

Business and Labor Committee

Nebraska Legislature

Interim Study to review the occupational regulations for
Professional Employer Organizations

Report as required by Neb. Rev. Stat. § 84-948
One Hundred Seventh Legislature
First Session

Committee Members

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Senator Carol Blood, Vice Chair District 3
Senator Tim Gragert, District 40
Senator Steve Halloran, District 33
Senator Steve Lathrop, District 12
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Occupational Board Reform Act

The Legislature passed the Occupational Board Reform Act in 2018 (Neb. Rev. Stat. §§ 84-901 to 84-920) with an operative date of July 1, 2019. The act requires that:

“Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.” (Neb. Rev. Stat. § 84-948)

There were five such occupational regulations identified under the jurisdiction of the Business and Labor Committee, (1) Employment Agent; (2) Boiler/Pressure Vessel Inspector; (3) Locksmith; (4) Professional Employer Organization; and (5) Contractor/Sub-Contractor. The committee selects one occupational licensing regulation to review each year in the five year period. For 2019, the committee selected to review Boil/Pressure Vessel Inspector, for 2020 the committee selected Locksmith, and for 2021 the Committee selected Professional Employer Organization.

Committee Findings

Neb. Rev. Stat. § 84-948 requires the report to include the following with answers in bold:

(3) A committee's report shall include, but not be limited to, the following:

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;

All Professional Employer Organization (PEO) must be registered in Nebraska. Such groups can perform many different duties and cannot be categorized as a single occupation. The regulations are enforced through the Department of Labor Office of Labor Standards-PEO.

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

Professional Employer Organization Registration Act; Neb. Rev. Stat. §§ 48-2701 to 48-2711

(c) The number of members of the occupational board and how the members are appointed;

N/A: The Office of Labor standards-PEO is an office within the Department of Labor

(d) The qualifications for membership on the occupational board;

N/A

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

N/A

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

N/A

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

N/A

(h) A review of the basic assumptions underlying the creation of the occupational regulations;

The regulations assume the existence of bad actors/incompetent organizations that offer professional employer services to Nebraska businesses. The regulations require an organization providing professional employer services to verify past names, addresses, and jurisdictions in order to identify organizations with a history of bad acts.

(j) A comparison of whether and how other states regulate the occupation.

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(4) Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 84-946 considering the following recommended courses of action for meeting such policies:

The regulations appear to be consistent with Neb. Rev. Stat. § 84-946

(a) If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific goods or services;

This applies to Professional Employer Organization but appears the current regulations are adequate.

(b) If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendation will be to require periodic inspections of such facilities;

N/A

(c) If the need is to protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded;

Bond requirements would likely provide quicker recourse for incurred damages but would likely be greatly outweighed by the increased cost to do business.

(d) If the need is to protect a person who is not party to a contract between the provider and consumer, the likely recommendation will be to require that the provider have insurance;

N/A

(e) If the need is to protect consumers against potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;

N/A

(f) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the likely recommendation will be to enact government certification; and

N/A

(g) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

N/A

(5) If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under subsection (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

N/A

(6) In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

N/A

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 84-946.

N/A

Conclusion

Professional Employer Organizations are regulated by the office of labor standards within the Department of Labor. So far in 2021 there are 174 registered Professional Employer Organizations. To register an application is submitted to the department, verified, and if all requirements are met the organization is registered in the state. The total price of the application is \$250.00 for an initial applicant and \$150.00 for annual renewal. All funds collected by the department are held in the Contractor and Professional Employer Organization Cash Fund. The current balance of the fund is \$1,422,758.69. Funds are invested under the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The regulations and fees are similar to surrounding states and have not caused an notable amount of positive or negative externalities.