current board of directors be removed and replaced with a new board. The Governor's letter to the chair of the Central Florida Area Workforce Investment Consortium stated that the RWB had nearly \$5.3 million in reviewed expenditures that had been found not to be in compliance with federal fiscal requirements.<sup>22</sup>

<sup>20</sup> See discussion of Regional Workforce Boards above.

<sup>21</sup> Federal law vests such authority with the Governor.

<sup>22</sup> Letter from Governor Rick Scott to Mayor Teresa Jacobs, Mayor of Orange County, dated September 21, 2011, on file with the Senate Commerce and Tourism Committee.

**Financial Disclosures**

Section 112.3145(2), F.S., requires the following:

- Each state or local officer and specified state employee to file a statement of financial interests no later than July 1 of each year;
- Each state or local officer and specified state employee must file a final statement of financial interests within 60 days after leaving his or her public position. The disclosure covers the period between January 1 of the year in which the person leaves and the last day of office or employment, unless within the 60-day period the person takes another public position requiring financial disclosure; and
- Each state or local officer who is appointed and each specified state employee who is employed must file a statement of financial interests within 30 days from the date of appointment or, in the case of a specified state employee, from the date on which the employment begins.

A 2008 opinion by the Commission on Ethics stated that “[a]ppointed and ex officio members of the board of directors of a regional workforce development board are not subject to the financial disclosure provisions in Section 112.3145, Florida Statutes.”<sup>23</sup>

**Workers’ Compensation Coverage**

The Welfare Transition Program, the Food Stamp Employment and Training Program, and the Workforce Investment Act Program provide work experience for adult and youth participants.

In the Welfare Transition Program, participants engage in work experience as a condition for their continued receipt of cash assistance under the federal Temporary Assistance for Needy Families (TANF) Program. In the Food Stamp Employment and Training Program, certain participants are required to engage in work experience as a condition for their continued receipt of food stamp benefits. In the Workforce Investment Act Program, work experience is an activity that is primarily used for youth who have had limited exposure to the world of work.

Federal law requires that participants in a federally funded work experience activity must be covered either under the state workers’ compensation law or comparable insurance coverage must be secured. The cost for any workers’ compensation coverage provided under this proposal would be paid for by the applicable federal grant program. The overall cost would be lower if all participants were covered under the state’s plan rather than each regional workforce board and each individual service provider having to negotiate separate insurance coverage for their participants.

Section 445.009(11), F.S., allows a participant in an adult or youth work experience activity to be deemed an employee of the state for purposes of workers’ compensation coverage.<sup>24</sup> This subsection of statute is set to expire on June 30, 2012.

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<sup>23</sup> Florida Commission on Ethics, “Financial Disclosure: Applicability of Disclosure Law to Incorporated Workforce Development Board,” CEO 08-3 (January 30, 2008), on file with the Senate Commerce and Tourism Committee.

<sup>24</sup> Section 47, ch. 2011-147, L.O.F., amended this provision in order to implement Specific Appropriation 2008 of the 2011-2012 General Appropriations Act.

### III. Effect of Proposed Changes:

**Section 1** provides this act may be cited as the Regional Workforce Boards Accountability Act.

**Section 2** amends s. 445.003, F.S., to require at least 50 percent of the Title I funds for Adults and Dislocated Workers to be expended on Individual Training Accounts. The CS specifies that qualified expenditures include tuition, books, and fees of training providers and other training services aligned with training prescribed and authorized by the Workforce Investment Act of 1998. The CS removes the ability for the RWB to expend the funds on other programs developed by the board in compliance with the policies of WFI.

**Section 3** amends s. 445.007, F.S., related to regional workforce boards.

#### Board Membership

Related to the board members, the CS:

- Limits the total membership of each local RWB to the minimum membership required under federal law; however:
  - Upon approval by the Governor the local elected official may appoint additional members; and
  - If a public education or training provider serves on the board, then both a private non-profit provider and a private for-profit provider must serve on the board;
- Requires each member and the executive director or person responsible for the operational and administrative functions of a RWB to file a disclosure of financial interest pursuant to s. 112.3145, F.S., if they are not already required to file a financial disclosure pursuant to s. 8, art. II, of the State Constitution, or s. 112.3144, F.S.;
- Codifies the federal law which sets the requirements for board chairs; and
- Provides authority for the Governor to remove any member or the executive director or person responsible for the operational and administrative functions of a RWB for cause, including engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, or official incompetence and irresponsibility.

#### Budget and Compliance

Each RWB is required to develop an annual budget for the purpose of carrying out its duties that must be approved by the local elected official and submitted to WFI within two weeks of approval. Additionally, DEO, under the direction of WFI, is required to assign staff to meet with each RWB annually to review the board's performance and to certify that the board is in compliance with applicable state and federal law.<sup>25</sup>

#### Contracts

Related to contracts by the board, the CS:

- Revives from repeal the provision which prohibits the regional workforce boards from utilizing state or federal funds for meals, food, beverages, entertainment, or recreational activities;
- Revives from expiration the provision which deals with contracts between a regional workforce board and a member of the board, or a contract between a board and a relative

<sup>25</sup> Under current law, WFI is required to assign staff for these purposes, and does not specify that the staff may be from DEO.



of a member or employee of the board. Such contracts totaling \$25,000 or greater must be approved by WFI before execution, submitted to DEO for review, and approved by a two-thirds vote of the board. Contracts under \$25,000 must simply be reported to DEO and WFI within 30 days of approval; and

- Requires the RWB's procurement and expenditure procedures to comply with the policies of DEO and WFI; and
- Provides that making smaller, multiple payments for a single purchase with the intent to avoid procurement and expenditure procedures is grounds for removal for cause.

### **Training**

Further, the CS requires the RWBs to provide the greatest possible choice of training providers, and prohibits the boards from limiting choice due to costs, location, or historical training arrangements. However, the boards are permitted to restrict the amount of training resources available to any one client, and may base such restrictions on the cost of training in the client's chosen occupational area.

**Section 4** amends s. 445.009, F.S., to save from repeal a provision that provides that state workforce services participants in an adult or youth work experience activity are considered employees of the state for the purpose of workers' compensation coverage.

**Section 5** requires WFI to evaluate the development of a single, statewide workforce-system brand for Florida and submit a report to the Governor by November 1, 2012.

**Section 6** provides an effective date of July 1, 2012.

## **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

## **V. Fiscal Impact Statement:**

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

None.

**B. Private Sector Impact:**

Private training providers who previously were not participants due to the costs of their training services may have more opportunities to provide training to individuals served by RWBs. However, these changes may result in fewer individuals receiving services.

**C. Government Sector Impact:**

The CS continues the state's current policy to provide that state workforce services participants in an adult or youth work experience activity are employees of the state for workers compensation coverage. This provision allows existing federal funds to be efficiently utilized and reduces the overall cost of workers' compensation coverage to the state.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations on February 28, 2012:**

The committee substitute does the following:

- Provides that other training services aligned with training may qualify as Individual Training Account Expenditures;
- Removes the requirement that the chair and executive director of the RWB serve at the pleasure of the Governor;
- Permits the Governor to remove any board member or the executive director for cause, which includes fraud, neglect of duty, or lack of performance;
- Requires the RWB's procurement and expenditure procedures to comply with the policies of DEO and WFI;
- Provides that making smaller, multiple payments for a single purchase with the intent to avoid procurement and expenditure procedures is grounds for removal for cause;
- Removes the provision requiring that contracts totaling \$2,500 or greater to be approved by a 2/3 vote of the board; and
- Changes the due date for the report by WFI on establishing a statewide workforce brand from August to November 2012.

**CS by Commerce and Tourism on January 26, 2012:**

The committee substitute does the following:

- Potentially increases the number of individuals serving on a board by requiring that if a public education or training provider is on the board, both a representative of a private non-profit provider and a representative of a private for-profit provider must be appointed to the board;
- Removes the requirement that the chair and the executive director or person responsible for the operational and administrative functions of a regional workforce board shall serve at the approval of the Governor;
- Requires contracts between a regional workforce board and a member of the board, or a contract between a board and a relative of a member or employee of the board, be approved by a two-thirds vote of the board with a quorum present (current law requires approval by two-thirds of the entire board);
- Requires contracts totaling \$2,500 or greater to be approved by a majority vote of the regional workforce board;
- Requires at least 50 percent of the Title I funds for Adults and Dislocated Workers to be expended on Individual Training Accounts, including tuition, books, and fees of training providers; and
- Requires regional workforce boards to provide the greatest possible choice of training providers, and prohibits the boards from limiting choice due to costs, location, or historical training arrangements.

B. Amendments:

None.