

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 325 Labor Pools  
**SPONSOR(S):** Tobia  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N	Butler	Luczynski
2) Economic Development & Tourism Subcommittee	13 Y, 0 N	Collins	Duncan
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The Labor Pool Act (the Act) protects the health, safety and well-being of day laborers throughout Florida by outlining uniform standards of conduct and practices by labor pools. The Act provides that the wages of day laborers may only be paid in either cash or through a negotiable instrument, generally a check or money order.

The bill amends the Act to authorize labor pools to pay the wages of day laborers by payroll debit card or electronic fund transfer to a financial institution designated by the day laborer, in addition to cash or negotiable instrument. The day laborer must be given the option to elect to be paid in cash or negotiable instrument. The labor pool is subject to certain limitations and notice requirements.

The bill has no impact on state or local funds.

The bill has an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

Part II of ch. 448, F.S., also known as the Labor Pool Act<sup>1</sup> (the Act), was enacted in 1995 to protect the health, safety and well-being of day laborers throughout Florida. The Act outlines uniform standards of conduct and practices for labor pools. Section 448.22(1), F.S., defines a labor pool as a business entity that operates a labor hall by one or more of the following methods:

- contracting with third-party users to supply day laborers to them on a temporary basis;
- hiring, employing, recruiting, or contracting with workers to fulfill these temporary labor contracts for day labor; or
- fulfilling any contracts for day labor in accordance with this subsection, even if the entity also conducts other business.

Labor pools are limited in the methods that they may use to pay the wages of a day laborer by s. 448.24, F.S. Under the Act, a labor pool must compensate day laborers for work performed in the form of cash, or commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount.

Although not defined within the Act, a “negotiable instrument” is defined by s. 673.1041(1), F.S., part of the Florida Uniform Commercial Code, to mean:

[A]n unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(a) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(b) Is payable on demand or at a definite time; and

(c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain . . . .

There are several types of negotiable instruments; the most common is a “check,” which is defined by s. 673.1041(6), F.S., as:

[A] draft, other than a documentary draft, payable on demand and drawn on a bank or a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as “money order.”

Payroll debit cards are also regulated at the Federal level by the Electronic Fund Transfer Act.<sup>2</sup> According to the Consumer Financial Protection Bureau, an employer may not mandate that an employee receive wages only on a payroll debit card.<sup>3</sup> An employer may require direct deposit through electronic means; however, the employee must be able to choose the institution that will receive the direct deposit.

Further, while a payroll debit card must be payable in cash, on demand, without discount by s. 532.01, F.S., for at least the initial withdrawal of each pay period, the institution “cashing” the payroll debit card may charge a fee for doing so, so long as it is not the institution that issued the payroll debit card.

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<sup>1</sup> ss. 448.20-448.26, F.S.

<sup>2</sup> *See generally*, 15 U.S.C. 1693 (2012).

<sup>3</sup> CFPB Bulletin 2013-10 (Sept. 12, 2013).

After the first withdrawal following a pay period, the institution who issued the payroll debit card may charge a fee for each subsequent transaction.

### **Effect of Proposed Changes**

The bill amends s. 448.24, F.S., to allow labor pools to pay wages by payroll debit card or electronic fund transfer to a financial institution designated by the day laborer, in addition to by cash or negotiable instrument, subject to certain limitations and requirements.

The bill amends s. 448.24(2)(a), F.S., to authorize labor pools to pay wages in:

- cash;
- commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount;
- payroll debit card; or
- electronic funds transfer which must be made to a financial institution designated by the day laborer.

The bill creates s. 448.24(2)(b), F.S., to provide several limitations and requirements for labor pools in regards to the selection of payroll method.

The bill requires a labor pool, prior to the first pay period, to provide notice of the method the labor pool intends to use for payroll and the employee's options with regards to electing their payment method.

The bill also requires a labor pool to allow an employee to elect to not receive their wages by either payroll debit card or electronic fund transfer.

If the labor pool and employee both elect to transfer wages through payroll debit card, the bill requires the labor pool to provide an employee with:

- the option to receive their wage through electronic fund transfer to a financial institution designated by the day laborer.
- a list of each location and address of each business within close proximity to the labor pool that provides the ability to withdraw the contents of the payroll debit card without fee.

Finally, the bill allows a labor pool to deliver a written itemized statement showing in detail each deduction made from payment of wages electronically upon written request from the day laborer.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 448.24, F.S., revising methods by which a labor pool may compensate day laborers; requiring labor pools to offer payment by electronic fund transfer in certain circumstances; providing employee protections should a labor pool elect payroll debit or electronic fund transfer cards to pay wages; allowing a labor pool to deliver an electronic wage statement upon employee request.

Section 2: Provides an effective date of July 1, 2015.

## **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:**

None.

**D. FISCAL COMMENTS:**

None.

**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, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**