

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1361

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1361

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7501

Committee Clerk Signature

*Ellen Retanof*

**Chairman Keiser: Opened the hearing on HB 1361 relating to licensing requirements for professional employer organizations & declare an emergency.**

Bette Grande~Representative District 41. Introduces Al Jeager.

Al Jeager~Secretary of State. This bill was drafted by our office. A couple of years ago this body passed legislation allowing registration of professional employee organization appeals

with our office. I estimated three or four companies that would use this. The fact is, today we have over thirty. The license fee is a thousand dollars, but with over thirty companies, we also have experienced challenges for reporting requirements and financial information. This is what prompted this bill. I will have Clara Jenkins and pass out testimony. When this bill came out,

Clara was contacted by a representative of the National Association Professional Employee Board Organization. They would sent to our office what they thought about the bill. It was

directed to Representative Grande. We have had no communication with them. If they had concerns, they chose not to bring it to my office and we became aware through a third party.

Clara Jenkins~Director of Secretary of State. See testimony attachment.

Chairman Keiser: Should the performance bond correlate with the disclosure?

Jenkins: The application doesn't require any disclosure or what the disclosure is. There has to be some reporting feature. Maybe on the renewal process because on the front end that employer isn't going to know what his exposure is until he has acquired those files.

Al Jeager-Clara is not a trained auditor reviewer of complex financial statements. The time she spends reviewing complex things and the back and forth, we certainly earned the money. This is more than our office can handle.

Chairman Keiser: I want to bring to attention the concern Al Jeager about he did not have an auditor in his office.

Todd Fuchs~Payroll Express Inc. from Fargo. I initially went to Bette and asked for her help. We were asked if we wanted to do this audit thing, well, it's good for industry. We initially set up so there was a review financial which cost me \$1500. That was more than I thought it was going to cost. When it came around the audited financial, finding a auditor, in the middle of summer in Fargo, auditors are just buried. Now it's \$5500. I now have \$7000 into thing. We do need some protection. We want to put some teeth into the registration.

Representative N Johnson: What would getting a bond cost you?

Fuchs: I haven't looked into it but I hope is less than \$5500.

Art Geiger~President and owner of Avitus Group. I am in opposition of HB 1361. See testimony attachment.

Representative Amerman: What does this bill do?

Geiger: It eliminates minimum requirement & standard for business to operate in the PEO industry.

Vice Chairman Kasper: If you rewrite something in North Dakota statue and keep your standards, is there an area that could be compromised.

Geiger: I'm not sure I can answer that in total. I learned some things here listening from the Secretary of State Office. I was surprised by some of the comments. I have not heard these kinds of concerns and I need to learn some more from some of these issues.

Vice Chairman Kasper: Do the other 35 states you mentioned that adopted your model standard require audited financial statements and if so are they as costly in each of those states.

Geiger: You can get a financial statement audited and send it to all 35 states, yes that is a possibility. I think there should be some solution to how a separate document could be separated from the full financial audit. Some companies have gotten so large and complex that they have misrepresented through financial documents the strength of those companies. This is what we been trying to avoid in our efforts to enact legislation as the act in North Dakota. Another surprising this I heard in Secretary of State's testimony was that there are 33 businesses trying to do business in North Dakota. This would explain the importance why we need such correct oversight. This industry is growing rapidly, the nature of the way business are treated in America, there will be employers that will seek out the services of the PEO. PEO's will continue to grow, while it's a good thing, we want to make certain that these businesses don't take advantages of North Dakota, right now with a limited number of PEO's. This issue will be more complex and require all of us the way we will oversee the management of it. It's not uncommon for business to seek regulation and our industry has done so because of the complexity & nature of our business. That is what I'm here for is to promote PEO's, while I understand the concerns, I'm thoroughly opposed to the language of this bill and I hope we can find a solution.

Representative Thorpe: With all the over striking, do you feel our code is over zealous or are there any parts that we are eliminating that we should keep?

Geiger: No, I don't think it's over zealous and I do have empathy to Todd's comments. I was surprised at the amount that he was charged for an audit. The nature of the language, we feel we could modify or make some adjustments, but now in the nature of HB 1361.

Representative Gruchalla: The point of substituting a bond for the audited financial statement, that slot is what really bothers you?

Geiger: No, the bond has pluses & minuses. Can it be an adjustment, perhaps in unison with some of the other standards that we are requiring?

Vice Chairman Kasper: You have seen financial scandals where financial statements were manipulated by some pretty large accounting firms and in house accountants? If you had a bond in North Dakota you would not have to be required to be bonded in all the other 35 states unless they require?

Geiger: My comment was if we went that route in the model bill and required bonding everywhere that would be viewed as a negative. So consequently, when the audited from the individual state by state and we thought a better oversight.

Chairman Keiser: You can have a negative working capital and still have tremendous value. You can have fixed not liquid assets and have negative working capital. You have no cash flow.

Geiger: We felt that the working capital would demonstrate that there was a cash flow evident; they could substantiate any demands that were required from the tax standpoint, the tax liability as well as the consumer's liability.

Chairman Keiser: Let me follow up on some earlier discussion, if bonds are utilized in any form and adjustment of this law, should the bond be related to the risk?

Geiger: I would believe that would be very valid.

Chairman Keiser: Does retained earnings have any relative value compared to working capital?

Geiger: I'm not an accountant, but I would say no.

Chairman Keiser: Is an audit absolutely essential or could a review acceptable?

Geiger: I think if we have certain demands in the review, it could be. That is why I said I would be open to discussion, we can find solutions.

Anyone here in opposition, neutral?

Jeager: The frustration from our office is that this industry doesn't want to communicate with us. I'm not saying this is perfect, but we have a concern. When a national association says they are going to give us information and we get it through somebody else, I don't know if we are the advisory here? We are just trying to perform our job. If we are getting 33 audit reports defining what working capital is, there is something wrong with that term. If something can be worked out, I don't have a problem with that.

Vice Chairman Kasper: The 33 of the 35 have not complied with the requirement, have they lost their license?

Jenkins: The law says now that if they don't have a minimum of \$100,000 working capital.

Jeager: We do not have expertise in these complex financial statements.

Kasper: What does the law say right now if the company has not given you the audited financial statement, is their license revoked or carries on the license?

Jenkins: What the law says right now, I need application, financial report and if working capital is less than \$100,000, you submit a bond as well. If you can't submit the bond, your license doesn't get issued.

Vice Chairman Kasper: If they have not given you a financial statement, they have not complied with the law?

Jenkins: Correct.

Vice Chairman Kasper: Then do you revoke their license?

Jenkins: They are done and they start over.

Vice Chairman Kasper: How many are licensed currently?

Jenkins: Thirty three.

Geiger: As the industry grows, there is an organization that is call ESAC, very similar to a organization like FDIC, a PEO can get ESAC accreditation. ESAC stands for Employer Services Accrediting Corporation and to be accreted, you have to go through some pretty rigorous financial review. You could have ESAC accreditation and take the burden of the Secretary of State office for review. That is one possibility for resolution.

Chairman Keiser: Representative Gruchalla is the carrier; I'm going to appoint a subcommittee with Representative Gruchalla, Representative Vigesaa, & Gordie Smith. Gordie, we need accounting expertise, would you sit in? Al Jeager, could Clara Jenkins or both sit in? Art Geiger, you can too. We want to get this done in a reasonable time frame and we want to solve the problem for the Secretary of State and protect the consumers.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1361

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 9, 2009

Recorder Job Number: 9003

Committee Clerk Signature *Ellen Litang*

**Chairman Keiser: Opened the committee work session on 1361.**

Representative Gruchalla: On the PEO, I met with Secretary of State Office and according to the auditor office, their recommendations are is that whole states ask for a bond. This is a professional employment services when you hire outside agencies to take care of your payroll deductions and all that type of stuff. The reason that HB 1361 is asking for this certified audit is that most states ask for a bond. There was an issue in North Carolina where the PEO did not pay withholding for a company for three years. When the tax went to get collected, they went after the client not the PEO. By having a bond, you are protected. Job Services, there are 20 PEO in North Dakota that are not licensed. So that means we can't go out of state to get the money if something would go wrong, only jurisdiction here. So a bond like this would cover a situation like this. Another reason for having this audit is that if a CPA signs on the form it gives some credibility to the audit. Those are the main points. So the recommendation is we put \$100,000 bond for the first year and then 5% on the form 941 for subsequent years.

Chairman Keiser: Do you have the amendment for that?

Representative Gruchalla: No, I do not.

Representative N Johnson: That would satisfy the Secretary of State and the Auditor?

Representative Gruchalla: They would both be happy with Auditor and the Secretary of State.



Chairman Keiser: What about the PEO's

Representative Gruchalla: I haven't heard.

Vice Chairman Kasper: The one PEO from Montana wanted to keep it the way it is, but he has a huge PEO that works in multiple states. He can afford the audit. A lot of these other PEO's are smaller is large.

Chairman Keiser: Could you get that amendment?

Chairman Keiser: Closes work session for HB 1361.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1361

**House Industry, Business and Labor Committee**

Check here for Conference Committee

**Hearing Date:** February 11, 2009

**Recorder Job Number:** 9169

Committee Clerk Signature
---------------------------

**Chairman Keiser: Opened the committee work session on 1361.**

Representative Gruchalla: Pass out the amendments from Legislative Council and testimony for attachments, it's easier to read.

Vice Chairman Kasper: Do we have a penalty if a PEO is not licensed and not doing the bond or 5%?

Chairman Keiser: I think Tyler can look that up.

Vice Chairman Kasper: If we don't have a penalty, maybe should have one to put some teeth into it.

Chairman Keiser: One of the penalties is they can with draw the license.

Representative Amerman: Is the reason putting in 500,000, from what I understood you can't get at them because they are out of state. So, if there is a penalty, can we still get at them?

Representative Gruchalla: That's possibly true because that is the issue with the bond, you can't go out of state to do anything.

Chairman Keiser: Read Secretary of State's law for imposing a penalty. We do have a penalty section.

Representative Nottestad: Moves to adopt amendments 0101.

Representative N Johnson: Second.

Voice roll call was taken with all aye's and 0 nay's.

Chairman Keiser: What are the wishes of the committee?

Voting roll call was taken on HB 1361 for a Do Pass as Amended with 12 ayes, 0 nay's, 1  
absent and Representative Gruchalla is the carrier.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1361

Page 1, line 1, after "to" insert "create and enact subsection 11 to section 43-55-01 and two new sections to chapter 43-55 of the North Dakota Century Code, relating to professional employer organizations; to"

Page 1, after line 4, insert:

**"SECTION 1.** Subsection 11 to section 43-55-01 of the North Dakota Century Code is created and enacted as follows:

11. "Working capital" means current assets less current liabilities as defined by generally accepted accounting principles."

Page 2, line 6, overstrike "by jurisdiction of each name under" and insert immediately thereafter "of jurisdictions in"

Page 2, replace lines 17 through 29 with:

- "i. A An audited financial statement, verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located, as of a date not earlier than one hundred eighty days for the fiscal year ended immediately before the date submitted to the secretary of state, which is prepared in accordance with generally accepted accounting principles. The financial statement must set forth the financial condition of the professional employer organization over the most recent twelve month operating period and must clearly define the working capital of the professional employer organization. A professional employer organization that has not had sufficient operating history to have a financial statement based upon at least twelve months of operating history shall meet the financial capacity requirements under this chapter and present a financial statement bond as provided under this subdivision for the entire period of its operation section 43-55-05.
  
- j. A copy of the employer's quarterly federal tax return for the quarter ending immediately before the date submitted to the secretary of state. A professional employer organization that has not operated long enough to have filed an employer's quarterly federal tax return shall submit a bond in the amount as provided under section 43-55-05."

Page 3, line 1, remove the overstrike over "a:"

Page 3, remove the overstrike over lines 4 through 15

Page 3, line 16, remove the overstrike over "under this chapter;" and after "or" insert "and"

Page 3, line 17, remove the overstrike over "(2) A bond with a minimum value of", after "one" insert "five percent of the wages, tips, and other compensation reported on the

employer's quarterly federal tax return for the quarter ending immediately before the date submitted to the secretary of state but not to exceed five", and remove the overstrike over "~~hundred thousand dollars to be~~"

Page 3, remove the overstrike over lines 18 through 25

Page 4, line 3, remove the overstrike over "~~Financial capability~~", replace "**Bond**" with "**and bond**", and after the second boldfaced period insert:

"1."

Page 4, line 4, remove "continuously" and remove the overstrike over the overstruck colon

Page 4, line 5, after "+" insert "a." and remove the overstrike over "~~A minimum working capital of one hundred thousand dollars as reflected in the~~"

Page 4, remove the overstrike over line 6

Page 4, line 7, remove the overstrike over "~~and each annual renewal;~~" and after "or" insert "and"

Page 4, line 8, after "2-" insert "b.", remove the overstrike over "A", remove "a", and overstrike "one" and insert immediately thereafter "five percent of the wages, tips, and other compensation reported on the employer's quarterly federal tax return for the quarter ending immediately before the date submitted to the secretary of state but not to exceed five"

Page 4, line 9, after the period insert:

"2. A professional employer organization that does not have a minimum working capital of one hundred thousand dollars shall submit a bond in the amount of one hundred thousand dollars or five percent of the wages, tips, and other compensation reported on the employer's quarterly federal tax return for the quarter ending immediately before the date submitted to the secretary of state, whichever is greater but not to exceed five hundred thousand dollars.

3. A professional employer organization that has not operated long enough to have completed a full fiscal year or filed an employer's quarterly federal tax return shall submit a bond in the amount of one hundred thousand dollars.

4."

Page 4, line 10, remove "submitted with a license application or a renewal application and be"

Page 4, line 14, remove the overstrike over "~~A bond provided under this section may not be included for the~~"

Page 4, remove the overstrike over line 15

Page 4, after line 15, insert:

"5. Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the secretary of state at least forty-five days before cancellation or nonrenewal.

**SECTION 4.** Two new sections to chapter 43-55 of the North Dakota Century Code are created and enacted as follows:

**Confidential records.**

1. The social security number or federal tax identification number disclosed or contained in an application filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of an application is released to the public.
  
2. All audited financial reports and employers' quarterly federal tax returns are confidential except to the extent necessary for the proper administration of this chapter by the secretary of state or the attorney general.

**Interagency cooperation.** A state agency, in performing duties under other laws that affect the regulation of professional employer organizations, shall cooperate with the secretary of state as necessary to administer and enforce this chapter."

Renumber accordingly

Date: Feb 11 - 2009

Roll Call Vote # 1

### 2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1361

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

X Ab

Total (Yes) 12 No 0

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
all ayes, 0 nays, 1 absent

Date: Feb 11 - 2009  
Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1361

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman <i>Kasper</i>	7		Representative Boe	7	
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider		
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby	7				
Representative Sukut	7				
Representative Vigesaa	7				

Total (Yes) 12 No 0

Absent 1

Floor Assignment *Gruchalla*

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



REPORT OF STANDING COMMITTEE

HB 1361: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1361 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact subsection 11 to section 43-55-01 and two new sections to chapter 43-55 of the North Dakota Century Code, relating to professional employer organizations; to"

Page 1, after line 4, insert:

**"SECTION 1.** Subsection 11 to section 43-55-01 of the North Dakota Century Code is created and enacted as follows:

11. "Working capital" means current assets less current liabilities as defined by generally accepted accounting principles."

Page 2, line 6, overstrike "by jurisdiction of each name under" and insert immediately thereafter "of jurisdictions in"

Page 2, replace lines 17 through 29 with:

- i. A An audited financial statement, verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located, as of a date not earlier than one hundred eighty days for the fiscal year ended immediately before the date submitted to the secretary of state, which is prepared in accordance with generally accepted accounting principles. The financial statement must set forth the financial condition of the professional employer organization over the most recent twelve month operating period and must clearly define the working capital of the professional employer organization. A professional employer organization that has not had sufficient operating history to have a financial statement based upon at least twelve months of operating history shall meet the financial capacity requirements under this chapter and present a financial statement bond as provided under this subdivision for the entire period of its operation section 43-55-05.
- j. A copy of the employer's quarterly federal tax return for the quarter ending immediately before the date submitted to the secretary of state. A professional employer organization that has not operated long enough to have filed an employer's quarterly federal tax return shall submit a bond in the amount as provided under section 43-55-05."

Page 3, line 1, remove the overstrike over "a:"

Page 3, remove the overstrike over lines 4 through 15

Page 3, line 16, remove the overstrike over "under this chapter;" and after "or" insert "and"

Page 3, line 17, remove the overstrike over "~~(2) A bond with a minimum value of~~", after "one" insert "five percent of the wages, tips, and other compensation reported on the employer's quarterly federal tax return for the quarter ending immediately before the date submitted to the secretary of state but not to exceed five", and remove the overstrike over "~~hundred thousand dollars to be~~"

Page 3, remove the overstrike over lines 18 through 25

Page 4, line 3, remove the overstrike over "~~Financial capability~~", replace "~~Bond~~" with "and bond", and after the second boldfaced period insert:

"1."

Page 4, line 4, remove "continuously" and remove the overstrike over the overstruck colon

Page 4, line 5, after "1." insert "a." and remove the overstrike over "~~A minimum working capital of one hundred thousand dollars as reflected in the~~"

Page 4, remove the overstrike over line 6

Page 4, line 7, remove the overstrike over "~~and each annual renewal;~~" and after "or" insert "and"

Page 4, line 8, after "2." insert "b.", remove the overstrike over "A", remove "a", and overstrike "one" and insert immediately thereafter "five percent of the wages, tips, and other compensation reported on the employer's quarterly federal tax return for the quarter ending immediately before the date submitted to the secretary of state but not to exceed five"

Page 4, line 9, after the period insert:

"2. A professional employer organization that does not have a minimum working capital of one hundred thousand dollars shall submit a bond in the amount of one hundred thousand dollars or five percent of the wages, tips, and other compensation reported on the employer's quarterly federal tax return for the quarter ending immediately before the date submitted to the secretary of state, whichever is greater but not to exceed five hundred thousand dollars.

3. A professional employer organization that has not operated long enough to have completed a full fiscal year or filed an employer's quarterly federal tax return shall submit a bond in the amount of one hundred thousand dollars.

4."

Page 4, line 10, remove "submitted with a license application or a renewal application and be"

Page 4, line 14, remove the overstrike over "~~A bond provided under this section may not be included for the~~"

Page 4, remove the overstrike over line 15

Page 4, after line 15, insert:

"5. Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the secretary of state at least forty-five days before cancellation or nonrenewal.

**SECTION 4.** Two new sections to chapter 43-55 of the North Dakota Century Code are created and enacted as follows:

**Confidential records.**

1. The social security number or federal tax identification number disclosed or contained in an application filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of an application is released to the public.
2. All audited financial reports and employers' quarterly federal tax returns are confidential except to the extent necessary for the proper administration of this chapter by the secretary of state or the attorney general.

**Interagency cooperation.** A state agency, in performing duties under other laws that affect the regulation of professional employer organizations, shall cooperate with the secretary of state as necessary to administer and enforce this chapter."

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1361

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1361

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10630, 10632

Committee Clerk Signature

Minutes:

*Troy Schuchard*

**Chairman Klein:** Opened the hearing on HB 1361, all members present.

**Clara Jenkins:** Business Systems Director, in place of Secretary of State Al Jaeger testified in support of HB 1361. (See attachment #1)

**Chairman Klein:** Instead of asking for a financial statement, we just want a bond. Is that correct?

**Clara Jenkins:** That is absolutely right because a financial statement does not ensure payment of any fees to any state agency nor does it guarantee the payment of any fees that they are responsible for any of their business clients. The bond would afford some degree of assurance that those payments will be made. A financial statement is just snapshot at the end of their fiscal calendar and that would state their financial position, but does not ensure payments.

**Senator Anidrist:** Tell us a little more about what a PEO, Professional Employer Organization is.

**Clara Jenkins:** A PEO is a professional human resource person. They come into a small business and they will assume all of the Human Resource responsibilities for a company, for

instance; doing payroll, taking care of State and Federal requirements, Job Service, and WSI paperwork. They are considered a co-employer with the business owner.

**Senator Anidrist:** Are they mostly domiciled out of the State?

**Clara Jenkins:** We have 2 companies domiciled here in ND; the other 31 are from out-of-state.

**Senator Anidrist:** Is the bond readily available at a reasonable price?

**Clara Jenkins:** I believe these bonds will be issued by any insurance agent.

**Bette Grande:** Representative District 41 testified in support of HB 1361.

**Todd Fuchs:** Co-owner of Payroll Express testified in support of HB 1361. To complete our renewal in 2008, it was necessary for us to spend \$5500, and we had the auditors in our office for about a week and a half just to complete the audit that has no value. I have better things to do with my money.

**Chairman Klein:** You heard Senator Andrist's question about handling the cash, could you give us an idea of what it is that you do?

**Todd Fuchs:** We go around to businesses; in our case we target small business with 5-9 employees, and pool them together under our umbrella so they are co-employed between Joe's Barber Shop and Pay Roll Express, for example. Joe sends us the hours for his 5 employees, we tabulate it, create payroll, process it, do all the state and federal withholdings, and process the health insurance because all the employees are part of Pay Roll Expresses group insurance plan, dental, vision, and 401K. One of the things these clients like is the idea that they don't have to educate themselves on that stuff. After everything is done, we give them one bill with our percentages and markup on it. Included on their bill are all of the withholdings, insurances, any deductions, garnishments, and various state and federal deductions.

**Senator Potter:** If you mess up and the employer gets penalized for failure to pay taxes or something, does your contract obligate you to pick up those inherent penalties?

**Todd Fuchs:** We are obligated to make sure all those things are paid and if we didn't we would be out of business in no time.

**Senator Potter:** Is it your understanding that the bond would provide the guarantee of those payments?

**Todd Fuchs:** At least for the agencies, yes. For the employees, I am not sure how would work. The agencies would have some mechanism to get those funds.

**Senator Nodland:** In essence you compete with small CPA firms.

**Todd Fuchs:** Yes. We hear that a lot. What we do different from the CPA firms is when we market ourselves to small business, the things that we do that a CPA firm doesn't is we follow up with our co-employer and hold them accountable.

**Senator Nodland:** To obtain the bond, the company does have to get an audit and financial statement; but I would imagine it would be based on the amount of liability.

**Todd Fuchs:** Correct. It takes the responsibility over, is this company good enough for a bond. That is up to the bonding agency to go over their books to justify whether or not they want to issue a bond. That will be up to them.

**Senator Wanzek:** Are the employees your employees or are they Joes Barber Shop's employees?

**Todd Fuchs:** They are Co-employees. They are under our numbers for unemployment and that stuff. This is why we are able to offer our group health insurance to all of those employees.

**Senator Wanzek:** So essentially you manage the whole business from a Human Resources standpoint.

**Todd Fuchs:** Correct.

**Senator Horne:** If you went through the bond, how much would that cost you?

**Todd Fuchs:** We have been told for the \$100K costs about \$400.

**Bill Dwanic:** Representing National Association of Professional Employer Organization testified in support and handed out letter from Adam Peer.

**Chairman Klein:** Closed the hearing on HB 1361.

**Chairman Klein:** Opened discussion on HB 1361.

**Senator Wanzek:** Motion on the amendments proposed by the Secretary of State.

**Senator Nodland:** Seconded

**Chairman Klein:** Motion for a Do Pass on the Amendments proposed by the Secretary of State's office is approved 6-1.

**Senator Wanzek:** Motion for a Do Pass as amended.

**Senator Nodland:** Seconded

**Chairman Klein:** Motion for a Do Pass as amended of the engrossed HB 1361 is approved 7-0, **Senator Wanzek** to carry.



++

Date: 3/10/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1361

Senate

Committee

**Industry, Business and Labor**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  **Pass**  **Do Not Pass**  **Amended**

Motion Made By Senator Wanzek Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm		✓
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment \_\_\_\_\_

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

++

Date: 3/10/09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1361

Senate

Committee

**Industry, Business and Labor**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Pass  Do Not Pass  Amended

Motion Made By Senator Wanzek Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Wanzek

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

**REPORT OF STANDING COMMITTEE**

HB 1361, as engrossed: 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). Engrossed HB 1361 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "11" with "9" and replace "43-55-01" with "43-55-08"

Page 1, line 7, replace "11" with "9" and replace "43-55-01" with "43-55-08"

Page 1, replace lines 9 and 10 with:

"9. Upon request of the secretary of state or attorney general, a professional employer organization promptly shall provide an audited financial statement verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located."

Page 2, line 25, remove the overstrike over "A", remove "An audited", and overstrike "financial statement, verified by a certified public accountant"

Page 2, line 26, overstrike "licensed to practice in the jurisdiction in which the accountant is located,"

Page 2, line 27, remove "for the fiscal year ended"

Page 2, line 28, remove "immediately" and overstrike "before the date submitted to the secretary of state, which is"

Page 2, line 29, overstrike "prepared in accordance with generally accepted accounting principles."

Page 3, line 2, overstrike "A professional employer organization that has not had sufficient"

Page 3, overstrike lines 3 and 4

Page 3, line 5, overstrike "under this chapter and present a"

Page 3, line 7, replace "federal tax return" with "contribution and wage report to job service North Dakota"

Page 3, line 9, remove "operated long enough to"

Page 3, line 10, remove "have" and replace "federal tax return" with "contribution and wage report with job service North Dakota"

Page 3, line 12, after "year" insert "and may be renewed within sixty days before the expiration of the license by submitting to the secretary of state:

- a. The information required in subsection 2;
- b. The license fee provided in section 43-55-04; and
- c. A bond as provided under section 43-55-05"

Page 3, line 13, overstrike "a. Within sixty days before the expiration of a license, the licensee may apply to"

Page 3, overstrike lines 14 through 27

Page 3, line 28, overstrike "under this chapter;" and remove "and"

Page 3, line 29, overstrike "(2) A bond with a minimum value of" and remove "five percent of the wages, tips,"

Page 3, remove lines 30 and 31

Page 4, line 1, remove "to the secretary of state but not to exceed five" and overstrike "hundred thousand"

Page 4, overstrike lines 2 through 10

Page 4, line 11, overstrike "5."

Page 4, line 14, overstrike "6." and insert immediately thereafter "5."

Page 4, line 18, overstrike "**Financial capability**" and replace "and bond" with "**Bond**"

Page 4, line 19, overstrike the colon

Page 4, line 20, remove "a." and overstrike "A minimum working capital of one hundred thousand dollars as reflected in"

Page 4, overstrike line 21

Page 4, line 22, overstrike "application and each annual renewal;" and remove "and"

Page 4, line 23, remove "b.", overstrike "A" and insert immediately thereafter "a", after "of" insert "the greater amount of", remove the overstrike over "~~one~~" and insert immediately thereafter "hundred thousand dollars or", after "the" insert "total", and remove ", tips, and"

Page 4, line 24, remove "other compensation" and replace "federal tax return" with "contribution and wage report to job service North Dakota"

Page 4, remove lines 28 through 31

Page 5, remove lines 1 and 2

Page 5, line 3, replace "3." with "2." and remove "operated long enough to have"

Page 5, line 4, remove "completed a full fiscal year or" and replace "federal tax return" with "contribution and wage report with job service North Dakota"

Page 5, line 6, replace "4." with "3."

Page 5, line 9, overstrike "A bond provided under this"

Page 5, overstrike lines 10 and 11

Page 5, line 12, replace "5." with "4."

Page 5, line 23, after "and" insert "the" and replace "federal tax returns" with "contribution and wage report to job service North Dakota"

Renumber accordingly

2009 TESTIMONY

HB 1361

Testimony for PEO Bill:

HB 1361 is being introduced to replace the audited financial statement requirement for a PEO license with a mandatory bond for all license applicants and to provide an emergency clause to simplify the process for all applicants immediately after the approved bill is signed.

Replacing the financial statement with a bond for all licensees is being proposed for the following reasons:

- The audited financial report is public record. Applicants have expressed considerable concern that competitors can review and obtain copies of their audited financial reports.
- For the initial license, the audited financial statement must be verified by a CPA within 180 days prior to the application. In many cases, this has caused applicants to seek a special audit report from their CPA because their annual audit report they routinely acquire for business purposes was verified more than 180 days prior to the date of their decision to seek a license and do business in North Dakota. I've been told that for some, the special audit report has cost several thousands of dollars and often takes several months to obtain. Their regular annual audits are routinely scheduled with their CPAs; these special reports usually take several months to obtain because the CPAs are otherwise employed. The special audit report usually does not satisfy the company's normal audit report requirements and is therefore an extra expense to obtain the license from North Dakota. We've had two out-of-state applicants withdraw their applications rather than "jump through the hoops" to do business in North Dakota.
- Many of the PEO licensees are subsidiary companies of large consolidated organizations. Therefore; these applicants have submitted verified consolidated audit reports that do not define the financial position of the separate subsidiary organization applying for the license. These audit reports are not acceptable since these subsidiary organizations are separate legal entities. These subsidiary organizations have expressed distress that North Dakota's licensing requirements are unreasonable because these large consolidated organizations have to seek separated audit reports to enable their subsidiary organizations to do business in North Dakota. Most of the applications from these types of applicants have been pended with the Secretary of State for several months because of the magnitude of the task for the CPAs to dissect and separately audit the financial details of these complex organizations. One might conclude that these separated audit returns have been secured with considerable cost.
- N.D.C.C., Section 43-55-03, subsection 2i requires that the audited financial report must include a specific line item defined as working capital. Of the 33 licenses issued, 33 accountants have advised that "working capital" is not a conventional line item in an audited financial report and 31 of the reports submitted were not acceptable because they did not include that line item. Since "working capital" is not specifically defined in Chapter 43-55, one can only wonder about the basis of the number that has been supplied on the audited financial reports.
- Requiring the bond for all applications without the audited financial report will streamline the licensing process in the Secretary of State's Office. Eliminating the audited financial statement will save the time spent reviewing audited financial reports that often exceed 50 pages, writing multiple letters and phone calls seeking and explaining the audited financial statement requirements, and scanning these large documents. Many applicants have stated that the bond is much cheaper to acquire than the special audited reports. Of the 33 applications that have been processed, only 2 submitted acceptable audited financial reports. Those 2 applicants are the only North Dakota companies licensed as PEOs.

- N.D.C.C., Section 43-55-05 provides that licensees must have working capital of \$100,000 or maintain a bond with 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. If a PEO that does not have a bond on file fails to make any of these mentioned payments, chances are good that the company no longer has the \$100,000 working capital declared in the audited financial report. A bond for all applicants would insure that there would always be a resource to satisfy these obligations up to \$100,000. Of the 33 licenses that have been issued, only 3 companies supplied a bond. Of these 3 bonds, 2 have been replaced with audit reports upon renewal that demonstrated the minimum of \$100,000 working capital. Only 1 bond remains in force.

We respectfully request your consideration of the amendments to the PEO-related statutes and that you adopt the emergency clause to expedite future applications and the 5 applications currently pending for issues related to audited financial reports.



MR CHAIRMAN - MEMBERS OF THE COMMITTEE

MY NAME IS ARTHUR GEIGER, PRES/OWNER OF AG  
AG DOES BUSINESS IN BISMARCK AT \_\_\_\_\_  
WE CURRENTLY HAVE \_\_\_\_\_ CLIENTS WHICH INCLUDES  
\_\_\_\_\_ WSE WITH ANNUAL PAYROLL OF \_\_\_\_\_

I AM HERE TODAY FOR 2 REASONS:

- 1) I AM AN ADVOCATE OF MY INDUSTRY TO HAVE <sup>HIGH</sup> STANDARDS AND
- 2) I AM AN ADVOCATE OF CONSUMER PROTECTION

I OPPOSE HB 1361 BECAUSE <sup>IT</sup> OPENS THE DOOR FOR UNQUALIFIED BUSINESSES IN OUR INDUSTRY AND IT ~~PUTS~~ <sup>CREATES</sup> UNDO RISK FOR THE STATE AND THE CONSUMER. ~~IT~~ <sup>IT</sup> BRINGS A NEGATIVE LIGHT TO THE CURRENT LEGISLATION GOVERNING THE PEO INDUSTRY.  
- MORE  
- NOT BEEN NICE

BUSINESS OWNERS AND OPERATORS OF A PEO ASSUME SIGNIFICANT RESPONSIBILITY AND LIABILITY RELATING TO FINANCIAL AND TAX ACCOUNTABILITY. EASING THE FINANCIAL REQUIREMENTS FOR THESE BUSINESSES WILL ONLY CONTRIBUTE TO ALLOWING A FINANCIALLY UNSTABLE <sup>PEO</sup> TO OPERATE IN ND.

- 1) IT ELIMINATES MINIMUM <sup>FINANCIAL</sup> STANDARDS
- 2) IT ELIMINATES THE INDEPENDENT REVIEW OF A BUSINESS' REPRESENTATION OF ITS FINANCIAL POSITION

3) IT IMPOSES A GREATER BURDEN ON A SMALL ~~PER~~ BUSINESS OBTAINING PEO SERVICES

I AM NOT AWARE OF ANY BUSINESS IN OUR INDUSTRY OR IN ND THAT FAVORS HB 1361. I UNDERSTAND THE NATIONAL OFFICE OF THE INDUSTRY ASSOCIATION (NAPEO) HAS SCAWARDED EXTENDED COMMENTS ~~AND~~ WRITING TO EACH OF YOU ON THE NEGATIVE ASPECTS OF THE BILL.

IN UNISON WITH NAPEO, I AM HAPPY TO HAVE THE OPPORTUNITY TO DISCUSS WITH THE APPROPRIATE PARTIES HOW TO IMPROVE ANY ADMINISTRATIVE BURDENS THAT MAY BE PERCEIVED <sup>BY THE</sup> SOS OFFICE.

MY COMPANY HAS BEEN IN BUSINESS 13 YRS. WE HAVE CUSTOMERS IN 22 STATES BUT PRIMARILY IN ND, MT, WY, CO, CAL. I HAVE PERSONALLY INTERACTED WITH AGENCIES IN EACH OF THESE PRIMARY STATES AND IN MANY OF THE OTHER 17 STATES. ~~TO~~ TO PROMOTE A QUALITY SERVICE WHICH IS PROVEN TO BE <sup>VERY IMPORTANT</sup> I WAS PART OF THE VERY POSITIVE PROCESS IN ND WHEN ~~SECTION 43-55, THE CURRENT LEGISLATION,~~ ~~WAS ENACTED~~ THE CURRENT LEGISLATION SECTION 43-55 OF THE ND CENTURY CODE WAS GAZETED

IT WOULD BE A SETBACK FOR THE STATE, THE CONSUMER AND THE INDUSTRY IF HB 1361 WAS TO PASS

# Gruchalla - Easier to read for testimony

## PROPOSED AMENDMENTS TO HOUSE BILL 1361

### Add a New subsection 11 to 43-55-01

11. "Working capital" means current assets less current liabilities as defined by generally accepted accounting principles.

### 43-55-03. Licensing requirements.

1. ~~After October 1, 2007,~~ a A person may not provide, advertise, or otherwise hold itself out as providing professional employer services, unless the person is licensed under this chapter. A person engaged in the business of providing professional employer services shall obtain a license regardless of its use of the term or conducting business as a "professional employer organization", "staff leasing company", "registered staff leasing company", "employee leasing company", "administrative employer", or any other name.
2. Each applicant for licensure shall provide the secretary of state with the following information:
  - a. The name of the professional employer organization and any name under which the professional employer organization intends to conduct business in this state.
  - b. The designation of organization of the applicant whether domestic or foreign; a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, sole proprietor, or any other person subject to a governing statute; and the jurisdiction of origin of the organization.
  - c. The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state.
  - d. The professional employer organization's taxpayer or employer identification number.
  - e. The date of the end of the applicant's fiscal year.
  - f. A list ~~by jurisdiction of each name under~~ of jurisdictions in which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities.

- g. A statement of ownership, which must include the name and address of any person that owns or controls twenty-five percent or more of the equity interests of the professional employer organization.
  - h. A statement of management, which must include the name and address of any individual who serves as president, chief executive officer, or otherwise has the authority to act as a senior executive officer of the professional employer organization.
  - i. ~~A~~An audited financial statement, verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located, ~~as of a date not earlier than one hundred eighty days for the fiscal year ended immediately~~ before the date submitted to the secretary of state, which is prepared in accordance with generally accepted accounting principles. ~~The financial statement must set forth the financial condition of the professional employer organization over the most recent twelve-month operating period and must clearly define the working capital of the professional employer organization.~~ A professional employer organization that has not had sufficient operating history to have a financial statement based upon at least twelve months of operating history shall meet the financial capacity requirements under this chapter and present a financial statement bond as provided under ~~this subdivision for the entire period of its operation~~ section 43-55-05.
  - j. A copy of the federal form 941, Employer's Quarterly Federal Tax Return for the quarter ending immediately before the date submitted to the secretary of state. A professional employer organization that has not operated long enough to have filed a federal form 941, Employer's Quarterly Federal Tax Return, shall submit a bond in the amount as provided under section 43-55-05.
3. A license issued under this section is valid for one year.
4. a. Within sixty days before the expiration of a license, the licensee may apply to renew the license by submitting to the secretary of state the information required in subsection 2 along with the required license fee.

- 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~~ and
  - (2) A bond with a minimum value of ~~one~~ five percent of the wages, tips, and other compensation reported on the federal form 941, Employer's Quarterly Federal Tax Return for the quarter ending immediately before the date submitted to the secretary of state but not to exceed five 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.
5. A person applying for licensure or a renewal of licensure shall maintain continuously its organization's applicable records current and in good standing as otherwise required by law.
  6. The secretary of state shall maintain a list of professional employer organizations licensed under this chapter.

**43-55-05. Financial capability and bond.** A professional employer organization shall maintain either:

1. A minimum working capital of one hundred thousand dollars as reflected in the audited financial statement submitted to the secretary of state with the license application and each annual renewal;~~or and~~
2. A bond with a minimum value of ~~one~~ five percent of the wages, tips, and other compensation reported on the federal form 941, Employer's Quarterly Federal Tax Return for the quarter ending immediately before the date submitted to the secretary of state but not to exceed five hundred thousand dollars as reflected in the financial statement submitted to the secretary of state.
3. A professional employer organization that does not have a minimum working capital of one hundred thousand dollars shall submit a bond in the amount of one hundred thousand dollars or five percent of the wages, tips, and other compensation reported on the federal form 941, Employer's Quarterly Federal Tax Return for the quarter ending immediately before the date submitted to the secretary of state, whichever is greater but not to exceed five hundred thousand dollars.
4. A professional employer organization that has not operated long enough to have completed a full fiscal year or filed a federal form 941, Employer's Quarterly Federal Tax Return, shall submit a bond in the amount of one hundred thousand dollars.
5. The bond must be held by the secretary of state and 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. A bond provided under this section may not be included for the purpose of calculation of the minimum net worth required by this section.
6. Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the secretary of state at least forty-five days before cancellation or nonrenewal.

**New Section:**

**Confidential records.**

1. The social security number or federal tax identification number disclosed or contained in an application filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of an application is released to the public.
2. All audited financial reports and federal forms 941, Employer's Quarterly Federal Tax Return, shall be confidential except to the extent necessary for the proper administration of this act by the secretary of state or the attorney general.

**New Section:**

**Interagency cooperation.** A state agency, in performing duties under other laws that affect the regulation of professional employer organizations shall cooperate with the Secretary of State as necessary to administer and enforce this chapter.

**Emergency Clause**

ALVIN A. JAEGER  
SECRETARY OF STATE

PHONE PAGE www.nd.gov/sos



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

#1  
PHONE (701) 328-2900

FAX (701) 328-2992

E-MAIL sos@nd.gov

March 10, 2009

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

FR: Al Jaeger, Secretary of State (presented by Clara Jenkins)

RE: HB 1361 – Professional Employer Organizations (PEO)

Chapter 43-55 of the North Dakota Century Code was adopted by the 2007 Legislative Assembly. Since the law became effective on October 1, 2007, 33 PEO's have registered with the Secretary of State's office. At the time the legislation was adopted in 2007, it was estimated that only a handful of organizations would be registered.

However, regardless of the number of PEO's registered, the Secretary of State's office has encountered several challenges administering the provisions of this chapter and that is the reason for this bill. Because those challenges were still being identified and discussed since the bill was passed by the House, the Secretary of State is requesting your consideration in adopting the amendments attached to this testimony.

When the amendments are adopted, the bill will remove the requirement that a PEO must submit, along with their registration application or renewal application, an audited financial statement. Instead, a PEO will be required to provide a bond in the amount of either \$100,000 or equal to 5% of the salary paid in North Dakota in the quarter immediately prior to a renewal application, whichever is greater.

The amendments will expedite the processing of applications and renewals and, the Secretary of State believes, will provide better protection for the PEO clients and the state. The reason for the emergency clause is to be able to immediately use the new procedures for all renewals and new applications (five are currently pending).

The audited financial statement is being eliminated for the following reasons:

- To have an applicant submit an audited financial statement has proven to have little value in terms of the information it provides for either the protection of the state or a PEO client. It is a snapshot of one day and is no indication of the continuing financial stability of the licensee.
- As it testified in 2007, the Secretary of State's office has no staff with the accounting credentials to analyze the complex audited financial statements, which have been submitted. This has made it very challenging to process the applications in a timely manner and to verify if the applicant has "working capital" of \$100,000, as is required by N.D.C.C. § 43-55-03(2)(i). Some of the audit reports are in excess of 50 pages.



Reviewing this volume of pages is compounded by the revelation that the term "working capital" is not conventional terminology used in accounting circles and there is no definition for it in state law. For example, of the 33 applications received, only two submitted financial statements specifically providing the information (working capital) in the initial application and they were two North Dakota based PEO's. Therefore, it raises a question about the accuracy of the information related to working capital when the information is ultimately provided.

- As it is, if asked, the Secretary of State's office cannot make any representation of the financial solvency of an applicant nor should it. Despite this, the fact the PEO is licensed can convey an inaccurate impression to a PEO client that the company is financially stable because they may believe the PEO would not have been otherwise licensed by the Secretary of State.
- Under current law, an audited financial statement must be verified by a CPA within 180 days prior to an application being submitted by a PEO to the Secretary of State. In many cases, this timeline has caused applicants to seek a special updated audited financial report, which has been very costly, because their normal annual audit report period occurred prior to the 180 days. Because of the process and cost, it also has been a deterrent for a few applicants.
- Several of the PEO applicants have been subsidiary companies of large consolidated organizations. Therefore, these applicants have submitted verified consolidated audit reports related to the umbrella organization, which do not define the financial position of the separate subsidiary organization applying for the license. Since the subsidiary company is a separate legal entity, a consolidated audit report is not acceptable. It must be specific to the entity applying for the license.
- The audited financial statement is a public record and applicants have been anxious about this information being available to their competitors.
- The application process, with the accompanying audited financial report, has resulted in many hours of staff time, along with many telephone calls, letters, etc. to process and review an application related to information having limited value.

For all of the above reasons, the Secretary of State respectfully requests your consideration of the bill and adopting the attached amendments. Not only will it expedite the application process, it will provide better protection for the PEO client and the state. In addition, based on the above reasons, we also believe the process will be better for the PEO's.

Finally, the Secretary of State has considered the suggestion offered by the National Association of Professional Employer Organizations that the state consider utilizing the services of an independent assurance organization to determine the fitness of an applicant to obtain a license. However, the cost to become accredited by such an organization appears to be quite high and it could be exclusionary thereby preventing smaller by eliminating PEO's from being licensed that could otherwise do so by obtaining a bond as proposed in this bill and as provided under current law.

## AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1361

Page 1, line 1, replace "11" with "9" and replace section "43-55-01" with "43-55-08"

Page 1, line 7, replace "11" with "9" and replace section "43-55-01" with "43-55-08"

Page 1, replace lines 9 and 10 with:

9. Upon request of the secretary of state or attorney general, a professional employer organization must promptly provide an audited financial statement verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located.

Page 2, line 25, remove "An audited", and overstrike "financial statement, verified by a certified public accountant"

Page 2, line 26, overstrike "licensed to practice in the jurisdiction in which the accountant is located, "

Page 2, line 27, remove "for the fiscal year ended"

Page 2, line 28, remove "immediately" and overstrike "before the date submitted to the secretary of state, which is"

Page 2, line 29, overstrike "prepared in accordance with generally accepted accounting principles."

Page 3, line 2, overstrike "A professional employer organization that has not had sufficient "

Page 3, overstrike lines 3 and 4

Page 3, line 5, overstrike "under this chapter and present"

Page 3, line 7, replace "federal tax return" with "contribution and wage report to Job Service North Dakota"

Page 3, line 9, remove "operated long enough to"

Page 3, line 10, remove "have"; and replace "federal tax return" with "contribution and wage report to Job Service North Dakota"

Page 3, line 12, after "year", insert "and may be renewed within sixty days before the expiration of a license by submitting to the secretary of state:

- a. The information required in subsection 2;
- b. The required license fee provided in section 43-55-04; and
- c. The bond as provided under section 43-55-05"

Page 3, line 13, overstrike "a. Within sixty days before the expiration of a license, the licensee may apply to"

Page 3, overstrike lines 14 thru 27

Page 3, line 28, overstrike "under this chapter;" and remove "and"

Page 3, line 29, overstrike "(2) A bond with a minimum value of" and remove "five percent of the wages, tips,"

Page 3, remove lines 30 and 31

Page 4, line 1, remove "to the secretary of state but not to exceed five" and overstrike "hundred thousand"

Page 4, overstrike lines 2 thru line 10

Page 4, overstrike "5."

Page 4, overstrike "6." and immediately thereafter, insert "5."

Page 4, line 18, overstrike "**Financial capability and bond**" and insert immediately thereafter "**Bond**"

Page 4, line 19, insert "a" after "maintain"

Page 4, line 20, remove "a." and overstrike "A minimum working capital of one hundred thousand dollars as reflected in "

Page 4, overstrike line 21

Page 4, line 22, overstrike "application and each annual renewal;" and remove "and"

Page 4, line 23, remove "b.", overstrike "A"

Page 4, line 23, after "one", insert "the greater amount of one hundred thousand dollars  
or"

Page 4, line 23, before "wages", insert "total", and remove ", tips, and"

Page 4, line 24, remove "other compensation" and replace "federal tax return" with "contribution and wage report to Job Service North Dakota"

Page 4, remove lines 28 thru 31

Page 5, remove lines 1 and 2

Page 5, line 3, replace "3." with "2" and remove "operated long enough to have"

Page 5, line 4, remove "completed a full fiscal year or", and replace "federal tax return" with "contribution and wage report to Job Service North Dakota".

Page 5, line 6, replace "4." with "3."

Page 5, line 9, overstrike "A bond provided under this"

Page 5, overstrike lines 10 and 11

Page 5, line 12, replace "5." with "4."

Page 5, line 23, insert "the" after "and"; replace "federal tax returns" with "contribution and wage report to Job Service North Dakota"

Renumber accordingly.

**TESTIMONY ON HB 1361**  
**Industry, Business and Labor Committee**  
Senator Jerry Klein, Chairman  
Tuesday, March 10, 2009

Good Morning Mr. Chairman and members of the Committee, my name is Todd Fuchs from West Fargo. I am co-owner of Payroll Express, Inc., a West Fargo based, locally owned PEO.

First of all, I would like to commend the Secretary of State for all of the work that they have done with the registration of PEO's in North Dakota. Two years ago, the registration process was dumped on them against their wishes and they have been very accommodating to work with.

As a small PEO, we find the current requirement for an "audited financial statement" a financial burden. To complete our renewal in 2008, it was necessary to spend \$5,500 to complete the audit and receive a document that has virtually no value – except that we sent it to the Secretary of State and received our license. In doing that, our financial statement is now public record – anyone can request a copy of that document.

I agree with the Secretary of State, the audited financial statement does not prove or guarantee that the PEO is financially sound, and does not provide the state with any protection against unpaid employment taxes by large out-of-state PEOs. Many of the out-of-state PEOs licensed in North Dakota did <sup>not</sup> meet the minimum working capital requirement and needed to purchase the bond anyway. Audited financials are an expense that a small PEO

cannot afford, especially if they may be required to purchase the bond in addition to the expense of the audited financial statements.

That being said, I understand the position of NAPEO. Most of the large, multi-state PEOs already have audited financial statements, so there is no cost burden to them. It is much easier for them to provide a copy of their audit and could be difficult for them to purchase a bond in each state where they have employees, if that were mandatory in other states as well.

I would ask this committee that you consider the Secretary of State's comments removing the requirement for audited financial statements.

If this committee decides that "audited financial statements" are necessary, I would encourage you to give the small PEOs the option of the audit "OR" purchasing a bond.

Thank you for your consideration.

Todd Fuchs, V.P.  
Payroll Express, Inc.



707 North St. Asaph Street  
Alexandria, Virginia 22314

T 703 836 0466  
F 703 836 0976  
www.napeo.org

March 10, 2009

*Hand Delivered*

Honorable Jerry Klein, Chair  
Senate Committee on Industry, Business, and Labor,  
State of North Dakota  
[jklein@nd.gov](mailto:jklein@nd.gov)

**In re: House Bill 1361 (Engrossed), Professional Employer Organizations and  
Proposed Amendments**

Dear Chair Klein,

On behalf of the National Association of Professional Employer Organizations (NAPEO), I wanted to offer our comments on House Bill 1361 (HB 1361) (Engrossed) and the amendment expected to be offered by the Office of the Secretary of State.

While NAPEO supports many of the aspects of HB 1361 (Engrossed) and proposed amendments, including, interagency cooperation, updating terms and definitions, and clarifying that wages used in calculations for regulatory requirements are based solely on North Dakota wages, NAPEO remains very concerned about:

- Eliminating annual audited financial statements;
- Eliminating minimum financial requirements; and
- Requiring every professional employer organization (PEO) to post a potentially large and costly bond.

We believe that clarifying existing requirements that include audited financial statement and a minimum amount of working capital better serve the public and do not place an undue burden on PEOs. Clarifying existing language would also address the administrative issues raised by the Secretary of State. These changes amount to the deregulation of the PEO industry and are in direct contravention to the regulatory frameworks being crafted in many other states across the country.

Thank you for considering our comments on this legislation. NAPEO stands ready to continue work with the committee and stakeholders on further addressing the concerns raised regarding the current requirements. If you have any questions, please feel free to contact me at [apeer@napeo.org](mailto:apeer@napeo.org) or 703-739-8179.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Peer", is written over a horizontal line.

Adam Peer, Assistant Director  
State Government Affairs  
National Association of Professional Employer Organizations

cc: Members, Senate Committee on Industry, Business, and Labor  
Honorable Bette B. Grande, 41<sup>st</sup> House District  
Honorable Al A. Jaeger, Secretary of State