NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 20 (Third Edition)

SHORT TITLE: Regulate Professional Employer Organization.

SPONSOR(S): Senator Bingham

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2004-05	**FY 2005-06**	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**
GENERAL FUND					
REVENUES					
Justice	See Assumptions & Methodology				
Insurance	No Net Impact *				
EXPENDITURES					
Justice	See Assumptions & Methodology				
Insurance	No Net Impact*				
Correction	See Assumptions & Methodology				
Judicial Branch	See Assumptions & Methodology				

* See Technical Considerations for explanation.

	FY 2004-05	**FY 2005-06**	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**
INS. REG. FUND					
REVENUES	$99,000	$99,000	$99,000	$99,000	$99,000
EXPENDITURES					
Nonrecurring	$24,230				
Recurring	$98,939	$197,878	$197,878	$197,878	$197,878
Net Ins. Reg. Fund	**($24,169)**	**($98,878)**	**($98,878)**	**($98,878)**	**($98,878)**
POSITIONS:					
Insurance Reg. Fund					
DOI	2	2	2	2	2

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Departments of Insurance, Justice and Correction; Administrative Office of the Courts (AOC); Employment Security Commission

EFFECTIVE DATE: This act becomes effective January 1, 2005.

BILL SUMMARY: Senate Bill 20 would require Professional Employer Organizations (PEOs) to be licensed in order to do business in this State. In 2002, the General Assembly enacted SB 1281 [S.L. 2002-168] that requires PEOs to register with the Department of Insurance. The registration consists of the completion of an application and payment of a one-time fee of $250.00. A person cannot perform professional employer services without being registered with the Department. A person who violates the registration requirement may be subjected to a Class H felony. Senate Bill 20 imposes additional requirements on PEOs and gives the Department of Insurance disciplinary authority over licensees. The bill specifies that the client is entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of employment of covered employees of the client.

ASSUMPTIONS AND METHODOLOGY:
Insurance Regulatory Fund Revenue: This bill would require PEOs to apply for licensure and to submit a $1,000 application fee that will be deposited into the Insurance Regulatory Fund. Each licensed PEO would also be required to apply for license renewal and to submit a $1,000 renewal fee, also to be deposited into the Insurance Regulatory Fund. Currently, there are 11 registered PEO groups with 49 member companies, 84 individually registered PEOs, and 4 PEOs with pending registrations. Thus, the revenue from the application fee for the 99 (11 groups + 84 individuals + 4 pending) is expected to be $99,000 annually. The Department expects that there will be some growth in the number of licensed PEOs. However, at this time, there is not sufficient data or experience on which to estimate what that growth will be.

Department of Insurance Expenditures: Senate Bill 20 requires the Department of Insurance to administer the licensing laws for PEOs. The Commissioner of Insurance would have the authority to adopt rules necessary to administer the licensing laws and to take appropriate disciplinary actions. The Commissioner would also serve as the chair of the North Carolina Professional Employer Organization Advisory Council and the Department would provide meeting space and clerical and other services required by the Council to conduct its business.

The Department will be responsible for monitoring and regulating PEOs to ensure their compliance with the licensing laws similarly to the manner in which it currently provides oversight and regulation of insurance companies and continuing care entities. These responsibilities will include financial regulation such as reviewing and evaluating applications for initial license, reviewing annual financial statements, and making recommendations about additional financial oversight in the event of financial problems. Non-financial regulation of PEOs involves the prompt and thorough investigation of questionable insurance activities regarding unauthorized/unapproved insurance products offered to the public. Currently, there are 11 registered PEO groups, 84 registered PEOs and 4 pending registrations.

The Department estimates that the fiscal impact of administering the licensing laws and regulating the PEOs is $197,878 recurring and $24,230 nonrecurring. The recurring cost will cover the salaries, benefits, and operating cost for an Insurance Company Examiner III, who will be responsible for the financial regulation of the PEOs, and an Insurance Compliance Analyst Supervisor, who will be responsible for the non-financial regulation of the PEOs. The salary and benefits for a grade 80 Examiner is $72,484, based on a mid-point salary of $62,857 and benefits of $9,627. The salary and benefits for a grade 73 Compliance Analyst is $53,510 based on a mid-point salary of $45,709 and benefits of $7,801. The total operating cost for the two positions is $71,084 and includes $60,000 for travel and $11,084 for materials, supplies, training, and continuing education. Assuming the positions are effective January 1, 2005, the first year recurring cost would be $98,939. The nonrecurring cost of $24,230 will cover the cost of computer equipment as well as office and furniture equipment.

The Department would not incur any cost for the Council meetings because the bill specifically indicates that the Council members will not receive compensation or per diem. Also, because the Department has attorneys on staff who are responsible for developing rules, Fiscal Research does not anticipate that the Department will need any additional resources to develop rules necessary to administer the licensing requirements.

The Department is funded by the Insurance Regulatory Fund (IRF). However, as required by G.S. § 58-6-25, moneys in the IRF may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The statute further provides that all money credited to the IRF shall be used to reimburse the General Fund for the enumerated purposes. To comply with the statute, funds are appropriated from the General Fund to the Department of Insurance for all authorized expenditures of the IRF. The IRF, in turn, reimburses the General Fund for the appropriation. Accordingly, any use of the IRF authorized by this bill would require a General Fund appropriation to the Department. The IRF would reimburse the General Fund for the appropriation such that the expenditure would have no net effect on the General Fund.

Justice: Section 1 authorizes the Department of Justice to provide state and national fingerprint checks for any applicant for licensure as a PEO. These checks are conducted by the State Bureau of Investigation (SBI) within the Department. Neither the Department of Insurance nor the Fiscal Research can project the number of applicants who would require background checks each year as a result of this bill. Thus, we cannot project the amount of additional revenue from the criminal record checks.

The applicant would pay for the criminal record check. The SBI charges $38 for each state and national fingerprint check, of which $22 is remitted to the Federal Bureau of Investigation. The remaining $16 is used to support the functions of the identification unit, which conducts the criminal history background checks. Each employee can process approximately 9,600 background checks per year, and the SBI is able to accommodate some increase in background checks within its existing staffing level. If the increase in workload due to new record checks were greater than the unit's capacity, the SBI would need authorization for additional positions supported by the receipts collected from the applicants/ licensees.

Tax credits and other incentives. The language included in the bill clarifies the existing administrative practice of the Department of Revenue on the question of whether Bill Lee Act credits are allowed in the co-employment situation. Thus, there is no fiscal impact from this provision.

Criminal & Civil Penalties

Section 1 of this bill includes a statutory provision that would make it a Class H felony for any person who engaged in enumerated prohibited acts. These enumerated acts are almost identical to those in existing statute for PEO registrants (also punishable as a Class H felony), the same group that would be licensed under this bill. The last act, using or attempting to use a license that has been suspended or terminated, is new in this bill. The Department of Insurance does not anticipate many offenses under the new prohibited act, as terminated licenses must be returned to the Board. There is not likely to be significant impact from this penalty unless a significant number of PEOs operate without a valid license.

Judicial Branch: For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The AOC is unable to provide an estimate of the impact of the Class H penalty in this bill, but believes that the impact will not be significant. The staff at the AOC believe that the majority of PEOs would comply with the proposed licensing requirements found in this bill. Thus, the AOC does not project a significant number of Class H felony charges under section 1 of this bill.

Correction: The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The incarceration fiscal notes are based on December 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. <u>Based on the most recent population projections and estimated available prison bed capacity, there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.</u> That means the number of beds needed is always equal to the projected additional inmates due to a bill.

As with the AOC's analysis, the Sentencing Commission cannot project the number of convictions that would result from the Class H felony in Section 1 of this legislation. Since the proposed section expands an existing offense, the Sentencing Commission does not have any historical data from which to estimate the impact on the prison population. It is not known how many offenders might be sentenced under this subsection. If, for example, there were three convictions for this offense per year, this would result in the need for one additional prison bed in the first year and two additional prison beds in the second year due to active sentences and post-release sentencing revocations. In FY 2005-06, the first year of prison impact, each prison bed will cost, on average, $23,854 per year to operate.[1] In addition, approximately 64 percent of Class H felons receive non-active sentences. The majority receive an intermediate sentence or supervised probation, and are supervised by the Division of Community Corrections at a cost of $1.75 to $10.06 per offender per day.

SOURCES OF DATA: Department of Insurance, Department of Justice, Department of Correction, Sentencing Policy and Advisory Commission, Administrative Office of the Courts.

---

[1] Operating costs are based on actual 2002-03 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A 3% annual inflation rate is added each year.

TECHNICAL CONSIDERATIONS: The bill requires the revenue collected from the application and renewal fees to be deposited into the Insurance Regulatory Fund and authorizes those fees to be used to implement the bill. As noted above, the Insurance Regulatory Fund can only be used to reimburse the General Fund for money appropriated to the Department of Insurance for specified purposes. Thus, under existing law, in order to use fees deposited into the Insurance Regulatory Fund, it would be necessary to first appropriate funds from the General Fund to the Department of Insurance.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marilyn Chism, Dave Crotts, Chloe Gossage

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: July 7, 2004

Signed Copy Located in the NCGA Principal Clerk's Offices