

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5132-01
Bill No.: HB 1703
Subject: Business and Commerce; Employees-Employers
Type: Original
Date: February 12, 2016

Bill Summary: This proposal establishes the Professional Employer Organization Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	(\$651,055)	(\$326,883)	(\$286,576)
Total Estimated Net Effect on General Revenue	(\$651,055)	(\$326,883)	(\$286,576)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	4 FTE	4 FTE	4 FTE
Total Estimated Net Effect on FTE	4 FTE	4 FTE	4 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOLIR)** from the employer standpoint defers to Office of Administration for fiscal impact.

Officials at DOLIR assume the following is the fiscal impact to their organization as the regulating agency.

Section 285.715

Additional requirements are placed on the DOLIR to collect, store, and retrieve the records related to the registration of PEOs in this state. This section also sets forth filing time requirements for PEOs registering within Missouri and grants the DOLIR authority to issue initial, renewal, limited and interim registrations, and an annual renewal process. This section also requires the DOLIR to make the listing of PEOs available to the public, and includes recommendations for electronic filing of applications, documents, reports, and other required filings.

Section 285.720

This section sets forth the maximum fees which can be charged for the PEO filings. DOLIR assumes both the fees collected and costs to administer the activities would be deposited to and funded by General Revenue as no other fund has been established in this legislation. According to the StaffMarket website (<https://www.staffmarket.com/peos-by-state/Missouri>), there are currently 54 PEOs operating in the State of Missouri (it is assumed these are PEOs headquartered in Missouri). In addition, per the Division of Employment Security there are 273 Lessor Employee Units (LEUs) operating in Missouri. For the purpose of this fiscal note, it is assumed LEUs will file as PEOs due to the language changes in Section 288.032.2(5) which redefines the term “lessor employing unit” to mean a registered professional employer organization. It is also assumed that LEUs currently operating in Missouri do not include any of the 54 PEOs operating in this state.

According to the National Association of Professional Employer Organizations, there are 700 to 900 PEOs nationwide. For the calculation of this fiscal note, DOLIR assumes 900 PEOs operate nationwide, with 54 of them based in Missouri. Therefore, 846 of the PEOs nationwide would be non-Missouri based PEOs. DOLIR estimates that 85 (10%) non-Missouri based PEOs would apply for registration within Missouri (900 [nationwide PEOs] - 54 [Missouri based PEOs] X 10% = 84.6).

ASSUMPTION (continued)

Section 285.750

This section assigns the responsibility for conducting hearings and imposing penalties on those who knowingly violate this act and would require the DOLIR to investigate and establish an appeals process for persons accused of violating the provisions of these sections. DOLIR assumes that 10% of those entities who register as PEOs would be reviewed or investigated for violations, (411 X 10% = 41.1) and that 5% of those investigated would be cited for material violations resulting in an administrative penalty (41 X 5% = 2.05). Using these assumptions, an estimated 2 PEOs per year could be assessed an administrative penalty of up to \$1,000 each, resulting in \$2,000 in administrative penalty revenues per year.

Revenue Projections

DOLIR assumes an estimated 327 initial registration fees of \$500 and 85 limited registration fees of \$250. Each year thereafter, DOLIR assumes that 95% (391) of the existing PEOs would renew at \$250 each. Additionally, DOLIR estimates that the number of new registrations would be equivalent to 5% of the existing PEOs (full + limited registrations).

Year 1	Number	Fees	Total Fees
Full Registrations	327	\$500	\$163,500
Limited Registrations	85	\$250	\$21,250
			\$184,750
<u>Administrative Penalties*</u>			\$2,000
Total Revenue			\$186,750
Year 2	Number	Fees	Total Fees
Full Registrations	16	\$500	\$8,000
Limited Registrations	4	\$250	\$1,000
Renewals	391	\$250	\$97,750
			\$106,750
<u>Administrative Penalties*</u>			\$2,000
Total Revenue			\$108,750
Year 3	Number	Fees	Total Fees
Full Registrations	17	\$500	\$8,500
Limited Registrations	4	\$250	\$1,000
Renewals	390	\$250	\$97,500
			\$107,000
<u>Administrative Penalties*</u>			\$2,000
Total Revenue			\$109,000
*Administrative Penalties		Penalty	Annual Penalties
Registered PEOs Reviewed Annually	41		
PEOs Found in Violation	2	\$1,00	\$2,000

ASSUMPTION (continued)

Cost Estimate

The requirements set forth in this legislation are not consistent with the functions currently performed by the DOLIR. Therefore, DOLIR requested 8 new FTEs reflected in the third column of the table below.

Positions Titles	# of Positions Currently at DOLIR	# of Requested Positions by Title	Oversight Recommendation
Auditor II	2	2	1
Senior Office Support Assistant (Keyboarding)	4	1	0
Processing Technician	0	2	1
Investigator II	13	1	1
Hearings Officer	0	1	1
Labor & Industrial Manager B1	28	0	0
Labor & Industrial Manager B2	3	1	0
Labor & Industrial Manager B3	7	0	0

Oversight adjusted the fiscal impact to DOLIR by reducing the number of new FTEs based on the implementation of a “new system” designed by ITSD to track the registrations, invoicing, payment of fees through SAM II and the following:

Auditor II - DOLIR estimates approximately 400 PEO registrations each year. Registrations, invoicing, and collection of fees will be electronically processed. Therefore, this will require yearly desk audit of registered PEOs, renewals, non-renewals and delinquent payments which will be tracked by the new ITSD system. DOLIR estimates approximately 41 of these registrations may require further in depth review or approximately 3.4 a month, a reasonable caseload to be handled by an Auditor II.

Senior Office Support Assistant (Keyboarding) - DOLIR currently has 4 FTEs in this position title and should be able to handle the additional work related to the addition of 4 FTEs. A new system designed by ITSD will allow the requirements of this proposal to be completed electronically. Therefore, any additional supply requests, travel requests, purchase order processing related to 4 additional FTEs should be minimal. The 4 new FTEs will be responsible for correspondence, printing, monitoring of PEOs, and filing of hard copy records.

Processing Technician - DOLIR estimates approximately 400 PEO registrations each year. Registrations, invoicing, and collection of fees will be electronically processed. Therefore, this will require yearly desk audit of registered PEOs, renewals, non-renewals and delinquent

ASSUMPTION (continued)

payments. DOLIR estimates approximately 41 of these registrations may require further in depth review or approximately 3.4 a month; a reasonable case load to be handled by one Processing Technician.

Investigator II - DOLIR estimates approximately 400 PEO registrations each year. Registrations, invoicing, and collection of fees will be electronically processed. Therefore, this will require yearly desk audit of registered PEOs, renewals, non-renewals and delinquent payments. DOLIR estimates approximately 41 of these registrations may require further in depth review or approximately 3.4 a month; a reasonable case load to be handled by one Investigator II.

Hearings Officer - DOLIR estimates approximately 400 PEO registrations each year. Registrations, invoicing, and collection of fees will be electronically processed. Therefore, this will require yearly desk audit of registered PEOs, renewals, non-renewals and delinquent payments. DOLIR estimates approximately 41 of these registrations may require further in depth review or approximately 3.4 a month, a reasonable case load to be handled by one Hearing Officer.

Oversight assumes the Auditor II, Investigator II, Processing Technician II and Hearing Officer will work closely and interdependently on researching and resolving the estimated 41 PEOs in violation of the requirements of this proposal.

Oversight adjusted DOLIR's request for a new manager band position to zero, as there is a sufficient number of manager band positions to cover supervision over the activities of these 4 new FTEs. Labor and Industrial Manager B2 - DOLIR currently has a combined 38 FTEs in the Manager Band categories of 1, 2 and 3. The positions of Auditor II, Processing Technician II, Investigator II and Hearing Officer require a high level of skill and ability to work independently with minimal supervision.

Additional one-time equipment costs and on-going expenses are included at the standard rates.

Equipment Requested by DOLIR	# Requested by DOLIR based on Adding 8 FTEs	Oversight Recommendation based on Adding 4 FTEs
Personal Computers	8	2
Laptops	8	2
Second Monitor	12	4

Oversight adjusted the computer equipment requested by DOLIR to reflect the addition of 4 FTEs instead of 8 FTEs as requested by DOLIR. Also, Oversight's adjustment includes that an individual assigned a laptop does not need a personal computer, the laptop can be docked and used as the personal computer when that individual is in the office and not traveling. Oversight assumes a laptop would be purchased for the Auditor II and Investigator II as they may have to travel. The other 2 FTEs will be assigned a personal computer.

ASSUMPTION (continued)

Oversight adjusted the number of second monitors to reflect the addition of 4 FTEs; it is unclear as to why DOLIR was requesting an additional 12 second monitors when requesting 8 FTEs.

In addition, ITSD will be required to develop a tracking system for the PEO's fees and registrations as set forth in this legislation.

DOLIR consulted with Information Technology Services Division (ITSD) to determine what this proposal would require to manage electronically.

- A new system to collect information that pertain to the professional employer organization (PEO) through a web application or key-information that will be processed.
- Statements, letters, and bonds will be imaged.
- An audit and tracking of the PEO, along with tracking of the registration of organizations.
- Ability to manage collection of organization fees and interface with SAMII for the fees through invoicing.
- Create a web page to list the PEOs that are available to the public.
- This system will require a new database and services from the State Data Center.

Oversight will include in the costs for FY17 the fiscal impact of a new system, at a cost of \$425,250 which comprises of 5,670 hours for IT consultants at a rate of \$75 per hour. And will include in the fiscal impact for FY18 the costs to maintain the new system of \$87,176 which is calculated at 1134 hours (20% of 5,670) for IT consultants at a rate of \$75 per hour and inclusion of a 2.5% inflation rate. Oversight adjusted the ITSD costs in FY19 to 567 hours (10% of 5,670) for IT consultants at a rate of \$75 per hour and included the inflationary rate of 2.5% for each of the two previous fiscal years for a cost of \$44,651.

Unemployment Program

This bill contains two provisions that would affect Missouri's unemployment insurance (UI) program. First, section 285.745 requires a registered PEO be treated as a "lessor employing unit" under section 288.032. This means that in addition to the PEO reporting requirements contained in the Professional Employer Organization Act (Chapter 285), PEOs will have to meet the "lessor employing unit" reporting requirements contained in Employment Security Law (Chapter 288).

The second change included in this bill that will impact Missouri's UI program is in section 288.032.2(5), which changes the type of general business entity that, by definition, can be considered a "lessor employing unit" under section 288.032.2(5) from an independently

ASSUMPTION (continued)

established business to a registered professional employer organization. This change appears to indicate the only way a general business entity can be a lessor employing unit (LEU) is to be a registered PEO. If there were any current LEUs that did not register as PEOs according to the provisions in this bill, their unemployment insurance (UI) accounts would need to be inactivated and the Division of Employment Security (DES) would need to determine if the clients of non-registered PEOs have established liability under Missouri Employment Security Law; and if so, establish UI accounts for such clients.

Also, in order to relieve clients from joint and several liabilities, LEUs would financially have to guarantee payment as set forth in Chapter 288, and the LEU would have to register as a PEO and comply with financial requirements under the provision in this bill.

This bill contains many provisions and requirements that are not related to Missouri's UI program. The DES receives an annual UI administration grant from the USDOL for operation of the Missouri UI program. The UI administration grant cannot be used to administer the non-UI related provisions.

Officials at the **Department of Insurance, Financial Institutions, and Professional Registration, Department of Revenue, Department of Economic Development, Department of Mental Health, and Department of Social Services** each defer to the Office of Administration to respond to fiscal impact of this proposal.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials at the **Joint Committee on Administrative Rules, Office of Administration - Personnel, Department of Transportation, and Department of Conservation** each assume this proposal will not have a fiscal impact on their respective organizations.

Oversight assumes should costs exceed the estimated fiscal impact DOLIR can request additional funding through the appropriation process.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
GENERAL REVENUE			
<u>Revenue - DOLIR</u>			
Administrative Sanctions	\$2,000	\$2,000	\$2,000
Full Registrations Fees	\$163,500	\$8,000	\$8,500
Limited Registration Fees	\$21,250	\$1,000	\$1,000
Renewals	<u>\$0</u>	<u>\$97,750</u>	<u>\$97,500</u>
Total Revenue	<u>\$186,750</u>	<u>\$108,750</u>	<u>\$109,000</u>
<u>Costs - DOLIR</u>			
Personnel - 4 FTE	(\$119,590)	(\$144,943)	(\$146,393)
Fringe Benefits	(\$66,312)	(\$79,966)	(\$80,363)
Equipment	(\$27,872)	\$0	\$0
Expenses	(\$12,031)	(\$14,798)	(\$15,169)
ITSD	<u>(\$425,250)</u>	<u>(\$87,176)</u>	<u>(\$44,651)</u>
Total Costs	<u>(\$465,153)</u>	<u>(\$101,974)</u>	<u>(\$59,820)</u>
FTE Change - DOLIR	4 FTE	4 FTE	4 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$651,055)</u>	<u>(\$326,883)</u>	<u>(\$286,576)</u>
NET FTE CHANGE ON GENERAL REVENUE	4 FTE	4 FTE	4 FTE
<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Yes, any small business considered a “lessor employing unit” under section 288.032, would have to register as a Professional Employer Organization (PEO), pay the required registration fee, and meet the financial requirements contained in this bill to continue its business operations.

FISCAL DESCRIPTION

PROFESSIONAL EMPLOYER ORGANIZATION ACT (Sections 285.700 and 285.705, RSMo)

This bill establishes the Professional Employer Organization Act regarding the regulation of professional employer organizations and defines the terms used in these provisions.

FISCAL DESCRIPTION (continued)

PROFESSIONAL EMPLOYER AGREEMENT (Sections 285.710, 285.730, 285.735 and 285.740)

The provisions of the bill must not affect, modify, or amend any collective bargaining agreement or the rights or obligations of any client; professional employer organization (PEO); or covered employee under the federal National Labor Relations Act, the federal Railway Labor Act, or Sections 105.500 to 105.530 regarding labor organizations. Nothing in the act or in any professional employer agreement can diminish, abolish, or remove rights of covered employees to a client or obligations of the client to a covered employee existing prior to the effective date of the professional employer agreement or affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective. A professional employer agreement must also not prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client or a covered employee. A PEO must have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the PEO has specifically agreed otherwise in writing or create any new or additional enforceable right of a covered employee against a PEO that is not specifically provided by the professional employer agreement or this act.

Neither the provisions of the bill nor any professional employer agreement can affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee. A covered employee who must be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any license, registration, or certification requirement. A PEO must not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to the requirements or regulation. A client must have the sole right of direction and control of the professional or licensed activities of covered employees and of the client's business. The covered employees and clients must remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration, or certification of the covered employees or clients.

For purposes of determination of tax credits and other economic incentives provided by this state or other government entity and based on employment, covered employees must be deemed employees solely of the client. A client must be entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of the client. Notwithstanding that the PEO is the W-2 reporting employer, the client must continue to qualify for the benefit, incentive, or credit. If the grant or amount of any incentive is based on the number of employees, each client must be treated as employing only those covered employees coemployed by the client. Covered employees working for other clients of the PEO must not be counted. Each PEO will provide, upon request by a client or an agency or department of this state, employment information reasonably required by any agency or department of this state responsible for administration of any tax credit or economic incentive and necessary to support

FISCAL DESCRIPTION (continued)

any request, claim, application, or other action by a client seeking any tax credit or economic incentive.

With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client company has entered into an agreement with a PEO or uses the services of a PEO.

REGISTRATION (Sections 285.715, 285.720, 285.725, 285.745, and 285.750)

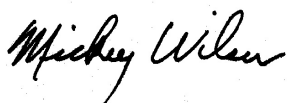
The bill specifies the criteria for the registration of persons providing professional employer services in Missouri. A process for limited registration is allowed. Regulations governing the employer employee relationship, contractual agreements pertaining to professional employer services companies, and the regulation of both clients and professional employers regarding insurance, employee rights, taxation, workers' compensation responsibilities, and the payment of wages are specified in the bill.

Upon filing an initial registration statement, a PEO must pay an initial registration fee not to exceed \$500 and a renewal fee not to exceed \$250.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Department of Insurance, Financial Institutions, and Professional Registration
Department of Revenue
Office of Secretary of State
Joint Committee on Administrative Rules
Office of Administration
Department of Economic Development
Department of Transportation
Department of Conservation
Department of Mental Health
Department of Social Services



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