

SUBJECT: Licensing and regulation of staff leasing services

COMMITTEE: Economic Development — favorable, without amendment

VOTE: 5 ayes — Deshotel, Straus, Morrison, Ortiz, Veasey
0 nays
2 absent — Kolkhorst, Dunnam

SENATE VOTE: On final passage, May 1 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 2947 by Eissler:)*
For — Andrea C. McHenry, Administaff; Tim Tucker, National Association of Professional Employer Organizations

Against — Kim Traylor; *(Registered, but did not testify:* Curtis Fuelberg, Texas Council of Professional Employers)

On — William H. Kuntz, Jr., Texas Department of Licensing and Regulation

BACKGROUND: A person who offers staff leasing services is subject to Labor Code, ch. 91 and the rules adopted by the Texas Commission of Licensing and Regulation. An applicant for an original or renewal license must demonstrate a net worth as follows:

- \$50,000, if the applicant employs fewer than 250 assigned employees;
- \$75,000, if the applicant employs at least 250 but not more than 750 assigned employees; and
- \$100,000, if the applicant employs more than 750 assigned employees.

The applicant may demonstrate net worth to the Texas Department of Licensing and Regulation (TDLR) by providing the department with the applicant's financial statement or a copy of the applicant's most recent federal tax return. The applicant also may satisfy the net worth

requirement through guarantees, letters of credit, a bond in an amount that demonstrates compliance, or other security acceptable to TDLR.

DIGEST:

SB 1365 would amend Labor Code, ch. 91 to establish that an applicant for an original or renewal staff leasing services company license would have to demonstrate a positive working capital, rather than net worth. The bill would define “working capital” to mean the applicant’s current assets minus current liabilities as determined by generally accepted accounting principles. An applicant could demonstrate working capital to TDLR by providing the department with the applicant’s financial statement, but the bill would remove the current option of an applicant’s providing the most recent federal tax return. The bill would allow an applicant to satisfy any deficiencies in working capital through guarantees, letters of credit, a bond in an amount that demonstrated compliance, or other security acceptable to TDLR.

A document submitted to establish working capital would have to show capital on a date no earlier than nine months before submission of the application. An independent certified public accountant would have to prepare or certify a document submitted to establish working capital, and after April 1, 2010, would have to review or audit a document submitted to establish working capital. The bill would provide that the information related to working capital submitted to TDLR was not subject to the Public Information Act.

TDLR by rule could authorize the acceptance of an affidavit and supporting information provided by a bonded, independent assurance organization that had been approved by the department in lieu of the requirements for a license application, general license requirements, background investigations, and working capital requirements.

If a license holder submitted a timely and sufficient application for license renewal to TDLR, the license holder’s existing staff leasing services license would not expire until the application finally had been determined.

The bill would repeal the definition of “net worth” and make conforming changes.

The bill would take effect September 1, 2007, and would apply to a license issued or renewed on or after that date.

**SUPPORTERS
SAY:**

SB 1365 would modernize the licensing procedure for staff leasing services companies or professional employer organizations (PEOs). It also would strengthen financial requirements for licensure by requiring statutory levels of working capital rather than net worth. A standard of working capital would permit an assessment of PEOs' liquidity and would give assurance that the companies could meet payroll and other financial obligations, while net worth could be an indicator of assets that might not easily be converted. The bill would enhance the ability of the state to effectively regulate the staff leasing services industry.

Allowing TDLR to accept an affidavit and supporting information by a bonded, independent, and qualified assurance organization approved in lieu of licensing and other requirements would be a valuable tool. It could assist TDLR in evaluating licensees while relieving PEOs of much of the administrative burden that is part of the annual licensing process. Granting TDLR access to a company's supporting information supplied by a qualified assurance organization could give TDLR added insight into a PEO's financial health. The provision would be permissive and would not replace existing regulatory authority.

**OPPONENTS
SAY:**

Authorizing TDLR, by rule, to accept an affidavit and supporting information by a bonded, independent, and qualified assurance organization in lieu of licensing requirements, background investigations, and working capital requirements could place small to medium-sized professional employer organizations at a considerable disadvantage. Currently, the Employer Services Assurance Corporation (ESAC), which has been operating since 1995, is the only assurance organization offering this service for staff leasing service companies. Of the 199 companies in Texas, only three of the largest are ESAC-accredited. If TDLR adopted a rule allowing acceptance of ESAC information in lieu of licensing and other requirements, it could be used as a marketing tool against smaller Texas PEOs when they, in fact, would be meeting all state licensing requirements. TDLR should remain the state's only governing authority over professional employer organizations.

NOTES:

The companion bill, HB 2947 by Eissler, was heard by the Economic Development Committee on April 11 and reported favorably, as substituted.