

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 Transportation and Economic Development Appropriations Committee

BILL: CS/CS/SB 1062

INTRODUCER: Transportation and Economic Development Appropriations Committee, Commerce Committee, and Senator Fasano

SUBJECT: Employee leasing companies

DATE: March 13, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	Fav/CS
2.	Belcher	Noble	TA	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill establishes the “Accurate Employment Statistics Enhancement Act,” which requires employee leasing companies, also known as Professional Employer Organizations (PEOs), to file reports with the Labor Market Statistics Center of the Agency for Workforce Innovation (AWI). Compared to current law, the bill requires that employee leasing companies report additional and more specific information more frequently (quarterly instead of biannually) to AWI. The quarterly reports must contain specific information about each employee leasing company and client “establishment,” including various types of identification, number of employees, total wages paid subject to unemployment compensation taxes, and contract information.

The bill also prescribes a format for such reports, the time within which the reports must be filed, and specifies that a report is not required for any calendar quarter preceding the third calendar quarter of 2010. The bill requires AWI to adopt rules as necessary to administer the bill provisions and authorizes the agency to administer, collect, enforce, and waive penalties for failure to file such reports.

This bill amends sections 443.036 and 443.1216 of the Florida Statutes.

The bill may have an indeterminate but minor fiscal impact on AWI for processing more frequent and lengthier reports, promulgating rules, and enforcement costs. It is anticipated that increased costs would be covered within the agency's existing budget from federal funds.

II. Present Situation:

Employee Leasing Companies

Employee Leasing Companies, otherwise known as Professional Employer Organizations (PEOs), are organizations that enable clients to outsource the management of human resources, employee benefits, payroll, and workers' compensation.¹ There are approximately 700 employee leasing companies in the nation; 127 of those are in Florida.² The PEO industry is one of the largest employers in Florida, co-employing close to 700,000 employees and serving over 50,000 companies.³

Most of the clients that benefit from PEOs are small to medium size firms that need assistance with employment administration, reducing risk and liability, and offering a more comprehensive employee benefit package.⁴

According to the Florida Department of Business and Professional Regulation's Board of Employee Leasing Companies, an employee leasing company is different from the following types of organizations that provide administrative relief to companies:⁵

- Temporary help arrangements to support or supplement the client's workforce in special work situations such as employee absences, temporary skill shortages, and seasonal workloads (e.g. Kelly Services temporary agency or day laborers);
- An arrangement in which an organization employs only one category of employees and assigns them to a client to perform a function inherent to that category and which function is separate and divisible from the primary business of the client (e.g. accountants, subcontractors, or consultants);
- A facilities staffing arrangement, whereby an organization assigns its employees to staff a specific client function, on an ongoing basis, provided that the employees comprise no more than 50 percent of the workforce at a client's worksite and provided that no more than 20 percent of the employees were the client's employees immediately preceding the commencement of the arrangement (e.g. concession staff for sports franchise or other employment organization);

¹ <http://www.napeo.org/peoindustry/definition.cfm>.

² Statistics provided by the Department of Business and Professional Regulation, citing in part the National Association of Professional Employment Organizations, on November 25, 2008. Document on file with the Commerce Committee.

³ Ibid. Page 3.

⁴ <http://www.napeo.org/peoindustry/definition.cfm> (describing some of benefits of PEOs) and <http://www.napeo.org/peoindustry/role.cfm> (referring to small to medium sized business' interest in PEOs).

⁵ See <http://www.myflorida.com/dbpr/pro/emplo/codes.html> and s. 468.520(4), F.S.; examples adapted from information provided by the Department of Business and Professional Regulation, November 25, 2008. Document on file with the Commerce Committee.

- An arrangement in which an organization assigns its employees only to a commonly controlled company or group of companies as defined in s. 414 of the Internal Revenue Code and in which the organization does not hold itself out to the public as an employee leasing company (e.g. payroll company for restaurant chains or franchises); or
- A home health agency or a health care services pool unless otherwise engaged in business as an employee leasing company (e.g. Florida Home Health Care).

An employee leasing company has a contractual relationship with its client, making the employee leasing company a co-employer of the client's employees. In fact, nothing changes at the business, except that, in relation to personnel matters, the employee reports to the employee leasing company.⁶

Current Employee Leasing Company Reporting

AWI's Labor Market Statistics Center produces data, such as employment, unemployment, and wage information, which assists employers and job seekers and may affect workforce and economic development.⁷ These statistics assist with economic analysis, business recruitment, career counseling and other critical business decision-making.⁸ AWI's Labor Market Statistics Center collects this data under several federal/state cooperative statistical programs, including the Quarterly Census of Employee Wages program. This program receives its data from quarterly tax reports submitted to the state by employers subject to state Unemployment Insurance laws under ch. 443, F.S.⁹

An employee leasing company is subject to ch. 443, F.S., and must therefore maintain and report records as required by s. 443.171(5), F.S., which requires reports to contain information required by AWI or the tax collection service provider. In addition to those reporting requirements, s. 443.036, F.S., requires each employee leasing company to maintain a list of clients and employees, including their social security numbers, who have been assigned to work at each client company job site. Furthermore, each client company job site must be identified by industry, products or services, and an address. The client list must be provided to the tax collection service provider biannually by June 30 and December 31 of each year.

Section 443.1216, F.S., provides that when an employer contracts with an employee leasing company, that employer's workers are considered employees of the employee leasing company. Employees of the employee leasing company are reported quarterly under the employee leasing company's tax identification number and contribution rate.

Problems with Current Reporting Requirements

Under the existing state unemployment compensation law, employee leasing companies report the number of their internal staff and the staff of their clients (leased staff) under a single tax identification number. According to AWI, this current reporting practice distorts industry and

⁶ <http://definitions.uslegal.com/e/employee-leasing-programs/>.

⁷ http://www.floridajobs.org/publications/news_rel/LMS%20Release%2008-15-08.html.

⁸ *Id.*

⁹ See <http://www.labormarketinfo.com/Stats.htm> for a list and description of programs.

geographic economic data for the state and local areas, effectively skewing employer and employee numbers, employment by industry, and employment in geographic location. For example, in a Manufacturing Workforce Pipeline Study conducted by the Employ Florida Banner Center for Manufacturing, the Banner Center discovered that current reporting by the employee leasing companies cause jobs that were once classified in the manufacturing industry, or any other industry, to now be counted in the employment services industry, which results in false declines in one industry and artificial job growth in another industry.¹⁰ Considering that the PEO industry co-employs approximately 700,000 employees in Florida, the data received by AWI may be significantly skewed.

III. Effect of Proposed Changes:

Section 1 provides that the short title for the act is “Accurate Employment Statistics Enhancement Act.”

Section 2 amends s. 443.036(18), F.S., to include in the definition of “employee leasing company” a requirement that employee leasing companies are responsible for providing quarterly reports on their clients and the companies’ internal staff. The current report specifications are deleted. (New report specifications are included in section 3 of the bill.)

Section 3 amends s. 443.1216(1)(a), F.S., to require employee leasing companies to file quarterly reports with the Labor Market Statistics Center of AWI, or as otherwise directed by AWI.

Sub-subparagraph (1)(a)2.a., F.S., is created to require reports that are filed with AWI to contain information about the client and employee leasing company including, various identification information, a physical address, the number of employees, wages paid subject to unemployment compensation taxes, and contract information. This is essentially the same data already required to be reported by all Florida employers.

Sub-subparagraph (1)(a)2.b., F.S., is created to require that the reports be submitted in a certain format, including electronically or as prescribed by AWI, and requires the reports to be filed by the last day of the month following the end of the calendar quarter. This sub-subparagraph also requires that the data reported under this bill match the data reported under the unemployment compensation quarterly tax and wage report; and specifies that no report is required before the third calendar quarter of 2010.

Sub-subparagraph (1)(a)2.c., F.S., is created to required AWI to adopt rules necessary to administer the bill provisions and grants AWI authority to administer, collect, enforce, and waive penalties for failure to file such reports.

Sub-subparagraph (1)(a)2.d., F.S., is created to define “establishment” to mean “any location where business is conducted or where services or industrial operations are performed.”

¹⁰ “Manufacturing Workforce Pipeline Study,” Employ Florida Banner Center for Manufacturing. September, 2007. Page 40. <http://www.banner-mfg.org/Photos/Pipeline%20Study.pdf> .

Section 4 provides an effective date of October 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an indeterminate impact on employee leasing companies for producing the quarterly reports and meeting the reporting requirements of the bill.

C. Government Sector Impact:

The bill may have an indeterminate but minor fiscal impact on AWI for processing more frequent and lengthier reports, promulgating rules, and enforcement costs. It is anticipated that increased costs would be covered within the agency's existing budget from federal funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

On March 4, 2009, the Commerce Committee adopted a Committee Substitute. The CS is different from the prior version of the bill in that it clarified that an employee leasing company “is responsible for producing” rather than “produces” the quarterly reports required in this bill. Furthermore, it clarified that the additional information provided by the employee leasing companies, as required by this bill, has the same confidentiality protection as the information required under current law. The CS also changed the title of the bill to make it correspond with the confidentiality provision provided for in the CS.

On March 12, 2009, the Transportation and Economic Development Appropriations Committee adopted a Committee Substitute. The CS is different from the prior version of the bill in that it removes language clarifying that the additional information provided by the employee leasing companies has the same confidentiality protection as the information required under current law. The CS includes the provision that no report is required for any calendar quarter preceding the third calendar quarter of 2010.

B. Amendments:

None.