

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1154

INTRODUCER: Rules Committee; and Senators Perry and Hutson

SUBJECT: Labor Pool Act

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>McKay</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1154 amends the Labor Pool Act to provide that a labor pool satisfies the statutory requirements related to provision of restroom facilities and drinking water, if its labor hall facility complies with all minimum requirements for public restrooms and drinking fountains in the Florida Building Code. Alternatively, a labor pool may comply with the drinking fountains requirement by furnishing a water cooler or bottled water.

The bill also requires that a worker aggrieved by a violation of the labor pool law provide written notice of the alleged violation and give the labor pool a reasonable opportunity to cure the alleged violation, before bringing a civil action. A civil action must be commenced within 1 year after the date that the aggrieved worker serves the written notice of alleged violation.

The bill provides that the remedies specified in the Labor Pool Act are the exclusive remedies for violations of the duties and rights specified in s. 488.24, F.S.

The bill takes effect July 1, 2023.

II. Present Situation:

The Labor Pool Act

Part II of ch. 448, F.S., also known as the Labor Pool Act,¹ was enacted in 1995 to protect the health, safety, and well-being of day laborers throughout the state. A labor pool is a business entity that operates 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 contracts for temporary labor; or
- Fulfilling any contracts for day labor in accordance with the act, even if the entity also conducts other business.²

A “labor hall” is a central location maintained by a labor pool where day laborers assemble and are dispatched to work for a third-party user.³

A labor pool must not:

- Charge a day laborer:⁴
 - For safety equipment, clothing, accessories, or any other items required by the nature of the work;
 - More than a reasonable amount to transport a worker to or from the designated worksite; or
 - For directly or indirectly cashing a worker’s check.⁵
- Request or require that any day laborer sign any document waiving statutory protections.⁶
- Charge more than the actual cost of providing lunch, if the labor pool provides lunch at the worksite.⁷
- Restrict a day laborer’s right to accept a permanent position with a third-party user to whom the laborer is referred for temporary work, or to restrict the right of such a third-party user to offer such employment to an employee of the labor pool.⁸

A labor pool must:

- If operating a labor hall, provide the following facilities for a worker waiting at the hall for a job assignment:
 - Restroom facilities;
 - Drinking water; and

¹ Chapter 95-332, Laws of Fla.

² Section 448.22(1), F.S. The act also specifically excludes certain businesses from its provisions: businesses registered as farm labor contractors; employee leasing companies; temporary help services that solely provide white collar employees, secretarial employees, clerical employees, or skilled laborers; labor union hiring halls; or labor bureau or employment offices operated by a business entity for the sole purpose of employing an individual for its own use. *See* s. 448.23, F.S.

³ Section 448.22(3), F.S.

⁴ “Day labor” means temporary labor or employment that is occasional or irregular for which the worker is employed for not longer than the time period required to complete the temporary assignment for which the individual worker was hired, although an individual may be eligible for additional temporary assignments when available. *See* s. 448.22(2), F.S.

⁵ Section 448.24(1), F.S.

⁶ Section 448.24(3), F.S.

⁷ Section 448.24(4), F.S.

⁸ Section 448.24(6), F.S.

- Sufficient seating.⁹
- Select one of the following methods to pay a day laborer for work performed:
 - Cash;
 - Commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount;
 - Payroll debit card; or
 - Electronic fund transfer.¹⁰
- Notify a day laborer of the payment method that the labor pool intends to use and the day laborer's options to elect a different payment method.¹¹
- If selecting to pay a day laborer by payroll debit card:
 - Offer the day laborer the option to elect payment by electronic fund transfer; and
 - Provide the day laborer with a list, including the address, of a nearby business that does not charge a fee to withdraw the debit card's contents.¹²
- Compensate day laborers at or above the minimum wage.¹³
- Comply with the Workers' Compensation Law in ch. 440, F.S.¹⁴
- Insure any motor vehicle owned or operated by the labor pool and used for worker transportation.¹⁵
- Furnish each worker with a written itemized statement showing in detail each wage deduction.
- Give each worker an annual earnings statement summary.¹⁶

Remedies

Any worker aggrieved by a violation of the provisions relating to labor pool duties in s. 448.24, F.S., has the right to bring a civil action in a court of competent jurisdiction against the labor pool. In any such action, the worker is entitled to recover actual and consequential damages, or \$1,000, whichever is greater, for each violation, and costs. These remedies are not exclusive and do not preclude the worker from pursuing any other remedy at law or equity available to the worker.¹⁷

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹⁸

⁹ Section 448.24(5), F.S.

¹⁰ Section 448.24(2), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 448.25, F.S.

¹⁸ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited March 10, 2023).

In 1992, Hurricane Andrew demonstrated that Florida’s system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission’s recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.¹⁹ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.²⁰

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act” (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.²¹

The Florida Building Commission was statutorily created to implement the Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The commission reviews several International Codes published by the International Code Council,²² the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every 3 years.²³

Local Amendments to the Building Code

Local governments may adopt amendments to the building code which are more stringent than the building code and which are limited to the local government’s jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the building code, and thus, the local government would need to go through the amendment process every 3 years in order to maintain a local amendment to the building code.²⁴

Water Closets and Drinking Fountains in the Florida Building Code

Section 403 of the Building Code sets standards for minimum plumbing facilities; the requirement varies based upon the actual use of the building or space. For the “Business”

¹⁹ *Id.*; DBPR, *Building Code Information System*, available at: <https://floridabuilding.org/c/default.aspx#> (last visited March 10, 2023).

²⁰ *Id.*

²¹ Section 553.72(1), F.S.

²² The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited March 10, 2023).

²³ Sections 553.73, and 553.74, F.S.

²⁴ Section 553.73(4), F.S.

classification, the Water Closet requirement is 1 per 25 people for the first 50 people and 1 per 50 people for the remainder exceeding 50, and the Drinking Fountain requirement is 1 per 100.²⁵

III. Effect of Proposed Changes:

The bill amends the labor pool duties in s. 448.24(5), F.S., to provide that a labor pool satisfies the requirements related to restroom facilities and drinking water if its labor hall facilities comply with all minimum requirements for public restrooms and drinking fountains in the Florida Building Code, and any local amendments thereto. A labor pool may also provide drinking water through a water cooler dispenser, by offering bottled water, or by any other similar means.

The bill amends the remedies provisions to provide that before bringing a civil action pursuant to s. 448.25, F.S., an aggrieved worker must give the labor pool a reasonable opportunity to cure the alleged violation. The aggrieved worker must serve the labor pool in accordance with s. 48.081, F.S.,²⁶ with written notice of the alleged violation. The notice must include a statement that failure by the labor pool to cure the alleged violation within 60 days after receipt of the notice may result in a civil action being filed against it in court. A labor pool may cure a violation relating to its labor hall facilities by correcting the alleged violation to comply with the requirements.

A civil action brought under the provisions relating to labor pool duties must be filed within 1 year after the date the aggrieved worker serves written notice of the alleged violation on the labor pool.

The bill provides that the remedies specified in the Labor Pool Act are the exclusive remedies for violations of the duties and rights specified in s. 488.24, F.S.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁵ 2020 Florida Building Code, Plumbing, 7th Edition, available at: <https://codes.iccsafe.org/content/FLPC2020P1/chapter-4-fixtures-faucets-and-fixture-fittings#:~:text=403.3Required%20public%20toilet%20facilities,be%20provided%20with%20toilet%20facilities> (last visited March 10, 2023).

²⁶ Section 48.081, F.S., specifies the procedures to be followed in serving process on a corporation.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article I, s. 21 of the State Constitution provides that the “courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” The bill limits the remedy for injuries related to the labor pool act to those remedies listed in s. 448.25, F.S., and thus implicates the access to courts provision.

If this bill limits civil remedies related to operation of a labor pool, which remedies may otherwise be available to an injured party, this limitation may not be effective. Interpreting the access to courts provision, the Florida Supreme Court has ruled that:

Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla.Stat. s 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.²⁷

One question may be whether the civil remedies of s. 448.25, F.S. are a “reasonable alternative.” For example, the worker's compensation law limits remedies in a manner deemed reasonable.²⁸ The bill does not make findings that would support a claim that there is an overwhelming public necessity and no alternative method.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

²⁷ *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973).

²⁸ *Kluger* at 4.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 448.24 and 448.25 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules on April 19, 2023:

The CS clarified the application of minimum standards in the Florida Building Code to water fountains and restrooms, and clarified the limitation of remedies.

- B. **Amendments:**

None.