

STORAGE NAME: h0565.br.doc
DATE: January 14, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 565
RELATING TO: Farm Labor Contractors
SPONSOR(S): Representative(s) Peterman
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE AND CONSUMER AFFAIRS (CCC) YEAS 8 NAYS 1
 - (2) BUSINESS REGULATION (W/D)
 - (3) COUNCIL FOR COMPETITIVE COMMERCE (W/D)
 - (4)
 - (5)
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I. SUMMARY:

State and federal agencies have responsibility for enforcement of farm labor laws and farm labor contractors are required to be registered with both the state's Department of Labor and Employment Security and with the U. S. Department of Labor. The Fair Labor Standards Act generally prohibits a charge or deduction from an employee's salary for items or services that accrue to the benefit of the employer, rather than the employee.

This bill prohibits farm labor contractors from making a charge or deduction from an employee's wages for any tools, equipment, transportation, or recruiting fees determined to be to the benefit of the employer.

This legislation does not appear to have a fiscal impact on revenue collections or expenditures and will take effect on July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

A farm labor contractor is a person who, for a fee, provides farm workers who may work directly under his control or under the control of a third person.¹ Part III of Chapter 450, requires that farm labor contractors obtain a certificate of registration from the Department of Labor and Employment Security upon completion of a program of education and examination. Duties, responsibilities and prohibitions are also established. To a great extent, state law regarding farm labor contractors mirrors federal requirements. The Department of Labor and Employment Security [department], reports that there are approximately 3,800 farm labor contractors registered pursuant to this law.

Proponents of this legislation assert that there are farm labor practices wherein farm workers have been charged for items used in their work that have little or no benefit to the worker and primarily benefit the employer. It is reported that some contractors recoup some of their expenses by cost-saving measures such as charging workers for daily rides, check cashing, etc. in addition to charging for materials, equipment, and tools of the trade incidental to carrying out the employer's business. There is no specific provision in state law prohibiting this practice.

Section 450.38, Florida Statutes, provides that Farm Labor Contractors who violate the provisions of Part III, chapter 450 may be charged with a misdemeanor of the second degree and subjected to a civil penalty up to \$1,000.

Federal Law

The Migrant and Seasonal Agricultural Worker Protection Act, chapter 20, title 29, U.S.C. requires registration of Farm Labor Contractors and establishes many of the same duties, prohibitions and penalties as state law.

Although the Fair Labor Standards Act generally prohibits a charge or deduction from an employee's salary for items or services that accrue to the benefit of the employer, rather than the employee, there are exceptions where an employer may regard the reasonable cost of providing certain services as wages.

"Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other

¹ See s. 450.28(1), F.S.

facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees. [29 U.S.C. s. 203(m)]

Federal regulations prohibit an employer from taking deductions from a worker's pay or otherwise driving workers' wages below the minimum wage by imposing expenses that are primarily for the benefit of the employer.² Federal regulations do not specifically state how the question of who benefits from a particular item is to be determined but notes that, in order for the item to be for the primary benefit of the employee, it must be something "like board or lodging." The regulations do, however, provide numerous examples and, taken as a whole, appear to indicate that the kinds of things that primarily benefit the *employee* are expenses that an employee would incur in the normal course of daily life, e. g., meals. Conversely, items that are required by law, the nature of the job, or that result from a business decision of the employer are regarded as primarily for the benefit of the *employer*, e. g., tools of the trade. The Administrator of the Wage and Hour Division, Department of Labor, routinely issues opinions specifically addressing whether various costs are for the benefit of the employer.

State and federal agencies have responsibility for enforcement in this area.³ However, both the department and Florida Legal Services Office report that there are more state compliance officers in this area than federal compliance officers. In addition, it is thought that state enforcement of this prohibition will be more effective in curtailing unfair labor practices.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 450.34, Florida Statutes, to prohibit a farm labor contractor from making a charge or deduction from an employee's wages for any tools, equipment, transportation, or recruiting fees that are determined under the federal Fair Labor Standards Act to be to the benefit of the employer.

The bill provides that the act will take effect on July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See EFFECT OF PROPOSED CHANGES: above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Labor and Employment Security has 14 compliance officers that will be responsible for enforcement of the provisions set forth in this legislation. Enforcement can be accomplished within existing resources.

² See 29 C.F.R. s. 531.35.

³ Section 1871, ch. 20, Title 29, U.S.C. reads: This chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some expenses currently deducted from farm worker wages may be absorbed by the farm labor contractors.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

The purpose of this legislation is to prohibit certain acts by farm labor contractors, such as the imposition of charges for items deemed to be for the "benefit of the employer." Chapter 450, F.S., defines "farm labor contractor" as any person who, for a fee, provides farm workers, who may work directly under his control or under the control of a third person. The term "employer" is not defined in the bill or in Chapter 450, F.S., and it may not be clear who is covered by that term.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Agriculture and Consumer Affairs

Representative Kendrick offered two amendments, which were adopted and are traveling with the bill. Amendment 1 conformed the House bill to the Senate bill by changing "shall" to "may". This change is a drafting preference and did not change the intent of the legislation. Amendment 2 specified that charges for items benefiting the employer could not be deducted from an employees wages unless " in compliance with the federal Fair Labor Standards Act."

Committee on Business Regulation

The bill was withdrawn from the Committee on Business Regulation on March 7, 2002, without a committee hearing.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE AND CONSUMER AFFAIRS (CCC):

Prepared by:

Staff Director:

Debbi Kaiser

Susan D. Reese

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

Janet Clark Morris

M. Paul Liepshutz