



STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
WORKFORCE SERVICES DIVISION
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WORKFORCE SERVICES POLICY #6.0

Subject: WORKFORCE INVESTMENT ACT LOCAL GOVERNANCE

Topic: This policy provides guidance on the appointment of Local Workforce Investment Boards and outlines the roles, responsibilities and authority of the Chief Elected Officials and the Local Workforce Investment Boards in regard to the Local Workforce System. This policy also builds upon and enhances the Tennessee Department of Labor and Workforce Development's 5-Year Integrated Strategic Plan.

Scope: Tennessee Department of Labor and Workforce Development (TDLWD), State Workforce Development Board (State Board), Local Workforce Investment Boards (LWIB), Local Workforce Investment Areas (LWIA), other Workforce System Sub-Recipients (Sub-Recipients), Tennessee Career Center/One-Stop/American Job Center (Center), Workforce System Partners (Partners), Workforce System Operators (Operators), Chief Elected Official (CEO), Lead Chief Elected Official (Lead CEO); American Job Centers (Workforce System).

References: Public Law 105-220 Workforce Investment Act (WIA) of 1998, as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR Part 652 et al, 20 CFR Part 667.705; 29 CFR Part 95-97; Office of Management and Budget (OMB) cost principles codified in 2 CFR Part 220, Part 225 and Part 230; Tennessee Workforce Development Act of 1999, Tenn. Code Ann. Title 4, Chapter 3, Part 14, §4-3-1401 et. seq., WIA Section 117, 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 CEO who may act on behalf of the other CEOs in a given LWIA or in an investigation, review, proceeding, or hearing under this policy.

CHIEF ELECTED OFFICIAL AGREEMENT. As noted in 20 CFR Part 667.705, when a LWIA 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.

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 WIA 117(d)(3)(B)(i)(I) and outline the process for determining each CEOs' share of responsibility as required in 20 CFR Part 667.705. This determination could be based on allocation, population, expenditures, or other criteria determined by the CEOs; and,
- (2) **Grant Recipient and Signatory.** Acknowledgement that the CEOs are the Grant Recipient for all local WIA funds as outlined in WIA 117(d)(3)(B)(i) or have designated Grant Recipient authority to the LWIB. 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 WIA. This may be accomplished by designating signatory authority to a Lead CEO. If a Lead CEO 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 - WIA 117(d)(3)(B)(i).
- (4) **Local Board Budget Approval.** Describe the process for reviewing and approving the LWIB annual budget as required in WIA 117(d)(3)(A) and 20 CFR Part 661.305(a)(4).
- (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 LWIA, either participating as a signatory on the Agreement or as a participating CEO, the newly elected individual must submit to the LWIB 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 WIA funds in the LWIA, and are required by the WIA to approve or provide guidance on a number of LWIB 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) Designate the Lead CEO to serve as the signatory for the CEOs; and,
- (c) Outline decisions that may be made by the Lead CEO on behalf of the CEOs; and
- (d) Name, title, and contact information of the appointed Lead CEO.

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

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

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 WIA 117(b), the State Board shall establish criteria for the appointment of LWIB members by the CEOs. To ensure the criteria established by the TDLWD are acknowledged by both the CEOs and the members of the LWIB, 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 LWIB and CEOs must enter into a partnership agreement that, at a minimum, addresses the following sections:

(1) Local Board Membership. The WIA Section 117(c)(1) authorizes CEOs to appoint the members of the LWIB in accordance with the criteria established

under Section 117(b) of the WIA. Authority to appoint members to the LWIB lies solely with the CEOs.

- (a) **Terms.** Outline the terms of LWIB member appointments. It is recommended that the terms are staggered so that only a portion of membership expires in a given year.
- (b) **Nomination.** For each LWIB member position that requires a nomination, there are three types of board representatives that require uniquely-mandated nominations. These are representatives for business, labor and education. Only organizations, specifically involved with these three classifications, may nominate such respective board members. Nominations, for these three types of board representatives, require a Chief Executive Officer or head official, from one of the organizations pertaining respectively to business, labor, or education, to perform the following tasks:
 - (i) sign the appointment form, referenced in Section C below; and,
 - (ii) sign a letter identifying the individual being nominated by his or her organization. This letter must also acknowledge the nominee's optimum policy making authority and include documentation in the form of curriculum vitae, resume or work history supporting the qualifications of the nomination. And,
 - (iii) submit this signed letter to the appointing CEOs of the LWIA. Anyone making any other nominations or recommendations for other representative positions on the local board will need to follow the same procedure as listed above in (i) – (iii). Composition of LWIB members should reflect the demographic makeup for the Local Area. The most recent US Census is the best source for identifying respective demographics information.
- (c) **Appointment.** LWIB member appointments must be signed by the appointing CEO and submitted to the Administrative Entity. (See Workforce Development Board Nomination Form; <http://www.tn.gov/labor-wfd/wiabdinformain.shtml>)
- (d) **Change in Status.** Acknowledgement that LWIB 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 a representative 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.** LWIB members replacing out-going members mid-term will serve the remainder of the out-going member term; and,
- (f) **Vacancies.** LWIB vacancies must be filled within a reasonable amount of time of the vacancy. The CEOs in a LWIA 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 LWIB, with a vacancy or term expiration beyond the time period described in the LWIB by laws shall be void unless the LWIB has an approved waiver from the TDLWD prior to the LWIB 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.** LWIB members must be removed by the CEOs if any of the following occurs: documented violation of conflict of interest, failure to meet LWIB member representation requirements defined in the WIA and this policy, or documented proof of fraud and/or abuse. LWIB members may be removed for other factors outlined in the LWIB Bylaws such as attendance. The bylaws must define the specific criteria that will be used to establish just cause for such removal and the process that will be required to document proof, and the steps regarding filing an appeal and arbitration.

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

- (a) **Local Plan Requirements.** Describe how the local workforce development plan will be developed in partnership between the CEOs and the LWIB.
- (b) **Budget and Approval.** As referenced in WIA 117(d)(3)(A), describe how the LWIB will develop the LWIA budget and the process for obtaining the CEOs' approval.
- (c) **Workforce System Operator.** Establish the guidelines that will be followed by the LWIB for selection of a Local Workforce System Operator in accordance with WIA and Workforce Services Policy # 8, One-Stop Delivery System, including the process for getting CEO Agreement on the selection.
- (d) **Youth Council.** Establish Youth Council and appointment procedures consistent with WIA §117(h).
- (f) **Local Board Policy.** Describe the process for approving LWIA policy.

(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 LWIB 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 LWIB Chair must be maintained at the LWIA Administrative Entity office and available for monitoring by the TDLWD. If a new CEO or Local Board Chair is elected within the LWIA, the newly elected individual must submit to the LWIB 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 with at least one joint meeting held annually between the CEOs and the LWIB.

LOCAL BOARD MEMBERSHIP. An individual may be appointed as a representative of more than one entity if the individual meets all criteria for representation. All board members should be in positions of optimum policy-making authority within each of the entities they are representing; even those representing more than one. Each LWIB is required to have the following representation.

- A. Business Representatives.** The LWIB shall have a majority, defined as greater than 50% of all LWIB membership, of business representatives. Business representatives must be owners of a business, chief executives, operating officers, or other business executives or individuals with optimum policy making or hiring authority. They will be appointed from among individuals nominated by local business organizations and business trade associations.
- B. Labor Organization Representatives.** The LWIB shall have at least two representatives of labor organizations with optimum policy making authority within their organization, agency or entity and nominated by local labor federations, or (for a local area in which no employees are represented by such organizations, other representatives of employees).
- C. Local Educational Entity Representatives.** The LWIB shall have at least two 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.
- D. Community-Based Organization Representatives.** The LWIB shall have at least two representatives of community-based organizations (including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present).
- E. Economic Development Agency Representatives.** The LWIB shall have at least two representatives of economic development agencies, including private sector economic development entities.

F. Tennessee Workforce System Partners.

- (1) The LWIB shall have at least one representative of each of the following programs
 - (a) WIA Title I (Adult, Dislocated Worker, and Youth); and,
 - (b) Wagner-Peyser Act; and,
 - (c) Adult Education and Literacy; and,
 - (d) TANF Employment and Training Program/SNAP Benefit Program; and,
 - (e) Vocational Rehabilitation; and,
 - (f) Title V Older Americans Act; and,
 - (g) Postsecondary Vocational Education/Perkins Act; and,
 - (h) Trade Act/NAFTA; and,
 - (i) Veterans Title 38; and,
 - (j) Unemployment Insurance.

- (2) When present in the LWIA, the LWIB shall have at least one representative of the following programs:
 - (a) Community Service Block Grant Employment and Training; and,
 - (b) Housing and Urban Development Employment and Training; and,
 - (c) Native American Programs; and,
 - (d) Migrant and Seasonal Farmworker Programs; and,
 - (e) Job Corps; and,
 - (f) Veterans Workforce Investment Programs.

LOCAL BOARD ROLES AND RESPONSIBILITIES. The LWIB 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 LWIB.

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

- (1) Develop the LWIB plan consistent with WIA and TDLWD requirements; and,
- (2) Select the Local Workforce System Operator according to Workforce Services Division Policy #8, One-Stop Delivery System; and,
- (3) Select eligible youth service providers consistent with Federal, State, and local procurement requirements; and,
- (4) Select eligible providers of adult and dislocated worker intensive and training services; and,
- (5) Maintain a list of eligible training providers including cost and performance data in conjunction with the Workforce Services Policy #5, Eligible Training Provider List Under the Workforce Investment Act (WIA); and,
- (6) Conduct oversight of the one-stop delivery system including all WIA activities; and,
- (7) Negotiate local performance measures; and,
- (8) Appoint a Youth Council to advise the LWIB on youth activities.

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

C. Other Local Workforce Investment Board Roles and Responsibilities.

- (1) Elect a private-sector business representative as LWIB Chair; and,
- (2) Create an annual report that must be submitted to the state office as per guidelines established by the TDLWD; and,
- (3) Promote American Job Center programs and activities; and,
- (4) Assist the state office in developing the statewide employment statistics system under the Wagner-Peyser Act; and,
- (5) Coordinate with economic development strategies and establish employer linkages with workforce development activities; and,
- (6) Carry out regional planning responsibilities as required by the TDLWD; and,
- (7) Conduct business in an open manner by making available to the public information about the activities of the LWIB. This includes the local plan before submission, membership, designation of the local Workforce System Operator, the awards of grants or contracts, and minutes of LWIB meetings.

BY LAWS. The LWIB must establish bylaws that include, at a minimum, the following sections:

- A. Establishment.** A statement that the LWIB is established in accordance with WIA Section 117 and the Tennessee Workforce Development Act of 1999.
- B. Name.** The name of the LWIB.
- C. Purpose.** The purpose for the establishment of the LWIB consistent with WIA sections 117(a) and (b).
- D. Duties and Responsibilities.** Acknowledge the duties and responsibilities as outlined in the WIA, the Tennessee Workforce Development Act of 1999, and in the Partnership Agreement between the CEOs and the LWIB.
- E. Membership.** A description of membership as outlined in WIA 117(b) and in the CEO Agreement.
- F. Local Board Chair Election.** A description of the process used to elect a Local Board Chair, including term details.
- G. Election of Officers.** A description of the process used to elect officers, officer positions, and terms, removal of officers, and specific officer roles and responsibilities.
- H. Meetings.**
 - (1) Information on how often LWIB and committee meetings will be held;
 - (2) Acknowledgement of open meeting requirements and compliance;
 - (3) A description of the process of announcing regular and special meetings;
 - (4) Acknowledgement that a quorum must consist of at least one-third of the currently appointed membership for LWIB decisions; and
 - (5) Clarification as to whether phone and web-based meetings will be permitted.
- I. Delegation of Local Workforce Investment Board Duties.** Any Board member may proxy to another Board member once per.
- 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 LWIB members shall adhere to the following in regard to conflict of interest. (See Conflict of Interest, http://www.tn.gov/labor-wfd/ConflictPolicy_Boards.pdf)
- (1) A LWIB 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 LWIB member shall avoid even the appearance of a conflict of interest. Prior to taking office, LWIB 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 LWIB. Such declarations shall be updated annually or within 30 days to reflect any changes in such business interests or relationships. The LWIB 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 LWIB, 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 LWIB 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 LWIB meeting and be maintained as part of the official record.
 - (4) It is the responsibility of the LWIB to monitor potential conflict of interest and bring it to the LWIB's attention in the event the member does not make a self-declaration.
 - (5) A LWIB shall ensure that the LWIB, its members, or its employees do not directly control the daily activities of its workforce service providers.
 - (6) LWIB members or their organizations may receive services as a customer 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 LWIB shall comply with all applicable Tennessee statutes and regulations including, but not limited to, the governing procurement standards or regulations for the LWIA, the Sunshine Law, and the State Travel Regulations.
 - (2) Acknowledgement stating, in execution of its business, the LWIB shall comply with the WIA 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 LWIB, including the appointment process, complies with the criteria outlined in Section 117 of the WIA and with this policy. The composition of each LWIB will be evaluated annually during the local planning cycle on:
- (1) State membership criteria,
 - (2) Federal membership composition requirements,
 - (3) Authority of LWIB 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 Investment 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 LWIB composition requirements have been maintained. If a LWIB 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 LWIB is meeting all performance measures, the regular two-year certification will be continued.
- C. Decertification.**
- (1) A LWIB is subject to decertification under the following conditions:
 - (a) Fails to meet all LWIB certification requirements; or,
 - (b) Fails to carry out required functions of the LWIB; or
 - (c) Fraud; or,
 - (d) Abuse.
 - (2) If a LWIB 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 LWIB may be decertified.
 - (3) A written notice and opportunity for comment from the TDLWD to the LWIB will be provided prior to decertification.
 - (4) In accordance with WIA section 117(c)(3), if a LWIB is decertified, the TDLWD may require a new LWIB be appointed for the LWIA pursuant to a reorganization plan developed by State Office, in consultation with the CEOs.

Contact: For questions regarding this policy, please contact Susie Bourque, Director of Policy and Special Projects, at 615) 741-1031 or Susie.Bourque@tn.gov .

Effective Date: July 1, 2014

Duration: Indefinite.

A handwritten signature in cursive script that reads "Dan Holton". The signature is written in black ink and is positioned above a horizontal line.

Dan Holton
Assistant Administrator