



STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
WORKFORCE SERVICES DIVISION
220 French Landing Drive
Nashville, TN 37243-1002
(615) 741-1031

WORKFORCE SERVICES POLICY #20, Chg. 1

Subject: **WORKFORCE INNOVATION AND OPPORTUNITY ACT
MEMBERSHIP COMPOSITION OF LOCAL WORKFORCE
DEVELOPMENT BOARDS**

Topic: This policy provides guidance on the appointment of Local Workforce Development Boards and outlines board membership requirements, board standing committees, board conflict of interest, roles and responsibilities.

Scope: Tennessee Department of Labor and Workforce Development (TDLWD), State Workforce Development Board (State Board), Local Workforce Development Boards (LWDBs), Local Workforce Development Areas (LWDAs), other Workforce System Sub-Recipients (Sub-Recipients), Workforce System Partners (Partners), Workforce System Operators (Operators), Chief Elected Official (CEO), Lead Chief Elected Official (LCEO), American Job Centers (Career Centers).

References: Workforce Innovation and Opportunity Act (WIOA), NPRM 679.130, 679.410 (Pub. L. 113--128) Title I, Section 102 and 107, Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; Tenn. Code Ann. Section 4-3-1402; Section 4-3-1404; Section 4-3-1405; and Section 8-35-221, Tennessee Sunshine Law.

Definitions:

- A. Chief Elected Official** is the chief elected executive officer of a unit of general local government in a local area, which is the mayor, county commission chair, or Native American tribal governor or president.
- B. Lead Chief Elected Official** is the individual selected by the participating CEOs who may act on behalf of the other CEOs in a given LWDA or in an investigation, review, proceeding, or hearing under this policy.

Background:

The Workforce Innovation and Opportunity Act (WIOA) requires the Governor, in partnership with the State Board, to establish criteria for use by the Chief Elected Official (CEO) in the local areas to appoint members to the local workforce development board (LWDB). WIOA Section 107(c) directs the CEO in a local area to appoint the members of the local board, in accordance with established state criteria. In a case in which a local area includes more than one unit of general local government, the CEOs of such units may execute an agreement (CEO Agreement) that specifies the respective roles of the individual CEOs in the appointment of the members of the local board and in carrying out other responsibilities assigned to such officials under WIOA. If, after a reasonable effort, the CEOs are unable to reach an agreement, the Governor may appoint the members of the local board from individuals nominated or recommended. The CEO(s) of a local workforce development area (local area) shall appoint members to the local board from the nominees received from those entities and organizations specified in this document. These members shall be appointed for a specified term.

Local Board Membership

All board members shall be:

- A. In positions of optimum policy-making authority within each of the entities they are representing.
- B. Established no later than July 1, 2015. (Training and Employment Guidance Letter 27-14 extends this deadline to September 30, 2015).
- C. Appointed from among nominations received from such organizations and entities as the proposed member would represent.
- D. Reflective, to the greatest extent possible, of the proportionate demographics of the local area.

Membership Criteria

A. Representatives of Business

- (1) A minimum of 51% of the membership shall be representatives of business, in the local area, who are owners of businesses, chief executive or operating officers of businesses, and other business executives or employers with optimum policy-making or hiring authority, and
- (2) Represent businesses, including small business (at minimum 2 members) or organizations representing businesses with employment opportunities, at a minimum, that include:
 - (a) High-quality, work-relevant training and development in high-demand industry sectors or occupations in the local area.
- (3) These representatives are to be appointed from among individuals nominated by local business organizations and business trade associations.

B. Labor Organization Representatives

- (1) A minimum of 20% of the membership shall include representatives of the workforce (workers) in the local area, who:
 - (a) Shall include representatives (plural) of labor organizations nominated by local labor federations in local areas where employees are represented by

labor organizations. If no employee is represented by a labor organization in the local area, other representatives of employees.

- (b) Shall include a representative from a joint labor-management apprenticeship program in the local area who shall be a labor organization representative or training director. If no such program exists, a representative of a Registered Apprenticeship program in the local area, if such a program exists.
- (c) May include representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment, including organizations that serve veterans or that provide or support competitive integrated employment for individuals with disabilities; and
- (d) May include (optional) representatives of organizations with demonstrated experience and expertise in addressing the employment, training or education needs of WIOA eligible youth, including organizations that serve out-of-school youth.

C. Representatives of Education and Training

- (1) Each local board shall include representatives of entities administering education and training activities in the local area, who:
 - (a) Shall include a representative of eligible providers administering adult education and literacy activities under WIOA Title II.
 - (b) Shall include a representative of institutions of higher education providing workforce activities (including community colleges).
 - (c) May include (optional) representatives of local educational agencies and community-based organizations with demonstrated experience and expertise in addressing the education or training needs of individuals with barriers to employment.

D. Representatives of Government, Economic and Community Development

- (1) Each board shall include members of governmental and economic and community development entities serving the local area, who:
 - (a) Shall include a representative of economic and community development entities.
 - (b) Shall include an appropriate representative from the state employment service office under the Wagner-Peyser Act serving the local area.
 - (c) Shall include an appropriate representative of the programs carried out under Title I of the Rehabilitation Act of 1973 (other than section 112 or part C) serving the local area.
 - (d) May include (optional) representatives of agencies or entities administering programs serving the local area relating to transportation, housing and public assistance.
 - (e) May include (optional) representatives of philanthropic organizations serving the local area.

E. Discretionary Representatives

- (1) Each local board may include such other individuals as the CEO may determine to be appropriate.

Standing Committees

Local Boards may designate and direct the activities of standing committees to provide information and to assist the local board in carrying out activities. Standing committees shall be chaired by a member for the local board. At a minimum, the local board may designate each of the following:

- A. A standing committee to provide information and assist with operational and other issues relating to the one-stop delivery system, which may include as members representatives of the one-stop partners.
- B. A standing committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth, which shall include community-based organizations with a demonstrated record of success in serving eligible youth.
- C. A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to compliance with section 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) regarding providing programmatic and physical access to the services, programs, and activities of the one-stop delivery system, as well as appropriate training for staff on providing supports for or accommodations to, and finding employment opportunities for individuals with disabilities.

Conflict of Interest

All LWDB members, as well as anyone on a standing committee, shall adhere to the following in regard to conflict of interest. (WIOA Sec. 102 (b)(2)(E)(i) and Sec. 107 (h)(1)(2)).

- A. A LWDB member may not vote on any matter that would provide direct financial benefit to the member or the member's immediate family, or on matters of the provision of services by the member or the entity the member represents.
- B. A LWDB member shall avoid even the appearance of a conflict of interest. Prior to taking office, LWDB members must provide to the Local Board Chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations that have received, currently receive, or are likely to receive contracts or funding from the LWDB. Such declarations shall be updated annually or within 30 days to reflect any changes in such business interests or relationships. The LWDB shall appoint an individual to timely review the disclosure information and advise the Local Board Chair and appropriate members of potential conflicts.
- C. Prior to a discussion, vote, or decision on any matter before a LWDB, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization, or property that would be affected by any official LWDB action, the member shall disclose the nature and extent of the interest or relationship and shall abstain from discussion and voting on or in any other way participating in the decision on the matter. All abstentions shall be recorded in the minutes of the LWDB meeting and be maintained as part of the official record.
- D. It is the responsibility of the LWDB to monitor potential conflict of interest and bring it to the LWDB's attention in the event the member does not make a self-declaration.

- E. Where Local Boards serve as the one-stop operator, the State must use such criteria to assess and certify the one-stop center to avoid inherent conflicts of interest. (NPRM 679.130 and 679.410)
- F. LWDB members or their organizations may receive services as customers of a local workforce service provider.

Chief Elected Official Agreement. As noted in WIOA Sec. 107 (c)(1)(B)(i), NPRM § 679.560(a)(13), when a LWDA includes more than one unit of government, the CEOs of each unit shall execute a written agreement that specifies the liability of the individual CEO. The TDLWD, as the designated representative of the Governor, provides the following guidance on this agreement. (679.310(e))

A. Required Inclusions. CEOs must enter into an agreement with each other that, at a minimum, includes the following sections:

- (1) **Liability of Funds.** Acknowledge financial liability as noted in WIOA 107(d)(12)(B)(i)(I) and outline the process for determining each CEO's share of responsibility as required in 107(d)(12)(B)(i)(II)&(III). This determination could be based on allocation, population, expenditures, or other criteria determined by the CEOs; and,
- (2) **Grant Recipient and Signatory.** Acknowledge that the CEOs are the Grant Recipient for all local WIOA funds as outlined in WIOA 107(d)(12)(B)(i)(I). If the CEOs will serve as the Grant Recipient, they must outline the process they will use to sign contracts and enter into agreements related to the WIOA. This may be accomplished by designating signatory authority to an LCEO. If a LCEO is used in this capacity, CEOs must include the information outlined in the Recommend Inclusions section (Part B).
- (3) **Fiscal Agent Designation.** Describe the process for designating a local fiscal agent within the guidelines as addressed in this section of law - WIOA 107(d)(12)(B)(i).
- (4) **Local Board Budget Approval.** Describe the process for reviewing and approving the LWDB annual budget as required in WIOA 107(d)(12)(B)(i).
- (5) **Participating Chief Elected Officials.** The agreement must contain the name, representation, contact information, and signature of each CEO in the local area.
- (6) **Election of a New Chief Elected Official.** When a new CEO is elected within the LWDA, either participating as a signatory on the Agreement or as a participating CEO, the newly elected individual must submit to the LWDB a written statement acknowledging that he or she:
 - (a) Has read, understands, and will comply with the current CEO Agreement; and,

(b) Reserves the option to request negotiations to amend the CEO Agreement at any time during the official's tenure as a CEO.

(7) **Amendment or Change to the Chief Elected Official Agreement.** Outline the process that will be used for amendments or changes to the CEO Agreement. All amendments or changes must be maintained at the local Operator office and available for monitoring by the State Office.

B. Recommended Inclusions. In order to improve the coordination and functionality of the local workforce system, the TDLWD encourages the CEOs to also address the following items in their agreement.

(1) **Designation of a Lead Chief Elected Official.** Because CEOs are liable for all WIOA funds in the LWDA, and are required by the WIOA to approve or provide guidance on a number of LWDB activities, the State office encourages CEOs to select a Lead CEO who will act on behalf of the other CEOs. If a Lead CEO is appointed, the following information must be sent to the local Operator office and kept on file for review by the TDLWD.

- (a) Appointment process and term of the Lead CEO; and,
- (b) Designation of the Lead CEO to serve as the signatory for the CEOs; and,
- (c) An outlining of decisions that may be made by the Lead CEO on behalf of the CEOs; and
- (d) Name, title, and contact information for the appointed Lead CEO.

(2) **Local Board Member Representation.** Outline how CEOs will ensure LWDB representation is fair and equitable across the LWDA.

(3) **Communication.** Describe how the CEOs will communicate with each other regarding LWDB activities. Determine how many times a year the CEOs will meet and how often a joint meeting with the LWDB will be held. The TDLWD encourages CEOs to meet at least once a year just as CEOs, and once a year with the LWDB.

C. For Single County Local Areas. For local areas with only one county and one CEO, the CEO shall execute a written agreement that specifies the liability of the individual CEO. The TDLWD, as the designated representative of the Governor, provides the following guidance on this agreement. This agreement shall include items previously described in **A. (1)-(7) and B. (2)-(3)**.

Chief Elected Official and Local Board Partnership Agreement. In accordance with WIOA 107(b)(1) State Criteria, "The Governor, in partnership with the State board, shall establish criteria for use by chief elected officials in the local areas for appointment of members of the local boards...." To ensure the criteria established by the TDLWD are acknowledged by both the CEOs and the members of the LWDB, a partnership agreement is required. The TDLWD, as the designated representative of the Governor, provides the following guidance on this agreement.

A. Required Inclusions. The LWDB and CEOs must enter into a partnership agreement that, at a minimum, addresses the following sections:

(1) Local Board Membership. WIOA Section 107(b)(2) authorizes CEOs to appoint the members of the LWDB in accordance with the criteria established under WIOA Section 107(b). Authority to appoint members to the LWDB lies solely with the CEOs. See WS Policy 20.

(a) Terms. Outline the terms of LWDB member appointments term limitations and how the term appointments will be staggered to ensure only a portion of memberships expire in a given year.

(b) Nomination. The following will be needed for each nominee to the board.

(i) A signed appointment form, referenced in sub-section “c” below; and,

(ii) The nominee’s optimum policy making authority in the form of curriculum vitae, resume or work history supporting the qualifications of the nomination.

(c) Appointment. LWDB member appointments must be signed by the appointing CEO and submitted to the Administrative Entity. (See box “20” of the Workforce Development Board Nomination Form.)

(d) Change in Status. Acknowledgement that LWDB members who no longer hold the position or status that made them eligible Local Board members must resign or be removed by the CEOs immediately as representatives of that entity; i.e. no longer work in the private sector, or no longer with an education institution, etc.; and,

(e) Mid-Term Appointment. LWDB members replacing out-going members mid-term will serve the remainder of the out-going members’ terms; and,

(f) Vacancies. LWDB vacancies must be filled within a reasonable amount of time of the vacancy. The CEOs in a LWDA are authorized to make all reappointments of members. Reappointments must be made within a reasonable amount of time of the term expiration. Any action taken by a LWDB, with a vacancy or term expiration beyond the time period described in the LWDB by laws shall be void unless the LWDB has an approved waiver from the TDLWD prior to the LWDB meeting. Waivers are to be requested in writing to the Administrator of Workforce Services with an explanation of why a vacancy was not filled in the defined timeframe and a description of the process underway to fill the vacancy.

(g) Removal. LWDB members must be removed by the CEOs if any of the following occurs: documented violation of conflict of interest, failure to meet LWDB member representation requirements defined in the WIOA and this policy, or documented proof of fraud and/or abuse. LWDB members may be removed for other factors outlined in the LWDB bylaws. The bylaws must define the specific criteria that will be used to

establish just cause for such removal, establish the process that will be required to document proof, and list the steps regarding filing an appeal and arbitration.

(2) Relationship between Chief Elected Officials and the Local Workforce Development Board. Establish roles and responsibilities of the CEOs and the LWDB along with a description of what the partnership will consist of and specific responsibilities.

(a) Local Plan Requirements. The local workforce development plan will be developed in partnership between the CEOs and the LWDB.

(b) Budget and Approval. As referenced in WIOA Section 107 (d)(12)(A), describe how the LWDB will develop the LWDA budget and the process for obtaining the CEOs' approval.

(3) Authorized Signatures. The Partnership Agreement shall be signed by the current Chief Elected Officials that have been identified as participating in the Chief Elected Official Agreement or by the Lead Chief Elected Official, and by the LWDB Chair at the time of the signing.

(4) Amendments, Change, or Election. Any amendment or change to the Partnership Agreement, notice of an election of a new CEO, or notice of an election of a new LWDB Chair must be maintained at the LWDA Administrative Entity office and available for monitoring by the TDLWD. If a new CEO or Local Board Chair is elected within the LWDA, the newly elected individual must submit to the LWDB a written statement acknowledging that he or she:

(a) Has read, understands, and will comply with the current Partnership Agreement; and,

(b) Reserves the option to request negotiations to amend the Partnership Agreement at any time during the individual's tenure.

B. Recommended Inclusions.

(1) Communication. Establish requirements for informing the CEOs on a regular basis regarding activities, performance outcomes, and budgets; this should be done by holding at least one joint meeting annually between the CEOs and the LWDB.

Local Board Roles and Responsibilities. The LWDB shall have the following roles and responsibilities which may require agreement, approval, or partnership with the CEOs as described in the Agreement between the CEOs and the LWDB.

A. In Partnership with the Chief Elected Officials and the Local Workforce Development Board.

(1) Develop the Local Plan and Regional Plan

- (2) Conduct an analysis of the economic needs and skills for the area and the region
- (3) Identify partnerships with entities and other resources that can assist in fulfilling the needed services to support workforce development activities and leverage funds and activities,
- (4) Promote employer engagement that reflects existing and emerging employment opportunities, promote partnerships with employers to use the local workforce system to support economic growth, develop and implement proven strategies that meet the employment and skill needs of workers that the employers need
- (5) Work with representatives of education to develop and implement career pathways for all participants, including those with barriers, to lead to employment in demand occupations
- (6) Identify proven and promising practices to meet the needs of employers and participants, including participants with barriers
- (7) Conduct oversight of the one-stop delivery system
- (8) Develop strategies to utilize technology to maximize accessibility and effectiveness for the local workforce system for employers, workers and all job seekers, including resources for individuals with barriers
- (9) Negotiate local performance measures
- (10) Designate or certify one-stop operators
- (11) Selection of Operators and Providers
 - a. One-Stop Operators
 - b. Youth Providers
 - c. Identification of Eligible Training Providers
 - d. Identification of Eligible Providers of Career Services
 - e. Identification of a sufficient number of providers for services to individuals with disabilities and adults in need of adult education and literacy activities, in order to allow consumer choice
- (12) Coordination with Education Providers
- (13) Budget and Administrative
- (14) Accessibility for Individuals with Disabilities

B. Approval Required by the Chief Elected Officials. Develop a budget for carrying out the duties of the LWIB.

C. Other Local Workforce Development Board Roles and Responsibilities.

- (1) Conduct business in an open manner by making available to the public information about the activities of the LWDB. This includes the local plan before submission, membership, designation of the local Workforce System Operator, the awards of grants or contracts, and minutes of LWDB meetings.

By Laws. The LWDB must establish bylaws that include, at a minimum, the following:

- A. The nomination process used by the chief local elected official to elect the Local Board chair and members;

- B. The term limitations and how the term appointments will be staggered to ensure only a portion of membership expires in a given year;
- C. The process to notify the chief local elected official of a board member vacancy to ensure a prompt nominee;
- D. The proxy and alternative designee process that will be used when a board member is unable to attend a meeting and assigns a designee as per the requirements at NPRM §679.110(d)(4);
- E. The use of technology, such as phone and Web-based meetings, that will be used to promote board member participation; and
- F. The process to ensure board members actively participate in convening the workforce development system's stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities.
- G. A description of any other conditions governing appointment or membership on the State Board as deemed appropriate by the chief local elected official.
- H. Meetings will be held in accordance to Sunshine Law requirements
- I. Delegation of Local Workforce Development Board Duties. Any Board member may proxy to another Board member once per year.
- J. Committees. A list of standing committees including the descriptions for each and composition, and description of the process for having ad hoc committees.
- K. Conflict of Interest. Acknowledgement that LWDB members, as well as anyone on a standing committee, shall adhere to the following in regard to conflict of interest. (See WIOA Sec. 102 (b)(2)(E)(i) and Sec. 107 (h)(1)(2))
 - (1) A LWDB member may not vote on any matter that would provide direct financial benefit to the member or the member's immediate family, or on matters of the provision of services by the member or the entity the member represents.
 - (2) A LWDB member shall avoid even the appearance of a conflict of interest. Prior to taking office, LWDB members must provide to the Local Board Chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations that have received, currently receive, or are likely to receive contracts or funding from the LWDB. Such declarations shall be updated annually or within 30 days to reflect any changes in such business interests or relationships. The LWDB shall appoint an individual to timely review the disclosure information and advise the Local Board Chair and appropriate members of potential conflicts.
 - (3) Prior to a discussion, vote, or decision on any matter before a LWDB, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization, or property that would be affected by any official LWDB action, the member shall disclose the nature and extent of the interest or relationship and shall abstain from discussion and voting on or in any other way participating in the decision on the matter. All abstentions shall be recorded in the minutes of the LWDB meeting and be maintained as part of the official record.
 - (4) It is the responsibility of the LWDB to monitor any potential conflict of interest and bring it to the LWDB's attention in the event the member does not make a self-declaration.

- (5) A LWDB shall ensure that the LWDB, its members, or its employees do not directly control the daily activities of its workforce service providers.
- (6) LWDB members or their organizations may receive services as customers of a local workforce service provider.
- L. Compensation and Reimbursement of Expenses.** A description of the policy on compensating Local Board members and reimbursing expenses.
- M. Amendment.** A description of the process for amending the bylaws.
- N. Compliance with Law.**
 - (1) Acknowledgement stating, in execution of its business, the LWDB shall comply with all applicable Tennessee statutes and regulations including, but not limited to, the governing procurement standards or regulations for the LWDA, the Sunshine Law, and the State Travel Regulations.
 - (2) Acknowledgement stating, in execution of its business, the LWDB shall comply with the WIOA and regulations as well as policies and directives from the TDLWD and State Board.

Local Board Certification.

- A. Local Board Initial Certification.** The State Office will certify that the composition of each LWDB, including the appointment process, complies with the criteria outlined in Section 107 of WIOA and with this policy. The composition of each LWDB will be evaluated annually during the local planning cycle on:
 - (1) State membership criteria,
 - (2) Federal membership composition requirements,
 - (3) Authority of LWDB members having optimum policy making authority, and;
 - (4) Single audits being complete and up-to-date and reported to the TDLWD as required
- B. Local Workforce Development Board Recertification.** Recertification will be conducted by the TDLWD once every two years to ensure: the Local Workforce System activities support meeting local performance measures as outlined in the local grant agreement; and, the LWDB composition requirements have been maintained. If a LWDB meets all membership requirements, but fails to meet all performance measures, certification will be granted for only a one-year review period, instead of a two-year period. At the end of the one-year review period, the recertification process will be repeated with an updated review of performance and membership composition. If this review shows the LWDB is meeting all performance measures, the regular two-year certification will be continued.
- C. Decertification.**
 - (1) A LWDB is subject to decertification under the following conditions:
 - (a) Fails to meet all LWDB certification requirements; or,
 - (b) Fails to carry out required functions of the LWDB; or
 - (c) Fraud; or,
 - (d) Abuse.

- (2) If a LWDB has already been placed on a one-year review period due to a lack of meeting all performance measures, and fails to meet performance measures a second-year, the LWDB may be decertified.
- (3) A written notice and opportunity for comment from the TDLWD to the LWDB will be provided prior to decertification.
- (4) In accordance with WIOA Section 107(c)(3), if a LWDB is decertified, the TDLWD may require a new LWDB be appointed, for the LWDA, pursuant to a reorganization plan developed by State Office, in consultation with the CEOs.

Contact: For questions regarding the WIOA Title I program, please contact Susie Bourque, Director of Policy and Special Projects, at (615) 741-1031 or Susie.Bourque@tn.gov.

Effective Date: December 11, 2015

Duration: Indefinite.



Dan Holton
Assistant Administrator