

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 895 Labor Pool Act

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Basabe

TIED BILLS: **IDEN./SIM. BILLS:** SB 1154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Wright	Anstead
2) Civil Justice Subcommittee	16 Y, 0 N	Mawn	Jones
3) Commerce Committee			

SUMMARY ANALYSIS

The Labor Pool Act ("Act") was enacted in 1995 to protect the health, safety, and well-being of day laborers throughout the state. The Act outlines uniform standards of conduct and practice for labor pools and specifies that, where a labor pool operates a labor hall, the labor pool must supply workers with drinking water, sufficient seating, and restroom facilities. Labor pools must also comply with certain requirements related to payment and safety equipment. Where a worker is aggrieved by a violation of the Act, the worker has civil remedies as specified in the Act, which remedies are not exclusive; thus, the worker may pursue any other remedy at law or equity which the worker may have.

CS/HB 895 amends the Labor Pool Act to provide that a labor pool satisfies the statutory requirements related to the provision of 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. The bill also provides that a labor pool may provide drinking water through a water cooler dispenser, by offering bottled water, or by any other similar means.

Further, the bill requires that:

- A worker aggrieved by a violation of the Labor Pool Act must give the labor pool a reasonable opportunity to cure the alleged violation by serving the labor pool with written notice of the alleged violation, which notice must meet specified requirements, and giving the labor pool 60 days to cure the alleged violation before filing a lawsuit against the labor pool.
- Such a lawsuit must be commenced within one year after the date that the aggrieved worker serves the written notice of the alleged violation on the labor pool.

Finally, the bill provides that the remedies specified in the Labor Pool Act for a worker aggrieved by a violation of the Act are the exclusive remedies available to the worker and thus preclude the worker from pursuing any other remedy at law or in equity which the worker may have.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Labor Pool Act

Part II of ch. 448, F.S., also known as the Labor Pool Act (“Act”),¹ was enacted in 1995 to protect the health, safety, and well-being of day laborers throughout the state and to outline uniform standards of conduct and practice for labor pools. The Act defines “labor pool” as a business entity that operates a labor hall² by one or more of the following methods:

- Contracting with third-party users to supply day laborers on a temporary basis;
- Hiring, employing, recruiting, or contracting with workers to fulfill contracts for temporary labor; or
- Fulfilling any contracts for day labor in accordance with the Act, even if the entity also conducts other business.³

Duties and Obligations of Labor Pools under the Act

Under s. 448.24, F.S., 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 a third-party user to offer employment to an employee of the labor pool.⁸

Further, s. 448.24, F.S., provides that a labor pool must:

- If operating a labor hall, provide the following facilities for a worker waiting at the hall for a job assignment:⁹
 - Restroom facilities;
 - Drinking water; and
 - Sufficient seating.
- Select one of the following methods to pay a day laborer for work performed:¹⁰

¹ Ch. 95-332, L.O.F.

² S. 448.22(3), F.S., defines a “labor hall” as a central location maintained by a labor pool where day laborers assemble and are dispatched to work for a third-party user.

³ S. 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.

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 S. 448.24(1), F.S.

⁶ S. 448.24(3), F.S.

⁷ S. 448.24(4), F.S.

⁸ S. 448.24(6), F.S.

⁹ S. 448.24(5), F.S.

¹⁰ S. 448.24(2), F.S.

- 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.
- 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:¹²
 - 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.
- 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

Civil Remedies

Under the Act, any worker aggrieved by a violation of the provisions relating to labor pool duties and obligations in s. 448.24, F.S., may file a lawsuit in a court of competent jurisdiction against the labor pool. In any such lawsuit, the worker may recover his or her actual and consequential damages, or \$1,000, whichever is greater, for each violation, and his or her costs. Further, the Act provides that this remedy is not exclusive and does not preclude the worker from pursuing any other remedy at law or equity available to him or her.¹⁷

Florida Building Code

In 1974, Florida enacted legislation requiring all local governments to adopt and enforce a building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations for improving Florida's building standards. In 1998, the Florida Legislature adopted the study's recommendations for a single state building code and enhanced state oversight over local code enforcement. In 2000, the Florida Legislature authorized the implementation of the Florida Building Code ("Building Code"), and that first edition replaced all local codes on March 1, 2002.¹⁸ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.¹⁹

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" ("FBCA"). The purpose and intent of the FBCA is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code and to ensure that the Building Code is applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.²⁰ To accomplish these goals, the FBCA created the Florida Building Commission ("Commission") to implement the Building Code. The Commission, housed within the Department of Business and Professional Regulation, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code, which body:

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ S. 448.25, F.S.

¹⁸ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/2006_Legislature_Rpt_rev2.pdf (last visited March 27, 2023).

¹⁹ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited March 27, 2023).

²⁰ S. 553.72(1), F.S.

- Reviews several International Codes published by the International Code Council,²¹ 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 three years.²²

However, the Building Code only provides minimum standards for construction in the state.²³ Thus, local governments may adopt and enforce amendments specific to their jurisdictions that are more stringent than the requirements imposed under the Building Code. Such amendments expire upon the adoption of the newest building code edition, and, thus, a local government must go through the amendment process every three years in order to maintain any such amendments.²⁴

Water Closets and Drinking Fountains in the Florida Building Code

Section 403 of the Building Code sets standards for minimum plumbing facilities, including water closets (that is, toilets) and drinking fountains, which standards vary based upon the actual use of the building or space. For a building or space with a “business” use classification, the water closet occupant load requirement is 1 water closet per 25 occupants for the first 50 occupants and 1 water closet per 50 occupants for the remainder exceeding 50, while the drinking fountain occupant load requirement is 1 drinking fountain per 100 occupants.²⁵ However, drinking fountains are not required for an occupant load of 15 or fewer.²⁶ Additional requirements also apply to both water closets and drinking fountains as set forth in the Building Code, including requirements for location, directional signage, and fixture materials and quality.

Effect of Proposed Changes

CS/HB 895 amends s. 448.24(5), F.S., to provide that a labor pool satisfies the requirements for providing 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. The bill also provides that a labor pool may provide drinking water through a water cooler dispenser, by offering bottled water, or by any other similar means.

Further, the bill amends s. 448.25, F.S., to provide that a worker aggrieved by a violation of s. 448.24, F.S., must give the labor pool a reasonable opportunity to cure the alleged violation by serving the labor pool in accordance with s. 48.081, F.S.,²⁷ with written notice of any alleged violation and by giving the labor pool a reasonable opportunity to cure the violation. Under the bill:

- The notice must include a statement that the labor pool’s failure to cure the alleged violation within 60 days after receipt of the notice may result in a lawsuit being filed against it.
- A labor pool may cure a violation relating to its labor hall facilities by modifying the alleged violation to comply with statutory requirements.
- A lawsuit filed under s. 448.25, F.S., must be filed within one year after the date the aggrieved worker serves written notice of the alleged violation on the labor pool.
- The remedies provided under the Act are exclusive and preclude the aggrieved worker from pursuing any other remedy at law or equity which the worker may have.

The bill provides an effective date of July 1, 2023.

²¹ 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 Mar. 27, 2023).

²² Ss. 553.73, and 553.74, F.S.

²³ S. 553.72(1), F.S.

²⁴ S. 553.73(4), F.S.

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 Mar. 27, 2023).

²⁶ 2020 Florida Building Code, Plumbing, 7th Edition, § 410.2.

²⁷ S. 48.081, F.S., specifies the procedures to be followed in serving process on a corporation.

B. SECTION DIRECTORY:

Section 1: Amends s. 448.24, F.S.; relating to duties and rights.

Section 2: Amends s. 448.25, F.S.; relating to remedies; damages; costs.

Section 3: Provides an effective date of July 1, 2023.

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:

The bill may reduce litigation expenses for labor pools due to the mandatory cure period created by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 16, 2023, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarified the application of minimum standards in the Florida Building Code to water fountains and restrooms.
- Clarified the limitation of remedies.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.