

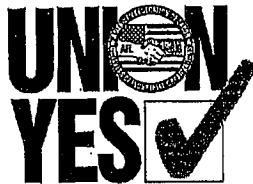
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TESTIMONY OF KANSAS AFL-CIO IN OPPOSITION TO SB 413

BRUCE TUNNELL
EXECUTIVE VICE PRESIDENT
February 14, 2012

Chairman Wagle and Members of the Committee:

As the Committee is well aware, the subject of Professional Employer Organizations (PEOs) is not a new topic in Kansas. The Kansas AFL-CIO is attaching testimony presented on previous occasions in response to previous proposed bills.

The concerns that were raised relative to PEO legislation in the past appear to be unsolved by SB 413. As such, our previous testimony is incorporated by reference (2/10/09 and 2/8/07). The Kansas AFL-CIO *strongly supports* regulation of PEOs in Kansas. Our organization recognizes that PEOs can provide useful services to employers; and that there are organizations currently operating unregulated in Kansas.

As in times past, our concerns are as follows:

A) Registration

The bill only requires that PEOs "register" with the Department of Labor. Registration per se does not imply any minimum standards. It is different than being licensed or being certified. Certainly, having the PEOs register is a step forward, but the concern is that it gives a false impression to the general public. The general public will interpret those PEOs who are "registered" as having met certain criteria. That is simply inaccurate.

B) Security

We do not again need to repeat the multiple fraudulent cases of PEOs who have absconded with, literally, millions of dollars. That testimony is highlighted in our attachments. An Internet search still discloses that fraudulent activities are taking place. The only financial



Senate Commerce Committee

Date: February 14, 2012

security required by SB 413 is "working capital" of \$100,000. PEOs are dealing with substantial amounts of money, and any fraudulent activity has a "ripple effect." The employer who has his payroll stolen may go out of business completely if they were staying in business "just barely" before becoming a victim of fraud. Any gaps in health insurance, workers compensation premiums, etc., will also have an impact beyond the stolen money (e.g. the cancer patient without insurance).

The amount of security demanded by the bill seems woefully inadequate.

C) Jurisdiction for Regulation

A major portion of the concerns relative to regulating PEOs stems from their purchase of insurance, including workers compensation insurance. It is respectfully suggested that PEOs be regulated, at least in terms of the insurance portions by the Insurance Commissioner. The Insurance Commissioner, either alone or in conjunction with, the Department of Labor could adopt appropriate rules and regulations.

We note that SB 413 does not prohibit master policies. Again, it is our understanding that those policies will permit misclassification of employees such that more honest employers will suffer. In addition, there remain concerns about avoiding experience ratings by use of the "co-employee concept."

D) Conclusion

In conclusion, we urge that PEOs be regulated in actuality, and not merely in name. The people and employers of Kansas need this protection, and all employers need to be paying appropriate insurance premiums. Regulation without teeth (such as sufficient security) is worse than no regulation at all.

Respectfully submitted

KANSAS AFL-CIO

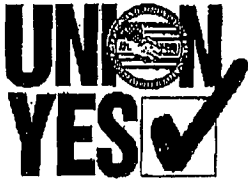
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TESTIMONY IN SUPPORT OF HB 2087

House Insurance Committee
Wil Leiker, Executive Vice President
Kansas AFL-CIO
February 10, 2009

The Kansas AFL-CIO strongly supports strict regulation of PEOs; and in that regard SUPPORTS the passage of HB 2087. The KS AFL-CIO believes that HB 2087 contains all the critical elements necessary for *effective* regulation.

There can be no doubt that the Kansas Legislature must act to regulate PEOs. It is no exaggeration to state that we are speaking about the potential for misappropriation of millions of dollars. Furthermore, there is a huge "ripple effect" beyond the possible misappropriation. For example, the nonpayment of a health insurance premium can have a disastrous effect on multiple parties (patient & patient's family, health care providers, etc.). The Legislature is well aware of the "horror stories" of the past, and we need not dwell on them.

The Kansas AFL-CIO is primarily concerned about PEOs in the workers compensation arena. While protection of injured workers for prompt payment of benefits is the critical concern, the Kansas AFL-CIO also believes that employers must be treated equally in the assessment of premiums. Individual employers who do not join PEOs must be in the same competitive market for the system to work; including, for example, the proper classification of employees. In short, in order for the marketplace to set an appropriate premium, one group must not be given an unfair or dishonest advantage over another group.

While there may be technical and minor changes necessary to HB 2087, major changes which reduce or soften the regulation of PEOs would be inappropriate. A "watered down" version of HB 2087 would, in all probability, be worse than no legislation at all. Giving the PEOs the appearance of being regulated, if they are not, would only entice unsuspecting businesses to participate.

The passage of a bill regulating PEOs must be a legislative priority. The Legislature is well aware of this powder keg. We can be certain that without action by the Legislature "the other shoe is sure to drop."

The Kansas AFL-CIO appreciates the opportunity to provide written testimony in support of HB 2087.



TESTIMONY OF KANSAS AFL-CIO

SENATE COMMERCE

REGARDING SB 156

FEBRUARY 8, 2007

WIL LEIKER
JOHN OSTROWSKI*"IF SOMETHING LOOKS TOO GOOD TO BE TRUE, IT PROBABLY IS"**"NO MAN CAN SERVE TWO MASTERS, HE WILL LOVE ONE AND HATE THE OTHER"*

Thank you for allowing testimony by the Kansas AFL-CIO relative to SB 156. It is the basic position of the Kansas AFL-CIO that the subject matter of Professional Employer Organizations (PEOs) is exceedingly complex and that this bill should not pass until the Kansas Legislature has had a full opportunity to address multiple issues raised by the bill.

As this Committee is aware, the concept of PEOs is not a new one. PEOs first appeared in California in the 1970's. Interestingly, the PEO was a tool used by upper management to avoid federal law regarding 401(k) plans:

The original PEO concept, begun in California in the 1970s, was to provide corporate executives with tax shelters, allowing them to put money in pension and 401(k) plans without providing these same benefits to their workers. The companies would fire their employees and have them rehired by a separate company (the PEO) which would pay worker salaries and provide benefits. (Exhibit 1)

In 2001, Substitute for SB 121 was before this Committee. In comparison, Sub for SB 121 was a much shorter bill (Exhibit 2), but the issues presented appear to remain unchanged. The bill did not pass the Kansas Legislature, and that appears to be fortunate. By mid 2002, PEOs were experiencing severe financial and regulatory difficulties; both employers and employees suffered (Exhibit 1).

On April 4, 2001, Larry Magill appeared before this Committee on behalf of the Kansas Association of Insurance Agents. Mr. Magill called PEO regulation a "complex" issue and recommended that it be submitted to an interim committee (Exhibit 3).

We agree with Mr. Magill that this is an extremely complex area. Even a limited search on the Internet discloses a mountain of information regarding PEOs—some

positive, much negative. Areas of specific concern to the Kansas AFL-CIO include the following:

1. WILL KANSAS EMPLOYERS AND EMPLOYEES BE ADEQUATELY PROTECTED?

PEOs market themselves as the employer's solution to all HR problems (e.g. Exhibit 4, "zero workers compensation claims...HR headaches eliminated...no more workers comp audits," etc.). If this legislation becomes law, the state will, intentionally or unintentionally, be adding a mark of credibility to these organizations. Employers, and to some extent employees, will accept the state "blessing" as evidence that all is well. As we know from past experience, state regulation has generally been ineffective (Exhibit 1). Prior to Kansas endorsing these organizations, careful study must be given to the issues.

According to the current NCCI website:

While PEOs can be a viable arrangement for many small employers looking for the ease of a co-employer or an administrative advantage, *there is also considerable opportunity for fraudulent situations to occur.*

Identification of employer versus employee relationships, experience rating difficulties, experience mod avoidance, and premium leakage are *just a few of the problems* that NCCI and the insurance carrier community have identified. (Creating Workable Standards for PEOs, Mona Carter, NCCI Holdings, Inc., Exhibit 5, emphasis supplied.)

The Kansas AFL-CIO does not profess to have the subject matter expertise to address which of these concerns, if any, are satisfied by SB 156. However, the issues appear extremely serious, and the proposed legislation appears to have the potential to harm Kansas employers and employees.

Attached as Exhibit 6 is information received from The Szymoniak Law Firm in Florida. The dollar amounts relative to the fraud committed by PEOs are staggering. The numbers include \$20 million, \$5.7 million, \$47.5 million, \$13.4 million, \$7.2 million, and the list goes on and on and on. In fact, sentencing is scheduled for February 15, 2007 for the head of TTC Illinois, Michael Lee McCafferty. TTC Illinois was the largest privately held employee leasing company in the nation. As pointed out by Ms. Szymoniak, one of the problems with a leasing company is that there are no physical assets to attach to enforce tax liens, or other mishandled funds. Certainly, the \$100,000 referred to in SB 156 seems wholly inadequate.

There also appears to be no sense of urgency relative to passage of the legislation. It is our understanding that drafts of model legislation will be forthcoming in

the summer of 2007 from a joint effort by IAIABC/NAIC and others. We would suggest that the prudent course would be to evaluate this legislation against the upcoming model legislation. It is our understanding that there are material differences.

2. MISCLASSIFICATION OF WORKERS

Of particular concern to the Kansas AFL-CIO is the misclassification of workers in an effort to avoid premiums. The idea of "co-employers" has the appearance of a shell game relative to pension plans (Exhibit 1), work comp premiums (Exhibit 5), and payment of unemployment insurance ("One major concern is that the PEOs and their clients are mutually agreeing to avoid paying unemployment taxes and workers compensation premiums (as calculated based on claims experience). Therefore, these arbitrage schemes are being gradually prohibited by federal and state law." Exhibit 7).

The Kansas AFL-CIO is constantly fighting the unscrupulous employer in the marketplace (e.g. hiring of undocumented workers, paying wages "under the table", avoiding workers compensation/UI insurance, etc.). These employers gain an unfair advantage over the legitimate employers who are fulfilling their obligations.

Furthermore, the unsafe employer will be able to escape responsibility for having an unsafe workplace. An artificially low premium will lead to a reduction of incentives for hiring skilled workers, safe workers, providing of safe equipment, and providing a safe workplace.

3. LIABILITY

It appears that the PEOs control the acceptance of liability as they determine. On the surface, there appear to be multiple problems with this. Employers wooed by economic savings will unlikely appreciate the areas to which they are being exposed in terms of liability. PEOs will be offering "adhesion contracts" (i.e. take it or leave it). The PEOs also create conflict of laws questions (i.e. Kansas law versus other states) and choice of law questions (i.e. where should any legal action be brought).

Under the worst case scenario, the concept of co-employers will lead to "gaps" in liability coverage. Under the best case scenario, there will be a blurring of who is responsible for the activities of the workplace, to the employers, employees and those doing business with the employer.

4. SPECIFIC PROPOSALS

Again, the Kansas AFL-CIO would minimally suggest that this matter be placed "on hold" until the model legislation is drafted. Presumably, it will address some of the issues raised by NCCI and others. In addition, the Szymoniak Law Firm has proposed specific suggestions to guard against uninsured injured workers, premium fraud, and tax evasion. If PEOs are to "licensed" or "regulated" in Kansas, high integrity is demanded.