

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	18 Y, 0 N	Wright	Hamon

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 by outlining uniform standards of conduct and practice for labor pools. The Act requires a labor pool that operates a labor hall to supply workers with drinking water, sufficient seating, and restroom facilities. Labor pools must also comply with certain requirements related to payment and safety equipment.

When a worker is affected by a violation of the Act, the worker may seek legal remedies as specified in the Act, or any other available legal remedy.

The bill provides that a labor pool satisfies the statutory 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. 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.

The bill requires that a worker affected by a violation of the Act must provide written notice of the alleged violation to the labor pool and give the labor pool 60 days to cure the alleged violation before bringing a lawsuit against the labor pool. Such a lawsuit must be commenced within one year after the date that the affected worker serves the written notice.

The bill provides that the remedies specified in the Act for a worker affected by a violation of the Act are the only remedies available to the worker, and therefore the worker may not pursue any other legal remedy.

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:

Florida Labor Pool Act – Current Situation

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:³

- 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.

The Act provides that 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

The Act requires a labor pool to:

- 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
 - Cash;
 - Commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount;
 - Payroll debit card; or

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.

- 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

Remedies

Under the Act, any worker affected by a violation of the provisions relating to labor pool duties and obligations may file a lawsuit against the labor pool. In any such lawsuit, the worker may recover actual and consequential damages, or \$1,000, whichever is greater, for each violation, and costs. This legal remedy is not exclusive and does not prohibit the worker from pursuing any other available legal remedy.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

The Florida Building Commission (Commission) was statutorily created 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. The Commission reviews several International Codes published by the International Code Council,²¹ the National Electric Code, and other nationally adopted

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.

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).

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 (or, 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. There does not appear to be specific minimum seating requirements for general businesses in the Building Code.

Florida Labor Pool Act – Effect of the Bill

The bill amends the Act 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 applicable local amendments. 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.

The bill provides that a worker affected by a violation of the Act and who seeks to bring a lawsuit, must first serve the labor pool in accordance with s. 48.081, F.S.,²⁷ with written notice of any alleged violation. 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 the Act must be filed within one year after the date the affected worker serves written notice of the alleged violation on the labor pool. The remedies provided under the Act are exclusive, and the affected worker may not pursue any other available legal remedy for violations of the Act.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 448.24, F.S.; relating to labor pool standards and requirements.

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

Section 3: Provides an effective date.

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.

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.