S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
2ND FLOOR, CORDELL HULL BLDG.
NASHVILLE, TENNESSEE 37243

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Opinion No. 00-034

Workforce Investment Act of 1998 - Propriety and Constitutionality of H.B. 2389

QUESTIONS

1. Whether H.B. 2389, a proposed state law which would require each Local Workforce Investment Board to include at least one (1) *ex officio* non-voting member from either the state House of Representatives or state Senate appointed by the speaker of either respective legislative body, would be consistent with the federal Workforce Investment Act of 1998?

2. If the state may enact such a law, would it be constitutionally sound?

OPINIONS

1. No. Such a law would violate the Workforce Investment Act of 1998.

2. In view of the answer to the first question, this question is pretermitted.

ANALYSIS

The Workforce Investment Act of 1998 was enacted to replace the provisions of the current Job Training Partnership Act (JTPA). *See* 29 U.S.C. § 2940. Under the Workforce Investment Act (hereinafter "Act"), the state is required to develop a state plan that outlines a five year strategy for the statewide workforce investment system and meets the requirements of the Act. The state plan must include a description of the state board, including a description of how the board will collaborate in carrying out the functions described in 29 U.S.C. § 2821(d). 29 U.S.C. § 2822(b). One of the functions of the board is to assist the Governor in the designation of Local Workforce Investment Areas (LWIAs) as required in 29 U.S.C. § 2831. 29 U.S.C. § 2821(d)(4). The LWIAs will replace the current service delivery areas established under JTPA.

Under the provisions of 29 U.S.C. § 2831(a), the Governor has the authority to designate LWIAs within the state. This designation should include consultation with the state board. 29

U.S.C. § 2831(a)(1)(A). The Governor's designation of the LWIAs, however, must also be consistent with the provisions of 29 U.S.C. § 2831(a)(2), (3) and (4). *Id*. Each LWIA is required to have a Local Workforce Investment Board (LWIB), certified by the Governor to set policy for that LWIA.

You ask whether the state may enact legislation which mandates that at least one (1) member of each LWIB be a non-voting *ex officio* member who is either a state senator or state representative who has been appointed by the speaker of either the state house or state senate without being inconsistent with the mandates of the Act, and if so, whether such an enactment would be constitutionally defensible.

The term "local board" is defined at 29 U.S.C. § 2801 (21), and 29 U.S.C. § 2832 provides the following regarding establishment and composition of the LWIBs:

> (a) Establishment - There shall be established in each local area of a State, and certified by the Governor of the State, a local workforce investment board, to set policy for the portion of the statewide workforce investment system within the local area (referred to in this chapter [29 U.S.C.A. S 2801 *et seq*.] as a "local workforce investment system").
>
> (b) Membership
>
> (1) State criteria
>
> The Governor of the State, in partnership with the State board, shall establish criteria for use by chief elected officials in the local areas for appointment of members of the local boards in such local areas in accordance with the requirements of paragraph (2).
>
> (2) Composition
>
> Such criteria shall require, at a minimum, that the membership of each local board--
>
> (A) shall include--
>
> (i) representatives of business in the local area, who--
>
> (I) are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;

> (II) represent businesses with employment opportunities that reflect the employment opportunities of the local area; and
> (III) are appointed from among individuals nominated by local business organizations and business trade associations;
> (ii) representatives of local educational entities, including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and postsecondary educational institutions (including representatives of community colleges, where such entities exist), selected from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities;
> (iii) representatives of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations, or (for a local area in which no employees are represented by such organizations), other representatives of employees;
> (iv) representatives of community-based organizations (including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present);
> (v) representatives of economic development agencies, including private sector economic development entities; and
> (vi) representatives of each of the one-stop partners; and
> (B) may include such other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

29 U.S.C. § 2832.

The members of the LWIBs are appointed by the "chief elected official" of the LWIA, or if the LWIA includes more than one (1) unit of local government, the chief elected officials of those units may execute an agreement as to their roles in appointing the LWIB members. 29 U.S.C. § 2832(c) Should they be unable to agree, then the Governor appoints the members. *Id.*

The Act sets forth the procedure by which a LWIB is appointed, as well as criteria and qualifications for any person to be eligible for appointment to an LWIB. Under this scheme, the Governor, together with the State board, establishes the criteria to be used by chief elected officials in the local areas for appointment to the LWIBs, in accordance with 29 U.S.C. § 2832(b)(2). The locally elected official then chooses the members using that criteria. 29 U.S.C. § 2832(c).

In construing a federal statute, the starting point is the language used by Congress. *Vergos v. Gregg's Enterprises, Inc.*, 159 F.3d 989 (6th Cir. 1998). Statutes should be read in a straightforward and common sense manner. *In re Laurain*, 113 F.3d 595 (6th Cir. 1997). A statute must be read as a whole and construed so as to give each word operative effect. *United States v. Branson*, 21 F.3d 113 (6th Cir. 1994). A court must make every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous. *Menuskin v. Williams*, 145 F.3d 755 (6th Cir. 1998).

Nowhere in the Act is there mention of state legislators, as such, being appropriate members of an LWIB. *See* 29 U.S.C. 2832(b)(2) (listing individuals appropriate for LWIB membership.) H.B. 2389 would mandate that each LWIB have at least one (1) legislator, appointed by the speaker of the respective state legislative body to the LWIB. This conflicts with two (2) requirements of the Act: 1) that the "chief-elected official" appoint each member to the LWIB, and, 2) that the Governor and State board determine criteria in accordance with 29 U.S.C. 2832(b)(2) necessary for membership on an LWIB.

In other words, the proposed legislation would take away the authority vested by the Act in the Governor, the State board, and the mayor or other locally elected official in determining who should be on a LWIB. A legislative mandate that each LWIB must have a state legislator on it is therefore in conflict with the Act.

Because this Office has concluded that the proposed legislation would violate federal law, the second question posed by the opinion request is pretermitted.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

E. BLAINE SPROUSE
Assistant Attorney General

Requested by:

Honorable Larry J. Miller
State Representative
20 Legislative Plaza
Nashville, TN 37343-0138