

SUBJECT: Regulation of staff leasing services

COMMITTEE: Technology, Economic Development, and Workforce — committee substitute recommended

VOTE: 7 ayes — Strama, Parker, F. Brown, Button, Eissler, Gattis, Harless

0 nays

2 absent — Ritter, Rodriguez

WITNESSES: For — Marshall McAlpine, Texas National Association of Professional Employer Organizations (NAPEO) and HR&P Solutions, Inc.; Amanda Snowden, Administaff; (*Registered, but did not testify*: Victor Alcorta, Administaff; Garry Bradford, NAPEO and Unique HR; Rebecca Bradford, Texas NAPEO and Unique HR; Galt Graydon, Tim Tucker, NAPEO; Jake Posey, Texas Association of Personnel Consultants (TAPC))

Against — None

On — Brian Francis, Texas Department of Licensing and Regulation

BACKGROUND: Businesses contract with staff leasing services companies, such as professional employer organizations, to outsource administrative functions such as human resources and payroll. Employees provided in this arrangement are co-employed by both the staff leasing services company and the contracting business.

Labor Code, ch. 91 outlines regulation of staff leasing services by the Texas Department of Licensing and Regulation (TDLR).

Labor Code, sec. 91.014 requires that a new or existing staff leasing service license applicant demonstrate financial net worth capacity of:

- \$50,000, if the applicant employs less than 250 assigned employees;
- \$75,000, if the applicant employs between 250 and 750 assigned employees; and

- \$100,000, if the applicant employs more than 750 assigned employees.

This section also contains provisions for how the applicant can demonstrate net worth, how net worth should be determined, and guidelines for submitting net worth to TDLR.

Labor Code, sec. 91.001(2) defines an assigned employee as an employee under a staff leasing services arrangement whose work is performed in the state. The term does not include an employee hired to support or supplement a client company's work force in a special work situation, including:

- an employee absence;
- a temporary skill shortage;
- a seasonal workload; or,
- a special assignment or project.

DIGEST:

CSHB 2249 would change the minimum financial requirements that staff leasing service license applicants must demonstrate from net worth to working capital, allow for electronic filing and for an assurance organization to act on behalf of a staff leasing services company, and specify requirements for certain economic incentives.

Working capital requirements. CSHB 2249 would amend Labor Code, ch. 91 by changing the financial requirements for a new or existing staff leasing service license applicant from net worth to working capital and adding new requirements for demonstrating its financial standing. Working capital would be defined as an applicant's current assets less its current liabilities, as determined by generally accepting accounting practices (GAAP).

Applicants would have to submit a financial statement to TDLR that was prepared according to GAAP, audited by an independent certified public accountant, and without qualification as to its going concern status. An applicant that had been in operation for less than 12 months and thus would not have an audited financial statement would be required to meet the financial capacity requirements and provide TDLR with financial statements that have been reviewed by a certified public accountant. An applicant could satisfy any deficiencies in the working capital requirement through guarantees, letters of credit, a bond in an amount that met

financial capacity requirements, or by other means of security approved by TDLR.

Electronic filing and assurance organizations. The bill would allow a staff leasing services company to authorize an assurance organization that was approved and qualified by TDLR to act on its behalf in complying with licensing requirements, including electronic filing and the payment of application and licensing fees. The use of assurance organizations would be optional for staff leasing services companies. TDLR would retain its authority to issue licenses, revoke licenses, conduct investigations, and enforce provisions in regulating staff leasing services companies.

An assurance organization would be defined as an approved independent entity that:

- provided a national program of accreditation and financial assurance for staff leasing services companies;
- had acceptable documented qualifications, standards, and procedures; and
- agreed to provide information, compliance monitoring services, and financial assurance for TDLR to regulate staff leasing services companies.

TDLR could adopt rules for accepting electronic filing of applications, documents, reports, and other required documents. TDLR could accept electronic filing and other assurance by an approved and qualified assurance organization that provided satisfactory assurance and documentation of compliance that it met or exceeded existing requirements.

Tax credits and incentives. In determining tax credits, grants, and other economic incentives provided by the state or other government entities that are based on employment, assigned employees would be considered employees of the client, and the client would be solely entitled to any related economic development incentives. This would apply even if the staff leasing services company were the reporting employer for federal income tax purposes. Only those employees co-employed by the client would be included in determining a grant or an amount of an economic development incentive based on the number of employees.

Each staff leasing services company would provide, on the request of a client or state agency, reasonably required employment information for the administration of any tax credit or economic incentive and necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive.

The bill would take effect September 1, 2009, and the working capital requirement would take effect December 31, 2011.

**SUPPORTERS
SAY:**

CSHB 2249 is a much-needed modernization bill that would update a section of the Labor Code that has not been amended in a decade. The bill would improve industry standards for staff leasing services companies and TDLR's ability to regulate them. It would streamline TDLR's review process for new and renewal applications, strengthen financial requirements for licensees, and provide efficiency for a contracting business to allow an assurance organization to act on its behalf.

Changing the financial capacity requirements of license applicants from net worth to working capital would provide a more straightforward and accurate depiction of a firm's financial health by demonstrating its liquidity, rather than the current net worth requirement that captures potentially misleading long-term assets. Also, a working capital requirement would provide a simpler calculation for applicants and a more meaningful measure to TDLR because it is current. Required financial statements would provide an important added assurance of an applicant's capacity to TDLR and to businesses that contract for these services.

Sometimes there is confusion surrounding whether an assigned employee is a permanent employee or a temporary employee for purposes of employee requirements in accessing economic development incentives. CSHB 2249 would provide needed clarification to enable businesses to fully access these incentives, thereby encouraging them to invest in the state.

**OPPONENTS
SAY:**

CSHB 2249, while well intentioned, could disadvantage smaller firms by placing additional requirements on them, such as providing audited financial statements.

NOTES:

The committee substitute differs from the bill as filed by adding that the clients of staff leasing services companies would be solely entitled to any economic incentives from their employment of assigned employees.

The companion bill, SB 1427 by Williams, was reported favorably, as substituted, by the Senate Business and Commerce Committee on April 14 and placed on the Local and Uncontested Calendar.

A similar bill, HB 2947 by Eissler, was reported favorably as substituted by the House Economic Development Committee late in the 2007 regular session, but died in the Calendars Committee.