SB 995

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 995 (Senator Garagiola)
Finance

Professional Employer Organization Recognition and Registration Act

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This bill requires that a professional employer organization (PEO) be registered with the Department of Labor, Licensing, and Regulation (DLLR) before providing services to clients in the State.

A PEO that does business in the State must be registered within six months of the bill's October 1, 2009 effective date.

Fiscal Summary

State Effect: General fund expenditures by DLLR increase by $76,700 in FY 2010 to register PEOs. Out-year expenditures reflect annualization, inflation, and gradually increasing costs for disciplinary hearings. General fund revenues increase by $22,500 in FY 2010 from registration fees to partially offset the cost of the registration program. Out-year revenue estimates reflect a constant number of PEOs, biennial renewals for full registrations, and annual renewals for limited registrations. Potential minimal general fund revenue increases from the bill's penalty provisions.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	$22,500	$2,500	$12,500	$2,500	$12,500
GF Expenditure	$76,700	$59,200	$61,800	$65,500	$65,400
Net Effect	($54,200)	($56,700)	($49,300)	($63,000)	($52,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful for PEOs that are small businesses. They will have to pay annual or biennial registration fees as well as for annual audits.

Analysis

Bill Summary: A PEO is a business that provides human resource management, payroll processing or administration, and employee benefit administration under a co-employment relationship with a client. A co-employment relationship is an ongoing relationship in which the rights, duties, and obligations of an employer are shared between the PEO and a client under a professional employer agreement.

To register with DLLR, a PEO must submit an application, pay a registration fee of no more than $500, and provide:

- the business documentation specified in the bill;
- a financial statement that sets forth the financial condition of the company; and
- the most recent independent audit.

Succeeding audits must be provided annually.

A registration expires after two years and may be renewed for two-year terms for a fee of up to $250.

A one-year limited registration is available to a PEO that resides outside the State and is licensed or registered by another state, does not maintain an office in the State or solicit clients in the State, and has 50 or fewer covered employees in the State. The registration fee for a limited registration, and each annual renewal, may not exceed $250.

The bill specifies the conditions under which DLLR may deny, suspend, or revoke a PEO's registration. It also specifies the terms and conditions governing professional employer agreements and co-employment relationships.

A PEO that is found to be operating in the State without valid registration is guilty of a misdemeanor and subject to a fine of up to $1,000 for a first offense and up to $5,000 for a second or subsequent offense. A person who engages in repeated violations of the bill's provisions is also guilty of a misdemeanor and subject to a fine of up to $2,500. Subject to the provisions of the State's Administrative Procedure Act, the Secretary of Labor, Licensing, and Regulation may also bring civil administrative action against a PEO believed to be operating without valid registration. If the PEO is guilty of a violation, the Secretary may impose a civil fine of up to $1,000 for each day of unlawful action.

The bill's provisions are severable if any are found to be invalid by a court of competent jurisdiction.

Current Law: PEOs are not subject to State regulation.

Background: A PEO provides outsourced human resource management services to companies that do not have the resources or expertise to establish their own human resource departments. A PEO operates by establishing and maintaining a long-term employer relationship with a client's employees through co-employment agreements. The agreement contractually confers certain employer rights, responsibilities, and risks on the PEO that enable the PEO to pay wages and employment taxes and premiums out of its own accounts on behalf of the client. However, under the agreements, a PEO typically reserves the right of direction and control over covered employees, and retains the right to hire, reassign, and fire covered employees. This gives the PEO an opportunity to manage the risks it assumes through the co-employment agreement. According to the National Association of Professional Employer Organizations (NAPEO), PEOs have served more than 10,000 clients nationwide.

The Employer Services Assurance Corporation (ESAC) administers a PEO accreditation program. The program verifies a PEO's compliance with all applicable government regulations and financial standards. It backs its accreditation with a surety bond of $11 million that protects a PEO client against liability for fraud or abuse by an accredited PEO.

According to Staffmarket.com, an online PEO broker, 61 PEOs currently operate in Maryland, including some with out-of-state headquarters. Of those, only 12 are members of NAPEO (some firms have multiple offices in the State), and only eight are accredited by ESAC.

State Revenues: Legislative Services assumes that the small number of PEOs that are either members of NAPEO or accredited by ESAC is an indication that at least some PEOs currently operating in Maryland may not withstand the scrutiny of an annual audit and therefore may not pursue registration. Therefore, the total number of registrants is assumed to be less than 60, with a majority based in the State. Specifically, Legislative Services assumes 40 full registrations and 10 limited registrations in fiscal 2010 as the first cohort of PEOs is registered by April 2010. Therefore, general fund revenue from registration fees increases by $22,500 in fiscal 2010. Further, Legislative Services assumes a constant number of PEOs, so out-year revenue estimates reflect biennial renewal of full registrations and annual renewal of limited registrations. To the extent more PEOs pursue registration, revenues increase.

General fund revenues may increase further due to the bill's penalty provisions, but cannot be reliably estimated. Given that DLLR can assess civil fines for each day that a firm is found to be in violation, the amount of a fine levied against a single PEO may be significant. However, the overall effect on general fund revenues is expected to be minimal.

State Expenditures: The limited number of potential registrants minimizes the need for additional staff to administer the registration program. DLLR should be able to manage the program with a half-time program manager and a 0.2 full-time equivalent assistant Attorney General position. Initial start-up costs include $30,000 in contractual costs to reprogram the department's mainframe computer and incorporate the new program into its E-licensing system. Ongoing costs include $5,000 for a contractual accountant to review audits and gradually escalating costs for disciplinary hearings as enforcement efforts develop.

General fund expenditures by DLLR increase by $76,671 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date and the April 1, 2010 registration deadline. This estimate reflects the cost of hiring a half-time program administrator and a part-time assistant Attorney General. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	0.7
Salaries and Fringe Benefits	$35,208
Start-up Costs	34,335
Ongoing Operating Expenses	7,128
Total FY 2010 State Expenditures	**$76,671**

Future year expenditures reflect annualized salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: HB 1056 (Delegate Vaughn) - Economic Matters.

Information Source(s): Charles, Frederick, Garrett, Montgomery and Somerset counties; Department of Business and Economic Development; Board of Public Works; Department of Budget and Management; Maryland Insurance Administration; Injured Workers' Insurance Fund; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of Administrative

Hearings; Subsequent Injury Fund; Secretary of State; Maryland Department of Transportation; Department of Legislative Services

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