

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDCA 10-04 Employee Leasing Companies
SPONSOR(S): Economic Development & Community Affairs Policy Council
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2046

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Economic Development & Community Affairs Policy Council	13 Y, 0 N	Tait	Tinker
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SUMMARY ANALYSIS

In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer (“client company”) under which all or most of its client workforce is employed by the leasing company and then leased to the client company. Generally, the client company terminates all or most of its employees. The terminated employees are then engaged by the leasing company and leased to the client company to perform the same work they performed as the client’s employees.

The bill provides the following changes related to the regulation of employee leasing companies (ELC) in Florida:

- Streamlines approval process for a change of ownership by providing that a purchase or acquisition of a licensed ELC, does not require prior approval from the Board of Employee Leasing Companies within the Department of Business and Professional Regulation if the controlling person of the ELC maintains a controlling person license under part XI, ch. 468, F.S.
- Revises disciplinary actions associated with licenses not timely renewed. It eliminates the requirement that these delinquent licenses automatically become void 30 days after the renewal date when the renewal fees are not paid and provides that the delinquent license would be subject to disciplinary action by the board instead of becoming automatically void.
- Clarifies that the existence of an employee leasing arrangement would not affect the eligibility of an ELC, a client company, or a leased employee for local or state tax incentives or other economic benefits.

The bill does not have a fiscal impact.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Employers have several options when using employment agencies to help reduce administrative costs and to become more competitive in the marketplace. Florida's employment staffing industry consists of three basic segments:

- *Day labor and labor pools*: Regulated under ch. 448, F.S., these entities assign their employees on a day-to-day basis to client companies (employers).
- *Temporary help firms*: Not regulated by the state, these firms assign their employees on a weekly, monthly, seasonal, or other basis to client companies for a period of less than one year.
- *Employee leasing companies or professional employer organization*: Regulated under part XI, Ch. 468, F.S., these companies assign and actively co-employ their employees with the client company.

Florida Regulation of Employee Leasing Companies

Employee leasing companies (ELC) are licensed and regulated by the Board of Employee Leasing Companies ("board") within the Department of Business and Professional Regulation ("department"). The term "employee leasing" is defined in statute as "...an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client."¹ The law excludes temporary help arrangements from the employee leasing definition and these entities are not subject to state licensure requirements.²

Pursuant to s. 468.526(2), F.S., two or more, but not more than five, ELCs that are majority owned by the same ultimate parent, entity, or persons may be licensed as an ELC group. Pursuant to s. 468.520(7), F.S., a "controlling person" is any natural person who possesses the power, directly or indirectly, to direct or cause the direction of the management or policies of any employee leasing company or any natural person employed, appointed, or authorized by an ELC to enter into a contractual relationship with a client company on behalf of the ELC.

¹ Section 468.520(4), F.S.

² Ibid.

Assessment and Licensure

An ELC, ELC group, or controlling person must meet certain initial and ongoing registration requirements. These requirements include the submission of an initial application and fees, financial reports, payroll assessment fees, and renewal applications and fees.

Annual Assessment – The department assesses each ELC and ELC group an annual assessment fee. This fee is based upon the preceding calendar year's gross Florida payroll of the company or group. The assessment fee is due on April 1 of each year and becomes delinquent after April 30.³

Licensure and Renewal – Each license issued to an ELC, ELC group, or controlling person is required to be renewed biennially.⁴ Licenses for ELCs and controlling persons must be renewed prior to March 1st of even-numbered years. If a licensee fails to renew a license by April 30th of every even-numbered year, the license will automatically become delinquent. A license that is delinquent for 30 days or less may be returned to an active status by paying the renewal fee plus a \$300 delinquent fee.⁵ A license delinquent for more than 30 days will automatically become void.⁶

Section 455.271(1), F.S., provides that a licensee may practice a profession, only if the licensee has an active status license. An inactive license may revert to active status at any time, provided the licensee meets all of the requirements for active status: pays any additional licensee fees and any applicable reactivation fees, pursuant to subsection (4) of s. 455.271, F.S. Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle will render the license void, without any further action by the board or the department.

Section 468.532, F.S., authorizes the board to take disciplinary actions against a licensee for certain activities or violations, including conducting business without a license. Rule 61G-7.001, F.A.C., provides a range of disciplinary guidelines for violations of Part XI, ch. 468, F.S. Under this rule, an employer practicing on a revoked license or a suspended license, or is unlicensed, is in violation of s. 468.532(1)(f), F.S. Disciplinary actions could result and range from the imposition of a minimum penalty such as a reprimand, probation, \$500 fine, and administrative/legal costs to the maximum penalty of license denial, license revocation, \$5,000 fine per day, and administrative/legal costs.

The law authorizes the department to conduct investigations, audits, or reviews of companies to determine compliance with applicable laws and rules.⁷ According to the department, the Complaints/Investigations intake section reviews complaints. Based upon information and documentation provided, the department makes a determination as to the legal sufficiency of the allegations. If the complaint is determined to be legally sufficient and is not classified as an unlicensed practice, a notice of noncompliance or citation is considered for these minor violations. For more serious matters, such as unlicensed practice, the file is forwarded for investigation. The department may initiate mediation for legally sufficient complaints where mediation rules exist and the allegations pertain to economic harm or the licensee can remedy them. If deemed appropriate, all completed investigations are forwarded to the Office of the General Counsel for legal determination and legal action.

Change of Ownership

Current statute prohibits ELC license or registrations from being transferred or assigned, and ELCs are not permitted to operate under any name or at any location other than that specified in the application.

Any person or entity that seeks to purchase or acquire control of an entity licensed or registered under this part must first apply to the board for a certificate of approval for the proposed change of ownership.

³ Section 468.526(3), F.S.

⁴ Section 468.527(2), F.S.

⁵ Rule 61G-5.006, F.A.C.

⁶ Section 468.528, F.S.

⁷ Section 468.535, F.S.

The application must contain the name and address of the proposed new owner and other information required by the board.

Existing stockholders or partners who intend to acquire, from other stockholders or partners, control of an existing entity that is licensed or registered under this part must first apply to the board for a certificate of approval for the proposed change of ownership. The application must contain the names and addresses of the stockholders or partners who own 10 percent or more of the entity and who are seeking to acquire control and other information required by the board.

Before recommending to the board that a certificate of approval be issued, the department may conduct an investigation of the applicant and examine the records of the entity as part of the investigation in accordance with applicable law and submit its findings to the board. As a part of its investigation, the department shall determine if there are any complaints pending against the company being purchased, the controlling person proposed to operate the purchased entity, or the proposed controlling person's existing company. The board, upon the department's recommendation, shall issue a certificate of approval only after it has determined that the proposed new owner possesses the financial ability, experience, and integrity to operate the ELC.

The board may waive the investigation requirements and automatically approve the proposed change in ownership if the application meets the other requirements, the proposed new owner and the current owner are part of the same controlled entity, and no member or controlling person of the controlled entity is under investigation or has been previously denied a license by the board.

Any application submitted to the board is deemed approved if the board has not approved the application or rejected the application, and provided the applicant with the basis for a rejection, within 90 days after the receipt of the completed application.

Proposed Changes

The bill amends s. 468.5245, F.S., relating to employee leasing company acquisitions or purchases. These changes will streamline the change of ownership process by providing that a purchase of acquisition of a licensed ELC does not require prior board approval if a controlling person of the ELC maintains a controlling person license under part XI, ch. 468, F.S. The ELC must provide notification to the board, in a manner prescribed by the board, within 30 days after the purchase or acquisition of an ELC.

In addition, the bill eliminates the board's authority to conduct an investigation of the applicant and the books and records of the entity prior to the issuance of a certificate of approval to a person or entity seeking to purchase an ELC or ELC group.

The bill also amends s. 468.528, F.S., relating to delinquent licenses. Disciplinary actions associated with delinquent licenses are revised by eliminating the requirement that a license becomes automatically void 30 days after a missed renewal date and provides that such a license would be subject to disciplinary action by the board. This change will allow an ELC to remain in delinquent or inactive status for up to 2 years under ch. 455.271, F.S. However, the ELC would be prohibited from conducting business during this delinquent status.

Currently, failure to pay the renewal fee and renew the license at the time of renewal results in the license becoming delinquent. At that time, a licensee has 30 days to pay a late fee, not to exceed \$300 or the license automatically becomes void without further action of the board. A delinquent license for 30 days or less may be returned to active status by payment of the renewal fee plus a delinquent fee of \$300. A delinquent license for more than 30 days will automatically become void.

Finally, the bill amends s. 468.534, F.S., to provide that part XI of ch. 468, F.S., relating to employee leasing companies, does not impact the eligibility of an employee leasing company, a client company, or a leased employee to participate in or benefit from any local or state tax credit or other economic incentive. If the amount of the tax credit or economic incentive is based on the number of a client's

employees, the leased employees are treated as if they were direct employees for purposes of the tax credit or other incentive.

The bill provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 468.5245, F.S., relating to change of ownership for employee leasing companies.

Section 2: Amends s. 468.528, F.S., relating to delinquent licenses.

Section 3: Amends s. 468.534, F.S., relating to applications for employee leasing companies.

Section 4: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill streamlines the process for changing ownership of an ELC or ELC group. In addition, the bill removes the requirement that a license automatically becomes void 30 days after a missed renewal date when payment is not made. These changes ease regulations on ELCs, and could promote industry growth.

Should a business apply for local or state tax incentives or other economic benefits, the bill allows the business to include their leased employees in the job count. This change may allow small businesses which meet all eligibility criteria, except for having leased employees, to utilize local or state tax incentives or other economic benefits which may create some new level of economic activity.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES