

- SUBJECT:** Changing the regulation of staff leasing services
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 8 ayes — Wilson, Yarbrough, Flores, Goolsby, Haggerty, J. Moreno, Palmer, A. Reyna
- 0 nays
- 1 absent — D. Jones
- WITNESSES:** For — Carl Kleimann, Texas Chapter of the National Association of Professional Employer Organizations
- Against — None
- BACKGROUND:** Texas has regulated staff leasing services since 1993 through Labor Code, chapter 91. These service companies assign their own long-term workers to client companies and share many of the responsibilities for those employees with the client companies. These services do not include companies providing temporary workers or independent contractors.
- Chapter 91 does not address specifically a new form of staff leasing service called a professional employer organization (PEO). PEOs operate like independent human-resource offices for the workers they assign to clients. They offer a wide range of services, including management of payroll, employment taxes, health benefits, hiring, and worker assignment. PEOs may be excluded under the current law because the license for a staff leasing service requires the service to retain certain rights that PEOs usually share with the client company, including:
- ! direction and control over employees assigned to a client's work sites;
 - ! hiring, firing, discipline, and reassignment of assigned employees; and
 - ! direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures.
- No provisions in the current law apply state and federal labor laws to client

companies or specify whether the use of staff leasing services affects the status of a company as a small or historically underutilized business (HUB) with respect to state contracts.

Not all states issue licenses for staff leasing services. Limited staff leasing licenses are used by out-of-state leasing services who assign employees to nationwide corporations that sometimes do business in Texas.

DIGEST:

CSHB 1184 would add PEOs to the Labor Code definition of staff leasing service companies. It would amend current law on contract requirements to allow licensed services, including PEOs, to share rights with the client company that the service now must retain.

The bill would specify that the staff leasing services law does not relieve a client company of a right, obligation, or duty under Texas labor laws, the federal National Labor Relations Act, the federal Railway Labor Act, or any other law governing labor relations.

CSHB 1184 also would specify that the use of a licensed staff leasing service would not affect a client company's status as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a HUB with respect to state contracts.

In the section of the law dealing with contract requirements, client companies would retain responsibility for:

- ! direction and control of assigned employees as necessary to conduct the client company's business, discharge any applicable fiduciary duty, or comply with any licensure, regulatory, or statutory requirement;
- ! goods and services produced by the client company; and
- ! acts, errors, and omissions of assigned employees committed within the scope of the client company's business.

A workers' compensation policy maintained by a licensed staff leasing service would apply to the service and the client company with respect to all employees assigned by the service to the client company. The state could require additional workers' compensation coverage for employees of the client company who were not assigned by the service.

The bill would require the Texas Department of Licensing and Regulation to grant an applicant who was denied a staff leasing service license 30 days to address the reasons for denial. Upon a showing of good cause and a good-faith effort to remedy the reasons for denial, the commissioner of licensing and regulation could grant an additional 30 days to remedy the reasons for denial.

A staff leasing service seeking a limited license no longer would have to have a domicile in another state or possess a license or registration as a staff leasing services company in that state.

CSHB 1184 would add a list of factors for the department to consider when imposing an administrative penalty on a licensed service. Those factors would include the severity of the violation, whether it was wilful or intentional, whether the licensed service acted in good faith to avoid or mitigate the violation, whether the licensed service had committed similar violations in the past, and the level of previous administrative penalties imposed. The department would have to establish a written enforcement plan that would include the penalty ranges for specific violations and the criteria used to determine the amount of an administrative penalty.

The bill would change a reference to “an order of” the department to “notice from” to conform with terminology used by the department.

CSHB 1184 would take effect September 1, 1999. The provisions for license application denials, administrative penalties, and contracts with client companies would only apply to those occurring on or after that date.

**SUPPORTERS
SAY:**

Texas needs to amend its staff leasing services law to keep up with changes in the industry. The law should include PEOs because these innovative firms have seen enormous growth nationally and in Texas. PEOs provide cost-effective human resource services to client companies so that the clients can concentrate on their business rather than on the increasingly complex world of employment law. CSHB 1184 would add PEOs to the law by including them in the definition of staff leasing services and allowing licensed services to share certain rights with client companies.

This bill is the product of close consultation with labor organizations. CSHB 1184 would make it clear that client companies are not relieved of any rights, obligations, or duties under any labor law.

Businesses that are small, minority-owned, disadvantaged, woman-owned, or historically underutilized often have the greatest need for the savings that come from using a staff leasing service or a PEO. PEOs enable these firms to contract out burdensome human-resources work and concentrate on their own products and services. These businesses should not be penalized in their state contracts for making good business decisions.

Other provisions of CSHB 1184 would clarify the existing law and give the Department of Licensing and Regulation more direction in regulating staff leasing services.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The major change made to the original bill by the committee substitute was the addition of the statement that client companies would not be relieved of rights, obligations, or duties under any labor relations law. The substitute also added provisions that would allow licensed services to share certain rights with client companies rather than retain them. The substitute deleted a requirement that the State Office of Administrative Hearings conduct all administrative penalty hearings.