State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3598/P1
GMM:lxk:nwn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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.

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 BILL

REGISTRATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS

Introduction

This bill provides for the registration and regulation of PEOs. Specifically, under the bill:

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 bill.

Registration

Initial registration. The bill requires a PEO that is operating in this state on the effective date of the bill to register with DORL by no later than 180 days after that date. The bill 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 bill. Similarly, the bill 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 bill, a person may apply for registration by paying the initial credential fee determined by DORL and 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.

The bill specifies that the financial statement shall be without qualification as to the going concern status 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 without qualification as to the going concern status of the PEO,~~ and that has been audited by an independent certified public accountant. stays

Renewal registration. Under the bill, 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, filing an updated financial statement, and paying the renewal fee determined by DORL. A renewal registration is valid for one year after the date of renewal.

Limited registration. The bill 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 bill.

Electronic or alternative registration. In addition, the bill 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 bill 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 bill also permits DORL to promulgate rules providing for registration of a PEO, without compliance with the registration and financial capability requirements of the bill, 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 bill 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

or sale

The bill 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 of insurance or in the business of an employee benefit plan administrator. Also, for purposes of the insurance laws governing small employer health insurance, the bill 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 of such a PEO is not a small employer if the employees of the PEO performing services for the client are offered health care benefits under a health benefit plan sponsored by the PEO.

In addition, the bill provides that nothing in the bill or in a contract for the provision of the nontemporary, ongoing workforce of a client may be construed to affect or impair any federal, state, or local licensing, registration, or certification requirement that is applicable to a client or to an employee of the PEO who is performing services for a client.

Finally, the bill provides that, for purposes of tax credits, economic development incentives, and other benefits that arise out of the employment of employees, the client is entitled to those credits, incentives, and other benefits that arise out of the employment of an employee of a PEO who is performing services for the client.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 440.03 (13) (b) 57m. of the statutes is created to read:

no ¶ The bill 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. ¶

440.03 **(13)** (b) 57m. Professional employer organization or professional employer group.

SECTION 2. 440.08 (2) (a) (intro.) of the statutes, as affected by 2007 Wisconsin Act 20, is amended to read:

440.08 **(2)** (a) (intro.) Except as provided in par. (b) and in ss. 440.51, 442.04, 444.03, 444.11, 448.065, 447.04 (2) (c) 2., 449.17 (1m) (d), ~~and~~ 449.18 (2) (d), <u>and 461.02 (3) (a) and (b) and (4),</u> the renewal dates for credentials are as follows:

SECTION 3. Chapter 461 of the statutes is created to read:

CHAPTER 461

PROFESSIONAL EMPLOYER ORGANIZATIONS

461.01 Definitions. In this chapter:

(1) "Applicant" means a professional employer organization or a professional employer group that applies for registration under s. 461.02.

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

(3) "Controlling person" means any of the following:

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

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

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

1 **(5)** "Professional employer organization" has the meaning given in s. 108.02
2 (21e), regardless of whether the person uses the term "professional employer
3 organization," "PEO," "staff leasing company," "registered staff leasing company,"
4 "employee leasing company," or "administrative employer," or uses any other name,
5 as part of the person's business name or to describe the person's business.

6 **(6)** "Registrant" means a professional employer organization or a professional
7 employer group that is registered under s. 461.02.

8 **461.02 Registration requirements. (1)** REGISTRATION REQUIRED. No person
9 may offer or provide professional employer services, advertise that the person is a
10 professional employer organization or that the person provides professional
11 employer services, or otherwise hold itself out as a professional employer
12 organization unless the person first registers with the department as provided in this
13 section. To register under this section, a person shall file the registration form under
14 sub. (2) and pay the initial credential fee determined by the department under s.
15 440.03 (9) (a).

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

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

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

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

The financial statement shall be without qualification as to the going concern status of the applicant.

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

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

(f) 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 without qualification as to the going concern status of the applicant,~~ stays and that has been audited by an independent certified public accountant. A professional employer group may meet the requirements of this paragraph by submitting a combined or consolidated audited financial statement. An applicant that does not have sufficient operating history to have an audited financial statement that is based on at least 12 months of operating history may meet the requirements of this paragraph by submitting financial statements that have been reviewed by an independent certified public accountant.

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

(b) Any person that is not engaged in the business of providing professional employer services in this state on the effective date of this paragraph .... [revisor inserts date], shall register with the department before engaging in that business in this state. An initial registration under this paragraph is valid until 180 days after

1 the end of the first fiscal year of the registrant that ends after the date of initial
2 registration.

3 **(4)** RENEWAL REGISTRATION. A registrant that wishes to renew its registration
4 shall, by no later than 180 days after the end of the registrant's fiscal year, renew that
5 registration by notifying the department of any changes in the information specified
6 in sub. (2) (a) to (e), filing an updated financial statement as described in sub. (2) (f),
7 and paying the renewal credential fee determined by the department under s. 440.03
8 (9) (a). A registrant may apply to the department for an extension of the time within
9 which to renew a registration by providing with the application a letter from the
10 certified public accountant who is auditing the registrant's financial statement
11 stating the reasons for the delay and the anticipated completion date of the audit.
12 A renewal registration is valid for one year after the date of renewal.

13 **(5)** LIMITED REGISTRATION. (a) A professional employer organization or
14 professional employer group that is domiciled outside this state, that is registered
15 or licensed as a professional employer organization or professional employer group
16 in another state, that does not maintain an office in this state or directly solicit clients
17 that are located or domiciled in this state, and that has no more than 50 employees
18 performing services for clients in this state on any given day may apply for limited
19 registration under this section by filing with the department a limited registration
20 form prescribed by the department and paying the initial credential fee determined
21 by the department under s. 440.03 (9) (a). An applicant that is seeking limited
22 registration shall, in addition to the information provided under sub. (2), provide the
23 department with information and documentation showing that the applicant meets
24 the qualifications specified in this paragraph for limited registration.

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

6 (c) A professional employer organization or professional employer group
7 seeking limited registration that does not have employees performing services for
8 clients in this state on the effective date of this paragraph .... [revisor inserts date],
9 shall register with the department as provided in sub. (3) (b), before employing any
10 employees to perform services for clients in this state, and the initial limited
11 registration shall be valid as provided in sub. (3) (b).

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

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

19 **(6)** PROFESSIONAL EMPLOYER GROUP REGISTRATION. Two or more professional
20 employer organizations that are part of a professional employer group may register
21 under this section or renew a registration by providing the information required
22 under sub. (2), (4), or (5) on a combined or consolidated basis, paying the initial
23 credential or renewal fee determined by the department under s. 440.03 (9) (a), and
24 guaranteeing each other's obligations. If a professional employer group provides a
25 combined or consolidated financial statement under sub. (2) (f) that includes the

1 financial condition of entities that are not part of the professional employer group,
2 the person controlling the professional employer group shall guarantee the
3 obligations of the professional employer organizations in the professional employer
4 group.

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

12 (b) The department may by rule provide for registration of a professional
13 employer organization or professional employer group without compliance with sub.
14 (2), (4), (5), or (6), s. 461.03, or rules promulgated under s. 461.06 on acceptance by
15 the department of assurance provided by a bonded, independent, and qualified
16 assurance organization that has been approved by the department that provides
17 assurance satisfactory to the department that the professional employer
18 organization or professional employer group is qualified to engage in the business of
19 providing professional employer services in this state.

20 (c) This subsection does not limit the authority of the department to require a
21 professional employer organization or professional employer group to register as
22 provided in sub. (2), (4), (5), or (6), to maintain proof of financial capability as
23 required under s. 461.03, or to comply with this chapter and the rules promulgated
24 under s. 461.06; to investigate an applicant or registrant and deny registration or

1 renewal registration under sub. (8), or to investigate an applicant, registrant. or
2 controlling person and take disciplinary action under s. 461.05.

3 **(8)** ISSUANCE OF REGISTRATION. On receipt of an application for registration or
4 for renewal of a registration under subs. (3) to (7) and of the initial credential fee or
5 renewal fee determined by the department under s. 440.03 (9) (a), the department
6 shall investigate the applicant or registrant to determine whether the applicant or
7 registrant is qualified for registration or for renewal registration. Except as provided
8 in s. 440.12 and 440.13, the department shall issue a registration or renewal
9 registration if, after completing the investigation, the department determines that
10 the applicant or registrant meets the requirements under this chapter and rules
11 promulgated under s. 461.06 for issuance or renewal of a registration and is satisfied
12 that the applicant or registrant will comply with this chapter and those rules.

13 **(9)** LIST OF REGISTRANTS; CONFIDENTIALITY. The department shall maintain a list
14 of all professional employer organizations and professional employer groups
15 registered under this section. All records maintained by the department that contain
16 any information obtained from an applicant or registrant are confidential and not
17 open to public inspection or copying under s. 19.35 (1) unless one of the following
18 applies:

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

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

22 (c) The requester is the department of children and families or a county child
23 support agency under s. 59.53 (5), the request is made under s. 49.22 (2m), and the
24 request is limited to the name, home address, and business address of the applicant,
25 registrant, or controlling person who is the subject of the request and any financial

information about the applicant, registrant, or controlling person contained in the record.

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

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

(1) WORKING CAPITAL REQUIREMENT. Working capital, as defined by generally accepted accounting principals, of not less than $100,000, as shown in the financial statement submitted to the department under s. 461.02 (2) (f), (4), or (6). If a professional employer organization or professional employer group has less than $100,000 in working capital, the department may issue a registration or renewal registration contingent on the registrant meeting the working capital requirement of this subsection no later than 180 days after the issuance of the registration or renewal registration. During the period of contingent registration, the registrant shall submit quarterly financial statements to the department accompanied by an attestation by the chief executive officer of the registrant that all wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, and other amounts that are payable to or with respect to an employee of the registrant performing services for a client were paid by the registrant when due.

(2) ALTERNATIVE COMMITMENT. 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

1 financial statement submitted to the department under s. 461.02 (2) (f), (4), or (6)
2 indicates a deficit in working capital, a bond, certificate of deposit, escrow account,
3 or irrevocable letter of credit in an amount that is not less than $100,000 plus an
4 amount that is sufficient to cover that deficit. The commitment described in this
5 subsection shall be in a form approved by the department, shall be held in a
6 depository designated by the department, and shall secure the payment by the
7 professional employer organization or professional employer group of any wages,
8 salaries, employee benefits, worker's compensation insurance premiums, payroll
9 taxes, unemployment insurance contributions, or other amounts that are payable to
10 or with respect to an employee performing services for a client if the professional
11 employer organization or professional employer group does not make those
12 payments when due. The commitment shall be established in favor of or be made
13 payable to the department, for the benefit of the state and any employee to whom or
14 with respect to whom the professional employer organization or professional
15 employer group does not make a payment described in this subsection when due. The
16 professional employer organization or professional employer group shall file with the
17 department any agreement, instrument, or other document that is necessary to
18 enforce the commitment against the professional employer organization or
19 professional employer group, or against any relevant 3rd party, or both.

20 **461.04 Rights, duties, and obligations unaffected. (1)** PROFESSIONAL
21 EMPLOYER SERVICES NOT INSURANCE. A professional employer organization or
22 professional employer group that offers, markets, sells, administers, or provides
23 professional employer services that include the provision of employee benefit plans
24 for the employees of the professional employer organization or professional employer

or sale

1 group performing services for a client is not engaged in the business of insurance or
2 in the business of an employee benefit plan administrator under ch. 633.

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

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

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

note: This subsection shall be liberally construed to permit professional employer organizations and professional employer groups to provide employee benefit plans as provided in this subsection without being considered to be engaged in the business or sale of insurance or in the business of an

1 credit, incentive, or other benefit described in this subsection or of an agency of this
2 state that is responsible for administering such a tax credit, incentive, or benefit, a
3 professional employer organization or professional employer group shall provide any
4 employment information reasonably required by the agency that is necessary to
5 support a claim, application, or other action by the client.

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

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

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

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

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

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

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

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

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

16 **461.06 Rules.** The department shall promulgate rules to implement this
17 chapter. Those rules shall include rules providing for all of the following:

18 **(1)** Alternative registration of professional employer organizations under s.
19 461.02 (7) (a) and (b).

20 **(2)** Reasonable fees for any service provided under this chapter that do not
21 exceed an amount that is necessary to cover the cost of providing that service.

22 **(3)** Minimum requirements for issuance or renewal of a registration under s.
23 461.02 (8).

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

1 635.02 **(7)** (b) 3. A professional employer organization, as defined in s. 461.01
2 (5), or a professional employer group, as defined in s. 461.01 (4), that provides health
3 care benefits to more than 50 employees performing services for a client, as defined
4 in s. 461.01 (2).

5 4. A client of a professional employer organization or professional employer
6 group specified in subd. 3., if the employees of the professional employer organization
7 or professional employer group performing services for the client are offered health
8 care benefits under a health benefit plan sponsored by the professional employer
9 organization or professional employer group.

10 **SECTION 5. Nonstatutory provisions.**

11 (1) RULE MAKING. The department of regulation and licensing shall submit in
12 proposed form the rules required under section 461.06 of the statutes, as created by
13 this act, to the legislative council staff under section 227.15 (1) of the statutes no later
14 than the first day of the 6th month beginning after the effective date of this
15 subsection.

16 (2) POSITION AUTHORIZATION. The authorized FTE positions for the department
17 of regulation and licensing are increased by 0.5 PR position on July 1, 2009, to be
18 funded from the appropriation under section 20.165 (1) (g) of the statutes, for the
19 purpose of administering the registration of professional employer organizations
20 and professional employer groups under chapter 461 of the statutes, as created by
21 this act.

22 (3) INITIAL FEE DETERMINATION. The department of regulation and licensing
23 shall determine the initial fees for registration or for renewal registration under
24 section 461.02 (3) to (7) of the statutes, as created by this act, as provided in section
25 440.03 (9) of the statutes. Not later than 14 days after determining those fees, the

1 department shall send a report detailing those proposed fees to the cochairpersons
2 of the joint committee on finance. If, within 14 days after the date on which the
3 department submits the report, the cochairpersons of the committee notify the
4 secretary of regulation and licensing that the committee has scheduled a meeting for
5 the purpose of reviewing the proposed fees, the department may not impose the fees
6 until the committee approves the report. If the cochairpersons of the committee do
7 not notify the secretary, the department shall post the fees on the department's
8 Internet site.

9 **SECTION 6. Effective dates.** This act takes effect on July 1, 2009, except as
10 follows:

11 (1) RULE MAKING INITIAL FEE DETERMINATION. The treatment of SECTION 5 (1) and
12 (3) of this act takes effect on the day after publication.

13 **(END)**

D - Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3598/1dn
GMM...kjf

Date

of

Representative Newcomer:

Adam from NAPEO requested that a definition of "department" be inserted in the bill. That definition is not necessary because "department" is already defined as DORL in s. 440.01 (1) (a).

Adam also requested that you state in the bill file that the provision of the bill saying that PEO's are not engaged in the business or sale in insurance is to be liberally construed. That statement is included in this redraft. The best indicator of legislative intent is the language of the statute itself. A court will look at legislative history only if the court first makes the threshold determination that the statute is ambiguous. So, a statement in the bill file will do you no good if the court finds that the language of the statute is clear and unambiguous. Moreover, a small solo practitioner from up north who cannot travel to Madison to review the bill file and who, therefore, has to rely on the statute will have no idea that the provision is to be liberally construed just from reading the statute and not reviewing the bill file. Accordingly, the better approach is to state the legislature's intent right up front in the statute itself. As Justice Holmes once said, "The public has the right to have statutes that say what they mean and mean what they say."

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3598/1dn
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January 17, 2008

Representative Newcomer:

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Duerst, Christina

From: Knight, Eric
Sent: Thursday, January 31, 2008 9:30 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-3598/1 Topic: Professional employer organization registration

Please Jacket LRB 07-3598/1 for the ASSEMBLY.