

Attachment 5: Epilogue

This document contains Pennsylvania Department of Labor & Industry (L&I)'s responses to public comments received on the Local Governance policy during the public comment period effective April 4, 2023, through May 4, 2023. Received public comments were organized by subject matter. In response to those comments, a workgroup attended by Bureau of Workforce Development Administration (BWDA) leadership and staff, representative local workforce development board executive directors, and staff to the Pennsylvania State Workforce Development board collaborated on the review and revision of the policy draft in consideration of those comments. Through this collaborative effort, some policy content was changed, and additional clarification was added.

L&I appreciates the local workforce system stakeholders who contributed comments.

Policy Purpose (Page 1)

This policy articulates the local governance requirements and associated provisions of the Workforce Innovation and Opportunity Act, or WIOA, and Pennsylvania's Workforce Development Act. WIOA assigns responsibilities at the federal, state, and local levels for the creation and maintenance of a workforce development delivery system. The workforce delivery system requires a collaborative effort among education, business, labor, economic development, public agencies, and community-based organizations in the delivery of services available under multiple programs to job seekers and employers. Chief elected officials, or CEOs, working with local workforce development boards, or LWDBs, ensure the provision of services at the designated local workforce development area, or LWDA, or region level.

Comments (s):

Comments discuss the proposed draft policy, focusing on the purpose and roles of local workforce development boards (LWDBs). Commenters make several points:

- A. The proposed draft policy accurately recognizes the responsibilities assigned by the Workforce Innovation and Opportunity Act (WIOA) at the federal, state, and local levels for establishing and maintaining a workforce delivery system.
- B. WIOA specifically grants authority to WDBs to shape the vision of the workforce system at the state and local levels and maintain a crucial leadership role in implementing WIOA.
- C. Unfortunately, the proposed draft policy from the PA Bureau of Workforce Development Administration (BWDA) fails to acknowledge the fundamental leadership role assigned to local WDBs under WIOA. The draft was created and published for public comment without seeking input or consultation from local leadership, including the Chief Elected Officials (CEOs) who are responsible for financial liability and appointing WDB members.
- D. The recommendation is for the BWDA to step back and establish a cooperative and mutually beneficial process for consulting with the local Workforce Development Boards (LWDBs) and CEOs. This collaborative approach would likely result in a more effective and implementable draft policy that can be shared for public comment.

Response:

- A. Federal law tasks states with executing specific responsibilities required by and articulated in law and regulation. State agencies under the governors' jurisdiction are responsible for the administration of these requirements and are accountable to the government of the United States for all programs,

Attachment 5: Epilogue

processes, outcomes, and performance required by statute.

B. Local workforce development areas – designated by governors in consultation with state workforce development boards – play an important role in ensuring the governors’ vision for workforce development services delivery are executed within the confines of federal law and regulation and in accordance with state workforce system policy. Commonwealth workforce system policy seeks to provide LWDBs with maximum flexibility – within the law and in alignment with state specific requirements – to accomplish the governor’s vision for Pennsylvania workforce development.

C & D. L&I welcomes and values input and feedback from LWDBs and CEOs, and has, for the first time, drafted and published a Policy on Policies that codifies its commitment to working more closely with local workforce development boards, staff to local boards, and the entire universe of Commonwealth workforce development system partners both inside and outside of state government.

No changes will be made in this section.

Definitions (Page 2)

American Job Center® Network, or AJC, is the common identifier to be used by each one-stop delivery center as required by WIOA and is to be used alongside the PA CareerLink® brand. It is a unifying name and brand that identifies online and in-person workforce development services as part of a single network.

Comment(s):

Commenters suggest including a reference to the statutory and regulatory language outlined in WIOA sec. 121(e) and 20 CFR 678.900 in the definition section of the proposed policy. They recommend modifying the definition of the "American Job Center® Network" to state that it is the common identifier used by each one-stop delivery center as required by WIOA, alongside the PA CareerLink® brand. They further emphasize that this should not prohibit one-stop partners, States, or local areas from having additional identifiers. The commenter specifically recommends incorporating the following statement into the policy: "American Job Center® Network, or AJC, is the common identifier used by each one-stop delivery center as required by WIOA and is to be used alongside the PA CareerLink® brand. It is a unifying name and brand that identifies online and in-person workforce development services as part of a single network. In accordance with WIOA sec. 121(e), this should not be construed to prohibit one-stop partners, States, or local areas from having additional identifiers."

In summary, commenters suggest allowing the use of additional identifiers alongside the PA CareerLink® brand within the context of the "American Job Center® Network."

Response:

WIOA does not prohibit local areas from having local brand identifiers for programs, and Pennsylvania permits the use of local identifiers as long as those identifiers and their use comply with the current Workforce System Common Identifier policy and with forthcoming revisions to Pennsylvania’s Common Identifier workforce system policy once made. Amendments will be made to this area of the Local Governance Policy to incorporate suggested language and add reference to the Common Identifier Policy. Amendments will also be made to the Common Identifier Policy. Working with L&I

Attachment 5: Epilogue

Communications office and the L&I Office of Chief Counsel, logo use requirements, and messaging requirements as they relate to the PA CareerLink®, will be revised and republished, taking into consideration local brands.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 4)

Local Workforce Development Boards

Establishment. WIOA requires the establishment of a LWDB in each local area of a state to carry out the functions described in section 107(d), (and any functions specified for the local board under this Act or the provisions establishing a core program) for each area. Each LWDB shall be certified by the governor of the state at least once every two (2) years.

Comment(s):

This draft Policy is owned by the BWDA Oversight Services Unit according to the publication information on page 1. However, recertification, as stated, is accomplished via the Governor of the Commonwealth. The existing WSP for Local Workforce Development Area Designation covers initial designation and also states on page 3 that after rigorous evaluations in 2017, the Governor determined at LWDBs would continue to exist as designated. The language in the draft policy at hand regarding recertification would be better suited within a Policy broader in scope than the BWDA Oversight Unit and by Law, the Governor is to determine certification. It is recommended the additional language that was added, is removed from this Policy.

Response:

It is important to note that this comment refers to policy ownership in order to specify that LWDBs are not certified by the policy owner listed on page 1 of the policy. For the sake of clarity, Policy ownership, according to the Commonwealth's Policy on Policies, is defined as, "...the L&I office responsible for creating, revising and monitoring a workforce system policy and its operational or administrative procedures." Ownership does not imply governing authority, only administrative responsibility for maintenance of the policy. However, the governor has given L&I, and by extension, the Bureau of Workforce Development Administration the authority to certify local boards on behalf of the governor. The Policy Owner will be edited to list the Bureau of Workforce Development Administration.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Pages 4-5)

Local Workforce Development Boards Membership Composition

For each local area in the state, the members of the LWDB must be selected by the CEO consistent with criteria established by the governor and PA WDB pursuant to WIOA Section 107(b)(1) and must meet the composition requirements of WIOA Section 107(b)(2). The LWDB must include representatives from business, workforce development, government, economic and community development and education and training providers.

Comment(s):

Commenters suggest that, due to a recommendation made by the PA Workforce Development Board's Continuous Improvement Committee, any additional language or requirements related to board membership for Local Workforce Development Boards is unnecessary. The law already outlines composition requirements, and the additional language is deemed redundant. The PA Workforce Development Board, in their meeting on Nov. 15, 2022, unanimously approved a recommendation

Attachment 5: Epilogue

stating that no additional required members are necessary for the LWDBs to fulfill their mission. Imposing further membership requirements, especially non-business members, would create compliance issues and impede their ability to fulfill their mission effectively.

Response:

This comment is appreciated, however, pursuant to WIOA Sec. 107(b)(1), the policy must contain language establishing criteria for use by CEOs to appoint local board members. Though the policy has been amended to provide clarification of these criteria, Pennsylvania does not require additional board members beyond what is identified in WIOA Sec. 107(b)(2).

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Pages 5-6)

Membership Composition

Per 20 CFR §679.320 (5th bulletin, subject: Representation). *Summarized: LWDB may include representatives of agencies or entities serving the local area relating to transportation, food and housing assistance; philanthropic organizations; or other individuals or representatives of entities whom the CEO determines to be appropriate. Although these members are not required under the Act, the commonwealth encourages CEOs to confer voting privileges on these members and that they carry the same rights and responsibilities as required members.*

Comment(s):

Commenters share concerns regarding the challenges faced in recruiting and retaining members for LWDBs due to perceived inefficient onboarding and retention requirements. Commenters assert that the proposed section contradicts the unanimous recommendation of the Pennsylvania Workforce Development Board, which states that no additional required members are necessary for LWDBs to fulfill their mission. One commenter raises specific concerns about the impact of additional appointments on the representation of the business community and the difficulty of attaining a quorum at quarterly meetings. Overall, the LWDBs encourage participation from a broad spectrum of organizations representing local and regional communities and the labor force, but the recruitment and retention of volunteer members remain challenging.

Additionally, commenter recommend that there be no requirement for CEOs to confer voting privileges on board members who are not required under WIOA.

Response:

This comment is appreciated, and L&I will revise this content to improve clarity and more adequately articulate that representation requirements are unchanged. Further, there is no requirement that non-required board members have voting privileges conferred onto them by CEOs; however, it is preferred that non-required members have voting privileges so as to leverage the full measure of their experience and expertise.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 6)

Membership Composition

Per 20 CFR §679.320 (5th bulletin, subject: Geographic Diversity). *The LWDB must elect a chairperson from among the business representatives on the local board as required by WIOA Section 107(b)(5), and members must represent diverse geographic areas within the local area.*

Attachment 5: Epilogue

Comment(s):

Commenters suggest that according to WIOA Sec. 107(b)(1), the Governor, in collaboration with the State board, is responsible for establishing criteria for the appointment of members to local boards by chief elected officials. While WIOA does not mandate that members of the Local Workforce Development Boards (LWDBs) must represent diverse geographic areas, there is a requirement outlined in the regulations that suggests it. However, it is argued that enforcing such a requirement beyond the statutory framework is unrealistic and impractical, potentially leading to complications if membership composition is not in compliance. Therefore, a recommendation is made to remove the requirement for members to represent diverse geographic areas within the local area.

Response:

L&I respectfully disagrees. This language is taken verbatim from WIOA 107(b)(5), which states "Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. The members of the board shall represent diverse geographic areas within the local area." There will be no change to this section of the policy, however, Pennsylvania will provide technical assistance as requested.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 6)

Multiple Entity Representation

Multiple Entity Representation With the exception of business member representatives, individuals may be appointed to represent more than one required membership category if the individual and the entity they represent meets all the criteria for representation for each category. For example, individuals representing more than one entity must have optimum policymaking or hiring authority within each of the categories they are representing.

Comment(s):

Commenters express shared concerns about the membership composition of LWDBs and the representation of multiple entities by board members. They emphasize the importance of allowing members, particularly labor representatives involved in registered apprenticeship programs, to represent multiple entities. The inclusion of exceptions for business member representatives is considered unnecessary and should be removed. There is a request for clarification on whether members representing multiple categories count toward board compliance without requiring additional members. One commenter suggested language to address this issue and ensure accurate determination of membership composition. Another commenter highlights the success of streamlining board membership while maintaining compliance with WIOA provisions. It argues against mandatory additions that could increase membership and potentially hinder effectiveness. Another commenter expressed the need for each member to be counted only once when determining membership composition, even if they represent multiple categories.

Response:

The language in this section will be edited to strike the phrase "With the exception of business member representatives". Amended language will state that one individual may represent more than one membership category, including businesses, as long as the membership requirements and compliance standards are met; however, that individual will count only once for percentage of businesses and will have only one vote. An attachment to the policy with detailed visual examples will be provided for

Attachment 5: Epilogue

further explanation of how membership compositions will be calculated when an individual represents more than one required category.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Pages 6-7)

Membership Provisions (Page 6-7)

Nominations WIOA requires that the CEO establish a formal nomination policy to facilitate appointments to the board that ensures:

- *Business representatives are appointed from among individuals nominated by local business organizations and business trade associations;*
- *Labor representatives are appointed from among individuals who have been nominated from local labor federations; and,*
- *When there is more than one local area provider of adult education and literacy activities under Title II, or multiple institutions of higher education providing workforce investment activities, the CEO must solicit nominations from those providers and institutions, respectively, in appointing the required representatives. This requirement provides for a representative selection process for these membership categories.*

Comment(s):

Commenters address the issue of the CEO's role in establishing a formal nomination policy. One commenter raises concerns about the potential redundancy of the requirement, additional workload for the CEO, and the need to solicit nominations from Title II programs. They recommend removing the local procedure requirement and allowing locally crafted nominations policies. While another commenter supports the requirement for a formal nomination policy, it opposes the mandatory nomination requirements for certain representation categories, highlighting existing successful representation from higher education institutions and a single Title II provider. They recommend eliminating a problematic nomination process beyond business and labor representatives.

Response:

While L&I appreciates this comment and recognizes the administrative requirement inherent in the nomination process, this language is taken directly from 20 CFR 679.320(g) which states "Chief elected officials must establish a formal nomination and appointment process, consistent with the criteria established by the Governor and State WDB under sec. 107(b)(1) of WIOA for appointment of members of the Local WDBs, that ensures:" and from 20 CFR 679.320(g)(3) which states "When there is more than one local area provider of adult education and literacy activities under title II, or multiple institutions of higher education providing workforce investment activities as described in WIOA sec. 107(b)(2)(C)(i) or (ii), nominations are solicited from those particular entities." The nomination requirement in the policy is a lawful requirement and is the standard to which the United States holds the Pennsylvania Department of Labor & Industry. The method by which LWDBs solicit nominations can be determined locally and can take the form of a public posting period, letter request, email notification, or other method so long as nominations are solicited from all entities.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Pages 6-7)

Membership Provisions

Nominations (subject, Representation)

Attachment 5: Epilogue

Representatives of business; labor organizations; adult education and literacy; and higher education are required to be nominated prior to appointment to the LWDB. Nominating organizations must submit an official letter directly to the CEO(s) with a copy provided to the local board, which:

- *Must be submitted on appropriate nominating agency's letterhead;*
- *Must designate the appropriate category or categories for which the member is being nominated;*
- *Must describe the nominee's optimum policymaking and/or hiring authority for the category or categories to be represented;*
- *Must include a narrative supporting the qualifications of the nominee, and in the case of representatives of business shall include a description of how the individual provides employment opportunities in the local area in an in-demand industry sectors or occupations and provides high-quality, work relevant training and development to its workforce or the workforce of others (in the case of organizations representing businesses);*
- *Must be signed by an official of the nominating entity; and,*
- *May include additional documentation (e.g., resume, etc.) supporting the qualifications of the nominee.*

Comment(s):

A commenter submits that, "Regarding the board nomination letter, there is no provision in statute or regulation for a nomination letter. The policy lacks consideration for the practical steps taken by the CEO for the nomination process that is then sent to the LWDB. Requiring business associations to write long narratives regarding individual nominee qualifications is difficult and an unnecessary requirement. Often times, much scrutiny is placed on the business association to properly draft and meet the subjective interpretation of a local monitor that may be uninformed or draw assumptions about industry practices or occupations. It should be sufficient to get the name of the LWDB nominee, their employers or business, and their title within their organizations." The commenter's recommendation is the elimination of the fourth bullet in the list.

Response:

L&I thanks the commenter while recognizing the concern. To establish statewide continuity for supporting federal requirements of proper nomination documentation, the Commonwealth amended language in the policy, and created a *Local Workforce Development Board Member Nomination Form*. Additionally, clarification was added that a letter or email may also be used, for which specific requirements still apply.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 7)

Membership provisions

Appointments LWDB appointments must be signed by the CEO and sent to the individual members confirming the appointment for a defined term. The letter must contain the 'category' for which a member is being appointed. A copy of the appointment letter must be maintained at the LWDB office in accordance with records retention requirements and be made available upon request by federal and state agencies.

Comment(s):

Commenters share the perspective that CEOs typically conduct appointments in transparent public meetings. They argue against the need for signatures, suggesting that the CEO's role in nominating

Attachment 5: Epilogue

candidates makes it redundant. The comments recommend the option of making appointments in publicly advertised meetings with recorded actions, either in minutes or through letters of appointment. Overall, the comments highlight the importance of transparency and provide suggestions for improving the appointment process.

Response:

L&I thanks the commenter for providing suggestions to improve the local workforce development board appointment process. In consideration of the comment, the policy was amended to account for the public forum for which appointments to the local board may often occur during official Commissioner meetings.

The modification of using meeting notes or an appointment letter signed by the CEO to serve as proof of appointment is acceptable so long as appointment details are properly documented, maintained at the LWDB office and are in accordance with record retention requirements. Proof of appointment must be made available upon request by federal and state agencies.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 7)

Membership provisions

Terms All terms, except interim appointments, must be no less than two (2) years and no more than four (4) years. All terms, including interim appointments, must have a defined start date and end date. The start date, term's duration and end date are agreed upon with appointees before appointment. A LWDB member's term begins on the pre-determined start date. Appointments cannot be retroactive or backdated. A member's appointment expires on the pre-determined end date, the effective date of a member's resignation or the date the member is removed for cause.

Comment(s):

20 CFR §679.310 states the CEO must establish by-laws, consistent with state policy, for Local WDB membership, that at a minimum addresses nomination process; term limitations and how term appointments will be staggered; notification of vacancies for prompt nominees; etc. Nowhere in WIOA regulation or the State Workforce board by-laws is a specified time frame for terms listed for local areas. There is also no discussion on interim appointments and/ or reappointments.

Recommendation: Local areas and their CEOs should have the ability to determine the terms for board members as well as not requiring the request for a new nomination letter for a board member who is serving subsequent terms. This pulls the CEOs and board staff focus from their required duties.

Response:

L&I appreciates the commenter's recommendation. To the commenter's point, in accordance with WIOA 679.310 (g), the federal regulation requires CEOs to establish bylaws that are consistent with state policy, including term limitations. It is the position of the Commonwealth to uphold term limit expectations reflected in the policy for the purpose of regulatory compliance, continuity across the workforce system, and to achieve alignment with the complexity of the multi-year and modification regional and local planning process. Term limit uniformity across the workforce system positions the Commonwealth more effectively for executing responsibilities entrusted by the Governor, as articulated in federal regulations. The nomination process for an individual being nominated for a subsequent term was changed to make subsequent term appointments a more conducive process.

Attachment 5: Epilogue

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 8)

Membership provisions

Subsequent Appointments/Reappointments Subsequent Appointments/Reappointments If not limited by the LWDB's bylaws, a CEO may appoint a member for a subsequent term or terms. This is a reappointment. Reappointments must be made in the same manner as initial appointments, including a new nomination letter for members being reappointed to categories requiring nomination. Reappointments must be made when a member's current term expires. This will require pre-planning on the part of the CEO. Members whose terms expire before the completion of the reappointment process cannot perform any official duties on the local board, including deliberation or voting, until a subsequent term's designated start date.

Comment(s):

Commenters believe interim appointments and reappointments are the CEO's purview. Commenters argue against requiring signatures and express concerns about administrative burdens, time-consuming requirements, and the potential for membership composition issues.

Commenters mention a need for clarity and distinguishing between new appointments and reappointments. They propose streamlined reappointment processes and the option for members to continue until reappointed or replaced. Commenters recommend flexibility in allowing locally developed nomination and appointment procedures that meet the specific needs of the areas overseen by CEOs.

Commenters highlight the challenges of meeting timelines for appointments and suggest extending the timeline to alleviate administrative burdens. They also stress a need to differentiate between initial appointments and reappointments to improve efficiency and reduce paperwork, especially when there are no significant changes in board members' official duties.

Commenters advocate for CEO control over appointments and reappointments, transparency in the process, flexibility in nomination procedures, streamlined reappointment processes, extended timelines, and the reduction of administrative burdens and paperwork requirements. The overall aim is to enhance efficiency and ensure compliance while allowing local areas to adapt procedures that best suit their specific needs.

Response:

L&I appreciates commenter's input. To improve clarity and to differentiate between appointment status, the Commonwealth amended the policy to reflect if the LWDB's bylaws allow, the CEO may appoint a member for an additional term, resulting in a reappointment if all existing requirements related to an initial appointment nomination apply.

In acknowledgment of a commenter's similar suggestions related to nomination procedures and term appointments, L&I refers readers to the previous response. In accordance with WIOA 679.310 (g), the federal regulation requires CEOs to establish bylaws that are consistent with state policy, including term limitations.

Regarding timeline concerns associated with the nomination and appointment process, WIOA 679.310 (g)(2) require CEOs to include in the bylaws staggered appointments, "to ensure only a portion of membership expire in a given year". To assist in succession planning, the Commonwealth amended the policy to reflect a 120-day period, offering boards additional time to make necessary preparations for

Attachment 5: Epilogue

vacancies. While this change provides additional time to fill the board vacancy, there's no substitute for thorough pre-planning.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 8)

Membership provisions

Vacancies LWDB vacancies must be filled within 90 days of the date a term becomes an incomplete term or the term's pre-determined end date. If a vacancy goes beyond the 90-day deadline and results in the LWDB being out of compliance with WIOA regulations for required membership composition, the LWDB must request and receive an approved, written waiver from the director of BWDA or the director's designee before the next LWDB meeting.

Comment(s):

Commenters highlight the challenges CEOs face in recruiting and appointing LWDB members within the proposed 90-day timeframe. They recommend extending the timeline to at least 120 days to allow for a more practical and realistic process. Commenters emphasize the administrative burdens placed on CEOs and LWDBs by the strict 90-day limit, stressing a need for flexibility to meet the nomination and appointment requirements.

Commenters point out conflicting language within the draft policy regarding the 90-day requirement and the process for requesting a waiver. They suggest aligning the timeline for requesting a waiver with the extended 120-day period to ensure consistency and provide sufficient time for the nomination and appointment process.

Additionally, one comment seeks clarification on the allowance of waiver requests for a 90-day extension, as it was granted in the past but then deemed not allowable. The commenter highlights the practical challenges faced in recruiting business members and requests flexibility in the appointment process for vacancies.

In summary, the comments call for at least 120 days to accommodate the nomination and appointment process. They emphasize the need for flexibility and acknowledge the challenges faced by CEOs in recruiting members, particularly business representatives. The overall aim is to address administrative burdens, ensure a practical and realistic process, and provide flexibility in meeting the requirements while maintaining compliance.

Response:

To accommodate the nomination and appointment process, a 120-day period to fill vacancies is acceptable, and the policy will be amended accordingly, however, it should be noted that extending this deadline does not negate the need for pre-planning to prepare for vacancies whenever possible.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 8)

Membership provisions

Request to Waive the 120-day requirement to make an appointment Requests to waive the 90-day requirement identified in this policy must be submitted via email to L&I at least one (1) week before the expiration of the 90 days. Each request must provide a detailed explanation, not to exceed one (1) page of why a vacancy will not be filled in the required timeframe, as well as a description of the process that was employed at the time of the vacancy and the process underway to fill the vacancy. Waivers must be

Attachment 5: Epilogue

requested by the LWDB chairperson and/or LWDB staff executive director.

Comment(s):

The appointment and reappointment process required by the draft policy is overly complicated, burdensome, staff intensive and subject to missed deadlines. As the CEO makes the appointments, why should waiver requests be explained by the LWDB Chair? Finally small areas with only a few board staff will find it difficult to comply with all the documentation and timeframe requirements in this policy while trying to comply with regulatory requirements.

- Recommendation: Allow requests for the 90-day extension to be made via a simple email request by the Executive Director without extensive explanations. Requests to Waive the 90-day requirement to make an appointment. Requests to waive the 90-day requirement identified in this policy must be submitted via email to L&I at least one (1) week before the expiration of the 90 days. **Each request must provide a detailed explanation, not to exceed one (1) page of why a vacancy will not be filled in the required timeframe, as well as a description of the process that was employed at the time of the vacancy and the process underway to fill the vacancy.** Waivers must be requested by the LWDB chairperson and/or LWDB staff executive director."

Response:

Extending the timeframe to fill vacancies to 120 days should make waivers unnecessary. Under the rare circumstance that a waiver may be needed, a detailed explanation must be provided. This explanation opens communication, gives an opportunity to identify issues while ensuring there is a plan forward, and prevents board certification delays. Additionally, it provides documentation that may be requested in an audit or by USDOL.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 8)

Membership provisions

Waiver Approval *If approved, the waiver will extend the period an additional 30 days or as negotiated with BWDA. Failure to fill the vacancy may result in sanctions to the LWDB.*

Comment(s):

We encourage the final policy to rescind the sentence: "Failure to fill the vacancy may result in sanctions to the WDB."

Response:

L&I appreciates this comment, but respectfully disagrees. There is a need to ensure that the state can act in an instance where a board could potentially be in a position where they cannot vote, do business, and move forward with their requirements under WIOA. The failure of L&I to ensure LWDB membership compliance may result in sanctions from USDOL. L&I is available to provide technical assistance to LWDBs upon request.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 8)

Membership provisions

Removal *LWDB members may be removed for other reasons outlined in the LWDB bylaws, such as lack of attendance. LWDBs must define the specific criteria that will be used to establish just-cause and the*

Attachment 5: Epilogue

process for removal. L&I reserves the right to investigate allegations of wrongdoing that result in the removal of a LWDB member. The CEO(s) will be formally notified of the results of any investigation.

Comment(s):

Commenters highlight the responsibility of CEOs in defining the specific criteria for establishing just cause and the process for removal in the By-Laws of Local Workforce Development Boards (LWDBs).

Commenters emphasize that according to WIOA and the introduction to the final regulations, the By-Laws are the responsibility of the CEOs, not solely the LWDBs. They recommend clarifying this distinction and indicating that the task of defining the criteria and process lies with the CEOs.

Commenters highlight the need to align the policy language with the regulatory guidance, recognizing that the responsibility for the By-Laws rests with the CEOs. They aim to ensure clarity and accuracy in assigning the appropriate authority for developing the criteria and process for just cause and removal.

In summary, commenters call for the policy to clearly reflect that the CEOs have the responsibility for defining the criteria and process for establishing just cause and removal in the By-Laws of LWDBs. They highlight the alignment with WIOA and the final regulations and recommend indicating that this task is a CEO responsibility, emphasizing the need for accurate delineation of authority and accountability.

Response:

The policy will be amended to clearly reflect that the CEOs have the responsibility for defining the criteria and process for establishing just cause and removal of members in the bylaws.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 9)

Membership provisions

Pennsylvania Department of State, or DOS, Registration Pennsylvania Department of State, or DOS, Registration Per Title 15 PA C.S., all private, incorporated, non-profit organizations must be registered with the DOS Bureau of Corporations and Charitable Organizations. This includes all LWDBs that are not part of a county entity.

Comment(s):

Recommendation: A LWDB recommends updating the narrative to include additional language that protects local workforce boards that are Pennsylvania non-profit corporations....” shall be incorporated as a Pennsylvania non-profit corporation pursuant to the Pennsylvania Nonprofit Corporation Law of 1988, 15 PA C.S.A. ~5101 et seq., and subject to all of the provisions thereof.”

Response:

L&I appreciates the submitter’s comment regarding PA’s Consolidated Statute Title 15. To be clear, this portion of L&I’s Local Governance policy language is associated with “Membership Provisions” and as such applies only to nominating entities. L&I reviewed the policy language and revised it to increase clarity by indicating the application of Title 15 PA C.S relates only to LWDB membership.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 9)

LWDB Staff

Attachment 5: Epilogue

(Subject, CEO Agreement) *If the LWDB selects an entity to staff the board that provides additional workforce functions beyond those required, such an entity is required to enter into a written agreement with the LWDB and CEO(s) to clarify their roles and responsibilities.*

Comment 1:

One commenter requests additional clarity regarding the following:

Can/does the unified fiscal agent and partnership agreement between the LWDB and CEO(s) serve as the “written agreement” described above?

Response 1:

The unified fiscal agent and partnership agreement between the LWDB and CEO(s) does not satisfy the expectation of boards to articulate in a written agreement the roles and responsibilities of staff members whose duties go beyond workforce function requirements. This written agreement should be viewed as a standalone requirement. The policy was amended to clarify the expectations of what must be included in the written agreement.

Comment 2:

What information must the written agreement include to sufficiently clarify the roles and responsibilities of the LWDB and CEO(s)?

Response 2:

L&I thanks the commenter for the question and recognized the need to create, in consultation with LWDBs, additional CEO Agreement guidance to further assist in meeting regulatory compliance. Please see *Attachment D: Chief Elected Official and Local Workforce Development Board Partnership Agreement Guidance* for additional information.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 9)

LWDB Restrictions

The LWDB, its staff, the fiscal agent (if one exists) and fiscal agent staff are prohibited from providing training services.

Comment(s):

Commenters point out that WIOA regulations grant the option for grant recipients/fiscal agents to provide youth workforce investment activities directly, as stated in 20 CFR § 681.400. They also highlight that LWDBs can act as providers of career services for Adults and Dislocated Workers with the agreement of the CEO in the local area and the Governor, as outlined in WIOA Final Rule § 679.410.

Commenters recommend rescinding language in the policy that conflicts with WIOA and propose that the Governor establish a process for LWDBs to request waivers or approval to be providers of career or training services, specifying the criteria to be considered. They suggest recognizing that WIOA already grants authority to LWDBs for Title I Youth services and advocate for clear procedures in the policy document.

Commenters suggest revising the policy to avoid statewide restrictions on LWDBs' ability to provide direct career or training services. They propose establishing a procedure for LWDBs and their CEOs to request approval or waivers based on the specific needs of the local area being served. They emphasize the importance of considering local needs, implementing internal controls to prevent conflicts of

Attachment 5: Epilogue

interest, and ensuring that the approval process is not administratively burdensome.

In summary, the combined comments call for aligning the policy with WIOA regulations, establishing procedures for requesting approval or waivers, and allowing LWDBs to provide direct career or training services based on local needs and effective governance structures. They highlight the need for clear criteria, internal controls, and a streamlined process that facilitates service delivery while maintaining accountability.

Response:

In accordance with WIOA Sec. 107(g)(1)(A), appropriate firewalls between service provider organizations designated to perform career and training services and potential employment of LWDB staff and/or fiscal agent staff are required by USDOL. The Commonwealth amended the policy to clarify regulatory requirements for articulating in the CEO & LWDB partnership agreement the presence of clear boundaries between entities' roles and responsibilities demonstrating the avoidance of conflict of interest.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 9)

LWDB Restrictions

(Subject, Exceptions) In cases where career services and training services are provided by an inter-related agency (i.e., county agency or commission structure) that is also the employer of LWDB staff and/or fiscal agent staff, the service/training provider staff must report to a supervisor that does not oversee LWDB staff or fiscal agent staff. This structure is only allowable through L&I written approval.

Comment(s):

This section is not clear. Counties and cities typically do not provide training or operate as educational institutions. Usually only a community college serving as the staff to an LWDB would also provide training. A local area may serve as staff to the board, may also serve as the fiscal agent and may be designated to manage the CareerLink® however may not be providing training.

- Recommendation: The Commonwealth should clarify whether the example above requires L&I approval.

Response:

As expressed in the previous response, WIOA Sec. 107(g)(1)(A) requires appropriate firewalls when an organization employs LWDB staff and/or fiscal agent staff and provides career and training services. The policy was amended to clarify the circumstances under which structure exception would be required and identifies the steps required of the CEO and LWDB when this circumstance exists.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 10)

Certification

L&I is responsible for certifying a LWDB for each LWDA in the commonwealth. LWDBs are encouraged to contact their assigned BWDA Oversight Services monitor any time regarding certification, as the bureau remains available to provide the necessary technical assistance.

Comment(s):

Commenters highlight a perceived discrepancy between the proposed policy and the federal law

Attachment 5: Epilogue

regarding the certification of local workforce development boards (LWDBs). The comments emphasize that according to WIOA Section 107, the responsibility for certifying LWDBs lies with the Governor, not the Department or L&I (Labor and Industry).

Commenters point out that the proposed policy incorrectly states that L&I is responsible for certifying LWDBs in each local area. They highlight the language in WIOA Section 107(c)(2), which explicitly designates the Governor as the responsible authority for certifying one local board for each local area in the state.

Commenters unanimously call for aligning the policy with federal law by clearly stating that the Governor is responsible for certifying LWDBs for each local workforce development area in the commonwealth. They emphasize the need to maintain consistency in the language throughout the policy document and ensure that it reflects the authority and role assigned to the Governor by WIOA.

In summary, commenters asserts that the certification of LWDBs is the responsibility of the Governor, as specified in WIOA Section 107. It calls for revising the policy to reflect this by stating that the Governor is responsible for certifying LWDBs in each local area, ensuring consistency with federal law.

Response:

The Secretary of Labor & Industry, designated by the Governor, implements WIOA on behalf of the Commonwealth and is the responsible administrative body, as found in 20 Code of Federal Regulations (CFR) Part 679. Therefore, L&I has the authority to certify local boards on behalf of the Governor.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 10)

Certification

Second or subsequent certification In accordance with WIOA Section 107(c)(2), L&I is required to conduct a certification review of each LWDB every two (2) years. Certification will be based on the extent that the local workforce system's activities are able to meet local performance accountability measures and any prescribed outcomes as outlined in the local grant agreement; sustained fiscal integrity; and the LWDB composition. Additionally, single audits for LWDBs must be complete and up to date.

Comment(s):

Commenters argue that it's the Governor's role to certify LWDBs in accordance with WIOA Section 107. Both comments emphasize that the certification process outlined in WIOA designates the certification responsibility to the Governor.

They point out that the Department serves as the State Workforce Agency, but the certification process involves the authority and role of the Governor, sometimes in consultation with the State Workforce Development Board. The comments express uncertainty about whether the Governor has delegated or can delegate this authority to the State Workforce Agency or the State Workforce Development Board.

The recommendations from both comments align in proposing that the policy clearly state that the Governor is responsible for certifying LWDBs for each local workforce development area (LWDA) in the commonwealth once every two years. They advocate for consistency with the language in WIOA Section 107 and ensuring that the policy accurately reflects the designated certification responsibility of the Governor.

Attachment 5: Epilogue

In summary, the combined comment asserts that the Governor, as stated in WIOA Section 107, is responsible for certifying LWDBs for each LWDA. It suggests revising the policy to explicitly state that the Governor holds this responsibility and to remove any ambiguity regarding the delegation of this authority. By doing so, the policy will align with the federal law and clarify the role of the Governor in the certification process.

Response:

The Secretary of Labor & Industry, designated by the Governor, implements WIOA on behalf of the Commonwealth and is the responsible administrative body, as found in 20 Code of Federal Regulations (CFR) Part 679. Therefore, L&I has the authority to certify local boards on behalf of the Governor.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 10)

Certification

Procedures To facilitate the initial certification of a LWDB, the CEO(s) or a designee must submit a current LWDB membership list to L&I within 90 days following full local board appointment. Thereafter, LWDBs shall provide membership lists to L&I on a quarterly basis.

Comment(s):

The quarterly basis of reporting is an unnecessary and administratively burdensome on the CEO and LWDB and serves no clear or useful purpose relating to a certification process that occurs every 24 months, or two years. Additional requirements are established for a notification if the LWDB membership threatens board stability and certification requirements around membership.

- Recommendation: LWDBs shall provide membership lists to L&I on an annual basis.

Response:

The quarterly basis of reporting was discussed in a forum with LWDB Directors, and group consensus was to retain the quarterly requirement. Updates are reviewed quarterly and provide an opportunity for technical assistance and support.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 10)

Certification

Approval Certification by L&I will be evidenced by notification of approval from L&I to the LWDB.

Comment(s):

This section of the WSP - Local Governance Draft removes language from the current Local Governance Policy that says local boards are considered certified if “At least 90 days has passed, since the submission of the Local Board Membership List and other documentation as required, without the local board receiving any communication from the Department” (p. 7).

Response:

L&I appreciates this comment, however the language in the draft is consistent with state and federal law. BWDA is responsive to LWDBs in the certification process and recognizes that there must be communication and accountability to ensure that certifications are completed timely. Therefore, the language referred to in the comment was removed.

Attachment 5: Epilogue

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Pages 10-11)

Certification

Denial L&I may choose not to certify a LWDB for any of the following reasons:

- Membership composition does not comply with federal, state or local membership requirements;
 - The LWDB has not submitted a single audit that is complete and up to date (for second and subsequent certifications);
 - The LWDB has not sustained fiscal integrity (for second and subsequent certifications);
 - The LWDB has not met local performance accountability measures and any prescribed outcomes as outlined in the local grant agreement (for second and subsequent certifications); or,
- Failure to carry out responsibilities articulated in law, or published regulation.

Comment(s):

The combined comment emphasizes the consensus among the comments regarding the inclusion of "other reasons as L&I may determine" in the draft policy, which allows for undefined reasons for denying certification to a Local Workforce Development Board (LWDB). The comments point out that this language falls outside the requirements outlined in WIOA statute Section 107(c)(2) and grants L&I wide-ranging authority without specific criteria established by the Governor.

The combined comment asserts that the draft policy should reflect the explicit reasons for denial as stated in WIOA Section 107, maintaining consistency with the federal law. It recommends removing the ambiguous "other reasons" provision to ensure a transparent and consistent process for approving or denying certification to LWDBs.

In summary, the combined comment emphasizes the agreement among the comments that the inclusion of "other reasons as L&I may determine" in the draft policy is inappropriate and exceeds the authority granted by WIOA. The comments recommend specifying the reasons for denial based on the criteria outlined in WIOA, ensuring adherence to the federal law and providing clarity and consistency in the certification process.

Response:

L&I thanks commenters for the input. The Commonwealth amended language in the policy to clarify reasons warranting a denial or recertification, including failure to carry out responsibilities articulated in law, published regulation, policy, or grant agreement.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 11)

Certification

Denial Failure to achieve certification within 90 days may result in an interruption of workforce development activities and funding in an LWDA. A LWDB unable to achieve certification by June 30th of the certification year is at risk of an elevated funding risk status and may be subject to sanctions up to and including decertification.

Comment(s):

Commenters ask to have added to this section a narrative that PA DOL will offer technical assistance for compliance without a specific timeline.

Attachment 5: Epilogue

Response:

The Commonwealth amended language in the policy to reflect a change in the certification deadline allowing 120 days to achieve re-certification. As is L&I's process to provide certification reports which outline any insufficiencies to achieving board certification, the Bureau of Workforce Development Administration is available to provide technical assistance in resolving any outlined findings. A portion of the reconciliation process requires that a timeline must exist to allow the department to track regulatory compliance should the situation warrant next steps.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 11)

Committees

WIOA authorizes LWDBs to establish committees to help carry out their responsibilities.

Standing Committees: *The use of standing committees expands opportunities for stakeholders to participate in LWDB decision-making, particularly for representatives of organizations that may no longer sit on the LWDB but continue to have a stake in the success of LWDB decisions. Such committees also expand the capacity of the LWDB in meeting required functions. Standing committee membership should be representative of the local area and include individuals with diverse background and ethnicities.*

According to WIOA Sec. 107(b)(4)(A), the role of a standing committee is to assist LWDBs and gather information on behalf of the LWDB. This is to mean the role of a committee is to discuss and recommend items to the LWDB for deliberation and official action, defined in Sec. 703 of the PA Sunshine Act. Committees cannot take official action on agency business on behalf of the LWDB.

According to WIOA Sec. 107(b)(4)(A), all standing committees must be chaired by a member of the LWDB and may be partially comprised of other members of the LWDB. Additionally, standing committees must include other appointed individuals that are not formal members of the LWDB that have demonstrated experience and expertise to advise on issues that support the LWDB's ability to attain the goals of the WIOA state, local and regional plans and the objective of providing customer focused services to individuals and businesses.

All committee meetings must generate meeting minutes outlining the date, time, location, members present, members absent, whether a quorum of the committee is achieved, and a comprehensive narrative of the content of discussion or recommendation to the LWDB.

Comment(s):

The combined comment acknowledges the similarity among the comments regarding the requirement for standing committees outlined in the proposed policy. The comments point out that according to WIOA Section 107(b)(4)(A), the designation of standing committees is at the discretion of the Local Workforce Development Boards (LWDBs) and not a mandatory requirement.

The recommendations from the comments align in suggesting the rescission of any language that mandates specific standing committees, such as the Youth Standing Committee, Fiscal Standing Committee, and Executive Committee. They argue that the law allows LWDBs to establish standing or non-standing committees based on their by-laws and through a majority vote. Additionally, the comments highlight the contradiction within the policy itself, particularly regarding the Executive Committee's delegated authority conflicting with state law and the requirement of a Youth Committee conflicting with recent actions by the State Workforce Development Board.

Attachment 5: Epilogue

The combined comment asserts that the policy should adhere to the provisions of WIOA Section 107(b)(4)(A), which allows LWDBs to designate and direct the activities of standing committees based on their discretion. It recommends rescinding any language that mandates specific standing committees and emphasizes the importance of allowing LWDBs to establish committees according to their own by-laws and needs.

Furthermore, the combined comment addresses the interpretation of committee functions and the delegation of corporate powers. It suggests that if corporate powers can be delegated to one standing committee, such as the fiscal committee, then they can also be delegated to other standing committees, like the executive committee, as outlined in local by-laws. It recommends removing the line stating that committees cannot take official action on agency business on behalf of the LWDB, as it misinterprets the potential functions and authority of committees.

In summary, the combined comment emphasizes the consensus among the comments regarding the discretionary nature of standing committees and the need to remove any language that mandates specific committees. It stresses the importance of allowing LWDBs to establish committees according to their own by-laws and highlights the contradiction within the policy. The comment also addresses the interpretation of committee functions and recommends rescinding the line that restricts committees from taking official action on agency business.

Response:

Under WIOA, there is no explicit requirement for LWDBs to have specific standing committees. WIOA provides flexibility for states and local boards to structure their operations and establish committees or subcommittees as they deem necessary to fulfill their responsibilities effectively. The language in this section will be amended to specify that the Commonwealth encourages LWDBs to have youth and fiscal standing committees, but does not require them; however, if established, standing committees must abide by specific requirements as spelled out in the policy.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Pages 11-12)

Committees

Standing Committees (3rd & 4th paragraph) *According to WIOA Sec. 107(b)(4)(A), all standing committees must be chaired by a member of the LWDB and may be partially comprised of other members of the LWDB. Additionally, standing committees must include other appointed individuals that are not formal members of the LWDB that have demonstrated experience and expertise to advise on issues that support the LWDB's ability to attain the goals of the WIOA state, local and regional plans and the objective of providing customer focused services to individuals and businesses.*

All committee meetings must generate meeting minutes outlining the date, time, location, members present, members absent, whether a quorum of the committee is achieved, and a comprehensive narrative of the content of discussion or recommendation to the LWDB.

Comment(s):

This statement is not accurate. The only committee that this policy is stating must include non LWDB members is the Youth Committee. So, the sentence either needs amended to state the Youth Committee or it needs to state that the standing committees “may” have other individuals. This will make the statement accurate. While our LWDB does invite others to other committees at times, it is not

Attachment 5: Epilogue

required and really is a decision of the board. Otherwise, where does this end? Is the state going to require someone else to be on a standing committee?

Also, on page 13 it mentions meeting minutes, etc. It now mentions a quorum. Is a quorum now required for a committee meeting? While everyone agrees that this would obviously be best, a requirement becomes burdensome. This is for the board members to decide if the conversation is relevant depending on topic, attendance, etc. The board can always send the discussion back to committee if it is not enough. The committees do not make decisions – only recommendations.

Response:

L&I thanks the submitter for their comments and considered their concerns regarding LWDB standing committees. L&I reviewed the L&I policy language and revised the policy to ensure alignment with WIOA and PA Sunshine Act requirements. It is noted these policy requirements are applicable to standing committees.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Pages 11-12) Committees

Required Standing Committees Continued – *see policy language above.*

Comment(s):

Commenters highlight that WIOA grants local authority to establish standing committees and does not mandate their creation. They point out that the draft policy deviates from WIOA by specifying the establishment of certain standing committees, such as the Youth Standing Committee and Fiscal Standing Committee, along with specific membership requirements and duties.

Recommendations suggest the removal of the requirement for LWDBs to establish specific standing committees. They emphasize maintaining the local authority and flexibility granted by WIOA in determining the establishment of standing committees based on the LWDB's functions and the needs of the area(s) being served. The comments propose changing the language in the draft policy from "Required Standing Committees" to "Recommended Standing Committees" to provide guidance rather than strict requirements.

Furthermore, the combined comment cites the relevant WIOA regulation (20 CFR 679.360) that supports the discretionary nature of standing committee designation and the inclusion of individuals with relevant experience and expertise. It recommends removing the word "required" from the policy, as there is no obligation to have specific committees like youth, fiscal, and executive committees.

In summary, commenters emphasize the discretionary nature of standing committees and the need to remove the requirement for specific committees outlined in the draft policy. It stresses the importance of maintaining local authority and flexibility in determining the establishment of standing committees based on the LWDB's needs. Commenters also cite the relevant WIOA regulation and recommend changes to the language in the policy to provide guidance rather than strict requirements.

Response:

L&I appreciates the comments received regarding standing committees and whether they are required per WIOA. L&I reviewed WIOA and agrees the law does not mandate standing committees as being a LWDB requirement. L&I policy language has been revised to properly align with WIOA and PA Sunshine

Attachment 5: Epilogue

Act requirements.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 12)

Youth Standing Committee

The Youth standing committee represents a mechanism for a LWDB to coordinate area-wide youth services, assist with planning and oversee operational youth programs. A youth standing committee serves as the architect in designing and building comprehensive youth services at the local level. This committee shall, at a minimum:

- *Help to identify gaps in services and develop a strategy to use competitive selections or community partnerships to address the unmet needs of youth;*
- *Coordinate youth policy;*
- *Ensure quality services;*
- *Leverage financial and programmatic resources; and,*
- *Recommend eligible youth service providers to the local board.*

Comment(s):

Commenters highlight that WIOA provides flexibility by allowing but not mandating the establishment of a standing youth committee. They express concerns about additional requirements imposed by the state that contradict the discretionary nature outlined in WIOA. The comments recommend changes to the language of the policy to reflect this flexibility and align with the approach taken by the US Department of Labor.

Commenters suggest changes to the wording of the policy. They propose replacing the phrase "shall" with "may" to indicate the optional nature of the committee. Additionally, they suggest modifying the language related to youth committee membership to reflect that inclusion is not mandatory but can be determined based on the LWDB's discretion.

Response:

L&I considered comments received that disagreed a Youth Standing Committee be a requirement, as WIOA indicates a Youth Standing Committee is not mandated but is recommended. L&I agrees with the recommendations provided by commenters and revised the L&I policy to read: "If established, a youth standing committee represents ...".

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 12)

Youth Standing Committee

Membership *The youth standing committee must include LWDB members with a demonstrated record of success in serving eligible youth and young adults, as well as other individuals with appropriate expertise and experience who are not members of the LWDB. The committee's members shall bring their expertise to help address the employment, training, education, human and supportive service needs of eligible youth, especially out-of-school youth, young people who have become disconnected and those with barriers.*

Comment(s):

The policy now requires specific membership categories for the Youth Committee. These membership categories were removed between the Workforce Investment Act to WIOA. Therefore, why add them back. The rationale exists at the federal level why the categories were removed. This gave local areas

Attachment 5: Epilogue

more flexibility to look for the best people to serve on the Youth Committee. Suggestions are positive; however, making something a requirement that WIOA specifically took out does not make sense. Again, locally we have a very diverse Youth Committee and kept to tradition from WIA. However, this is not required by law.

Response:

L&I reviewed comment(s) disagreeing with the addition of Youth Standing Committee membership categories stating that WIOA does not prescribe this requirement. L&I considered the comment(s) and has revised the L&I policy accordingly.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 12)

Fiscal Standing Committee

To help ensure WIOA's fiscal aspirations are implemented and maintained on a local level, L&I requires LWDBs to have a fiscal standing committee as part of the local board structure. Fiscal standing committees represent a mechanism for LWDBs to increase the level of local coordination and responsible use of the multiple grants associated with WIOA's required programs, develop budgets and identify resources to leverage support for workforce development activities. A fiscal standing committee can assist in the important role of fiscal oversight in the local area regarding all WIOA related activities.

Comment(s):

Commenters expressed disagreement with the requirement for a separate fiscal committee and the recognition that the existing Executive Committee already fulfills those functions. It recommends revising the language to suggest the creation of a standing committee primarily focused on fiscal and budgetary responsibilities, rather than mandating it. The comment supports the notion that the decision to establish such a committee should be based on the specific needs and circumstances of the local workforce development area.

Response:

L&I considered the comments received expressing a strong disagreement with L&I's position that the LWDB establish and maintain a Fiscal Standing Committee. L&I will revise the policy language to read: "... encourages, but does not require, the establishment of a Fiscal Standing Committee".

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 13)

Executive Committees

(Subject, Establishment) While WIOA is silent on the establishment and use of executive committees, Pennsylvania law permits their establishment and use by the PA WDB. Pennsylvania law is silent on the establishment and use of executive committees by local workforce development areas; however, Pennsylvania workforce system policy permits their establishment and use by LWDBs if specific conditions are met.

Comment(s):

Commenters express a shared disagreement with the policy's restrictions on the establishment and authority of Executive Committees. They argue that the law allows for Executive Committees and that LWDBs should have the flexibility to determine their composition and decision-making authority. The comments highlight the benefits of Executive Committees in terms of efficiency and expertise. They also raise concerns about the requirement for full board ratification of Executive Committee actions and its

Attachment 5: Epilogue

potential effect on board participation.

While there are some differences in specific details and recommendations, they generally emphasize the importance of Executive Committees and the need for flexibility. They suggest revising the policy to perceived alignment with existing federal and state laws, granting LWDBs the freedom to determine the authority and composition of their Executive Committees.

Commenters recommend removing the requirement for full board ratification and allowing LWDBs to decide on delegation of power suggesting that by doing so, LWDBs can operate more efficiently and make timely decisions while ensuring compliance with legal requirements.

Response:

L&I understands the concerns raised by the commenters. L&I acknowledges the commenter's statements that a LWDB executive committee provides the LWDB with certain advantages. In consultation with L&I's Office of Chief Counsel, L&I concluded with the consent of the LWDB an executive committee may act on behalf of the LWDB, within the scope of authority as outlined within the LWDB's bylaws; and that LWDB executive committee meetings are subject to the Sunshine Act. L&I policy has been edited to align with applicable federal and state law, and PA WDB executive committee requirements. Additionally, L&I policy language has been edited to reflect that if an executive committee is desired by the LWDB and CEO(s) then the LWDB bylaws are to describe the executive committee's characteristics and requirements. The policy describes a minimum set of characteristics, such as scope of responsibilities, authority, and limitations. These requirements and characteristics reflect the degree of flexibility the LWDB chooses to imbue upon the LWDB executive committee.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 14)

Executive Committees

(Subject, Governance) *The following governs LWDB executive committees only.*

Comment(s):

A commenter suggests that Pennsylvania rescind the sentence, "The following governs LWDB executive committee only." The BWDA proposed restrictions against the authority delegated to executive committees of local workforce development boards that are independent nonprofit corporations, is permitted under Pennsylvania law. Requiring virtually all actions to be ratified by the full board will require more frequent and longer board members resulting in substantially increased demands on the time of already busy board volunteer members.

Response:

L&I appreciates the concerns expressed by the commenter; however, the policy sentence being asked to be rescinded shall remain. It is important to note that the commonwealth does not consider an executive committee a standing committee as outlined in WIOA but rather a sub-committee of the full LWDB. It is not the intent of L&I to burden LWDB membership with additional meetings or increased demands requiring longer meetings. Should a LWDB executive committee be desired the LWDB bylaws shall contain language specifically regarding the LWDB executive committee. In the case of the commenter's concerns, it is recommended the LWDB bylaws regarding the LWDB executive committee reflect the needs of LWDB membership in terms of meetings and time constraints.

Attachment 5: Epilogue

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 14)

Executive Committees

(Subject, Provisions) *LWDB executive committees are subject to the provisions of the Pennsylvania Sunshine Act.*

The LWDB, in consultation with the CEO(s), must determine if the LWDB will have an executive committee. Executive committees shall not act in lieu of the LWDB or render final decisions normally undertaken by vote of the full board. An LWDB's executive committee may be used to consider and curate ideas and issues for full board discussion.

If the LWDB, in consultation with the CEO(s), has determined that an executive committee will be a part of the local board's structure, the bylaws must:

- *Recognize that executive committee membership is limited to eligible, appointed, active LWDB members;*
- *Detail the specific scope of responsibilities for the executive committee, clearly state the membership and indicate the executive committee's decisions must be confirmed by the full LWDB;*
- *Clearly identify what the executive committee should not do; and,*
- *Articulate the process in place for full LWDB review of executive committee minutes, discussions and recommendations to the full LWDB.*

Carefully drafted bylaws and committee charters can help to ensure the executive committee serves its intended purpose and does not exceed its authority.

Bylaws shall:

- *Take into consideration federal and state laws, regulations, policies and guidance which often limit the decisions that can be delegated to committees,*
- *Require the executive committee to report, through comprehensive meeting minutes, on its activities so that at each board meeting, the LWDB can ratify any action it has taken; and*
- *Determine how often executive committee meetings are to be held.*

Comment(s):

Commenters express a shared disagreement with the policy's restrictions on executive committee authority. They argue that executive committees should be allowed to act on behalf of the board as needed, without requiring ratification by the full board for every decision. Commenters highlight the benefits of granting executive committees the flexibility to fulfill board responsibilities and make timely decisions. They emphasize that the restrictions would result in increased demands on board members' time and create unnecessary administrative bureaucracy.

Commenters recommend rescinding the section that limits the authority of executive committees. It advocates for allowing executive committees to act on behalf of the board, with decisions approved by CEOs and brought to the next full board meeting for transparency. The comment references the PA State Workforce Development Board's by-laws, which allow for the establishment of an executive committee to fulfill board responsibilities. It emphasizes the importance of avoiding delays in project completion and meeting deadlines by utilizing the expertise and efficiency of executive committees.

Overall, the combined comment emphasizes the need to empower Executive Committees and streamline decision-making processes. It highlights the potential negative impact of the restrictions and

Attachment 5: Epilogue

urges the policy to align with the existing provisions that allow Executive Committees to fulfill their role effectively.

Response:

L&I appreciates the concerns and issues expressed by those submitting comments surrounding proposed changes to policy language affecting a LWDB's executive committee. As indicated in an earlier response, L&I concluded an executive committee may act on behalf of the LWDB, within the scope of authority as outlined within the LWDB's bylaws; and that LWDB executive committee meetings are subject to the Sunshine Act. L&I policy language has been edited to reflect these conclusions.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 14)

Bylaws

While bylaws' content may be recommended to CEOs by LWDBs, bylaws are ultimately written by CEOs. These bylaws must establish, at a minimum, the following sections:

- **Establishment** A statement that the LWDB is established in accordance with WIOA Section 107.

Comment(s):

Commenters express a shared concern regarding the proposed policy's requirements related to by-laws and LWDB meetings. They argue that L&I is imposing additional requirements beyond what is established in federal and state law. Commenters highlight that the responsibility for establishing by-laws lies with the CEO, not the LWDB, and that LWDB approval is not required. They emphasize the importance of elected officials, who are liable for the funds, being empowered to determine how the business of the boards should proceed.

One commenter recommends revising the policy to remove the word "quarterly" and allow flexibility in determining committee meeting frequency.

Commenters argue that by-laws should be periodically reviewed and amended, but not changed multiple times within a year. They express the view that the local area is aware of the applicable laws and requirements, and therefore, duplicating them in multiple locations is unnecessary.

The combined comment recommends rescinding any language requiring specified by-law requirements beyond what is established in federal and state law. It asserts that the responsibility for establishing by-laws lies with the CEO and that LWDB approval is not necessary. The comment also suggests revising the policy to allow flexibility in committee meeting frequency and emphasizes the need for by-laws to be periodically reviewed and amended to reflect the organization's functioning. Finally, it highlights the importance of the board's decision-making authority in determining the content of by-laws and compliance with relevant laws and policies.

Response:

L&I agrees with the comments submitted and has edited the L&I policy's bylaws section to align with applicable federal and/or state laws. The policy will be amended to reflect that while bylaws content may be recommended to CEOs by LWDBs, the responsibility for establishing bylaws lies with CEOs. Bylaws must address specific criteria, including information on how often local workforce development board and committee meetings will be held, however, frequency of meetings may be determined

Attachment 5: Epilogue

locally.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 15)

Bylaws

- **Meetings**

While not required, demonstration of ability for public attendance by phone or web-based technology is encouraged.

Comment(s):

The draft policy is superseding local Bylaws. Advance Central PA conducts meetings of the LWDB and LEO Board either in-person or virtually without a hybrid option. It is recommended the draft Policy be updated as follows: Demonstration of ability for public attendance by phone or web-based technology if and when meetings are held virtually.

Response:

L&I notes a virtual and/or hybrid option permits members of the public with barriers to attend who might not otherwise be able to travel. The technology to permit increased public attendance has been in wide use for many years and continued use of technology designed to remove barriers to attendance at LWDB public meeting is appropriate. Furthermore, the policy clarifies virtual or hybrid options are not required but encouraged. No changes will be made in this section.

Attachment A: Local Governance Policy Provisions, Procedures and Guidance (Page 15)

Bylaws

Conflict of Interest *A conflict of interest policy meeting the standards set forth in the state's Conflict of Interest Code form and that acknowledges that LWDB members and LWDB staff must adhere to the following:*

Comment(s):

Recommendation: Update the form to include non-board members or create a separate form for non-board members.

Response:

L&I agrees with the commenter's assessment and will create a separate "Conflict of Interest Code" form for non-board members providing accountability in terms of identifying potential conflict of interest where non-board members are contributing to processes typically performed by board members (e.g., committee discussions).

Attachment C: Chief Elected Official and Fiscal Agent Agreement Guidance (Page 19)

Required Inclusions

a. Contracts. The fiscal agent shall oversee the contracting process between the LWDB and its service providers. Contracts shall include, at a minimum:

- A statement of work covering the services to be provided, measurable outcomes and penalty provisions;
- Catalog of Federal Domestic Assistance title and number;
- Award name and number;

Attachment 5: Epilogue

- Federal agency and pass-through state agency; and,
- Funding availability timeframes.

Comment(s):

Subrecipient and vendor contracts should be reviewed by attorneys and not fiscal agents. Agreements consist of required clauses, insurance, liability, and scope of work fiscal staff are not expert in these areas they are responsible for books and records.

Recommendation: The language should state LWDBs should call on individuals with the appropriate expertise to assist with contracts.

Response:

L&I understands the commenter's concern and has revised the policy to reflect L&I's original intent. While not required by law or policy, local area boards are welcome to have contracts and agreements reviewed by their solicitor or other parties with appropriate expertise to assist the LWDB.