

Under Florida's Workforce Innovation Act of 2000 (ch. 2000-165, L.O.F.), the Legislature created Workforce Florida, Inc., and revised the duties of the 24 regional workforce boards. Established as a not-for-profit corporation, Workforce Florida is the principal workforce policy organization for the state. The purpose of Workforce Florida is "to design and implement strategies that help Floridians enter, remain in, and advance in the workplace, becoming more highly skilled and successful, benefiting these Floridians, Florida businesses, and the entire state, and to assist in developing the state's business climate" (s. 445.004(2), F.S.).

Workforce Florida's board of directors serves as the state workforce investment board for purposes of the federal Workforce Investment Act, and the board must contain one member from the staffing service industry (s. 445.004(3)(a), F.S.). The regional workforce boards serve as the local workforce investment boards under the federal act.

Under Florida law, the state workforce system is based upon principles for implementing the federal Workforce Investment Act. These principles include "increased accountability," which emphasizes that the state, localities, and training providers will be held accountable for their performance (s. 445.003(1)(d), F.S.). To implement this accountability principle, the regional workforce boards are required to enter into memoranda of understanding with the Agency for Workforce Innovation for the delivery of employment services, and these memoranda of understanding must be performance based (s. 445.009(3), F.S.). In addition, all contracts executed by Workforce Florida or a regional workforce board must include specific performance expectations and deliverables (ss. 445.004(5)(c) and 445.007(11), F.S.). Further, all contacts between regional workforce boards and private sector staffing services firms must be performance-based and require a specific period of job tenure prior to payment (s. 445.009(10), F.S.).

Workforce services are delivered to citizens by the regional workforce boards through the one-stop delivery system. These workforce services include a variety of employment and training programs, including, among others, job search, referral, and placement assistance; employability skills training; recruitment and eligibility determination; and career counseling and educational planning (s. 445.009(1), F.S.).

Workforce Florida, in conjunction with state and local partners in the workforce system, is required to develop a strategic plan for the workforce system, with the goal of producing skilled employees for the employers in the state. By January 1 of each year, the strategic plan and any updates or modifications to the plan must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The plan must include, but is not limited to, strategies for fulfilling the workforce system's goals and strategies; aggregating, integrating, and leveraging the workforce system's resources; coordinating the activities of federal, state, and local workforce system partners; addressing the workforce needs of small businesses; and fostering the participation of rural communities and distressed urban cores in the workforce system (s. 445.006(1), F.S.). In its 2002-2005 strategic plan, Workforce Florida emphasizes the one-stop delivery system and describes its expanded use:¹

¹ Workforce Florida, Inc., *Workforce Florida Strategic Plan: 2002-2005*, 2-7 (Jan. 2002) (emphasis in original).

Broader focus for one-stop delivery systems

Workforce Florida's emphasis on better jobs and better wages suggests that workforce services and one-stop delivery systems will now reach out to a broader market of underemployed workers, including individuals who have never received welfare or government assistance. That same one-stop delivery system must also focus on employers. That raises the question of how to market one-stop workforce services to a broader group of potential customers and at the same time ensure that services are relevant and responsive to customers.

The strategic plan does not, however, specifically address how private-sector staffing services firms are used in the delivery of workforce services. From the genesis of the Workforce Innovation Act, the Legislature contemplated that private-sector staffing services firms would be involved in the workforce system. In its final report, the Florida Senate Select Committee on Workforce Innovation wrote:²

The staffing services industry is a major employer in Florida. In 1998, the industry was responsible for daily employment of 142,600 Floridians in field assignments, which are sometimes referred to as temporary jobs. Staffing agencies provide job matching services to job seekers and employers as well as employee screening and certain forms of computer training. They provide skill assessment, determine work aptitude, conduct appropriate background checks, and place individuals in jobs to the specifications of their business clients.

Staffing services firms are paid by their business clients and do not charge a fee to the job seeker. This practice distinguishes the industry from "employment agencies," that usually serve the job seeker after collecting a fee from them or contracting for a fee once placement is accomplished. The individual is employed by the staffing services firm and sent out on assignments. The staffing services firm is responsible for completing personnel paperwork and for paying taxes as the employer.

A 1999 survey conducted by the Labor Market Task Force showed that a majority of major employers responding reported they used staffing services firms to fill their staffing needs. Additionally, the survey indicates that 90 percent of the businesses reported that most of their entry level recruiting is done through a staffing services firm. Because of their strong ties to the business community, staffing services firms can be effective partners in the state's workforce system. The Workforce Innovation Act of 2000 provides for staffing services to be used in the state's job placement program and to assist underemployed job seekers in achieving economic self sufficiency. To the maximum extent feasible, staffing services firms will be provided access to one-stop delivery system databases . . . for recruitment and employment purposes. Regional workforce boards should use staffing services firms as a resource for assisting individuals to build a work history and to enhance work skills. The Act requires regional workforce boards to

² Florida Senate, Select Committee on Workforce Innovation, *The Workforce Innovation Act of 2000: Final Report*, 27-28 (Mar. 2000) (citations omitted).

collaborate with private-sector staffing agencies to facilitate services to the same population groups.

Implementing the select committee's recommendations in the Workforce Innovation Act, the Legislature authorized, but did not require, the one-stop delivery system to use private-sector staffing services firms:

To the maximum extent feasible, the one-stop delivery system may use private sector staffing services firms in the provision of workforce services to individuals and employers in the state. Regional workforce boards may collaborate with staffing services firms in order to facilitate the provision of workforce services. Regional workforce boards may contract with private sector staffing services firms to design programs that meet the employment needs of the region. All such contracts must be performance-based and require a specific period of job tenure prior to payment. (s. 9, ch. 2000-165, L.O.F.; s. 445.009(10), F.S.)

A June 2001 policy report by the James Madison Institute³ argues the one-stop delivery system has engaged in unfair competition with private-sector staffing services firms and has forced firms out of business:

One-stops have offered a wide array of services not just to the unemployed and welfare-to-work "clients" but they have captured the so-called "underemployed" market, individuals seeking job upgrades. In addition, they have extensively marketed themselves to large corporate employers as a source of "free" employment services. This expansion of one-stop services has appeared with astonishing salience in [Citrus, Levy, and Marion counties (Region 10)], and this growth has caused a great deal of commercial damage to the private sector staffing services industry in the city of Ocala.⁴

....

Since 1997, the Citrus, Levy, and Marion Regional Workforce Board and its one-stops have managed to put two staffing services (employment) companies out of business – one left town and the other sold out to another firm – and they have reduced the gross revenues and net profits of most others by one-half to two-thirds. Moreover, employment at all staffing services offices has declined, down to a skeletal staff of two to four persons. Most of the damage to these private sector companies has been concentrated in the city of Ocala.⁵

....

According [to] the [Citrus, Levy, and Marion Regional] Workforce Board's current marketing plan for 2000-01, the target audience for one-stops is

³ Kimble F. Ainslie, James Madison Institute, "*Just Say No*" to State Building on Workforce Development: Reinvigorating Labor Markets and Preserving the Federal Principle in Florida, Background Policy Report No. 34 (June 2001), available at <http://www.jamesmadison.org/files/publications/68.pdf> (last visited Feb. 1, 2001) (references to page numbers are from the printed version of the report, not the electronic version for which pagination is different).

⁴ *Id.* at 17.

⁵ *Id.* at 18.

“underemployed individuals and employers.” Evidently, the regional workforce board has moved beyond merely serving welfare-to-work applicants and the unemployed; they have fully moved into the mainstream employment services market and have been marketing directly to employers. It is evident the [Citrus, Levy, and Marion] Regional Workforce Board adopted a plan to dominate the employment services marketplace in its region, and every sign indicated the board’s intention was to monopolize the entire employment service market.⁶

. . . .

Quite evidently, the [Citrus, Levy, and Marion Regional] one-stops have [engaged in] unfair competitive practices.⁷

Beyond Ocala, the report alleges that the one-stop delivery system’s competition with private-sector staffing services firms is found in Orlando (Region 12), Palm Beach County (Region 21), Brevard County (Region 13), Polk County (Region 17), DeSoto, Hardee, and Highlands counties (Region 19), Pinellas County (Region 14), and Miami-Dade County (Region 23). Further, the report charges the staff of the regional workforce board in Volusia County with “tak[ing] up the tactic of threatening a takeover of staffing services functions.”⁸ Moreover, the report argues that one-stop delivery system centers have replaced portions of the private-sector staffing services industry:

Under regional workforce board direction, the one-stops have virtually taken over large sections of the staffing services business, particularly the lucrative temp-to-perm business. And they are poised to launch into the more lucrative executive placement business, as well as placing high school age youths.⁹

The report further argues that, “on the matter of serving the underemployed or anyone else in the local economy, there is no legitimate role for the regional workforce board to supply regular labor to the marketplace.”¹⁰ Finally, the report concludes:

Perhaps the first step toward a truly productive response would be for the state to remove itself from the business of managing labor markets and providing public institutional programs on industrial training. Specifically, this would mean . . . requiring Workforce Florida to eliminate one-stops across the state, or at least confining their functions to referring the unemployed and welfare recipients to private sector staffing agencies. Failing this, the permissive language of [s. 445.009(10), F.S.] ought to be replaced with mandatory language.¹¹

⁶ *Id.* at 19.

⁷ *Id.* at 20.

⁸ *Id.* at 18.

⁹ *Id.* at 19.

¹⁰ *Id.* at 22.

¹¹ *Id.* at 28-29.

In its August 2001 response to the James Madison Institute's report, Workforce Florida, Inc., wrote:¹²

Workforce Florida has not found a complete solution for the friction between the staffing agencies in Ocala and the local workforce board. Board staff and representatives of [the Agency for Workforce Innovation] have met with staffing agencies, both those who feel like the board is engaged in unfair competition and those who do not, and with other interested parties. The [James Madison Institute's] Report parroted the position of approximately 7 of the 23 staffing agencies in the Ocala area and failed to note any other positions. The author did not note that Workforce [Florida] and [Agency for Workforce Innovation] staff have formed a local committee to make recommendations to the state board.

Likewise, the report fails to note that the concentration of staffing companies in Ocala is unique for Florida. Workforce Florida has yet to hear but cursory discontent in any other workforce region. The Report notes that revenues to staffing agencies are down, but fails to look for any cause other than competition from the workforce board, including competition from other staffing agencies. This area has the highest concentration of staffing agencies in the state. The Report fails to note that staffing agencies in the area do a substantial portion of their business within manufacturing and distribution facilities, a sector that has been declining in the area. That being said, it is yet to be determined how much direct competition between the board and the staffing agencies occurs. In local focus groups assembled by the local workforce board with employers in the Ocala area, businesses did not view them as competing operations.

Workforce Florida's response also argued that the James Madison Institute's report did not mention that the state board and the Citrus, Levy, and Marion Regional Workforce Board contain members from the staffing industry.¹³ Finally, Workforce Florida's response concludes that "[d]epriving the state from training and support efforts for those transitioning from welfare to employment would set the state back five years. Private staffing agencies did not create the welfare problem, but neither did they solve it. It was not a central focus of their business mission."¹⁴

The Florida Workforce Development Association and the Florida Staffing Services Association organized a task force composed of representatives from the two associations and staff from the Agency for Workforce Innovation, Workforce Florida, and the regional workforce boards. On September 20, 2001, the task force recommended that Workforce Florida conduct a study of the current usage by one-stop delivery system centers of private-sector staffing services firms in providing workforce services. The task force also recommended legislation that requires the study, but recommended the study be conducted regardless of whether the legislation is enacted.

¹² Workforce Florida, Inc., *Workforce Florida Responds to James Madison Institute: Think Tanks Should Think*, 4-5 (Aug. 2001).

¹³ *Id.* at 4.

¹⁴ *Id.* at 5.

On October 4, 2001, the task force established three key points as a starting point for the study by Workforce Florida:¹⁵

- I. The way staffing agencies can play a partnership role at the local level.
 - A. Cooperative Advertising – Internal and external ads and promotions by regions to include verbiage, e.g., “In partnership with local staffing agencies and businesses of your community”, would present a united community effort in moving forward with lots of different partnerships to get people back to work. Likewise, private staffing firms would agree to verbiage in their advertisements that would cross-reference local one-stops and the services available there.
- II. Inclusion of staffing services firms in local decision-making.
 - A. Including a member of a local staffing services firm on Regional Workforce Boards or Committees.
- III. State and/or Federal prohibitions regarding use of private staffing services firms in the employment services program.
 - A. “Double-dipping”, vis-à-vis charges to employers by staffing firms, etc.

The executive committee of Workforce Florida informally discussed the task force’s recommendations on October 17, 2001, and directed that the issue be scheduled for further discussion and action by its board of directors. On November 6, 2001, the board of directors of Workforce Florida directed its staff to work with the Florida Workforce Development Association and the Florida Staffing Services Association, the regional workforce boards, and the Agency for Workforce Innovation in initiating a study leading to strategies and policies recommended for adoption by the board of directors, coupled with a report to the Legislature, no later than January 1, 2003, or an earlier date specified by intervening legislation. The agenda packet for the meeting also reported about the progress of negotiations in the Ocala area:

[I]n Marion County where there have been indications of past friction between local staffing agencies and the Regional Workforce Board, recent intensive negotiations have resulted in a set of agreements on respective roles and joint activities, now recorded in a Memoranda of Understanding between most major staffing agencies and the Citrus, Levy, Marion Regional Workforce Development Board.¹⁶

The committee substitute substantially implements the task force’s recommendations.

Responses from an informal survey conducted by Workforce Florida of the regional workforce boards reveal that about one-half of the respondents have representatives of staffing services firms on their boards. Several respondents explained they have contractual agreements or memoranda of understanding with staffing services firms and that staffing services firms provide skills training for workforce clients; participate in job placement activities with the regional workforce board; and are permitted to use facilities in the one-stop delivery system centers,

¹⁵ See Workforce Florida, Inc., *Agenda: Teleconference Meeting of the Board of Directors, Action Item 3* (Nov. 6, 2001).

¹⁶ *Id.*

advertise staffing services jobs in the centers, and recruit workforce clients in the centers. As of the date of this staff analysis, 11 of the 24 regional workforce boards have responded to the survey.

III. Effect of Proposed Changes:

The committee substitute eliminates the permissive provisions in current law which authorize regional workforce boards to use, and to contract with, private-sector staffing services firms for the provision of workforce services as part of the one-stop delivery system. The committee substitute replaces these permissive requirements and directs Workforce Florida, Inc.:

- To develop strategies and policies for incorporating the use of private-sector staffing services firms into the operation of the state's workforce system, notwithstanding any other provision of law.
- To incorporate the use of staffing services firms into its annually updated strategic plan.
- To develop policies and guidelines maximizing the use by regional workforce boards of private-sector staffing services firms to the extent feasible in the one-stop delivery system.
- To consider the extent to which the use of private-sector staffing services firms could result in more efficient delivery of workforce services.

The committee substitute also provides that any contract between a regional workforce board and a private-sector staffing services firm must be performance-based and must require a specific period of job tenure prior to payment.

The committee substitute requires Workforce Florida, in conjunction with the regional workforce boards and the staffing services industry, to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on its progress in fulfilling these requirements.

The report must also contain options for the state to increase the use of private-sector staffing services firms in the workforce system and recommendations on whether the membership of regional workforce boards should be amended to include representatives from staffing services firms and whether additional representatives of staffing services firms should be added to Workforce Florida's board of directors. The report is due by January 1, 2003.

The committee substitute takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The committee substitute requires Workforce Florida, Inc., to develop strategies, policies, and guidelines for incorporating the use of private-sector staffing services firms into the operation of the state's workforce system and maximizing the use of these staffing services firms by the regional workforce boards. To the extent that the workforce system expands its use of staffing services firms, these firms would experience increased workforce-related business and the related revenues.

C. Government Sector Impact:

According to Workforce Florida, Inc., irrespective of whether the committee substitute is enacted, its staff will conduct a study leading to strategies and policies recommended for adoption by its board of directors, coupled with a report to the Legislature, no later than January 1, 2003, or an earlier date specified by intervening legislation. Consequently, the committee substitute will have no additional government sector impact. Workforce Florida estimates the study will not require additional funding and will be absorbed within its current operating budget.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.