

## BILL ANALYSIS

C.S.H.B. 2249  
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Technology, Economic Development & Workforce  
Committee Report (Substituted)

### BACKGROUND AND PURPOSE

The staff leasing services industry has been operating in Texas since the late 1980s. By contracting with a staff leasing services company, a small or medium sized business is able to attract high quality employees because of benefits usually only available to employees of large businesses. These benefits, which are handled by the staff leasing services company, include health insurance coverage, workers' compensation insurance coverage, 401(k) and other retirement investment options, and professional human resource management.

In 1993, the 73rd Legislature, Regular Session, enacted H.B. 456 to regulate the industry by requiring staff leasing services companies to be licensed by the Texas Department of Licensing and Regulation (TDLR). Over time, this statute has been amended to reflect changes in the industry, employment law, and the economy. For example, the statute was amended to include **professional employer** organization services in the definition of "staff leasing services" to reflect a term that is now commonly used.

C.S.H.B. 2249 strengthens financial standards for staff leasing services companies, establishes a superior standard for determining a staff leasing services company's liquidity, creates maximum efficiencies at TDLR for the staff leasing services company licensing process, and allows a staff leasing services company to use an approved assurance organization to act on its behalf in complying with licensing requirements. The bill clarifies that nothing in a staff leasing services arrangement affects the ability of a client company to qualify for tax credits or other economic incentives. The bill requires a staff leasing services company to provide employment information required for the administration of any tax credit, grant, or economic incentive that is based on employment.

### RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 4 of this bill.

### ANALYSIS

C.S.H.B. 2249 amends the Labor Code to require an applicant for an original or renewal staff leasing services license to demonstrate positive working capital, rather than net worth, in certain amounts relating to the number of assigned employees. The bill requires the applicant to demonstrate the applicant's working capital, rather than net worth, to the Texas Department of Licensing and Regulation (TDLR) by providing TDLR with the applicant's financial statement, rather than a copy of the applicant's most recent federal tax return. The bill requires the financial statement to be prepared in accordance with generally accepted accounting principles, be audited

by an independent certified public accountant, and be without qualification as to the going concern status of the applicant. The bill requires an applicant that has not had sufficient operating history to have audited financial statements based on at least 12 months of operations to meet the financial capacity requirements for working capital and to provide TDLR with financial statements that have been reviewed by a certified public accountant. The bill's provisions relating to working capital requirements take effect December 31, 2011.

C.S.H.B. 2249 defines "working capital" of an applicant as the applicant's current assets minus the applicant's current liabilities as determined by generally accepted accounting principles. The bill repeals the definition of "net worth" of an applicant. The bill makes conforming changes to the working capital requirement, computing and establishing net worth, information subject to public information laws, and grounds for disciplinary action.

C.S.H.B. 2249 authorizes the Texas Commission of Licensing and Regulation to adopt rules to permit the acceptance of electronic filings for purposes of the staff leasing services law, including the filing of applications, documents, reports, and other required documents. The bill authorizes the rules to provide for the acceptance of electronic filing and other assurance by an assurance organization, qualified and approved by the commission, that provides satisfactory assurance and documentation of compliance acceptable to TDLR that meets or exceeds the requirements of the law. The bill authorizes a staff leasing services company to authorize an assurance organization that is qualified and approved by the commission to act on its behalf in complying with licensing requirements, including the electronic filing of information and the payment of application and licensing fees. The bill establishes that use of an assurance organization is optional and is not mandatory for a staff leasing services company. The bill establishes that nothing in these provisions may be construed to change or affect TDLR's authority to issue licenses, revoke licenses, conduct investigations, or enforce any provision relating to staff leasing services. The bill defines "assurance organization" as an independent entity approved by the commission that provides a national program of accreditation and financial assurance for staff leasing services companies; has documented qualifications, standards, and procedures acceptable to TDLR; and agrees to provide information, compliance monitoring services, and financial assurance useful to TDLR in accomplishing the provisions relating to staff leasing services.

C.S.H.B. 2249 establishes that for the purpose of determining tax credits, grants, and other economic incentives provided by Texas or other governmental entities that are based on employment, assigned employees are considered employees of the client and the client is solely entitled to the benefit of any tax credit, economic incentive, or other benefit arising from the employment of assigned employees of the client. The bill establishes this provision applies even if the staff leasing services company is the reporting employer for federal income tax purposes. The bill requires each client to be treated as employing only those assigned employees coemployed by the client if the grant or the amount of any other economic incentive is based on the number of employees. The bill prohibits assigned employees working for other clients of the staff leasing services company from being included in the computation. The bill requires each staff leasing services company to provide, on request of a client or an agency of Texas, employment information reasonably required by the state agency responsible for the administration of any tax credit or economic incentive that is based on employment and necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive.

C.S.H.B. 2249 makes its provisions applicable to a staff leasing services license issued or renewed on or after December 31, 2010.

C.S.H.B. 2249 repeals Section 91.001(12), Labor Code.

**EFFECTIVE DATE**

September 1, 2009, except as otherwise provided.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 2249 differs from the original by clarifying language relating to a client's sole entitlement to any benefit of a tax credit, economic incentive or other benefit.

C.S.H.B. 2249 differs from the original by establishing a December 31, 2011, effective date for provisions relating to working capital requirements for license applicants, whereas the original establishes a December 31, 2010, effective date for those requirements.