

**THE WORKFORCE INVESTMENT ACT**

**Why Local Government Attorneys Should Be  
Familiar with Its Requirements**

**By**

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# **The Workforce Investment Act A Primer for Local Government Attorneys**

By Rochelle J. Daniels, Broward County

## **I. Introduction**

Workforce programs are about providing information, access to services and services including training, and support to individuals needing the services, so that they can be competitive in their local labor market. Up until recently workforce programs were not required to be coordinated or integrated. The degree to which local and state service providers cooperated was largely left to the good intentions of agencies and organizations providing the services. In 1994, the United States Department of Labor began to award states discretionary grants to organize workforce services around one stop centers. These one stop centers encouraged the co-location of a variety of workforce service providers to make the services more accessible and customer friendly for the individuals, both job seekers and employers, who needed the services. In 1998, with the passage of the Workforce Investment Act, 29 U.S.C. § 2801 et seq., one stop centers became mandated and Congress asked states to coordinate among nineteen different workforce funding streams called one stop partners. *Id.* § 2841. States were also free to add additional funding streams or partners. The Workforce Investment Act is built upon a foundation of six basic principles. They are:

- Strong state and local boards

State and local boards are majority private sector and are provide oversight and policy guidance with respect to the programs.

- Flexibility

While the United States Department of Labor has promulgated regulations for implementation of the programs, the regulations have a lot of flexibility including the ability to request waivers of the requirements.

- One Stops

A requirement that workforce related funding streams co located and communicate electronically to provide the customer with seamless access to services.

- Universality

There are no mandatory eligibility requirements for adults to access services.<sup>1</sup> Services are available at some level for anyone needing workforce services.

- Empowering Individuals

The Workforce Investment Act recognizes that people need information in order to make smart decisions about career goals and their futures. Regional workforce boards are responsible for assuring that the information required by the legislation is available in the one stop centers.

- Accountability

In addition to being responsible for proper use of the funds regional boards and local elected officials must meet 17 different performance standards including customer satisfaction.<sup>2</sup>

In Florida workforce programs are governed by the both federal and state law. The applicable federal statutes are:

- A. The Workforce Investment Act of 1998, (WIA). 28 U.S.C. 2801 et seq.
- B. The Welfare to Work Grants under the Budget Reconciliation Act of 1997 as amended, (WTW). 42 U.S.C. § 603.
- C. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWOR). 42 U.S.C. 601 et seq.

The regulations promulgated under each of the statutes can be found at:

- A. The WIA Regulations at 20 C.F.R. § 652.
- B. The WTW Regulations at 20 C.F.R § 645.
- C. The PRWOR Regulations at 45 C.F.R. § 260.

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<sup>1</sup> There are three funding streams awarded by formula to local workforce areas under the Workforce Investment Act. They are adult, dislocated worker and youth funding streams. 29 U.S.C. § 2853, 2863. Regional workforce boards and chief local elected officials can make a determination for their area regarding the needs of the population, whether there are sufficient public assistance funds to meet the needs of the economically disadvantaged and who should be prioritized for services beyond just information and referral services. 29 U.S.C. § 2864(d)(3), 20 C.F.R. § 663.220 – 230. This is a departure from previous workforce programs which had very strict eligibility requirements. There are still strict eligibility requirements for youth and for dislocated workers, although dislocated workers may be able to be served by the adult funding stream. 29 U.S.C. 2801 § (9)(10)(13)(33).

<sup>2</sup> There are additional performance standards applicable to the PRWOR and Welfare to Work grants, two other funding streams awarded to local workforce areas.

The applicable state legislation can be found at F.S. § 445.001 et seq., and is titled the Workforce Innovation Act of 2000.

The PRWOR, 42 U.S.C. § 601 et seq., often referred to as welfare reform legislation is allocated to states in the form of four block grants. A portion of the Temporary Assistance to Needy Families, (TANF) Block Grant, is allocated to regional workforce boards based upon state and legislative budget deliberations and in accordance with the Workforce Innovation Act of 2000. F.S. § 445.001 et seq. Implementation of the PRWOR is subject to the approval of a Plan which each state submitted to the United States Department of Health and Human Services (HHS). Florida enacted implementing legislation for the PRWOR, entitled the Work and Gain Economic Self-Sufficiency Act of 1996, (WAGES), F.S. § 414.015 et Seq. (1999) and during the same legislative session also passed The Workforce Florida Act of 1996, F.S. § 446.601 (1997). These last two bills have since been replaced with the Workforce Innovation Act of 2000. F.S. § 445.001 et seq.

The Workforce Florida Act, F.S. § 446.601 (1997) was passed in anticipation of federal legislation which took another two years to wind itself through the Congressional legislative process emerging as WIA. Prior to the passage of WIA, workforce programs were referred to as employment and training programs and funds were awarded to states in accordance with the Job Training Partnership Act (JTPA), 29 U.S.C. § **1501 et seq. (1982)**, which mandated formula based allocations to local areas within the states called Service Delivery Areas (SDAs). A Service Delivery Area could be comprised of a single county or city or of a consortium of governmental units based upon a determination of labor market areas within a state. The chief elected official(s) in each Service Delivery Area were required to appoint a majority private sector board whose membership was specified in the JTPA. The majority private sector boards, called Private Industry Councils were responsible for providing governance, policy and oversight over the funds and programs in partnership with the chief elected officials. In addition to local boards, each governor also appointed a state level board which made recommendations regarding State policy areas under the law.

The Workforce Florida Act, F.S. § 446.602 (1997) called for the re-designation of the service delivery areas within the state of Florida and reorganized the state into regional workforce areas. A new State Workforce Board was created which replaced the prior State Board under the JTPA. The regional workforce areas serve in the capacity of the Workforce Investment Areas required to be designated under WIA which was enacted two years later in 1998. 29 U.S.C. § 2831.

A year after implementation of the Workforce Florida Act, and following the appointment of a WAGES State Board of Directors F.S. § 414.026 (1999), a process was initiated for the chartering of local WAGES Coalitions. F.S. § 414.028 (1999). The service boundaries for local WAGES Coalitions were identical to those

of the regional workforce areas. Each regional workforce area was required to initiate a community process led by the Department of Health and Human Services (now Department of Children and Families) and the Department of Labor and Employment Security (now reorganized and operating as the Agency for Workforce Innovation as affects workforce and welfare programs). To determine whether the regional workforce boards would also serve as local WAGES Coalitions or whether a separate board would be appointed to act as the WAGES Coalitions.

Most of the regional workforce areas in Florida opted to integrate and appoint one board to serve as the regional workforce board and the local WAGES Coalition. In 2000, with the passage of the Workforce Innovation Act, F.S. § 445.001 et seq., the legislature mandated that there be a single board in each regional workforce area to provide the policy guidance and oversight in conjunction with the chief local elected officials for the programs in each area. Every regional workforce area has an administrative entity which provides staff support to the boards and the chief elected officials. Regional boards and the organization which serves as their administrative entity are precluded from delivering program services with the funds allocated to their areas.

...The regional workforce board shall designate all local service providers and shall not transfer this authority to a third party. In order to exercise independent oversight, the regional workforce board shall not be a direct provider of intake, assessment, eligibility determinations, or other direct provider services. 29 U.S.C. § 2841(d)(2), F.S. § 445.007 (5).<sup>3</sup>

The discussion below addresses governance of the programs.

## II. The State Workforce Board

- A. The governor of every state is required to appoint a State Workforce Board to assist the governor in the development of a state workforce plan, the development of a statewide one stop system and other functions delineated at 29 U.S.C. § 2821(d). Among those other functions is the approval of local workforce plans, approval of the formula allocation which is used to distribute funds to local workforce investment areas and in Florida, the chartering of regional workforce boards as provided under F.S. § 445.004(11):

(11) The workforce development system shall use a charter-process approach aimed at encouraging local design and control of service delivery and targeted activities. Workforce Florida, Inc., shall be responsible for granting charters to regional workforce boards that have

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<sup>3</sup> The Florida Statutes require a strict “firewall” between the local boards and direct client service providers. Under the federal statutes, there are circumstances under which local workforce investment boards can provide direct client services. States have great flexibility to interpret the statute and regulations. States have interpreted the “firewall” issue a number of different ways.

a membership consistent with the requirements of federal and state law and that have developed a plan consistent with the state's workforce development strategy...

- B. In Florida, the WIA requirements are implemented in accordance with the Workforce Innovation Act of 2000, which calls for the creation of a corporation, Workforce Florida Inc. Workforce Florida Inc., is housed in the Agency for Workforce Innovation (AWI), but is “not an agency of state government” and is not subject to the authority, supervision or control of AWI. It is governed by a Board of Directors appointed by the governor and functions as the mandated State Workforce Board required by the WIA pursuant to section F.S. § 445.004(1) of the Florida Statutes.
- C. The Workforce Florida Inc., Board of Directors are subject to the requirements of chapters 119 and 286 of the Florida Statutes.
- D. The Workforce Florida Inc., Board of Directors has its own staff and budget. The staff also acts as a liaison between the Workforce Florida Inc., Board of Directors and the staffs of the regional workforce boards. They answer questions and issue opinions on the interpretation of the federal and state statutes applicable to funding streams under the Workforce Florida Inc.’s purview. These funding streams include:
  - 1. Programs authorized under Title I of the Workforce Investment Act of 1998, Pub. L. No. 105-220, with the exception of programs funded directly by the United States Department of Labor under Title I, s. 167.
  - 2. Programs authorized under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. ss. 49 et seq.
  - 3. Welfare-to-work grants administered by the United States Department of Labor under Title IV, s. 403, of the Social Security Act, as amended.
  - 4. Activities authorized under Title II of the Trade Act of 1974, as amended, 2 U.S.C. ss. 2271 et seq., and the Trade Adjustment Assistance Program.
  - 5. Activities authorized under 38 U.S.C., chapter 41, including job counseling, training, and placement for veterans.
  - 6. Employment and training activities carried out under the Community Services Block Grant Act, 42 U.S.C. ss. 9901 et seq.
  - 7. Employment and training activities carried out under funds awarded to this state by the United States Department of Housing and Urban Development.

8. Welfare transition services funded by the Temporary Assistance for Needy Families Program, created under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. No. 104-193, and Title IV, s. 403, of the Social Security Act, as amended.

9. Displaced homemaker programs, provided under s. 446.50.

10. The Florida Bonding Program, provided under Pub. L. No. 97-300, s. 164(a)(1).

11. The Food Stamp Employment and Training Program, provided under the Food Stamp Act of 1977, U.S.C. ss. 2011-2032; the Food Security Act of 1988, Pub. L. No. 99-198; and the Hunger Prevention Act, Pub. L. No. 100-435.

12. The Quick-Response Training Program, provided under ss. 288.046-288.047. Matching funds and in-kind contributions that are provided by clients of the Quick-Response Training Program shall count toward the requirements of s. 288.90151(5)(d), pertaining to the return on investment from activities of Enterprise Florida, Inc.

13. The Work Opportunity Tax Credit, provided under the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, and the Taxpayer Relief Act of 1997, Pub. L. No. 105-34.

14. Offender placement services, provided under ss. 944.707-944.708.

15. Programs authorized under the National and Community Service Act of 1990, 42 U.S.C. ss. 12501 et seq., 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, if such programs are awarded to the state. “ F.S. §. 445.004 (5)(b)

Not all of these funding streams are allocated by formula to the regional workforce boards. Regional workforce boards receive a formula allocation pursuant to WIA, 29 U.S.C. § 2853, 2863, a TANF allocation pursuant to the Workforce Innovation Act, F.S. § 445.004(11) and a Welfare to Work allocation in accordance with 42 USC § 603. The Workforce Florida Inc., Board of Directors also makes discretionary funds available to the regional workforce boards. While Wagner Peyser funds, which support the establishment of a national labor exchange are not directly allocated to the regional workforce boards, the Workforce Innovation Act of 2000 at F.S. § 445.009 (3) places the duties and functions related

to the delivery of labor exchange services under the direction of the regional workforce boards.

### III. Regional Workforce Boards

A. There is only one regional workforce board for each workforce area. The regional workforce boards are appointed by the chief local elected official(s) for the workforce area. 29 U.S.C § 2832.

B. Regional workforce boards, (referred to as workforce investment boards in WIA), are organized differently around the state and around the country. Some of the boards are organized as not for profit corporations. Others, once appointed by their chief elected official(s) operate under the umbrella of a local governmental unit similar to other boards appointed by counties and municipalities.

1. Chief local elected officials are required to participate in a number of decisions together with the regional workforce boards they have appointed. (See section IV below).

2. Many of the regional workforce boards do not have their own legal representation as they view themselves as an extension of local government. However, incorporated regional workforce boards may seek their own representation if or when their interests differ from that of the local governmental entity that has created the regional workforce board.

3. Regional workforce boards are subject to F.S. § 119 and F.S. § 286. The Florida Sunshine Law and Public Records Act apply to the regional workforce boards and to their committees. One of the responsibilities of regional workforce boards is to select service providers. An area of liability for the local boards and the local governmental units is the procurement process in acquiring goods and services, especially where notice, public access and the availability of documents related to the procurement are not maintained as required by the statutes.

a. Procurement and cost principles applicable to the grant funds allocated to states and local boards are subject to the federal Office of Management and Budget Circulars, 29 U.S.C. § 2934 and policies adopted by Workforce Florida Inc., and / or AWI.

b. Regional workforce boards should be briefed by their county attorney's office on the requirements of F.S. § 119 and regarding documents considered to be public record.

c. Regional workforce board members may do business with their own boards:

If the regional workforce board enters into a contract with an organization or individual represented on the board of



directors, the contract must be approved by a two-thirds vote of the entire board, and the board member who could benefit financially from the transaction must abstain from voting on the contract. A board member must disclose any such conflict in a manner that is consistent with the procedures outlined in s. 112.3143, F.S. § 445.007 (1)

However, it should be noted that the WIA conflict of interest statutes are more stringent than Florida conflict of interest statutes, in that there is no exception for individuals representing governmental organizations. 29 U.S.C. § 2832(g). Therefore elected officials and representatives of governmental entities serving on regional workforce boards should be advised to abstain from voting on contract awards to the entities that they represent.

#### 4. Regional Workforce Boards and their Committees

a. Regional workforce boards are very large because of the statutory prescribed membership *Id.* (b), which is further augmented by Workforce Innovations Act requirements. F.S. § 445.007(1). If all mandatory one stop partners<sup>4</sup> operate in a workforce area the minimum number of regional workforce board members is fifty five.<sup>5</sup> As a result most of the regional workforce boards opt to delegate the work of the regional workforce board to committees. Under WIA there is one mandated committee the functions of which are described in the law. 29 U.S.C. § 2832(h). Regional Workforce Boards are required to create two additional committees by the Workforce Innovation Act of 2000. F.S. § 445.007.

1. Members of the committees are not always members of the regional workforce board. This is true of the Youth Council and the High Skills High Wages Committee required by the Workforce Innovations Act 2000. F.S. § 445.007(7).
2. Regional workforce boards need to adopt by laws whether or not they are incorporated in order to address among other things, governance, the manner in which meetings will be conducted and the structure, membership, voting rights and authority of their committees.

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<sup>4</sup> Workforce Investment Board membership is delineated in section 117 of WIA. 29 U.S.C. § 2832(b) It consists of representatives of community based organizations, education, organized labor, economic development, and a representative of each funding stream required to coordinate services with WIA Title I programs in one stop centers where individuals can access workforce activities and programs. The Workforce Innovation Act of 2000 adds to the WIA mandated membership by requiring an additional labor representative and two representatives from non-public post secondary institutions.

<sup>5</sup> Some of the one stop partners administer more than one of the one stop funding streams. Almost all states have defined WIA section 117(b), 29 U.S.C. § 2832 to allow chief elected officials to appoint one individual from agencies which administer several workforce funding streams. This results in a slightly smaller local board.

3. Some of the regional workforce boards delegate duties and responsibilities assigned to the regional workforce boards by statute to their Executive Committees. There is no requirement to have an Executive Committee and the composition of the Executive Committee varies from area. The issue of whether actions required to be taken by the regional workforce boards can be delegated to an Executive Committee has never been tested.
4. One area which could generate problems for regional workforce boards which do most of their business through Executive Committees is in the area of procurement and contract award,
  - b. WIA requires that each local workforce investment board establish a Youth Council which shall be a committee of the local board.
  - c. The Workforce Innovations Act of 2000 refers to the Youth Council required by WIA at 29 U.S.C § 2832(h) as the First Jobs First Wages Committee F.S. § 445.007 (9).
    1. The membership of the Youth Council/First Jobs First Wages Committee is prescribed in WIA. 29 U.S.C § 2832(h). Not all the Youth Council members are regional workforce board members. The Workforce Innovations Act 2000 requires only that there be a minimum of five members on the Committee. F.S. 445.007(9).
    2. Youth Council members are appointed by the regional workforce board in concert with the chief local elected official for the workforce area. 29 U.S.C. § 2832(h)(1). Even among the categories of membership prescribed by the law there is flexibility in the determination of who the actual members will be. Vacancies are filled in the same manner in which the original Youth Council members were appointed.
    3. Regional workforce boards cannot operate youth services under WIA. They must award the funds to service providers through a competitive procurement. *Id.* § 2832 (h)(4)(B)(i).
    4. The Youth Council must make recommendations to the regional workforce board before the regional workforce board can act to award funds dedicated to youth programs under WIA to service providers. *Id.*

d. The Better Jobs Better Wages Committee, a creation of the Workforce Innovations Act. F.S. 445.007 (8), replaced the local WAGES Coalitions and is required to have at least five members. For the WIA program year which began in July 1, 2000, where there were two separate local boards for welfare and workforce programs a minimum of three of the members were required to have served on the former local WAGES Coalition.

e. The High Skills High Wages Committee, mandated by the Workforce Innovations Act, is appointed by the regional workforce board in conjunction with the primary economic development agency in workforce area. This committee has specific responsibilities assigned to it under the statute. F.S. § 445.007 (7)

f. WIA allows regional workforce boards to operate programs and to provide direct client services under very limited conditions. The Workforce Innovations Act of 2000, does not provide any flexibility in this regard. As a result all workforce and TANF client and program services are competitively procured. F.S. § 445.007(5).

g. In Florida the integration of these funding streams together with the statutory requirements regarding how services must be delivered <sup>6</sup>has resulted in large regional workforce board allocations. The flexibility of the PRWOR, WIA and WtW grants together with the size of the grants has captured the interest of the private sector resulting in the privatization of the programs in many locations by both not for profit and for profit entities.

### C. Responsibilities and Functions of Regional Workforce Boards

a. Regional workforce boards “set policy for the portion of the statewide workforce investment system within the local area.” 29 U.S.C. § 2832 (a). The WIA regulations at 20 C.F.R. § 661.300(b) modifies this statement as follows:

(b) In partnership with the chief elected official(s), the Local Board sets policy for the portion of the Statewide workforce investment system within the local area.

The Workforce Innovation Act of 2000 does not pay the same deference to the role and responsibility of the chief elected official(s). This results in confusion when

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<sup>6</sup> All WIA funded services for adults and youth over 18 can only be accessed through one stop centers. 29 U.S.C. § 2864. Local areas contract for one stop operators and determine the responsibilities of the operator. Some one stop operators are simply management agents, others manage the centers and provide a variety of direct client services. AWI staff providing labor exchange services must also provide those service in the one stop centers. This means that state employees covered by collective bargaining are working side by side with non union workers and are required to coordinate their services under the direction of a contractor selected by the regional workforce board.

trying to determine the role and responsibility of local elected officials with respect to TANF funds and other discretionary awards to the regional boards which are appointed by the local elected official(s).

b. WIA at 29 U.S.C. 2832 states that Regional workforce boards are also responsible for:

1. Developing and submitting a local plan in partnership with the chief elected official to the Governor. The local plan is strategic in nature and sets forth how programs will be operated and funds expended in the workforce area. Its submission to the state is subject to the approval of the elected official.
2. Selection of the one stop operators with the agreement of the chief elected official.
3. Selection of the youth providers based on the recommendations of the youth council.
4. Identification of eligible providers of training services. Adult training services are offered to eligible individuals through individual training accounts. Training providers apply to the regional workforce boards and are put on a list. Regional boards are responsible for managing the individual training account system. As the system must also be described in the local plan, chief elected officials also have an opportunity to provide input into the individual training account system.
5. Identification of eligible providers of intensive services if the one stop operator does not provide these services. All one stops must provide core, and intensive services, as well as referral to training services. Core and intensive services are described in WIA. 29 U.S.C. § 2864. Not all one stop operators provide core and intensive services. It is up to the regional boards and the chief elected officials to determine the responsibilities of the one stop operator.
6. Development of a budget for the purpose of carrying out the duties of the local board under subject to the approval of the chief elected official(s).
7. Program oversight in partnership with the chief elected official(s).

8. Negotiating local performance measures along with the chief elected official with the Governor. There are 17 WIA performance standards. The Governor negotiates the performance standards for the state with the United States Department of Labor. Local area officials negotiate the standards to be met in their areas with the state. There are also welfare standards. Regional workforce boards must meet welfare goals established by the state.
9. Localization of labor market information.
10. Developing linkages with the employer community
11. Marketing the one stop system to the community.

#### IV. The Role of the Local Elected Officials

A. Neither WIA nor the Workforce Innovation Act of 2000, delineate the role and responsibilities of the chief local elected official(s). Instead each of the bills needs to be reviewed to identify each reference to local chief elected officials.

B. WIA at 29 U.S.C. § 2801(6), defines the chief elected official as:

a. The chief elected executive officer of a unit of general local government in a local area, or

b. In a local area which includes more than one unit of general local government, it will be those elected officials designated pursuant to an agreement entered into between those units of government as described in WIA 29 U.S.C. § 2832(c)(1)(B).

a. A local workforce area is a unit of general local government with a population of 500,000, or

b. A local workforce area is a unit of local government or multiple governmental units which were considered service areas under the Job Training Partnership Act of 1982, 29 U.S.C. § 1511, or

c. A local workforce area may be any unit of general local government recommend by Workforce Florida Inc. to the governor which is then designated by the governor.<sup>7</sup>

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<sup>7</sup> In Florida workforce areas were designated in 1996 when the state began to look at a reorganization of the workforce system. The workforce system again reorganized in 1997 when WAGES Coalitions were designated. As a result the state workforce board in Florida decided not to re-designate the local areas again when WIA was enacted. The three designation options cited

C. In order for a local workforce area to be designated the chief local elected official in an area with a single unit of government or where there are multiple units of government the chief local elected officials for the area must request designation. 29 U.S.C. § 2831. This is the first official responsibility of local elected officials under WIA. Without requesting designation, it is up to the state to define the area. However, even where the governor determines the boundaries of the workforce area, the chief local elected officials of the area must come together with an agreement regarding how their duties and responsibilities will be fulfilled. 29 U.S.C. § 2832 (c)

1. Where the workforce area is a single unit of government the County Commission Chair or the Mayor would be the chief elected official. However the state has allowed counties to designate an a county commissioners who will be the chief local elected official for WIA even though the elected official is not the Chair of their County Commission.

2. Where the workforce area consists of multiple units of local government, each governmental unit must designate the elected official who will be the chief elected official for WIA purposes.

3. One way of doing this is through an interlocal agreement pursuant to F.S. 163.01. This agreement would then also serve as the required agreement under WIA by and between the governmental units. Interlocal agreements allow for the designated elected official from each unit of government to form a board or a council which can then act for each governmental unit which is party to the agreement to the extent provided for in the interlocal agreement.

4. Another might be under the general contracting authority of local governments. In this instance there is no official consortium of governments recognized by the Florida Statutes and all actions requiring chief elected official approval would have to be presented to the county commission or city council, which has executed the agreement. There are a number of area organized in this manner and moving contracts and making decisions which require chief elected official approval can be very cumbersome.

5. While WIA refers only to chief elected officials the underlying assumption is that elected officials can only act within the powers and authorities granted to them. Generally county commissioners do not have the power to bind their governmental units unless so authorized by their Commissions.

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above are not all of the options available under WIA but are the three most prevalent options under which local areas were organized following the passage of WIA. 29 U.S.C. § 2831(a). It should be noted that only areas with a population of 500,000, certain rural areas and workforce areas in the State of Rhode Island were able to get permanent designation. All other areas are subject to re-designation in the year 2003.

6. Both WIA and the Workforce Innovation Act of 2000 require that a fiscal agent/ administrative entity be designated to provide the staff support needed to conduct business. F.S. § 445.007(4)(b). WIA is very clear in identifying the local elected official(s) as the grant recipient and assigns to them the selection of the fiscal agent. 29 U.S.C. §2832 (d)(3)(B)(i)(I). There is a reason for this. WIA holds the local governmental unit which is the grant recipient liable for any misuse of the federal grant funds. *Id.* This was deliberately done. The Job Training Partnership Act of 1982, required local elected officials and the majority private sector boards they appointed called, Private Industry Councils, (PICs) to agree on the designation of an administrative entity. 29 U.S.C. § 1513 (repealed August 6, 1998 effective July 1, 2000). Elected officials often ceded to the PICs all authority regarding the funds and programs. Then when presented with audits or monitoring findings local governmental units were often surprised to find that they were responsible for the funds. By giving the elected officials full authority to determine who the fiscal agent would be, local governments supposedly would not be able to disavow any knowledge or responsibility regarding the program funds.

a. Local elected officials have no status with respect to PRWOR (TANF) funds except as determined by the state because the PRWOR block grants are grants to the states without any mandatory pass through requirements to local areas within the states.

b. The Workforce Innovation Act of 2000 mandates that there be one regional workforce board in each workforce area. Cite The regional workforce boards receive both TANF and WIA funds. The Workforce Innovation Act of 2000, however, at F.S. 445.007 (4)(b) provides for regional workforce boards to, “conclude agreements necessary to designate the fiscal agent and administrative entity.” The state charters local boards. Cite The statute awards the regional boards more authority than the federal statute allows. This has not been challenged by local governmental unit, however a governmental unit which is dissatisfied with or unable to agree with the regional board’s choice of fiscal agent might have a strong argument regarding the validity of the statute.

c. The Job Training Partnership Act of 1982, referred to an administrative entity, **cite**, to provide support to local boards and local elected officials. WIA refers only to a fiscal agent. **WIA section 117(d)(3)(b)(i)(II)**. The WIA regulations at **20CFR 660**. refers to the term administrative entity only in relation to funding streams which are mandated one stop partners. **Cite** It is possible to assume that a fiscal agent and an administrative entity can be the same organization or may be two separate organizations. As two separate entities, one entity may be responsible for monitoring and disbursing the funds. The other entity would be responsible for Board and elected official staff support and program administration and monitoring. In the latter instance the Florida Statutes would be in concert with the federal statute. *The most common usage distinguishes*

*between the grant recipient ( the local governmental unit) and the fiscal agent/administrative entity.*

d. State legislation references an “agreement necessary to designate the fiscal agent.” **Cite** WIA at **117(d)(3)(B)(i)(II)**, states that chief local elected official(s) may decide to enter into an agreement with the another entity including the local board to assist the governmental unit by allowing the other entity to act as the grant recipient or administrator/fiscal agent for the funds and programs, as follows:

“(II) Designation.--In order to assist in the administration of the grant funds, the chief elected official or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local grant subrecipient for such funds or as a local fiscal agent. Such designation shall not relieve the chief elected official or the Governor of the liability for any misuse of grant funds as described in subclause”

e. In order for regional workforce boards to be chartered Workforce Florida Inc., is requesting the submission of a copy of the local agreement between the local governmental unit and the regional board appointed by the chief elected official(s) along with other related documents. Regardless of which organization is the fiscal agent/administrative entity, an agreement between the parties is mandatory in Florida.

f. The chart below reflects the options for organizational structures

Grant Recipient	Fiscal Agent	Administrative Entity
Local Governmental Unit	Local Governmental Unit	Local Governmental Unit
Local Governmental Unit	Local Governmental Unit	Regional Board
Local Governmental Unit	Regional Board	Regional Board
Local Governmental Unit	Regional Board	Third Party Entity*
F.S. 163.01 Consortium	Consortium	Consortium
F.S. 163.01 Consortium	Consortium	Regional Board
F.S. 163.01 Consortium	Regional Board	Regional Board
Regional Board	Regional Board	Regional Board
Regional Board	Regional Board	Third Party Entity
Regional Board	Third Party Entity	Third Party Entity.

Usually a not for profit, but there is no prohibition against a for profit serving as the fiscal agent and/or administrative entity.

g. There are many areas in which the regional boards incorporate as a not for profit entity, act as grant recipient, fiscal agent and administrative entity. Elected official agreement is needed to for the regional boards to act as grant recipient and administrative entity.



h. While federal law intended for the local elected officials to decide who the grant recipient administrative entity would be, in Florida if a workforce area consists of a single governmental entity (a single county), or a consortium of elected officials under F.S. § 163.01, where the single entity selects the regional workforce board members, the statutes require that the administrative entity/fiscal agent be selected through a competitive procurement. This requirement is rife with problems. F.S. § 445.007(4)(b).

1. The governmental unit and regional board select the administrative entity and may also elect to compete to be the administrative entity.
2. One rationale for competitive procurements is to provide the public a fair opportunity to compete to do business with government, another is to obtain the best price for the service. However, it is the administrative entity/fiscal agent which actually safeguards the funds for which the governmental unit is liable. Interfering with the local elected officials option to select the entity they believe to be the most reliable may present local government with a good defense in the case of any misuse of public funds by either the administrative entity or any of the providers selected.

D. The chief elected official is responsible for appointing the regional workforce board. Even among the non private sector members the chief elected officials may select from among representatives of the different categories of membership. The chief elected official may also appoint anyone to the workforce board, whom the elected official feels will add to the capability and capacity of the local board. In making appointments outside of the legislatively proscribed categories, local elected officials must be sure to maintain the private sector majority.

1. Regional workforce board members serve at the pleasure of the elected official(s) who appoint them.
2. The appointing official(s) have the ability to set the terms of membership.
3. WIA allows for regional boards to select their own chair.
4. Most regional boards adopt by-laws. By-laws should not encroach upon or conflict with elected official determinations regarding the regional board, such as the terms of office or the appointment of board members.

- E. The chief elected official must approve the local plans developed by the regional workforce board. The local plans provide the detail on how funds will be spent, who will be targeted for services and how the system will be developed.
- F. Chief elected officials together with the regional workforce boards are responsible for selecting and terminating One Stop Operators. In Florida, one stop operators must be procured. **Cite.**
- G. Through the authority to approve of the local plan, chief elected officials have authority over the budget. However WIA also provides that elected officials must approve regional board budgets. This is of particular importance where (1) the chief local elected officials do not want the regional boards to act as the grant recipient or administrative entity, or (2) the elected officials want to maintain control over expenditures.
- H. Both the elected officials and the regional boards that they appoint are responsible for the oversight of the programs.
- I. Because the chief elected official(s) is the grant recipient by law under the WIA, they are also responsible under the law for the disbursement of the grant funds, while local boards are responsible for approval of the disbursements. As a practical matter the fiscal agent / administrative entity is responsible for the disbursements. Regional boards and local governmental units approve expenditures by approving contracts and purchasing/procurement procedures.
- J. The local governmental unit is liable for the funds.
- K. The chief local elected official(s) and the regional workforce boards negotiate the performance standards that must be met with their states.
- L. Outside of Florida chief local elected official(s) approval must be obtained where local boards want to hire staff and operate one stops. The Florida statutes do not provide for that option. F.S. § 445.007(5).
- M. Chief elected official(s) together with the chair of the regional workforce boards appoint the members of the Youth Council.
- N. States were required to consult with the chief local elected officials when deciding among the options available for grant allocation formulas to the local level.

## V. Conclusion

Workforce programs have gained in prominence over the last ten years as the definition of economic development has been expanded to include a skilled and trained workforce. Welfare reform, which is a part of workforce development is dependent not only upon a working population but also upon a skilled workforce which is self sufficient. WIA provides local government with resources and tools to expand their economic development initiatives encouraging training and skills acquisition necessary to attract and keep business in their communities.