

ASSEMBLY BILL 760 (LRB -3598)

An Act to amend 440.08 (2) (a) (intro.); and to create 440.03 (13) (b) 57m., chapter 461 and 635.02 (7) (b) 3. and 4. of the statutes; relating to: registration of professional employer organizations, requiring the exercise of rule-making authority, and providing a penalty. (FE)

2008

02-04.	A.	Introduced by Representatives Newcomer, Albers, Ballweg, Berceau, Davis, Hebl, Hintz, Hixson, Hilgenberg, Hraychuck, Jorgensen, Kaufert, Kerkman, Kleefisch, Kreuser, LeMahieu, Mason, Montgomery, Mursau, Nelson, Nygren, A. Ott, Parisi, Pope-Roberts, Sheridan, Shilling, Smith, Soletski, Townsend, Turner, Van Roy and Vukmir ; cosponsored by Senators Wirch, Breske, Hansen, Kapanke, Kreitlow, Lassa, Plale, Olsen, Schultz and Taylor .	
02-04.	A.	Read first time and referred to committee on Small Business	482
02-12.	A.	Public hearing held.	
02-13.	A.	Fiscal estimate received.	
02-20.	A.	Executive action taken.	
02-25.	A.	Report passage recommended by committee on Small Business, Ayes 7, Noes 2	534
02-25.	A.	Referred to committee on Rules	534
02-26.	A.	Placed on calendar 2-28-2008 by committee on Rules.	
02-28.	A.	Read a second time	583
02-28.	A.	Assembly substitute amendment 1 offered by Representative Newcomer (LRB s0317)	583
02-28.	A.	Assembly substitute amendment 1 adopted	583
02-28.	A.	Ordered to a third reading	583
02-28.	A.	Rules suspended	583
02-28.	A.	Read a third time and passed	583
02-28.	A.	Ordered immediately messaged	583
02-29.	S.	Received from Assembly	643
03-03.	S.	Read first time and referred to committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection	646
03-05.	S.	Executive action taken.	
03-05.	S.	Report concurrence recommended by committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection, Ayes 5, Noes 0.	
03-05.	S.	Available for scheduling.	
03-07.	S.	Referred to joint committee on Finance by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e).	
03-07.	S.	Withdrawn from joint committee on Finance and placed on the calendar of 3-11-2008 by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e).	
03-11.	S.	Read a second time	3
03-11.	S.	Senate amendment 1 offered by Senator Wirch (LRB a1608)	3
03-11.	S.	Senate amendment 1 adopted	3
03-11.	S.	Ordered to a third reading	3
03-11.	S.	Rules suspended	3
03-11.	S.	Read a third time and concurred in as amended, Ayes 31, Noes 2	3
03-11.	S.	Ordered immediately messaged	3
03-11.	A.	Received from Senate amended and concurred in as amended (Senate amendment 1 adopted).	
03-11.	A.	Senate amendment 1 concurred in .	
03-11.	A.	Action ordered immediately messaged.	

**2007
ENROLLED BILL**

07en A B-760

ADOPTED DOCUMENTS:

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Amendments to above (if none, write "NONE"): SAI - a1608/1

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2007 ASSEMBLY BILL 760**

February 28, 2008 - Offered by Representative NEWCOMER.

1 **AN ACT to amend** 440.08 (2) (a) (intro.); and **to create** 440.03 (13) (b) 57m.,
2 chapter 461 and 635.02 (7) (b) 3. and 4. of the statutes; **relating to:** registration
3 of professional employer organizations, requiring the exercise of rule-making
4 authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

CURRENT LAW

PROFESSIONAL EMPLOYER ORGANIZATIONS

Under current law, for purposes of liability for unemployment insurance, a professional employer organization (PEO) is considered to be the employer of the employees whom the PEO engages to perform services for its clients. Current law defines a PEO as any person who contracts to provide the nontemporary, ongoing employee workforce of more than one client under a written leasing contract, the majority of whose clients are not under the same ownership, management, or control as the person other than through the terms of the contract, and who meets all of the following qualifications:

1. The person has the right to hire and terminate the employees who perform services for the client and to reassign the employees to other clients.
2. The person sets the rate of pay of the employees and pays the employees from its own accounts.

3. The person has a general right of direction and control over the employees, which right may be shared with the client to the degree necessary to allow the client to conduct its business, meet any fiduciary responsibility, or comply with any applicable regulatory or statutory requirements.

4. The person assumes responsibility for the unemployment insurance coverage of the employees.

5. The person has the obligation to establish, fund, and administer employee benefit plans for the employees.

6. The person provides notice of the employee leasing arrangement to the employees.

THE SUBSTITUTE AMENDMENT

REGISTRATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS

Introduction

This substitute amendment provides for the registration and regulation of PEOs, which the substitute amendment defines as a person that is engaged in the business of entering into written contracts for the provision of the nontemporary, ongoing employee workforce of a client and providing services under those contracts and that under those contracts has the obligation to pay the employees providing services for those clients from its own accounts. Specifically, under the substitute amendment:

1. No person may offer or provide professional employer services, advertise that the person is a PEO or that the person provides professional employer services, or otherwise hold itself out as a PEO, unless the person first registers with the Department of Regulation and Licensing (DORL).

2. Subject to certain exceptions, a PEO must maintain working capital of not less than \$100,000 or a bond or other commitment in an amount that is not less than \$100,000 to secure the payment of wages and other amounts that are payable by the PEO.

3. Certain rights, duties, and obligations under current law relating to insurance, licensing, and tax credits and other economic development incentives are unaffected by the substitute amendment.

Registration

Initial registration. The substitute amendment requires a PEO that is operating in this state on the effective date of the substitute amendment to register with DORL by no later than 180 days after that date. The substitute amendment provides that such an initial registration is valid until 180 days after the end of the first fiscal year of the PEO that ends more than one year after the effective date of the substitute amendment. Similarly, the substitute amendment requires a PEO that is not engaged in the business of providing professional employer services in this state on that date to register with DORL before engaging in that business in this state and provides that such an initial registration is valid until 180 days after the end of the first fiscal year of the PEO that ends after the date of initial registration.

Under the substitute amendment, a person may apply for registration by filing a registration form that includes all of the following information:

1. The name or names under which the applicant conducts business.
2. The address of the principal place of business of the applicant and of each office that the applicant maintains in this state.
3. A list by jurisdiction of each name under which the applicant has operated in the five years preceding the date of the application, including any alternate names of the applicant, the names of any predecessor business entities of the applicant, and, if known, the names of any successor business entities of the applicant.
4. A statement of ownership, which must include the name and business experience of every person who owns or controls 25 percent or more of the ownership interest of the applicant.
5. A statement of management, which must include the name and business experience of every person who serves as president or chief executive officer of the applicant or who otherwise has the authority to act as the senior executive officer of the applicant.
6. A financial statement that sets forth the financial condition of the applicant as of a date that is not more than 13 months preceding the date of the application, that is prepared in accordance with generally accepted accounting principles, and that has been audited by an independent certified public accountant. The substitute amendment specifies that the financial statement shall be without qualification as to the going concern status of the applicant.

Renewal registration. Under the substitute amendment, a PEO that wishes to renew its registration must, by no later than 180 days after the end of the PEO's fiscal year, renew that registration by notifying DORL of any changes in the information specified in the previous registration form and filing an updated financial statement. A renewal registration is valid for one year after the date of renewal.

Limited registration. The substitute amendment permits a PEO that is domiciled outside this state, that is registered or licensed as a PEO in another state, that does not maintain an office in this state or directly solicit clients in this state, and that has no more than 50 employees performing services for clients in this state on any given day to apply for limited registration. A limited registrant is not required to comply with the financial capability requirements under the substitute amendment.

Electronic or alternative registration. In addition, the substitute amendment permits DORL to promulgate rules providing for registration of a PEO on acceptance by DORL of a registration form, financial statement, or any other information or documentation required under the substitute amendment or rules promulgated by DORL in the form of an electronic record and, if a signature is required, on acceptance of an electronic signature. The substitute amendment also permits DORL to promulgate rules providing for registration of a PEO, without compliance with the registration and financial capability requirements of the substitute amendment, on acceptance of assurance provided by a bonded, independent, and qualified assurance organization that has been approved by DORL that provides assurance satisfactory to DORL that the PEO is qualified to engage in

the business of providing professional employer services in this state (alternative registrant).

Financial capability

The substitute amendment requires a PEO, other than a limited registrant or an alternative registrant, to maintain one of the following:

1. Working capital of not less than \$100,000, except that DORL may issue a registration or renewal registration to a PEO that has less than \$100,000 in working capital contingent on the PEO meeting the minimum working capital requirement no later than 180 days after the issuance of the registration or renewal registration. During the period of contingent registration, the PEO must submit quarterly financial statements to DORL accompanied by an attestation that all wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable by the PEO to or with respect to an employee of the PEO who is performing services for a client were paid when due.

2. A bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than \$100,000, or, if the PEO's financial statement submitted to DORL indicates a deficit in working capital, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than \$100,000 plus an amount that is sufficient to cover that deficit, to secure the payment of wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable by the PEO to or with respect to an employee of the PEO who is performing services for a client if the PEO does not make those payments when due.

Rights, duties, and obligations unaffected

The substitute amendment provides that a PEO that offers, markets, sells, administers, or provides professional employer services that include the provision of employee benefit plans for the employees of the PEO performing services for a client is not engaged in the business or sale of insurance or in the business of an employee benefit plan administrator. The substitute amendment requires this provision to be liberally construed to permit PEO's to provide employee benefit plans without being considered to be engaged in the business or sale of insurance or in the business of an employee benefit plan administrator. Under the substitute amendment, if a PEO provides life insurance, health care, or disability income benefits for its employees performing services for a client, the PEO must fully insure payment of those benefits by having in force a plan or policy of insurance issued by an insurer authorized to do business in this state and the insurer, subject to any eligibility requirements imposed by the plan or policy, must accept and insure all employees of the PEO performing services for a client and all beneficiaries of those employees.

Also, for purposes of the insurance laws governing small employer health insurance, the substitute amendment provides that an insurer that contracts with a PEO that has more than 50 employees performing services for one or more clients is not a small employer insurer with respect to the contract between the insurer and the PEO, that a PEO that provides health care benefits for more than 50 employees performing services for one or more clients is not a small employer, and that a client

1 (2) “Client” means any person that enters into a written contract with a
2 professional employer organization or a professional employer group for the
3 provision of the nontemporary, ongoing workforce of the person.

4 (3) “Controlling person” means any of the following:

5 (a) A person who, individually or acting in concert with one or more other
6 persons, owns or controls, directly or indirectly, 25 percent or more of the ownership
7 interest of an applicant or registrant.

8 (b) A person who serves as president or chief executive officer of an applicant
9 or registrant or who otherwise has the authority to act as the senior executive officer
10 of an applicant or registrant.

11 (4) “Professional employer group” means 2 or more professional employer
12 organizations that are controlled by the same person.

13 (5) “Professional employer organization” means a person that is engaged in the
14 business of entering into written contracts for the provision of the nontemporary,
15 ongoing employee workforce of a client and providing services under those contracts
16 and that under those contracts has the obligation to pay the employees providing
17 services for those clients from its own accounts, regardless of whether the person
18 uses the term “professional employer organization,” “PEO,” “staff leasing company,”
19 “registered staff leasing company,” “employee leasing company,” or “administrative
20 employer,” or uses any other name, as part of the person’s business name or to
21 describe the person’s business.

22 (6) “Registrant” means a professional employer organization or a professional
23 employer group that is registered under s. 461.02.

24 **461.02 Registration requirements.** (1) REGISTRATION REQUIRED. No person
25 may offer or provide professional employer services, advertise that the person is a

1 professional employer organization or that the person provides professional
2 employer services, or otherwise hold itself out as a professional employer
3 organization unless the person first registers with the department as provided in this
4 section. To register under this section, a person shall file the registration form under

5 ~~sub (2)~~

INS. SA1-1

6 (2) REGISTRATION FORM. To apply for registration under this section, an
7 applicant shall file with the department a registration form prescribed by the
8 department that contains all of the following information:

9 (a) The name or names under which the applicant conducts business.

10 (b) The address of the principal place of business of the applicant and of each
11 office that the applicant maintains in this state.

12 (c) A list by jurisdiction of each name under which the applicant has operated
13 in the 5 years preceding the date of the application, including any alternate names
14 of the applicant, the names of any predecessor business entities of the applicant, and,
15 if known, the names of any successor business entities of the applicant.

16 (d) A statement of ownership, which shall include the name and business
17 experience of every controlling person, as defined in s. 460.01 (3) (a), of the applicant.

18 (e) A statement of management, which shall include the name and business
19 experience of every controlling person, as defined in s. 460.01 (3) (b), of the applicant.

20 (f) A financial statement that sets forth the financial condition of the applicant
21 as of a date that is not more than 13 months preceding the date of the application,
22 that is prepared in accordance with generally accepted accounting principles, and
23 that has been audited by an independent certified public accountant. The financial
24 statement shall be without qualification as to the going concern status of the
25 applicant. A professional employer group may meet the requirements of this

1 paragraph by submitting a combined or consolidated audited financial statement.
2 An applicant that does not have sufficient operating history to have an audited
3 financial statement that is based on at least 12 months of operating history may meet
4 the requirements of this paragraph by submitting financial statements that have
5 been reviewed by an independent certified public accountant.

6 (3) INITIAL REGISTRATION. (a) Each professional employer organization or
7 professional employer group that is operating in this state on the effective date of this
8 paragraph [revisor inserts date], shall register with the department by no later
9 than 180 days after that date. An initial registration under this paragraph is valid
10 until 180 days after the end of the first fiscal year of the registrant that ends more
11 than one year after the effective date of this paragraph [revisor inserts date].

12 (b) Any person that is not engaged in the business of providing professional
13 employer services in this state on the effective date of this paragraph [revisor
14 inserts date], shall register with the department before engaging in that business in
15 this state. An initial registration under this paragraph is valid until 180 days after
16 the end of the first fiscal year of the registrant that ends after the date of initial
17 registration.

18 (4) RENEWAL REGISTRATION. A registrant that wishes to renew its registration
19 shall, by no later than 180 days after the end of the registrant's fiscal year, renew that
20 registration by notifying the department of any changes in the information specified
21 in sub. (2) (a) to (e) and filing an updated financial statement as described in sub. (2)

22 (f) A registrant may apply to the department for an extension of the time within
23 which to renew a registration by providing with the application a letter from the
24 certified public accountant who is auditing the registrant's financial statement

1 stating the reasons for the delay and the anticipated completion date of the audit.

2 A renewal registration is valid for one year after the date of renewal.

3 (5) LIMITED REGISTRATION. (a) A professional employer organization or
4 professional employer group that is domiciled outside this state, that is registered
5 or licensed as a professional employer organization or professional employer group
6 in another state, that does not maintain an office in this state or directly solicit clients
7 that are located or domiciled in this state, and that has no more than 50 employees
8 performing services for clients in this state on any given day may apply for limited
9 registration under this section by filing with the department a limited registration
10 form prescribed by the department. An applicant that is seeking limited registration
11 shall, in addition to the information provided under sub. (2), provide the department
12 with information and documentation showing that the applicant meets the
13 qualifications specified in this paragraph for limited registration.

14 (b) A professional employer organization or professional employer group
15 seeking limited registration that has employees performing services for clients in
16 this state on the effective date of this paragraph [revisor inserts date], shall
17 register with the department as provided in sub. (3) (a), and the initial limited
18 registration shall be valid as provided in sub. (3) (a).

19 (c) A professional employer organization or professional employer group
20 seeking limited registration that does not have employees performing services for
21 clients in this state on the effective date of this paragraph [revisor inserts date],
22 shall register with the department as provided in sub. (3) (b), before contracting with
23 a client in this state, and the initial limited registration shall be valid as provided
24 in sub. (3) (b).

1 (d) A registrant that wishes to renew its limited registration shall, in addition
2 to complying with sub. (4), provide the department with information and
3 documentation showing that the registrant continues to meet the qualifications
4 specified in par. (a) for limited registration, and the limited registration shall be valid
5 as provided in sub. (4).

6 (e) A limited registrant is not required to comply with the financial capability
7 requirement under s. 461.03.

8 (6) PROFESSIONAL EMPLOYER GROUP REGISTRATION. Two or more professional
9 employer organizations that are part of a professional employer group may register
10 under this section or renew a registration by providing the information required
11 under sub. (2), (4), or (5) on a combined or consolidated basis and guaranteeing each
12 other's obligations. If a professional employer group provides a combined or
13 consolidated financial statement under sub. (2) (f) that includes the financial
14 condition of entities that are not part of the professional employer group, the person
15 controlling the professional employer group shall guarantee the obligations of the
16 professional employer organizations in the professional employer group.

17 (7) ALTERNATIVE REGISTRATION. (a) The department shall by rule provide for
18 registration of a professional employer organization or professional employer group
19 on acceptance by the department of a registration form, financial statement, or any
20 other information or documentation required under sub. (2), (4), (5), or (6), s. 461.03,
21 or rules promulgated under s. 461.06 in the form of an electronic record, as defined
22 in s. 137.11 (7) and, if a signature is required, on acceptance of an electronic
23 signature, as defined in s. 137.11 (8).

24 (b) The department may by rule provide for registration of a professional
25 employer organization or professional employer group without compliance with sub.

1 (2), (4), (5), or (6), s. 461.03, or rules promulgated under s. 461.06 on acceptance by
2 the department of assurance provided by a bonded, independent, and qualified
3 assurance organization that has been approved by the department that provides
4 assurance satisfactory to the department that the professional employer
5 organization or professional employer group is qualified to engage in the business of
6 providing professional employer services in this state.

7 (c) This subsection does not limit the authority of the department to require a
8 professional employer organization or professional employer group to register as
9 provided in sub. (2), (4), (5), or (6), to maintain proof of financial capability as
10 required under s. 461.03, or to comply with this chapter and the rules promulgated
11 under s. 461.06; to investigate an applicant or registrant and deny registration or
12 renewal registration under sub. (8), or to investigate an applicant, registrant, or
13 controlling person and take disciplinary action under s. 461.05.

14 (8) ISSUANCE OF REGISTRATION. On receipt of an application for registration or
15 for renewal of a registration under subs. (3) to ~~(7)~~ ^{INS. SAI-6} the department shall investigate
16 the applicant or registrant to determine whether the applicant or registrant is
17 qualified for registration or for renewal registration. Except as provided in s. 440.12
18 and 440.13, the department shall issue a registration or renewal registration if, after
19 completing the investigation, the department determines that the applicant or
20 registrant meets the requirements under this chapter and rules promulgated under
21 s. 461.06 for issuance or renewal of a registration and is satisfied that the applicant
22 or registrant will comply with this chapter and those rules.

23 (9) LIST OF REGISTRANTS; CONFIDENTIALITY. The department shall maintain a list
24 of all professional employer organizations and professional employer groups
25 registered under this section. All records maintained by the department that contain

1 any information obtained from an applicant or registrant are confidential and not
2 open to public inspection or copying under s. 19.35 (1) unless one of the following
3 applies:

4 (a) Disclosure of the record is necessary for the administration of this section.

5 (b) A court of competent jurisdiction in this state orders the department to
6 release the record.

7 (c) The requester is the department of children and families or a county child
8 support agency under s. 59.53 (5), the request is made under s. 49.22 (2m), and the
9 request is limited to the name, home address, and business address of the applicant,
10 registrant, or controlling person who is the subject of the request and any financial
11 information about the applicant, registrant, or controlling person contained in the
12 record.

13 (d) The department of revenue requests the record for the purpose of locating
14 a person, or the assets of a person, who has failed to file tax returns, who has
15 underreported taxable income, or who is a delinquent taxpayer; identifying
16 fraudulent tax returns; or providing information for tax-related prosecutions.

17 **461.03 Financial capability.** Except as provided in s. 461.02 (5) (e) or (7) (b),
18 a professional employer organization or professional employer group shall maintain
19 one of the following:

20 (1) **WORKING CAPITAL REQUIREMENT.** Working capital, as defined by generally
21 accepted accounting principals, of not less than \$100,000, as shown in the financial
22 statement submitted to the department under s. 461.02 (2) (f), (4), or (6). If a
23 professional employer organization or professional employer group has less than
24 \$100,000 in working capital, the department may issue a registration or renewal
25 registration contingent on the registrant meeting the working capital requirement

1 of this subsection no later than 180 days after the issuance of the registration or
2 renewal registration. During the period of contingent registration, the registrant
3 shall submit quarterly financial statements to the department accompanied by an
4 attestation by the chief executive officer of the registrant that all wages, salaries,
5 employee benefits, worker's compensation insurance premiums, payroll taxes,
6 unemployment insurance contributions, and other amounts that are payable to or
7 with respect to an employee of the registrant performing services for a client were
8 paid by the registrant when due.

9 **(2) ALTERNATIVE COMMITMENT.** A bond, certificate of deposit, escrow account, or
10 irrevocable letter of credit in an amount that is not less than \$100,000 or, if the
11 financial statement submitted to the department under s. 461.02 (2) (f), (4), or (6)
12 indicates a deficit in working capital, a bond, certificate of deposit, escrow account,
13 or irrevocable letter of credit in an amount that is not less than \$100,000 plus an
14 amount that is sufficient to cover that deficit. The commitment described in this
15 subsection shall be in a form approved by the department, shall be held in a
16 depository designated by the department, and shall secure the payment by the
17 professional employer organization or professional employer group of any wages,
18 salaries, employee benefits, worker's compensation insurance premiums, payroll
19 taxes, unemployment insurance contributions, or other amounts that are payable to
20 or with respect to an employee performing services for a client if the professional
21 employer organization or professional employer group does not make those
22 payments when due. The commitment shall be established in favor of or be made
23 payable to the department, for the benefit of the state and any employee to whom or
24 with respect to whom the professional employer organization or professional
25 employer group does not make a payment described in this subsection when due. The

1 professional employer organization or professional employer group shall file with the
2 department any agreement, instrument, or other document that is necessary to
3 enforce the commitment against the professional employer organization or
4 professional employer group, or against any relevant 3rd party, or both.

5 **461.04 Rights, duties, and obligations unaffected.** (1) PROFESSIONAL
6 EMPLOYER SERVICES NOT INSURANCE. A professional employer organization or
7 professional employer group that offers, markets, sells, administers, or provides
8 professional employer services that include the provision of employee benefit plans
9 for the employees of the professional employer organization or professional employer
10 group performing services for a client is not engaged in the business or sale of
11 insurance or in the business of an employee benefit plan administrator under ch. 633.
12 This subsection shall be liberally construed to permit professional employer
13 organizations and professional employer groups to provide employee benefit plans
14 as provided in this subsection without being considered to be engaged in the business
15 or sale of insurance or in the business of an employee benefit plan administrator
16 under ch. 633. If a professional employer organization or professional employer
17 group provides life insurance, health care, or disability income benefits for its
18 employees performing services for a client, all of the following apply:

19 (a) The professional employer organization or professional employer group
20 shall fully insure payment of those benefits by having in force a plan or policy of
21 insurance issued by an insurer authorized to do business in this state.

22 (b) Subject to any eligibility requirements imposed by the plan or policy under
23 par. (a), the insurer under par. (a) shall accept and insure all employees of the
24 professional employer organization or professional employer group performing
25 services for a client and all beneficiaries of those employees.

1 **(2) INSURER NOT SMALL EMPLOYER INSURER.** An insurer that contracts with a
2 professional employer organization or professional employer group that has more
3 than 50 employees performing services for one or more clients is not a small employer
4 insurer, as defined in s. 635.02 (8), with respect to the contract between the insurer
5 and the professional employer organization or professional employer group.

6 **(3) LICENSING.** Nothing in this chapter or in any contract for the provision of
7 the nontemporary, ongoing workforce of a client may be construed to affect or impair
8 any federal, state, or local licensing, registration, or certification requirement that
9 is applicable to a client or to an employee performing services for a client.

10 **(4) TAX CREDITS AND OTHER ECONOMIC DEVELOPMENT INCENTIVES.** For purposes of
11 determining tax credits, other economic development incentives provided by the
12 state that are based on providing employment, or any other benefits that arises out
13 of the employment of an employee of a professional employer organization or
14 professional employer group who is performing services for a client, such an
15 employee is considered to be an employee solely of the client, and the client is entitled
16 to the benefit of the tax credit, economic development incentive, or other benefit. If
17 the amount of a tax credit, incentive, or benefit described in this subsection is based
18 on the number of employees employed by a client, only those employees of a
19 professional employer organization or professional employer group who are
20 performing services for the client shall be treated as employees employed by the
21 client, and employees of the professional employer organization or professional
22 employer group who are performing services for another client shall not be treated
23 as employees employed by the client. On request of a client that is seeking a tax
24 credit, incentive, or other benefit described in this subsection or of an agency of this
25 state that is responsible for administering such a tax credit, incentive, or benefit, a

1 professional employer organization or professional employer group shall provide any
2 employment information reasonably required by the agency that is necessary to
3 support a claim, application, or other action by the client.

4 **461.05 Disciplinary proceedings. (1) INVESTIGATIONS.** Subject to the rules
5 promulgated under s. 440.03 (1), the department may conduct investigations and
6 hearings to determine whether a violation of this chapter or any rule promulgated
7 under s. 461.06 has occurred.

8 **(2) DISCIPLINARY ACTION.** Subject to the rules promulgated under s. 440.03 (1),
9 the department may reprimand a professional employer organization or professional
10 employer group or deny, limit, suspend, revoke, restrict, refuse to renew, or otherwise
11 withhold a registration if the department finds that an applicant, registrant, or
12 controlling person has done any of the following:

13 (a) Conducted any of the activities specified in s. 461.02 (1) without first
14 registering with the department as provided in s. 461.02.

15 (b) Knowingly made a material misrepresentation or false statement in an
16 application for registration or for renewal of a registration under s. 461.02 or in a
17 report under s. 108.067.

18 (c) Been convicted of any crime in connection with the operation of a
19 professional employer organization or professional employer group, any crime that
20 involves fraud or deceit, or any crime that otherwise affects the ability of the
21 applicant, registrant, or controlling person to operate a professional employer
22 organization or professional employer group.


23 (d) Willfully committed a violation of this chapter or of a rule promulgated
24 under s. 461.06.

1 **(3) FORFEITURE.** In addition to or in lieu of a reprimand or a denial, limitation,
2 suspension, revocation, restriction, nonrenewal, or other withholding of a
3 registration under sub. (2), the department may assess against an applicant,
4 registrant, or controlling person a forfeiture of not more than \$1,000 for each
5 violation.

6 **(4) INJUNCTION.** If it appears upon complaint to the department by any person
7 or it is known to the department that any person is violating this chapter, the
8 department or the district attorney of the proper county may investigate and may,
9 in addition to any other remedies, bring action in the name of and on behalf of the
10 state against any such person to enjoin such person from such violations.

11 **(5) JUDICIAL REVIEW.** Any person who is aggrieved by any action taken under
12 this chapter by the department, its officers, or agents may apply for judicial review
13 as provided in ch. 227.

14 **461.06 Rules.** The department shall promulgate rules to implement this
15 chapter. Those rules shall include rules providing for all of the following:

16 **(1)** Alternative registration of professional employer organizations under s.
17 461.02 (7) (a) and (b). 

18 **(3)** Minimum requirements for issuance or renewal of a registration under s.
19 461.02 (8).

20 **SECTION 4.** 635.02 (7) (b) 3. and 4. of the statutes are created to read:

21 635.02 (7) (b) 3. A professional employer organization, as defined in s. 461.01
22 (5), or a professional employer group, as defined in s. 461.01 (4), that provides health
23 care benefits to more than 50 employees performing services for a client, as defined
24 in s. 461.01 (2).



State of Wisconsin
2007-2008 LEGISLATURE

CORRECTIONS IN:

**SENATE AMENDMENT 1,
TO 2007 ASSEMBLY BILL 760**

Prepared by the Legislative Reference Bureau
(March 12, 2008)

In enrolling, the following corrections were made:

1. Page 2, line 7: delete "POSITION" and substitute "POSITION".
2. Page 3, line 2: delete "RULE" and substitute "RULE".

(END)

**SENATE AMENDMENT 1,
TO 2007 ASSEMBLY BILL 760**

March 11, 2008 - Offered by Senator WIRCH.

1 At the locations indicated, amend the bill, as shown by assembly substitute
2 amendment 1, as follows:

3 **1.** Page 7, line 5: delete that line and substitute: "sub. (2) and pay the initial
4 credential fee determined by the department under s. 440.03 (9) (a).". SAI-1

5 **2.** Page 8, line 21: delete "(e) and" and substitute "(e)". SAI-2

6 **3.** Page 8, line 22: delete "(f)." and substitute "(f), and paying the renewal
7 credential fee determined by the department under s. 440.03 (9) (a).". SAI-3

8 **4.** Page 9, line 10: delete "department." and substitute "department and
9 paying the initial credential fee determined by the department under s. 440.03 (9)
10 (a).". SAI-4

11 **5.** Page 10, line 11: delete "basis" and substitute "basis, paying the initial
12 credential or renewal fee determined by the department under s. 440.03 (9) (a).". SAI-5

SAI-6

1 **6.** Page 11, line 15: delete “(7),” and substitute “(7) and of the initial credential
2 fee or renewal fee determined by the department under s. 440.03 (9) (a),”.

3 **7.** Page 17, line 17: after that line insert:

SAI-7

4 “(2) Reasonable fees for any service provided under this chapter that do not
5 exceed an amount that is necessary to cover the cost of providing that service.”.

6 **8.** Page 18, line 11: after that line insert:

SAI-8

7 “(2) POSITION AUTHORIZATION. The authorized FTE positions for the department
8 of regulation and licensing are increased by 0.5 PR position on July 1, 2009, to be
9 funded from the appropriation under section 20.165 (1) (g) of the statutes, for the
10 purpose of administering the registration of professional employer organizations
11 and professional employer groups under chapter 461 of the statutes, as created by
12 this act.

13 (3) INITIAL FEE DETERMINATION. The department of regulation and licensing
14 shall determine the initial fees for registration or for renewal registration under
15 section 461.02 (3) to (7) of the statutes, as created by this act, as provided in section
16 440.03 (9) of the statutes. Not later than 14 days after determining those fees, the
17 department shall send a report detailing those proposed fees to the cochairpersons
18 of the joint committee on finance. If, within 14 days after the date on which the
19 department submits the report, the cochairpersons of the committee notify the
20 secretary of regulation and licensing that the committee has scheduled a meeting for
21 the purpose of reviewing the proposed fees, the department may not impose the fees
22 until the committee approves the report. If the cochairpersons of the committee do
23 not notify the secretary, the department shall post the fees on the department’s
24 Internet site.”.

CCC to
 SENATE Amendment 1,
 to 2007 Assembly Bill 760

In enrolling, the following
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Page 2, line 7: delete
 "^{cs} POSITION" and substitute
 "^{cs} Position".

(END)

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(END)

LRBa 1608/1cc-1

KJF

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22 until the committee approves the report. If the cochairpersons of the committee do
23 not notify the secretary, the department shall post the fees on the department's
24 Internet site.”.

SA1-9

1 **9.** Page 18, line 14: delete that line and substitute:

2 "(1) **RULE MAKING; INITIAL FEE DETERMINATION.** The treatment of SECTION 5 (1) and
3 (3) of this act takes effect on the".

4 (END)



State of Wisconsin
2007-2008 LEGISLATURE

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