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FISCAL IMPACT REPORT

SPONSOR Serrato LAST UPDATED _____
ORIGINAL DATE 1/31/23
BILL _____
SHORT TITLE Employee Leasing Benefit Programs NUMBER House Bill 255
ANALYST Campbell

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Duplicates Senate Bill 204

Duplicates/Relates to Appropriation in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

No Response Received From

Workforce Solutions Department (WSD)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 255

House Bill 255 (HB255) allows employee leasing contractors (ELCs, sometimes referred to as professional employer organizations or PEOs) to be labeled as a single employer for purposes of creating a single employer welfare benefit plan for purposes of New Mexico law. The bill would remove OSI's ability to set standards for what benefit plans ELC may offer, including regulations currently set to take effect January 1, 2024 if approved.

FISCAL IMPLICATIONS

RLD identified no fiscal implications.

SIGNIFICANT ISSUES

OSI's 2021 analysis of an identical bill gives a concise background for understanding this bill, though it also contains an assessment of the bill's impact on New Mexicans' access to quality health insurance that differs considerably from OSI's corresponding assessment this year:

The core business of a “professional employer organizations,” or PEO, is leasing workers to other businesses. As the direct employer of the leased workers, a PEO assumes responsibility for providing employee benefits, thus relieving the leasing businesses of the associated administrative burdens. When a PEO leases workers to multiple businesses, a question arises whether the PEO becomes subject to the laws that regulate multiple employer welfare arrangements. Subjectivity to those laws imposes significant regulatory burdens, and could cause a PEO not to offer valuable, low cost, employee welfare benefits to its employees.

The OSI analysis of an identical bill this year expresses a somewhat different view, but the discrepancy may be due to regulatory developments that have taken place in the meantime, at both the state and federal levels.:

In recent years, state and federal insurance regulators have seen an increasing number of companies, employer organizations and associations try to eschew individual and small group ACA protections by declaring themselves to be large groups. In eschewing individual and small group ACA mandates, they then offer unsubsidized and subpar coverages to covered members. **In New Mexico, this leads to health insurance coverage that lowers costs by not complying with state coverage mandates or cost-sharing prohibitions, and discriminating against individuals with health conditions.**

Benefit plans issued by employee leasing contractors (“ELC”) and other PEOs may be considered a multiple welfare employer arrangement (MEWA) under 29 U.S.C. §1002.

(Emphasis added.) A PEO or ELC is considered a MEWA under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1000 et seq., as OSI notes:

In April of 2022, the DOL updated the publication “Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act: a Guide to Federal and State Regulation,” to clarify when PEOs and ELCs qualify as MEWAs. This Guide can be found online at: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf>.

A PEO or ELC is also considered a MEWA under regulations promulgated by OSI that are set to take effect January 1, 2024, as OSI also notes:

DOL issued guidance has made a clear determination as to when PEOs and ELCs qualify as MEWAs. To ensure New Mexico is in compliance with federal law, OSI incorporated language from the DOL into a

proposed regulation, which is currently pending a final ruling, in OSI eDocket Case Number 2022-0065, <https://edocket.osi.state.nm.us/case-view/5786>.

(To use the link to view the regulations, one must register an account.) Those regulations require that health insurance plans offered by MEWAs must “meet major medical plan requirements.” This bill would exempt ELCs/PEOs from that requirement by deeming them non-MEWAs for state law purposes only.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates Senate Bill 204.

TECHNICAL ISSUES

OSI notes in regard to an identical bill:

The legislation proposed is codified in NMSA 1978, §60-13A, which is specific to business licenses subject to the jurisdiction of the Regulation and Licensing Department. This places enforcement and regulation of contemplated employer issued health plans outside the jurisdiction of the Insurance Code and Superintendent of Insurance.

The legislation does not authorize the Regulation and Licensing Department to promulgate rules to govern such coverage, or provide for enforcement mechanisms to ensure benefit plans are in compliance with state and federal law.

OSI says an identical bill is preempted by federal law:

Whether a PEO or ELC is considered a MEWA under ERISA is strictly a matter for federal law. See, *Nationwide Mutual Insurance Company v. Darden*, 503 U.S. 318, n. 5 (1992).

The U.S. Department of Labor (“DOL”) affirmed this position through a 2007 advisory opinion issued to the State of Nevada in 2007, which can be found online at: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/advisory-opinions/2007-05a.pdf>. “Whether the Plan is a single employer plan for purposes of ERISA is also a question of federal law. To the extent that Nevada state law purports to govern the determination of whether a particular arrangement is a MEWA for purposes of ERISA, it is preempted by section 514 of ERISA.”