



Ohio Legislative Service Commission

Nick Thomas

Fiscal Note & Local Impact Statement

Bill: H.B. 216 of the 128th G.A.

Date: October 6, 2009

Status: As Introduced

Sponsor: Rep. Carney

Local Impact Statement Procedure Required: Yes

Contents: Makes changes to the professional employer organization law

State Fiscal Highlights

STATE FUND	FY 2010 – FUTURE YEARS
General Revenue Fund	
Revenues	Potential loss in revenues of indeterminate amount due to tax law changes
Expenditures	- 0 -
Workers' Compensation Fund (Fund 7023)	
Revenues	- 0 -
Expenditures	Potential increase in administrative costs to evaluate and certify professional employer organizations

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The bill provides that, for the purpose of calculating tax credits and other economic incentives based on employment, a client employer shall be entitled to use employees in the calculation of the tax or economic incentives. This could increase the amount of revenue lost to the state from certain tax credits.
- The bill could potentially exempt certain employment services contracts from the sales and use tax. As a result, the bill may create a revenue loss from state government sales and use taxes. Tax revenues are distributed to the GRF and two local funds.
- The bill adds financial reports to the list of documents that professional employer organizations must file when applying for or renewing workers' compensation coverage. This could result in increased administrative costs for the Bureau of Workers' Compensation (BWC) to process these additional documents. The Bureau conducts a similar financial review of self-insured employers, but not for state insurance fund employers. There are currently 1,180 self-insured employers and 230 professional employer organizations.

Local Fiscal Highlights

LOCAL GOVERNMENTS

FY 2010 – FUTURE YEARS

Counties

Revenues	Potential loss in revenues of indeterminate amount due to tax law changes
Expenditures	- 0 -

- The bill could potentially exempt certain employment services contracts from the sales and use tax. As a result, the bill may create a revenue loss from sales and use taxes collected by counties, including the County Permissive Sales Tax and the Transit Authority Sales Tax. Also, potential lower tax revenues from the tax credits would reduce distributions to the Local Government Fund and the Public Library Fund.

Detailed Fiscal Analysis

Overview

The bill makes changes to the Professional Employer Organization (PEO) Law with regard to workers' compensation and certain tax provisions. A PEO provides payroll, human resources, workers' compensation, and employee benefits administration services to other companies, referred to in the bill and the Revised Code as client companies. This is generally accomplished by hiring a client company's employees and then leasing those employees back to their original employer; employees that are leased back to their original employer are referred to as "shared employees." A professional employer organization group is defined in the bill as two or more PEOs that are majority owned or commonly controlled by the same entity. According to a study done by the U.S. Census Bureau, there were approximately 230 PEOs in Ohio as of 2002, at that time employing roughly 40,000 workers as shared employees and reporting revenues of approximately \$1.3 billion.

Tax credits

The bill provides that, for the purpose of calculating tax credits and other economic incentives based on employment, a client employer, exclusively, shall be entitled to use "shared" employees in the calculation of the tax or economic incentives. The provision thus expands the definition of "employees" to include contracted employees in the form of shared employees, possibly increasing the number of employees that would qualify employers for credits such as the job creation and job retention tax credits. The result is that the bill potentially increases the state revenue loss from various tax incentives. Tax revenue is distributed to the General Revenue Fund, the Local Government Fund, and the Public Library Fund. Any reduction in tax revenues from the expansion of the definition of "employees" for purposes of tax credits will reduce distributions to these funds.

Sales tax

Under current law, employment service is a transaction subject to sales and use tax, i.e., the purchaser of the service pays the sales tax on the employment service contracts, unless it is excluded.¹ Generally, the seller of taxable employment services collects the combined state and local permissive sales tax and remits it to the state. Various changes to the statute have been made since January 1993.

¹ The Department of Taxation provides the definition of employment services and examples of transactions that are not taxable, available at http://tax.ohio.gov/divisions/communications/information_releases/sales/st199308.stm.

The bill requires shared employees, whose services are currently subject to the sales tax, to be considered the employees of the client company for purposes of collecting and levying sales tax. The bill would shift, for shared employment service, the party responsible for collecting and remitting the sales tax from the PEO to the client employer. No employer pays sales tax on the services provided by its own employees. Classifying shared employees as employees of the purchaser of employment service has the potential to exempt certain employment services contracts from the sales and use tax. As a result, the bill may create a revenue loss from state and local government sales and use taxes.

Workers' compensation

The bill contains several provisions regarding the Bureau of Workers' Compensation (BWC). Under the bill, PEOs would be required to file financial statements along with their initial workers' compensation registration and annual renewal application. If the financial statement demonstrates that the PEO is in a deficit position, it must submit proof to the Bureau that it has obtained sufficient credit to cover the deficit. The bill would also authorize BWC to provide limited registration and coverage for a period deemed appropriate by the Bureau should a PEO's financial position warrant such an action.

Currently, BWC only conducts financial reviews of self-insured employers—no state insurance fund employers are subject to this sort of oversight. As such, this provision could increase the Bureau's administrative costs to conduct additional financial audits. There are currently 1,180 self-insured employers and, as of 2002, roughly 230 professional employer organizations.

Other provisions

The bill would authorize (not require) BWC to adopt rules that allow an independent assurance organization, which is similar to a third-party administrator, to act on the behalf of a PEO. As these provisions are permissive, they would have no direct fiscal impact on BWC. Additionally, the bill would require BWC to adopt rules regarding the acceptance of electronic filings. As BWC currently accepts a substantial portion of documents via on-line filing, and as the bill does not actually require BWC to accept all filings electronically, this provision is expected to generate no additional costs. The bill also contains provisions that regard the relationship between PEOs and client employers, as well as the responsibilities and liabilities of PEOs, none of which appear to have any fiscal impact on these entities.