

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2036

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2036

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2036**

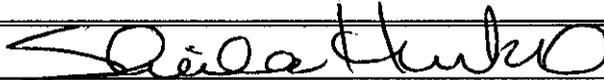
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 16, 2007**

Recorder Job Number: **1223**

Committee Clerk Signature



PEO Bill

John Bjornson – Legislative Council Staff – Senate Industry, Business & Labor Interim Staff – Worker's Comp & Staffing - In Favor

Senator Krebsbach - In Favor

PEO bill – this is a tax situation, there was a discussion on the study during the interim Senate Industry, Business & Labor for businesses. We worked on agreements for the business entity. Determined it belonged in the Secretary of States office. They need to do something. It is a business conciliation. Growing need in the state, businesses today want to concentrate on the businesses and the PEO take over the responsibilities they have to do. Management, administration, see as viable and growing institution.

S Klein: Gaining popularity throughout the country and trying to keep up the regulations.

S Wanzek: Would this include people who have someone working under a CPA.

S Krebsbach: They would not be part of this.

John Bjornson –Neutral

Provisions were that the study should be done. [explained the bill draft, covered the bill]

#8, page 2 is definition, for temporary staff services, limited particularly to these organizations.
[explained relationship and obligations under the agreement] Rights and Duties, page 3.

Page 5, procedures for licensing.

Fees: page 6, show minimum working capital, pg 7 general requirements, pg 8 provisions for PEO, pg 9 provisions added 18 & 19 subsection, pg 10 disciplinary action i.e. if acts without a license, \$500 fine, Class A misdemeanor, \$1000 fine, pg 11 on filing complaints.

They would have to be licensed by Oct. 1, 2007

S Potter: Is this dictating what the terms to be? Why is that?

J Bjornson: The issue was discussed, could deal with the content. Based on what the industry asked for. The committee didn't object.

S Andrist: What does a PEO do?

J Bjornson: In industry, they do accounting, paperwork, agreement contracts and have certain responsibilities. The business owner still has control.

Q?

Al Jaeger – Secretary of State - Neutral

TESTIMONY # 1

[Asked for amendment 17:56m] During the study, the office was looked upon to do the administrative part of this and so we became involved. The initial bill draft supplied by the industry, we needed to do is make sure the time frame in our office fit into our capabilities and our processes in terms of what we're able to do. We didn't have the skills and staff to do certain analysis of the national statements and what have you. Over a period of time this bill evolved in the manner that it did.

[testimony, amendments attached] During the last meeting, we found some tweaking that needs to be done, if amended and passed, we would agree. [explained what is covered in the

testimony] Duties include licensing, documents submitted to the office, issue license, renewal options, other than that, we're not involved. Fees are industry standards which are fine with them. During the drafting process, there would be general services fund, that is a retail account in response to the amount of services requested. Fees are directed into that fund, so if we get more than we planned on, we would have funds to deal with, at the end of the biennium, anything over \$75,000 gets moved to the general fund anyway. This bill would have been in July 1 because it allows money. August 1 if it doesn't deal with money normally. We have plenty of time to get forms, industry can get their act together of financial statements and all required. From SofS office, we have worked quite a bit on this and if amendments are adopted we can deal with it. Any questions on how it is handled, Clara Jenkins is here to answer your questions. For division of licensing.

S Hacker: The \$100,000 of equity needs to show, is that what your office came up with or the industry?

A Jaeger: Industry

S Hacker: What about liability insurance?

A Jaeger: Unique, places some requirements on us that we don't have with other businesses, so in the model act we were hesitant. There are some provisions that would require review by our office, I would have needed a CPA.

S Hacker: Do you need business insurance?

A Jaeger: It's part of what PEO's want

S Behm: \$100,000, seems like a lot of money.

A Jaeger: It's what the industry said. They felt PEO's need for license and renewal work on PEO's.

S Klein: We'll listen to the PEO's and hear why they decided this.

Scott Biebieo – Art Gieger – Leichty Homes – Brian Reinbold - In Favor

TESTIMONY # 2 Covered the testimony

What's the difference between CEO and PEO? Support of the bill, sets and accomplishes standards. During 2006 interim it was discussed. [33:59m explains]]

S Andrist: Most of our licensing and registration laws are designed to protect the public. Who are we protecting?

S Biebieo: This bill makes sure we have the ability and intent to protect employers and employees.

S Andrist: How do we define what a PEO is? Is this going to encompass every contract an employer might want to make with someone? I haven't got any definition here.

S Biebieo: There is a specific definition, "out-sourced professional resource services," contract for PEO. Professional Employer Organization, whatever they call themselves, they still would require a license from the SofS office. It's all functionally driven, not driven by what the organization calls themselves.

S Andrist: [Asks for explanation.]

[A bit of confusion on explanation using a variety of examples]

S Klein: This is not an easy thing to understand, I'm looking for an easy way to explain to the committee. [uses examples] Use the services, make the payroll, make payroll reports at the end of the quarter, pay workers comp. on timely basis, all the members know if there is a change in the law or need to post any signs, your job as PEO is to take that particular part of business from worrying about it. You handle all that.

S Biebieo: PEO has to have "employer" status. We can't legally provide a health benefit plan to your employees unless we are also an employer.

S Klein: [continues to explain 41:44] Create a uniform percentage of unemployment.

Question, do we have some employers who have lousy unemployment ratings coming into this organization? It's a melded type unemployment premium that they will pay.

S Wanzek: Couldn't PEO vary in degrees? They hire, dismiss, interview, they pretty much have taken over. They take care of the corporation work, file it, pay it, inform us when it needs to be done, I think there is a need for liability or accountability is if they don't get it done, I don't want to find out a month from now from the IRS that my reports weren't filed and I've got fines and penalties. I'm going to trust they're going to do it.

S Biebieo: Once hired, they are responsible for FICA payments, you would contact PEO, and they are responsible. They are liable. There are rights and responsibilities, baseline setup included in the contract. They are subject to PEO-Client/server agreements. These are intended to be a baseline contract in order to establish a relationship.

S Potter: [example shared] Currently using an auditing firm to pay all bills, wages, file taxes, pay health insurance, Attorney General offices, does this threaten my relationship with my contractor by forcing them to becoming them a PEO to provide those services? What are the advantages to "co-employment." I see why the legislation is needed.

S Biebieo: The firm you use currently they are acting as an agent of your organization, correct? Once they have signed the agreement, they become liable.[example 47:40m]
They're not suing you, they're suing the PEO. Department of Revenue can come back to the PEO but they're not going to come back to your company for the payment of those withholding taxes. Your company is relieved of all those administrative responsibilities associated with being an employer and you can focus your efforts on providing goods and services. House bill 1195 is a law addressing the issue. PEO is required to report tax and obtain and separate

account on each individual client. Unemployment tax rate, unemployment tax account, no blending.

Kent French – Liechty Homes - In Favor

[49:54m] Didn't come to testify, but I use their services. We started out with a group what we wanted to accomplish was bookkeeping, employee payroll, to make a long story short, what we got into an organization that takes care of all the stuff that we never did. We were supposed to do certain things as employers and we were never did, we didn't understand.

There is so much going on out there. We made changes and didn't realize that created some federal problems, and these people bring that to our attention. We don't have to hire people to come in on a part time basis, can't do it on a full time basis as we only have 50 people, but they're there. Another issue is the safety. They have people come out and bring to our attention many, many things that we have not done as far as the employees and we certainly don't want to be in violation of those ordinances. There is always something new coming up, our organization is extremely happy, saving money, saving money on lawsuits and are on top of the laws.

Ann Jorgenson Green – WSI - In Favor

[52:41m] There is a provision clarifies as a separate workmen's compensation law addressing this industry last session. It doesn't affect WC bill.

Larry Anderson – Unemployment Insurance - Neutral

Of interest to ND for the reason of passage in 2005. Bill 1195 which prevents "pseudo dumping". What is pseudo dumping? It is an effort if individuals through mergers or acquisitions to assume a lower unemployment insurance liability through that acquisition and dump off the liability that is experience rated. [example 55:08m] Used examples.

[Suggested Amendment, explained 2 pages and the proposed amendment]

SB 2036 is of interest to us we don't want elements to affect the efforts of the 2005 assembly.

[shared the written comments] Job service has 2 concerns with the bill. [shares the bill]

[asked they would amend bill] You asked about a blending provision in the law? Yes there is.

The threshold is \$500 or less the PEO can assume the PEO rate on request.

Art Geiger – President of Better Business, Inc. – Billings, MT - In Favor

The growth of our industry has allowed us to expand to ND. Purpose of bill is to identify existence and operation of a national industry that is growing at the rate of approximately 35% in industry. Reason, PEO has demonstrated that their innovative approach to help businesses adapt to the changing business growth. Company grew July 1996 with 3 to over 400 today.

Simplified explanation is a PEO enters into a contract relationship with a business where the client of the PEO and the employees become the employees of the PEO organization. The

Avedus Group has 5000 employees. They have responsibility for wages, taxes, workers compo, insurance, safety, protect integrity of WC insurance policy, benefits to employees.

Because of the complexities in the states, there comes the questions. In ND because you have a State Workers Comp and not private enterprise, we are not able to have our own policy in ND. In 23 of 25 states where we operate, it is my WC policy that is in place and all

employees covered by that policy and have that responsibility. The misunderstanding of a PEO demonstrates their fear that we are pseudo dumping. The intent of a PEO arrangement with a client is NOT to pseudo dump. The arrangement is for the PEO to have full responsibility to take care of unemployment activity. Protect the viability and protect dealings with

employees. This will allow them to be more profitable. It is an innovative approach changing the business world. Concept is to identify 2 employers in responsibility and liabilities that

results in a limited liability for the business owner and reduced administrative demands on the business owner which then allows them to be more profitable to focus on the product, their

service and their customers. Business owners are limited in their ability and knowledge to be able to write effective rules and regulations of the workplace such as an employee handbook. The PEO has a responsibility to these employees. PEO writes the handbook and coordination with the business owner. PEO to assure a fair and safe workplace for employees.

S Hacker: You spoke about how the liability factor in this co-employer relationship only weighs on the professional organization. If a PEO fails to do something integral to the contract of the business company and they get sued, what is to say that there is any protection to that company?

A Geiger: The bill is designed to clarify that. It states those conditions [example 1:14:36m]

S Hacker: Have you seen some lawsuits take place where the co-employers, PTOs can be judged?

A Geiger: In history, it is very broad [1:15:58m] I have testified in many courts.

Example seeking on question: wrongful discharge case, where employee filed claim of wrongful discharge, the PEO didn't act appropriately, they gave the employer and the client misdirection in dealing with employee complaint. When the employee filed wrongful action, the PEO was held legally liable for improper discharge. If the PEO acts properly and the client does not follow the direction or advice of the PEO, then the PEO would be indemnified from the responsibility for that action. Example: Work Comp law, where employee was injured and filed and complaint and asked for damages against it's direct employer of the business and not the PEO. PEO would be responsible for all damages on the WC law.

RECESS until 1:45 pm

Renee Fetting – ND Building and Construction & Trade Council - *In Doubt – Favor?*

As a negative balance employer, how can I improve my margins? We support the Job service amendment would close that loophole that our concerns address.

S Klein: With the passage of the Amendment, your concerns are addressed.

Todd Fuchs – Payroll Express – West Fargo - In Favor

ND PEO – have 200 employees, most clients have 1 part time, largest has 20-25 employees.

Some groups love the fact that we can pool employee groups and get them employee group

health insurance pool rates. This solves the problems for employers. Love our expertise.

[example:] Some people can frame a house, but they cannot run a business. This takes care of requirements and deadlines and is good for the industry.

S Klein: How do you charge?

T Fuchs: There are factors, usually % of payroll. We investigate safety and practices.

S Klein: You can be careful about who you choose.

T Fuchs: Our organization follows the rules and does an investigation on the company. We investigate with Job Service and their track record. If we bring them on it affects our rates. If our rates go up it makes it touch to go to the next guy and say, "Would you like to be my client?" and how much is it going to cost.

S Hacker: How long have you been in this?

T Fuchs: Started the company in 1996, little over 10 years 3 years ago. My job is to see clients, see how things are going, communication. Darcy runs the operation.

S Hacker: 10 years ago, would it have been more challenging to start that business with a requirement of \$100,000 in equity?

T Fuchs: Ten years ago it would have been hard. We would have go with bond option. It is not cheap.

S Potter: You're doing this without the co-employment status that the bill speaks to, and you don't have co-employment.

T Fuchs: Yes, we are all co-employers.

S Potter: Group health insurance, job safety, what about underwriting their health risk?

T Fuchs: You bet, as an employer you have to look if you want to take the client on.

Otherwise it will raise heck with health insurance if they're carrying crutches and an oxygen tank, arm in a sling. Discrimination if you are the employer, but we can review case.

S Behm: How do you know, what is your proof?

T Fuchs: Need Workman's Comp history so you know.

S Wanzek: Co-employee question, who's the real employer? You represent companies A,B, C, they all have different positions, are they YOUR employees, do you charge different A,B,C?

T Fuchs: [explains 1:30:26m] The employee lists Pay Roll Express as their employer. All employers have to have health insurance because they are all co-employers.

S Wanzek: At that time they can say, "I can't do it, sorry can't do it."

T Fuchs: Then it's sorry, you'll have to have an account Then they have to have an account and their bookkeeper do their payroll.

S Potter: How long term are these? Is there termination on the contract.

T Fuchs: Under federal law, health insurance, anybody that works 32.5 hours is eligible for health.

S Potter: Are there penalties for early withdrawal from this program?

T Fuchs: We have a termination of 2 months notice.

Scott: This is a co-employment common law w/employees. Clients are in with common law employment relationship.

S Potter: The case law you're citing, the common law, is there a law in ND?

Scott: There is a significant amount of federal case law and would assume that there is also some case law or recognition of the co-employment relationship in the ND courts. There is some recognition of the co-employment concept.

S Hacker: Hung up on \$100,000, do I have to have \$100,000 cash equity, is that correct?

Scott: Either \$100,000 cash or \$100,000 bond because the PEO is liable for taxes and insurance. It is the cushion fund it insures they have the money as the PEO is liable.

S Hacker: As a service company, not hard assets company, what difference if it would get a million liability?

Scott: The business liability insurance would not cover the liability for wages and taxes and things like that. It would cover the negligence on the part of the PEO, but not the business liability. The company needs a business plan for adequately providing services. They need that cushion.

S Andrist: I have the concern. I don't think the start up can get a \$100,000 bond.

S Wanzek: Is there an objection to lessen the amount. What if it was a lower amount?

Scott: In states similar to ND, in some are \$50,000 given size. If you desire \$50,000 we would accept that, \$100,000 might be tough to get into.

S Klein: Go back to the agencies that you may get "stiffed." If change is needed we need to get everyone involved if it's ok to lower to \$50,000.

Scott: The industry supports a baseline for PEOs in the state. If we think \$100,000 is right amount, we would still be comfortable with \$50,000 if you feel more entrepreneurs could get in.

S Potter: Do any other states have different size companies.

Scott: Not that I know of. They are either \$50 or \$100,000. Predominantly toward \$100,000. \$50,000 would be working capital.

S Wanzek: Isn't it going through the process for them to go through the financial process for the applicant to be reviewed? That makes for gate keeping.

Scott: We need a statement of management. Check backgrounds for convictions against forgery, fraud, assurance the PEO has sound financial backing to provide PEO services.

S Behm: That's a lot of money but maybe they have to have that.

Scott: The client doesn't, the PEO itself has to have it. [1:46:42m] with \$100,000 client, the state provides the state with confidence that they can secure confidence to the clients.

S Potter: Do they have to have the services?

Scott: Health benefits, 401 K, benefits. May get just payroll or other services. Legally we cannot be held liable to wages if we are not co-employed.

S Potter: So you don't need to subscribe to all services.

Scott: As long as you want co-employment services.

S Klein: We have model administrations.

Scott: Legislation is based on our model enacted in 28 states.

Bill Butcher – NFIB – In Favor

Support 3000 small business owners. See PEO opportunity for their members.

Agrees with Renee. Good for small business owners. Users are very happy with services and urge DO PASS.

S Klein: There have been issues that are tough bringing together. Important to get groups together. We would have to run the changes by Secretary of State

Art – Fiscal Responsibility [115:01m]

Address concerns. Responsibility in bond. That came about after 8 years of research with national industry, they have a subdivision called, "best practices committee," to study aspects of how it would represent stability for a business owner that wanted to operate a PEO in any given arena such as ND. We learned that \$100,000 and/or bond is not difficult to obtain.

PEO's liability to take care of concern of small business owners. Does not prove to be a hazard, nor a detriment for a business in an entrepreneurial beginning to open an PEO and it does bring protection because there are lots of employees involved and the state government

is involved. Been studied thoroughly. Second point is nature of services, a business may ask for services and get assistance for some help on an employee handbook, safety consulting, you as the business owner still have 100% liability. That's the difference. The PEO assumes responsibility and liability here because they have employer status. The legislation clarifies the employer status. A small business suddenly has the corporate structure, they have a human resource department, payroll dept., safety dept, benefits dept. and all of these will bring cost-effective measures for that business to operate with all the special expertise, responsibility and liability. Major step forward for business making that decision.

Concept is ND has a quiet existence, due to population, ND hasn't been targeted. Identity concept is a challenge to small businesses. You'll see large PEO because of multi-companies. Business is in Montana, but open office in ND. Hotel, restaurant chains.

S Klein: Do they have to follow the ND laws?

Art: They are licensed in ND and follow ND laws.

S Wanzek: All employees become yours under the plan, how about upper management, do you include those in? A key point person that's a manager, could we still employ him separately?

Art: Why do it when we can. There is tax filing, wage payment, tax payments, you contract with us and are identified as a group. If you contract with us, we are identified with the Avedas group, other employers would not.

S Wanzek: This manager who might have a special arrangement with him, incentives, etc. percentage of profit or something because he's managing, if we put them all together, might we limit how we can treat him differently.

Art: There are unique situations. We discuss it. There are benefits if all employees are with or without us.

S Potter: Have you brought in a client who had a collective bargaining agreement?

Art: Yes

S Potter: Is that collective bargaining agreement in anyway voided, changed, because now there is a co-employer?

Art: There is no change on the bargaining agreement. CBA is between that business and the union [124:16m]

S Wanzek: Thank you for answering the questions. I hope you don't take it defensively.

Art: The interest you have shown, you are representing our industry, that there is a sincere desire on your part to understand what is happening, and I'm delighted that you're doing that because I've made reference in my comments a couple times. This industry is growing at a rapid rate and you will see that there's going to be more activity, specifically ND, so for your knowledge and for hard decisions on such a registration and licensing act, to protect all parties involved, is an extreme compliment to us.

S Wanzek: I'm seeing the benefits you can provide. Some are good at their job, but not good at paperwork. What about a public entity? School is too costly, can a public entity use a PEO.

Art: Yes. We have to arrive at the fees. PEO goes to prospective client and explains all the expense to operate the business. The PEO looks at the business and sees what they can do for the employer. All the expenses they currently are experiencing. 120% of payroll is the employer cost. I may be able to quote at 119% or 123%, the 3% will be tremendous advantage determined at the time of proposal. We determine costs at the time of the proposal; each could vary. It's well worth it even if it may be a couple more dollars than what you're paying.

Todd: \$100,000 for a new business coming in and started from scratch, one client with 8 employees might be \$8000 a week.

T Fuchs: [2:10:00m] Explains the story of how they got stuck. Story on loss on 1st month payroll.

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2036 A**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 16, 2007**

Recorder Job Number: **1275** [start m 12:17]

Committee Clerk Signature

Minutes:

S Klein: Any questions on the \$100,000 bond or \$100,000 net worth. I checked on the cost of a \$100,000 bond. It can range from \$500 to \$5000 depending on risk, Secretary of State would like it to stay at \$100,000 level.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2036 B**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 16, 2007**

Recorder Job Number: **1276**

Committee Clerk Signature

Minutes:

S Wanzek: After hearing Secretary of State and Larry Anderson presenting some amendments, I think its important that we adopt those first.

S Klein: Amendment Do Pass, Motion by Wanzek, Second by Behm

Secretary of State, need to "tweek" during interim process.

Issue with Job Service was to make sure they are treated independently.

S Potter: The gentleman from Fargo and payroll, they now require 2 weeks payroll up front before they sign on makes it much more viable.

Do Pass on Ammendments as Proposed by S. Wanzek

Do Pass as Ammended by S. Hacker

Second by S. Potter

Carried by Hacker

Vote 7-0

FISCAL NOTE
 Requested by Legislative Council
 03/13/2007

Amendment to: Engrossed
 SB 2036

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$3,000	\$0	\$2,000
Expenditures	\$0	\$0	\$0	\$2,000	\$0	\$1,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill is to provide for the licensing of professional employer organizations by the Secretary of State. The provisions of the bill having an impact will be the fees for the initial licensing and subsequent renewals.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fee for the initial license application is \$1,000. The annual renewal fee is \$500.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The revenue will be generated by the licensing and renewal fees. However, at this time, it is unknown how many such organizations will register with the Secretary of State's office. Therefore, the bill is drafted to allow the revenue to be deposited into the agency's general services fund. This will allow for the availability of resources for the agency whether there are two or twenty organizations that become licensed.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

As stated in section A, it is unknown how many such organizations will register with the Secretary of State's office. Therefore, in order to make sure there is adequate revenue to cover expenses, whether there are two or twenty organizations licensed, the expenses will be covered by the agency's general services fund where the offsetting revenue from licensing and renewals will be deposited.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The appropriation will be covered by the amount appropriated for the agency's general services fund.

Name:	Al Jaeger	Agency:	Secretary of State
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Phone Number: 328-2900

Date Prepared: 03/13/2007

FISCAL NOTE
Requested by Legislative Council
12/26/2006

Bill/Resolution No.: SB 2036

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$3,000	\$0	\$2,000
Expenditures	\$0	\$0	\$0	\$2,000	\$0	\$1,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill is to provide for the licensing of professional employer organizations by the Secretary of State. The provisions having an impact will be the fees for the initial licensing and subsequent renewals.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fee for the initial license application is \$1,000. The renewal fee is set at \$500.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The revenue will be generated by the licensing and renewal fees. However, at this time, it is unknown how many such organizations will register with the Secretary of State's office. Therefore, the bill is to allow the revenue to be deposited into the agency's general services fund. This will allow for the resources to be available to the agency whether there are two or twenty organizations that become licensed.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

As stated in section A, it is unknown how many such organizations will register with the Secretary of State's office. Therefore, in order to make sure there is adequate revenue to cover expenses, whether there are two or twenty organizations licensed, the expenses will be covered by the agency's general services fund where the offsetting revenue will be deposited.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The appropriation will be covered by the amount appropriated for the agency's general services fund.

Name:	Al Jaeger	Agency:	Secretary of State
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Phone Number: 328-3670

Date Prepared: 01/01/2007

Date: 1-17-06 from 1-16.
 Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2036

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number Amendments.

Action Taken NO PASS

Motion Made By Wanzek Seconded By Behm

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 7-0 No _____

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2036: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2036 was placed on the Sixth order on the calendar.

Page 5, line 15, after "e." insert "The date of the end of the applicant's fiscal year.

f."

Page 5, line 19, replace "f." with "g."

Page 5, line 22, replace "g." with "h."

Page 5, line 26, replace "h." with "i."

Page 6, line 9, after "4." insert "a."

Page 6, after line 11, insert:

"b. For the purposes of a renewal application, the audited and verified financial statement may be based on the twelve months of operating history before the close of the fiscal year immediately preceding the renewal date of the license. A professional employer organization that is unable to obtain an audited and verified financial statement before the expiration of a license may submit with the application for renewal:

(1) A written request for an extension to submit the audited and verified financial statement by a specific date within six months after the license is renewed and a verified statement, signed by an individual authorized by the professional employer organization, affirming that the professional employer organization has continuously maintained sufficient working capital to meet the financial capacity requirements under this chapter; or

(2) A bond with a minimum value of one hundred thousand dollars to be held by the secretary of state to secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.

c. The secretary of state shall suspend the license of a professional employer organization if the professional employer organization fails to submit the audited and verified financial statement by the extended date provided under subdivision b."

Page 9, line 19, replace "52-04-08.1, 52-04-08.2," with "52-04-24"

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2036

2007 HOUSE STANDING COMMITTEE MINUTES

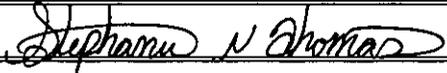
Bill/Resolution No. SB 2036

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3350

Committee Clerk Signature 

Minutes:

Chair Keiser opened the hearing on SB 2036.

John Bjornson, Legislative Council: The bill you have before you was changed from a registration bill to a licensing bill. The Secretary of State indicated that the function of that office really didn't fit with the registration process that was in the original draft of the bill. The Secretary of State is not typically in the business of reviewing qualifications of an entity to be registered under the law, and legislative business organizations didn't want to have that terminology used, so the committee determined that licensing be appropriate upon the recommendation of the Secretary of State. The bill was paired down somewhat to provide a process where the Secretary would receive applications from professional employer organizations, and if they met certain requirements to go ahead and license them, and the Secretary wouldn't spend a great deal of time looking into the background of these organizations, until they were already qualified in a number of ways to do this. This will be a new chapter in the Century Code, and the title addresses licensing of occupations and professions. Essentially PEO, Professional Employer Organization is an entity that will handle basically all human resource and administrative functions for an employer. The bill itself sets out certain rights, and obligations that attach to this co employment relationship that the

employer enters with the PEO. For the PEO and the employer this would require there be a written contract that sets out the rights and obligations of all the parties involved. This sets the framework for the contract, but the main point of the bill is the fact that a PEO prepared to operate this thing has to be licensed, and then we license the Secretary of State. Each license is valid for one year; the additional application fee is \$1,000, subsequent renewals of \$500 a year. If somebody is acting in the state without a license, they'd be guilty of a Class A Misdemeanor, and also may be subject to civil penalty imposed by the Secretary of State. Any individual can file a complaint with the Secretary of State if they believe that a PEO has violated, or committed a crime that would relate to their ability to perform their duties of a PEO. Finally, the bill has a delayed effective date of October 1, 2007.

Rep. Zaiser: How does the application fee or license fee for this PEO organization line up with other organizations?

John: I can't tell you exactly. Application license fees vary, but obviously this would be on the higher end, primarily the amount that was actually suggested by the representatives of the PEO when the bill was under consideration.

Rep. Keiser: On page 3, subsection 3 on lines 20-23, we're taking the PEO out of responsibility, but do we really want to do that? This is sort of a one sided deal, because as an employer I wouldn't be smart enough to now that if it wasn't stated in the contract, that they would be 100% off the hook.

John: This is part of the model law that was suggested.

Rep. Keiser: If I went to court, I'm going to lose if this is left in there, and if it's not in writing in the contract.

John: If there's something in the contract to the contrary, or if there's nothing in the contract this liability is with the employer, not the PEO. That would be the employers responsibility to

make certain that things are in the contract that they want excluded. I should have mentioned how there's an impact with laws that were adopted last session, and the previous session with respect to unemployment and workers compensation. There's an exception later in the bill, page 10 lines 13 and 14, this chapter and a PEO agreement may not be construed to affect the provisions 52-04.04, which is a job service provision we adopted two years ago, and 65-01.08 for workers compensation provisions adopted four years ago.

Scott DiBiasio, National Association of Professional Employer Organizations: Support SB 2036. See written testimony #1.

Rep. Ruby: You mentioned that having this in place would firm up some of the problems that you've had between the two parties involved. Wouldn't your contract have already put some kind of insurance, or place for the different provisions that should be under in the contract?

Scott: The answer to that question is that in most cases the contractual arrangement would resolve most of those questions that arise. The framework that we would be putting in place here would do two things. It would provide for PEO's as a statutory employer. Licensing PEO's here in the state would insure that the PEO's that are operating here have the financial responsibility, the financial capability, and the likelihood that a PEO would be able to come into the state with some egregious kind of intent, and to take money from a client, and then not do what they were intending to do with those funds. Licensing by the Secretary of States office would serve as a disincentive to do that, because of the penalties involved

Rep. Ruby: On page 12, subsection 7 wouldn't that go without saying? Why do you need that in this part of the law?

Scott: I think that was something that was actually added by the Secretary of States office, but if that's something that is standard practice up here in the state to be able to appeal a

decision on administrative agency to the district court, then certainly that would go without saying. Certainly, I think this would reinforce that existing requirement.

Rep. Kasper: On page 10, line 9 item 5 it talks about what the professional employer organization can not do. Tell me exactly what that allows, and what that prohibits for a PEO to do for employee benefits.

Scott: That would require that a professional employer organization either become a licensed insurance producer if they were to sell health insurance, or to sell workers compensation insurance. Being a monopolistic system, they don't have to utilize the services of a licensed insurance agent, but as it relates to health insurance, a PEO would have to purchase that health insurance from a licensed insurance agent, or broker in order to be able to provide it to their employees.

Rep. Kasper: If a PEO becomes licensed as an insurance agent, the PEO would be able to offer, sale, and market insurance products?

Scott: That would be correct, but in that case they would be an insurance agent, and have all the rights and privileges associated with being an insurance producer, but they would not be able to sell health, or workers compensation insurance without their license.

Rep. Kasper: So, in the PEO agreement, could the PEO say to the clients that in order for you to be a client of ours you must purchase your insurance products from the carrier that we designated?

Scott: That is really a marketplace decision, in relation to how the PEO wants to enter into the agreement with their client.

Rep. Kasper: That covers also the 401K plans, and the security side of things. I'm more interested in insurance stuff, and how that would work with a potential employee, or employee

that wants to become a PEO member if they're happy with the benefit plans they have. Could you as a condition of this contract say you either take our benefits, or we won't revisit this?

Scott: That would be a contractual arrangement. There's nothing in the statute, or in this bill that would require a client to obtain their 401K benefits from a PEO.

Rep. Kasper: Then I'm puzzled by the language on line 9, to me that excludes a PEO from offering those services, and you're saying it does not.

Scott: I believe that section is intended to say that if a PEO does provide those benefits to their employees, and to their clients then they are not engaged in the sale of insurance, or in acting as a 3rd party administrator.

Rep. Kasper: Even if the PEO is a licensed insurance agent, then they are purchasing it from themselves.

Scott: I believe yes, that would be the case.

Rep. Zaiser: Dealing with the liability of the PEO, I'm curious if this has been a problem in other states?

Scott: I think the intent of that language is to provide a limited amount of immunity to the PEO for liability that they are not aware of, and that they had not locally accepted as part of the PEO agreement.

Rep. Zaiser: That could work just the opposite, I assume, the PEO could engage in some activity dealing with providing a package, or selling the package that did violate the conditions.

Scott: I think there's language in there that says also that the PEO's can only provide services that it has been allocated by the client, and nothing more nothing less.

Rep. Zaiser: Are you aware of any other states that have amended this section?

Scott: I believe that the language that you are specifically referring to is contained in one form or another in most of the 28 statutes that are currently on the books. The two most recent states that have enacted this bill are Alabama, and Indiana.

Rep. Keiser: On page 2, subsection 9 why do you want a majority there? Would there ever be a situation where 40%, you could provide services of 40, but this would exclude that.

Scott: It's an issue that we're dealing with in a couple of other states right now where if a PEO is providing professional employer services to 10 out of 50 employees at a client worksite, they're still providing PEO services, and they're a PEO, they should be licensed under this statute. I think that language is specifically designed to further differentiate PEO's of temporary staff and services, and from long term staffing services that may have 5-10 employees at a 50 employee worksite. In order to be a PEO they would have to have more than 50%.

Rep. Keiser: So, your company wants to provide a service, you're a PEO let's say, and you have two firms. In firm A you have 60% to 100%, firm B you've got 49%, can you still offer services to firm B, and then are you not covered by any regulation?

Scott: I think the other controlling language in that section is it says a significant portion of a segment of the workforce. So, if you go in and say we're going to provide PEO services to all of the secretaries, there you're providing professional employer services to a significant portion, or all of a portion of a workforce.

Art Geiger: Support SB 2036.

Rep. Keiser: As I look at the bill, it seems to me we've got a hybrid. It started out as registration bill, and it got converted to a licensing bill, but we have in it licensing issues, and registration issues. Why don't we just make this into a licensing bill?

Scott: This bill does three separate things. It provides for recognition of the industry, it provides for an outline of the rights and responsibilities of each party in a professional employer agreement in a professional employer arrangement, and the third thing is it provides for licensing of the PEO's that are doing business here in the state of ND.

Larry Anderson, Job Service ND: Neutral on SB 2036. See written testimony #2.

Scott: I think the intent there is to say if the client were to pay a bonus wage, commission, etc., that the PEO is not aware of, and cannot make contributions to the unemployment insurance trust fund on behalf of that client because of the client level recording system, that the client would be responsible for making them contributions themselves.

Rep. Kasper: Why wouldn't we consider defining wages as all the things in here that are excluded and included, and then putting your stipulation that the client must report all of those items to the PEO, so that you can properly hold to pay the taxes that should be paid?

Scott: I don't necessarily have a problem with that if Job Service is comfortable with that. We could include language that says if the client pays a bonus wage, or a bonus commission incentive, they have to report it to the PEO, or repeal in the contribution.

Rep. Dietrich: You said this bill mirrors legislation that has been adopted in 28 states. I'm concerned about registration, and the licensing portion of the bill, in the appeal of the 28 states that they licensed and registered to the Secretary of State to the PSC.

Scott: It varies pretty significantly as to which agency serves as the registration, or the licensing entity. I would say that it's probably split 50/50 as to whether it's registration or licensing, and it is split amongst a number of different agencies as to who started the regulatory agency. In some cases it's the Labor Department, in some cases it's the Labor Industrial Affairs, in some cases it's the Secretary of Commerce, in some cases it's the

Department of Insurance, and in a couple of other states it is in fact, the Secretary of State that serves as the licensing registration editing for the PEO industry.

Rep. Dietrich: I know the Secretary of State wasn't really enamored with handling this. Did you approach the PSC?

Scott: We did not. I believe we did approach Job Service, WSI, and the Department of Insurance all of which said this deals with a whole slough of other issues.

Clara Jenkins, on behalf of Secretary of State Al Jaeger: Neutral on SB 2036. See written testimony #3.

Rep. Dietrich: The question pertains to the fee and bonding. Is it common practice that you could use a \$1,000 mark for professional issues?

Clara: These were proposed by the industry. We did not respond to those, these fees go into the Secretary of States special fund for the soul purpose of developing the programs.

Rep. Dietrich: Is it common to see \$1,000 fees for contractors, other professional organizations, auctioneers, realtors, that type of business?

Clara: The Secretary of State does not receive those amounts, the highest bid we have is \$300.

Rep. Dietrich: In relation to the \$100,000 bonding, is that common?

Clara: We don't have bonding anymore in the Secretary of State.

Rep. Kasper: The Secretary of State does not oppose licensing of the PEO's now, is that correct?

Clara: That's true. The way the bill is currently engrossed, it addressed all of the issues that we had.

Rep. Kasper: As far as the bond is concerned, the way I read the bill, the bond is there to protect the people that are a part of the PEO, so that certainly would not be an objection that

the secretary of state would have that the bond is required. It's just maybe filing a piece of paper that says that we've got a bond, which is just another piece of paper in a file, so it's not a big deal to the administration of it.

Clara: No. That's exactly what it's doing is creating a public record.

Rep. Ruby: Is any part of that bond possible to be used for payment to the state for fees?

Clara: Yes, I believe it is.

Rep. Ruby: What about the Secretary of State's office?

Clara: If they didn't pay a fee to our agency, they wouldn't have a license.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2036

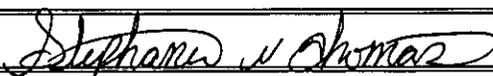
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4575

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on SB 2036, the professional employer organization bill.

Rep. Dosch: See proposed amendment 70028.0602.

Rep. Thorpe: I'm down to page 8, replacing lines 21-23 which is new language, and I would just like to hear the reasoning for replacing that.

Rep. Dosch: In the testimony, there were some questions that came about as to what all was included in wages, if there were bonuses, or other things like that. So, we had asked Job Service to give us a definition of what they felt should be included in wages. So, that's where they came up with the language, as far as what does it mean when you talk about all wages. Basically, wages means all remuneration for services to a professional employer organization, and the client regardless of the source including commissions, bonuses, cash values, any remuneration in the medium other than cash, any gratuity recipes, tip income, and anything like that all constitutes wages as far as Job Service is concerned, and that is why we're collecting the unemployment packs with all that on those total wages. That's why that section was rewritten.

Rep. Amerman: Do these amendments address suitor dumping, so that will not happen?

Rep. Dosch: On page 10, lines 13 and 14, where it says there's nothing in this chapter, or an agreement that may be construed to affect the provisions of section 52-04.24, which are the suitor dumping provisions of the law.

Rep. Dosch: I would move the amendment.

Rep. Clark: Second.

Voice vote was taken, amendment adopted.

Rep. Nottestad: I move a do pass, as amended.

Rep. Johnson: Second.

Rep. Amerman: In the interim committee, I voted against this bill then, and I think I'm going to vote against it now. When it was presented at the interim committee what I did not really understand, and did not care for was Rob Forward who testified to legitimate this type of business. That's why he wanted it on the books, and I felt in that area that this should have a good business that's legitimate. I believe all you have to do is register with the Secretary of State, you can do business, and I always felt if it's a good business, and you get profitable, and people understand it, that's how you get legitimized. I felt a little uncomfortable that he's using the legislature to put something in statute as a way to legitimize things, and I didn't feel comfortable about that. I didn't like the way that at first they wanted it under WSI, and we didn't like that. Then they put it under the Secretary of State, but they really didn't contact the Secretary of State and discuss it with him about putting it under the Secretary of State. He was a little upset about that, because there was a lot more to it. I'm still uncomfortable with it, and for those reasons, I'm not going to support it.

Rep. Dosch: We had this similar bill last session, and we didn't feel comfortable at that time, so we turned it into a study, and we did use the interim to work out some of the legitimate concerns that were brought up. We used the interim, we made some modifications to it, and

made two more modifications to it now. Do you need legislation to legitimize a business?

Maybe, or maybe not, but in the same token the way I look at it is these are businesses right now that require no registration, no nothing in the state, and they're handling peoples payroll, they are submitting payroll taxes, and all of that stuff that is co employee relationships. They perform some pretty important functions, in regards to small business, and do we want them totally unregulated out there. I think it is better to get something on the books, as far as regulating who these people are, and where they are operating at, and so I guess I would rather see this then come to nothing at all. They're dealing with a lot of money, they're dealing with our payroll dollars, they're dealing with other employees, and I just think we need something on these groups.

Rep. Kasper: Another important part of what PEO's do is in the area of employee benefits.

One of the ideas of a PEO is when you have an employer that has 2 or 3 employees here, or that 4 or 5 employees there, it really has no bargaining power for group insurances, no bargaining power for return of claims, and they're sort of out there with little choices in the ND market. This bill allows, and puts into statute the fact that the relationship between the PEO and those employers are such that they can't have group insurances, and buying power. They can get better return, because of that power of combinement. In the statute it says what they can, and what they can't do, and so it does help that small business person, it helps those employees of those small businesses develop better benefits at lower cost. So, I think this is a very consumer, employee friendly bill that helps accomplish some things, and still regulates this industry. I think it is a very important bill to pass.

Rep. Amerman: I'm glad we had the study, and this bill is probably better, and I think the amendments make it better if Job Service approved them. The thing I have trouble with is that this is modeled legislation from the industry itself. I would feel better if we as a state seemed

the need to get regulated, and that it would come from one of the departments that would do the regulation. This is pretty much all language that comes from the Professional Employer Organization, and its model legislation, and we have done some better things. I'm still not comfortable with it.

Rep. Dietrich: I agree there is a need for PEO's. I also agree that to be modeled by the organization gives me a little heartburn. For a licensing bill, this now has much more than a licensing bill. They're looking for their work legitimized their profession. I think there is a place for the Secretary of State involved, and that would be registration of a name, a fictitious name, that's what he does all the time. With that being said, he also will deal with anywhere from hundreds of dollars, to possibly hundreds of thousands of dollars. Myself in the clerking business, we deal in the hundreds of dollars to the hundreds of thousands of dollars, and we are regulated by the PSC. The PSC has an arm in investigator abilities which the Secretary of State said I don't have any investigative abilities; I don't have any FTE's that can do this type of work. Therefore, I think we should really revisit this, and it should go under the jurisdiction of the PSC. I think it would put a little teeth into the bill if we have it sitting there. I can't support the bill in this form; it's not a good bill.

Rep. Dosch: If you take a look on page 11 of the bill, where the disciplinary action to claimants, proceedings, and penalties, and so there are some definite teeth in the enforcement abilities in the bill.

Roll call vote was taken, motion tied. 7 Yeas, 7 Nays, 0 Absent.

Rep. Amerman: I move a do not pass, as amended.

Rep. Dietrich: Second.

Roll call vote was taken, motion passes. 8 Yeas, 6 Nays, 0 Absent, Carrier: Rep. Ruby
Hearing closed.

Date: 3-7-07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2036

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS, AS AMENDED

Motion Made By Rep. Nottestad Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla		X
Rep. Dietrich		X	Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby		X			
Rep. Vigasaa	X				

Total Yes 17 No 17

Absent 0

Floor Assignment Rep. ~~Dosch~~ Ruby

If the vote is on an amendment, briefly indicate intent:

Date: 3-7-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2036

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT Pass, AS Amended

Motion Made By Rep. Amerman Seconded By Rep. Dietrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark		X	Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch		X	Rep. Zaiser		X
Rep. Kasper		X			
Rep. Nottestad		X			
Rep. Ruby	X				
Rep. Vigesaa		X			

Total Yes 8 No 6

Absent 0

Floor Assignment Rep. Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2036, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2036 was placed on the Sixth order on the calendar.

Page 2, line 28, replace "under which at least a majority of the employees" with an underscored period

Page 2, remove line 29

Page 3, remove lines 20 through 23

Page 3, line 24, replace "4." with "3."

Page 3, line 27, replace "5." with "4."

Page 4, line 1, replace "6." with "5."

Page 4, line 5, replace "7." with "6."

Page 4, line 17, replace "8." with "7."

Page 5, line 27, remove "audited and" and replace "an independent" with "a"

Page 8, replace lines 21 through 30 with:

"b. (1) A statement that provides that:

(a) The professional employer organization shall pay wages to any covered employee and shall withhold, collect, report, and remit payroll-related and unemployment taxes on wages paid to the covered employee by the professional employer organization;

(b) The client shall accurately report all wages of a covered employee to the professional employer organization; and

(c) The professional employer organization shall make payments for employee benefits for covered employees to the extent the professional employer organization has assumed responsibility in the professional employer agreement.

(2) As used in this subdivision, the term "wages" means all remuneration for services to the professional employer organization and the client, regardless of source, including a commission or bonus and the cash value of any remuneration in a medium other than cash. Any gratuity customarily received by an individual in the course of the individual's service from any source other than the client or the professional employer organization must be treated as wages received from the individual's coemployers."

Page 9, remove lines 1 and 2

ReNUMBER accordingly

2007 TESTIMONY

SB 2036

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 16, 2007

TO: Senator Klein, Chairman,
and Members of the Senate Industry, Business and Labor Committee

FR: Al Jaeger, Secretary of State

RE: SB 2036 – Professional Employer Organizations (PEO)

HB 1195 SECTION 7. LEGISLATIVE COUNCIL STUDY - PROFESSIONAL EMPLOYER ORGANIZATIONS. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of requiring professional employer organizations operating in North Dakota to register with the state. The study must include consideration of how other states address the issue of registration of professional employer organizations. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

The matter of PEO's was studied as mandated by the above section of law. The result of the study was the subject bill, which was drafted by the Interim IB&L Committee. During the study process, the Secretary of State's office was ultimately identified as the agency where the licensing of PEO's could be administrated at which time the agency involved in the drafting process.

At the meeting when the interim committee voted to introduce the bill, I did inform them we had identified additional amendments to the bill. It was acknowledged that when the bill was introduced and had its hearing, the agency would have those amendments submitted. They are attached.

If the amendments are adopted, the agency is then confident it can administer the duties required of the Secretary of State in the licensing and renewals of PEO's.

The following two portions of the bill pertain to the duties of the Secretary of State and my testimony will be limited to those areas. The rest of the bill relates to the relationship of the PEO with its customers and other agencies, which are outside the duties of the agency.

- Page 4, beginning at line 24 through page 7, line 3
Relating to the licensing requirements, fees and financial capability
- Page 10, beginning at line 9 through page 12, line 8
Relating to disciplinary actions

#1
2036

PROPOSED AMENDMENTS TO SENATE BILL 2036

Page 5, after line 14, insert "e. The fiscal year end of the professional employer organization."

Page 5, line 15, replace "e." with "f."

Page 5, line 19, replace "f." with "g."

Page 5, line 22, replace "g." with "h."

Page 5, line 26, replace "h." with "i."

Page 6, line 11,

Page 6, after line 11, insert:

a. For the renewal application, the audited and verified financial statement may be based on the twelve months of operating history prior to the close of the fiscal year immediately preceding the renewal date of the license. A professional employer organization that is unable to obtain an audited and verified financial statement prior to the expiration of a license, may submit with its application for renewal:

(1) A written request for an extension to submit the audited and verified financial statement by a specific date within six months after the license is renewed; and

(2) A verified statement signed by an individual authorized by the professional employer organization affirming that the professional employer organization has continuously maintained sufficient working capital to meet the financial capacity requirements under this chapter; or

(3) A bond with a minimum value of one hundred thousand dollars to be held by the secretary of state to secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.

b. Failure to submit the audited and verified financial statement by the extended date shall result in suspension of the license by the secretary of state as provided in this chapter.

Renumber accordingly.



National Association
of Professional Employer Organizations

S.B. 2036 - REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS

What is a PEO? – Professional Employer Organizations – or PEOs – are companies that enable their clients to cost effectively outsource the management of human resources, employee benefits and workers' compensation so their clients can focus on growing their businesses. The PEO relationship involves a contractual allocation and sharing of employer responsibilities between the PEO and the client. This shared employment relationship is called co-employment.

Current North Dakota law - Currently, PEOs, co-employment, and the concept of allocating employer responsibilities among more than one employer are only minimally recognized in North Dakota law. A PEO's status as an employer with the ability to pay wages, collect & remit taxes, and provide benefit plans is based primarily upon common law principles and is subject to new interpretation by regulators and the courts at any time. This legislation does not change existing law regarding how workers' compensation insurance is provided for co-employees, or how contributions for co-employees are made to the unemployment insurance fund.

Why is this legislation needed? – A comprehensive PEO law will: 1) provide operational certainty and a firm foundation of law for PEOs; 2) resolve most common legal issues that arise in a co-employment relationship; 3) provide a framework to register and responsibly regulate PEOs operating in North Dakota; and 4) reinforce client and employee confidence in the PEO industry.

What will this legislation do? - This proposed legislation is a comprehensive approach to the PEO based in part on statutes enacted in 28 states. Specifically, this legislation will:

- Clearly define PEOs, the concept of "co-employment," and the rights, duties and obligations of a PEO and their clients under North Dakota statute
- Recognize PEOs as co-employers who partner with their clients to provide human resource services including employee benefits, such as healthcare and retirement plans;
- Require written agreements between PEOs and their clients that articulate the shared responsibilities of the parties and require written notice to workers when they are in a PEO relationship;
- Require annual registration of PEOs with the Secretary of State;
- Require PEOs to maintain a minimum working capital or provide a security or guarantee to the Secretary of State to assure the payment of wages, taxes and benefits;
- Give the Secretary of State the necessary enforcement tools to bring civil or criminal actions against a PEO that violates the law.

For more information on this legislation, contact NAPEO's Assistant Director of State Government Affairs **Scott DiBiasio** at (703) 739-8167.

#2 2036

Senate Bill 2036
Testimony of Larry D. Anderson
Job Service North Dakota
before the
Senate Committee On
Industry, Business and Labor
Senator Jerry Klein, Chairman
January 16, 2007

Mr. Chairman and Members of the Committee, I am Larry Anderson, Director of Workforce and Unemployment Insurance Programs with Job Service North Dakota.

Job Service North Dakota has two concerns with this bill:

- Our first concern is with lines 18 and 19 on page 9. Our understanding of the intent of the interim IB&L Committee was that language was to be included that ensured this bill would not interfere with the application of the Unemployment Insurance Law and the Workforce Safety and Insurance Law. To accomplish that lines 18 and 19 were inserted. The problem is that the two identified sections of Chapter 52 are not the sections that apply to "staffing services". The correct sections are 52-04-00.1 and 52-04-24. We have prepared the attached amendment to correct that error and ask that you accept it.
- Our second concern is that confusion will be likely when looking at the provision beginning on page 8, line 1. The term "wages" includes only part of what is considered wages in payroll tax laws. Here only "salary, draw, or regular rate of pay" is included. Payments such as bonuses, commissions, etc.

#3
2036

are excluded from this definition of wages unless specifically included in the agreement. This means that in each case of a coemployment relationship the records of two entities, likely in two physical locations will have to be reviewed to determine compliance with the law.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer any questions from the committee.

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2036

PROPOSED AMENDMENTS TO SENATE BILL NO. 2036

Page 9, line 19, replace "52-04-08.1, 52-04-08.2" with "52-04-00.1, 52-04-24"

Renumber accordingly

#3
2036

NATIONAL ASSOCIATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS (NAPEO)

NORTH DAKOTA HOUSE INDUSTRY, BUSINESS, & LABOR COMMITTEE

HEARING ON S.B. NO. 2036

An Act Relating to the Licensing of Professional Employer Organizations

MONDAY, FEBRUARY 12, 2007

Chairman Keiser, Members of the House Industry, Business, & Labor Committee. My name is Scott DiBiasio. On behalf of the National Association of Professional Employer Organizations (NAPEO), it is my pleasure to testify before you today in support of Senate Bill 2036, legislation that establishes a framework to license and responsibly regulate Professional Employer Organizations in North Dakota.

NAPEO is a national trade association of the professional employer organization (PEO) industry, representing a membership that generates more than 70% of the industry's total PEO gross revenues. As you will hear this morning, PEOs enable their clients to cost-effectively outsource the management of human resources, employee benefits, payroll and other critical benefits so that PEO clients can focus on their core competencies to maintain and grow their business. With the maze of government compliance issues, both federal and state, today's business owners, especially those with a small number of employees, face additional and changing regulation with respect to employment issues. PEOs provide enhanced access to employee benefits to nearly two million working Americans. In the state of North Dakota, NAPEO's membership comprises ten PEOs that do business in the state, one of which is domiciled in Fargo, another of which has an office here in Bismarck.

PEOs assist workers of small- and medium-size businesses with an average of 15 employees. While the owners of these small and mid-sized businesses focus on the "business of their business," PEOs assume the responsibilities and liabilities of the "business of employment." The PEO assumes responsibility for paying wages and employment taxes to all the workers of its client companies. The PEO maintains

employee records, handles employee complaints, and provides employment information to workers, such as an employee handbook.

Most significantly, the PEO provides to the workers of its clients, 401(k) plans, health insurance, dental coverage, life insurance, dependent care and other benefits, which for many of these workers is the first opportunity that they have had to obtain these benefits through their employment.

Currently, PEOs, co-employment, and the concept of allocating employer responsibilities are only minimally recognized in North Dakota law. A PEO's status as an employer with the ability to pay wages, collect & remit taxes, and provide health & welfare benefit plans is based primarily upon common law principles and is subject to new interpretation by regulators and the courts at any time.

Senate Bill No. 2036 passed out of the Senate unanimously earlier this month.

S.B. 2036 will: 1) provide operational certainty and a firm foundation of law for PEOs; and 2) resolve most common legal issues that arise in a co-employment relationship.

Importantly, this legislation does not change existing law regarding how workers' compensation insurance is provided for co-employees, or how staffing services make contributions to the unemployment insurance fund for co-employees. These issues were addressed by H.B. 1195, passed during the 2005 session.

PEOs also have a unique fiduciary responsibility, with the potential to amass significant liabilities very quickly if they are not responsibly managed and prudently operated. If a PEO were to fail, the potential exists to leave unpaid wages, taxes, unemployment insurance, workers compensation premiums and health care insurance premiums.

S.B. 2036 will provide a framework for the Secretary of State to license and oversee PEOs operating in North Dakota. If a PEO does not comply with the law, the Secretary of State will have the tools necessary to bring civil and/or criminal action against a PEO.

All of these provisions will reinforce client and employee confidence in the PEO industry. In fact, S.B. 2036 mirrors legislation that has been adopted in 28 states. In each of these states, the industry has seen growth with the passage of a comprehensive PEO law.

As an industry, PEOs doing business in North Dakota are supportive of a law that creates transparency, assures all PEOs live up to certain financial standards, and provides a level playing field to promote the continued growth of responsibly managed PEOs. S.B. 2036 accomplishes such a standard.

Representatives from the North Dakota PEO industry, the Secretary of State, state regulators, the Legislative Council, NAPEO and your colleagues in the Legislature have discussed this legislation extensively during the 2006 Interim.

Thank you very much for the opportunity to testify. I'd be happy to answer any questions.

Contact Information:

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Senate Bill 2036
Testimony of Larry D. Anderson
Job Service North Dakota
before the
House Committee On
Industry, Business and Labor
Representative George Keiser, Chairman
February 12, 2007

Mr. Chairman and Members of the Committee, I am Larry Anderson, Director of Workforce and Unemployment Insurance Programs with Job Service North Dakota.

Job Service North Dakota has one concern with this bill:

- Our concern is that confusion will be likely when looking at the provision beginning on page 8, line 1. The term “wages” includes only part of what is considered wages in payroll tax laws. Here only “salary, draw, or regular rate of pay” is included. Payments such as bonuses, commissions, etc. are excluded from this definition of wages unless specifically included in the agreement. This means that in each case of a coemployment relationship, the records of two entities, likely in two physical locations, will have to be reviewed to determine compliance with the law.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer any questions from the committee.

#13

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SECRETARY OF STATE

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STATE OF NORTH DAKOTA
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BISMARCK ND 58505-0500

February 12, 2007

TO: Rep. Keiser, Chairman,
and Members of the House Industry, Business and Labor Committee

FR: Clara Jenkins, on behalf of Secretary of State Al Jaeger

RE: SB 2036 – Professional Employer Organizations (PEO)

A study of Professional Employer Organizations was mandated by the following section of law.

HB 1195 SECTION 7. LEGISLATIVE COUNCIL STUDY - PROFESSIONAL EMPLOYER ORGANIZATIONS. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of requiring professional employer organizations operating in North Dakota to register with the state. The study must include consideration of how other states address the issue of registration of professional employer organizations. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

It resulted in the subject bill drafted by the Interim IB&L Committee. During the study process, the Secretary of State's office was identified as the agency to administer the licensing of PEO's.

Most of the bill relates to the relationship of the PEO with its customers and other agencies.

Only the following two portions of the engrossed bill pertain to the duties of the Secretary of State.

- Page 4, beginning at line 24 through page 7, line 3
Relating to the licensing requirements, fees and financial capability of a PEO
- Page 10, beginning at line 9 through page 12, line 8
Relating to disciplinary actions