

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 Committee on Rules

BILL: SB 456

INTRODUCER: Senators Braynon and Smith

SUBJECT: Labor Pools

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	<u>Siples</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 456 allows labor pools to offer additional methods to compensate day laborers for services performed. These new methods include an electronic fund transfer to the financial institution designated by the day laborer and a payroll debit card, which does not charge a fee for withdrawal of its contents. The labor pool must notify the day laborer of the payment method it intends to use and provide the day laborer the option to be paid by another authorized method. The bill authorizes the labor pool to provide a wage statement electronically upon written request of the day laborer.

II. Present Situation:

The Labor Pool Act

Part II of ch. 448, F.S., also known as the Labor Pool Act,¹ was enacted in 1995 to protect the health, safety, and well-being of day laborers throughout the state. The act also outlines uniform standards of conduct and practice for labor pools. A labor pool is defined as a business entity that operates a labor hall² by one or more of the following methods:

- Contracting with third-party users to supply day laborers to them on a temporary basis;
- Hiring, employing, recruiting, or contracting with workers to fulfill these contracts for temporary labor; or
- Fulfilling any contracts for day labor in accordance with the act, even if the entity also conducts other business.³

¹ Chapter 95-332, L.O.F.

² Section 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 Section 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,

The act limits the methods by which a day laborer may be paid to cash or commonly accepted negotiable instruments⁴ that are payable in cash, on demand at a financial institution, and without discount.⁵ The act prohibits a labor pool from charging a day laborer for directly or indirectly cashing the worker's check.⁶

Payment for Labor

Chapter 532, F.S., governs the issuance of payment for labor in this state. Under the law, payment for labor may be made by order, check, draft, note, memorandum, payroll debit card, or other acknowledgment of indebtedness issued in payment of wages and payable in cash, on demand, without discount, at an established place of business.⁷ It further requires the name and address of a business where a payroll debit card is negotiable on demand without discount to appear on the payroll debit card.

Payroll Debit Cards

More companies are using payroll debit cards to compensate their employees for their labor. The number of companies using this method to pay employees is expected to reach 10.8 million within the next 5 years.⁸ However, some consumer advocates warn that employees paid by these debit cards may be subjected to fees for transactions, such as withdrawals, balance inquiries, and point of sale purchases.⁹ Some of the payroll debit card issuers may also charge its cardholders overdraft and inactivity fees.

However, payroll debit cards may offer an individual who has limited or no access to a financial institution a safe and convenient way to receive her or his wages.¹⁰ The Consumers Union and the National Consumer Law Center has issued a Model State Payroll Card Law, which they feel offer a mutually beneficial payroll program for both employers and employees.¹¹ The model law includes such provisions as:

- Requirement of a voluntary written consent to receive payment by payroll card;

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 Section 673.1041(1), F.S., defines negotiable instrument as “an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it: (a) is payable to the bearer or to order at the time it is issued or first comes into possession of a holder; (b) is payable on demand or at a definite time; and (c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money...”

⁵ Section 448.24(2)(a), F.S.

⁶ Section 448.24(1)(c), F.S.

⁷ Section 532.01, F.S.

⁸ Sandra Pedicini, *More Companies Opt to Give Workers Payroll Debit Cards*, ORLANDO SENTINEL, Oct. 6, 2013, available at http://articles.orlandosentinel.com/2013-10-06/business/os-cfb-cover-payroll-cards-20131006_1_debit-cards-payroll-cards-such-cards (last visited Feb. 5, 2015).

⁹ *Id.* See also Jessica Silver-Greenberg and Stephanie Clifford, *Paid via Card, Workers Feel Sting of Fees*, NEW YORK TIMES, June 30, 2013, available at http://www.nytimes.com/2013/07/01/business/as-pay-cards-replace-paychecks-bank-fees-hurt-workers.html?pagewanted=all&_r=1& (last visited Feb. 5, 2015).

¹⁰ Press Release, American Payroll Association and National Consumer Law Center, *American Payroll Association, National Consumer Law Center Agree Payroll Cards Make Sense for Unbanked If Proper Guidelines Followed*, July 31, 2013, available at https://www.nclc.org/images/pdf/pr-reports/pr_effective-payroll-card2013.pdf (last visited Feb. 5, 2015).

¹¹ *Id.* See also Consumers Union and National Consumer Law Center, *Model State Payroll Card Law* (Feb. 2011), available at <http://consumersunion.org/wp-content/uploads/2013/02/Payroll-Model-Law.pdf> (last visited Feb. 5, 2015).

- The availability of wages without a fee at least once each pay period;
- A prohibition of certain other fees, such as fees for point of sale transactions, declined transactions, balance inquiry, and account activity;
- A provision of a periodic statement and transaction history;
- Requirement to disclose available payment options to the employee;
- A provision that allows an employee to change the wage payment method;
- A prohibition on linking the payroll card to any form of credit account or fee-based overdraft program; and
- A requirement that payroll card funds be placed in an FDIC or NCUA insured account.

Federal Payroll Card Regulations

The Electronic Funds Transfer Act (EFTA), Regulation E, governs the use of payroll card accounts.¹² The regulation outlines the requirements for financial institutions offering payroll credit accounts.¹³ The regulation provides instructions on providing account information to the consumer and general account information and disclosures. Additionally, financial institutions issuing payroll card accounts are instructed on limitations on liability for unauthorized account transactions that are timely reported. The regulation prohibits a financial institution or other person from requiring an individual to receive wages by electronic funds transfer with a particular institution, including payroll cards, as a condition of employment.¹⁴

III. Effect of Proposed Changes:

Section 1 amends s. 448.24, F.S., to permit labor pools to pay a day laborer by payroll debit card or electronic funds transfer, in addition to the current options of payment by cash or a negotiable instrument that is payable in cash.

The bill provides that before the first pay period, a day laborer must be advised of the method of payment the labor pool uses, and the payment options available. A day laborer must be given the opportunity to opt out of receiving his or her wages by payroll debit card or electronic fund transfer.

If a labor pool opts to pay wages by payroll debit card, the labor pool must:

- Offer to provide wages by electronic fund transfer; and
- Prior to selecting to pay a day laborer by payroll debit card, provide a list of businesses in close proximity of the labor pool that will allow the day laborer to withdraw the contents of the payroll debit card without a fee.

¹² 12 C.F.R. s. 1005.2(b)(2). Payroll card account is defined as “an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person.”

¹³ 12 C.F.R. s. 1005.18. *See also*, Consumer Financial Protection Bureau, *Payroll Credit Accounts (Regulation E)*, CFPB Bulletin 2013-10 (Sept. 13, 2013), available at http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf (last visited Feb. 5, 2015).

¹⁴ 12 C.F.R. s. 1005.10(e)(2).

Current law requires a labor pool to provide the day laborer with a written, itemized statement of wages including all deductions made from his or her wages. The bill authorizes a labor pool to provide this itemized statement in an electronic format, upon written request of the day laborer.

Section 2 provides an effective date of July 1, 2015.

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:

An employee being paid by this method may be able to avoid or reduce check-cashing fees or other fees incurred for accessing wages, if the employee does not have access or has limited access to traditional banking services.

An employer may save costs associated with the issuance of a paper check.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define “close proximity.” Although the term is used in several statutes to delineate distance,¹⁵ only two provisions provide a definition.¹⁶ Section 627.736(7)(a), F.S., uses the term “area of the closest proximity.” This term was reviewed by the Fifth District Court of Appeal, which found this term to mean the same or closest metropolitan area.¹⁷

The bill requires that a day laborer be provided a list of locations where the contents of the debit card may be withdrawn without a fee. However, it is unclear whether the entire contents of the debit card must be withdrawn in a single occurrence to avoid a fee, or if multiple partial withdrawals are also allowed without a fee.

VIII. Statutes Affected:

This bill substantially amends section 448.24 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁵ For example, ss. 39.6012, 119.071, 163.3175, 310.101, 310.141, 331.310, 341.031, 380.0552, 403.7211, 561.01, and 856.022, F.S.

¹⁶ Sections 119.071(3)(c)5.b. and 561.01(18), F.S., include in the definition of “entertainment or resort complex” lodging, dining, and recreational facilities adjacent to, contiguous to, or in close proximity to a theme park. Close proximity is defined to include an area within a 5-mile radius of the theme park complex.

¹⁷ *Progressive American Insurance Co. v. Belcher*, 496 So.2d 841, 843 (Fla. 5th DCA 1986).