

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to impact the House principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Currently, part XI of chapter 468, F.S., provides for the licensing and regulation of employee leasing companies by the Board of Employee Leasing Companies (board) within the Department of Business and Professional Regulation (DBPR). The board is comprised of seven members, appointed by the Governor, and confirmed by the Senate. Five members of the board must be persons engaged in the employee leasing industry and licensed under the employee leasing laws. The remaining two members are required to be Florida residents without any ties to the employee leasing business.

Part XI defines "employee leasing," 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."

Section 1. The bill requires that one of the remaining two board members that are not engaged in the employee leasing industry must represent small employers and the other remaining board member must have experience in the field of insurance regulation.

Present situation

Employee leasing companies are subject to the following financial requirements:

- For initial licensure as an employee leasing company, an applicant must provide a tangible accounting net worth of not less than \$50,000;
- An applicant for initial or renewal licensure is required to have an accounting net worth or have guaranties, letters of credit, or other security acceptable to the board in a sufficient amount to offset any deficiency;
- All licensees must submit a quarterly report that includes a balance sheet and an income statement, that affirms positive working capital or provides guaranties, letters of credit, or other security to offset any deficiency. In calculating the amount of working capital, a licensee is required to include adequate reserves for all taxes and insurance; and
- Each employee leasing company or leasing company group with \$2.5 million or more in payroll is required to submit annual financial statements audited by an independent certified public accountant with the application, and within 120 days after the end of the fiscal year. If the payroll is less than \$2.5 million, annual financial statements are subject to only a review by an independent certified public accountant.

Section 2. The bill changes the financial standard to require an accounting net worth of not less than \$100,000 at the time of licensure and this level would have to be maintained at all times after licensure. The bill requires that information as to who is providing workers' compensation be provided to all leased employees by the leasing company.

Present situation

As part of the credit underwriting process, some employee leasing companies currently review the credit scores and financial statements of potential client companies and require a deposit or a letter of

credit, if warranted. In some instances, this credit review is not triggered unless the payroll exceeds a certain amount. Generally, insurers are required to provide 30-days' notice to the policyholder, in this instance, the employee leasing company, prior to the expiration or cancellation of a workers' compensation policy. For cancellation due to nonpayment, the insurer is required to provide notice 10 days prior to the effective date of the cancellation.

Section 3. The bill requires an employee leasing company to make available to the Department of Financial Services information that is currently available to the workers' compensation insurance carrier.

The bill shortens the time frame from 30 days to 7 business days for an employee leasing company to notify necessary state regulators and applicable workers' compensation carriers of the initiation of an employee leasing relationship with a client company. Also, notification is required to be given in a similar 7 business day period to the same regulators and carriers following termination of an employee leasing contract with a client company.

The bill clarifies when an employee becomes a leased employee and, therefore, is covered by the obligation of the employee leasing company to provide workers' compensation coverage to leased employees. Section 468.525(4)(f) already requires an employee leasing company to provide notice to the leased employees concerning the relationship between the employee leasing company and the client company. The bill specifies that a person applying to become a leased employee shall become a leased employee upon:

- the receipt by the employee leasing company of the written notice provided by the employee leasing company under s. 468.525(4)(f) which is signed by the applicant acknowledging that the applicant has been informed of the relationship between the employee leasing company and the client company;
- the receipt by the employee leasing company of a completed application for employment and any additional forms required by the employee leasing company; or
- the receipt by the applicant of the applicant's first paycheck from the employee leasing company;

whichever occurs first and thus determines the date of employment for the leased employee.

Present situation

For purposes of workers' compensation insurance coverage requirements under ch. 440, F.S., the law defines the term, "employer," to include employment agencies, employee leasing companies, and similar agents who provide employees to other persons. Any person defined as an "employer" by ch. 440, F.S., is required to provide workers' compensation coverage to its employees by either securing coverage or meeting the requirements to self-insure. The employee leasing laws specifically require employee leasing companies to provide coverage to their employees. However, rules of the Board of Employee Leasing Companies appear to conflict with these statutory coverage requirements by allowing, as an option, the client company to provide and maintain such coverage.

A leasing company is required to notify its insurer within five days after the termination of a client. If an employee leasing company has received notice of cancellation or nonrenewal from its insurer, the employee leasing company must notify all client companies within 15 days unless the leasing company obtains another policy with an effective date that is identical to the date of the prior coverage.

Under the provisions of the employee leasing law, an employee leasing company is required to maintain and make available to its workers' compensation insurer certain information concerning client companies and covered employees. Each employee leasing company is also required to notify the

Division of Workers' Compensation, the Department of Revenue, and the insurer within 30 days after the initiation or termination of a client company. However, this provision conflicts with s. 627.192, F.S., of the Insurance Code, which requires an employee leasing company to provide notice to the insurer of a termination of client within 5 days after the termination. Each employee leasing company is required to submit to the Department of Revenue client lists on a biannual basis.

Upon termination of an employee leasing arrangement, each employee leasing company is required to maintain and furnish to the insurer adequate information to permit the calculation of an experience rating modification factor for each lessee or client company upon the termination of the employee leasing agreement. The term, "experience rating modification," means a factor applied to a premium to reflect a risk's variation from the average risk. It is determined by comparing actual losses to expected losses, using the risk's own experience. [s. 627.192(2)(b), F.S.]. The insurer is responsible for reporting to the National Council on Compensation Insurers, Inc., (NCCI) the data necessary to calculate the experience rating modifications for employers.

Section 627.192, F.S., provides in part,

The purpose of this section is to ensure that an employer who leases some or all of its workers properly obtains workers' compensation insurance coverage for all of its employees, including those leased from or coemployed with another entity, and that premium paid by an employee leasing company is commensurate with exposure and anticipated claim experience for all employees.

This section of the Insurance Code defines the term "lessee" to mean "an entity which obtains all or part of its workforce from another entity through an employee leasing arrangement or which employs the services of an entity through an employee leasing arrangement." "Lessor" is defined to mean "an employee leasing company...."

The DBPR notes:

"Section 4. Currently there is continuing debate within the industry regarding the legality of client-based policies and the lack of a system of reporting to enable the department and board to verify whether client companies are maintaining the required workers' compensation coverage. As written, this bill eliminates client-based workers' compensation policies, therefore no such system would be required to track and verify these policies to ensure compliance."

Section 4. The bill requires information that is reported to the insurer by the lessor must then be reported by the insurer "periodically to its rating organization." The bill further requires: "The rating organization shall report the experience modification factor for a lessee, if that information is available, within 30 days after a request for that information is made by the lessee."

Section 5. Effective date - January 1, 2007.

C. SECTION DIRECTORY:

See A. above

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DBPR anticipates "There will be no significant fiscal impact to the [DBPR]."

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DBPR notes, "The bill will have a disproportionate impact on smaller employee leasing companies due to the additional net worth requirement and the additional costs associated with the submission of audited financial statements rather than the submission of reviewed statements."

The DBPR further notes, "There are currently 54 out of 204 licensed employee leasing companies with a net worth of less than \$100,000, so possibly one fourth of the companies may relinquish their licenses. This information was obtained [by the DBPR] from the quarterly financial statements submitted by the companies."

D. FISCAL COMMENTS:

The DBPR anticipates the "small number of additional cases can be handled with existing resources."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DBPR states that "No specific rulemaking authority is included. Implementation of some provisions will require a moderate amount of rule revisions."

The DBPR further states, "Section 4. This section would change Chapter 627 of the Florida Statutes which deals with Insurance Rates and Contracts. The provision requiring the employee leasing company to maintain the workers' compensation coverage for all leased employees is in conflict with Rule 61G7-10.0014(2)(c), which permits as an option, client-based workers' compensation policies. Rule changes would be required to incorporate this change."

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR comments that "Section 4. Currently there is continuing debate within the industry regarding the legality of client-based policies and the lack of a system of reporting to enable the department and board to verify whether client companies are maintaining the required workers'

compensation coverage. As written, this bill eliminates client-based workers' compensation policies, therefore no such system would be required to track and verify these policies to ensure compliance."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2006, the Committee on Business Regulation considered the bill, adopted two amendments, and reported the bill favorably with CS.

Amendment #1 Bogdanoff

Removes the word "tangible" to allow intangible assets, such as a letter of credit, to be used in the computation of net worth.

Amendment #2 Bogdanoff

Inserts the word "business" to allow "7 business days" not just "7 days" for several notification deadlines.