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Office

S.B. 201
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsor: Sen. Dolan

Local Impact Statement Procedure Required: No

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Highlights

- The bill would allow firms providing human resource management services to elect to be alternate employer organizations (AEOs), similar to professional employer organizations (PEOs) but with different federal payroll-tax reporting requirements.
- LBO expects many firms that might become AEOs under the bill would otherwise be PEOs, which are accorded essentially identical tax benefits (summarized below). To the extent that firms would become AEOs that in the absence of the bill would not be PEOs, the bill might reduce GRF tax revenues. The resulting loss if any appears indeterminate.
- Loss of GRF tax revenues would reduce revenue sharing through the Local Government Fund (LGF, Fund 7069) and the Public Library Fund (PLF, Fund 7065). Because no more than minimal revenue loss is expected, such revenue-sharing reduction appears likely to be no more than minimal.
- The registration requirement provision for AEOs would minimally increase administrative costs for the Bureau of Workers' Compensation (BWC). The bill allows BWC to impose an annual registration fee that would offset such cost.

Detailed Analysis

The bill creates alternate employer organizations that would provide human resource management services to client employers, and would share employer responsibility and liability. An alternative employer organization (AEO) would be very similar to a professional employer organization (PEO) governed by continuing law, but would report federal payroll taxes paid on the wages of worksite employees under the client employer's tax identification number (TIN, a federal income tax identifier). This differs from the requirement for a PEO, which is required to report federal taxes on wages paid to shared employees under the PEO's TIN. However, the bill provides that the AEO is the employer of record for determining workers'

compensation experience ratings. The bill prohibits an AEO from owning or co-owning an affiliated PEO or AEO. The bill prohibits an AEO from sponsoring or acting as the employer for a health benefit plan, but it may assist a client employer in procuring a health benefit plan as a broker or otherwise. Additional details are in the bill analysis.

Tax effects

In determining an AEO's commercial activity tax (CAT) liability, the bill excludes from gross receipts property, money, and other amounts received by the AEO in excess of the administrative fee charged. This provision mirrors a CAT exclusion for PEO organizations. An entity that currently operates as a PEO and benefits from this exclusion would continue to derive an equal benefit if it converted to an AEO following enactment of the bill. The CAT revenue loss would increase if additional organizations became AEOs that are not currently PEOs.

The bill extends to certain investors in client employers of an AEO an income tax benefit provided to such investors in client employers of a PEO. The provision allows guaranteed payments or compensation paid by a client employer of a PEO or AEO to investors holding at least a 20% interest in the client employer to be considered a distributive share of the client employer's income, and taxed as business income rather than wages.¹ Investors in a client employer of a PEO who benefit from this exclusion would continue to derive an equal benefit if the PEO converted to an AEO following enactment of the bill. The income tax revenue loss would increase in connection with 20% or more investors in client employers of organizations that become AEOs but are not currently PEOs.

Under the bill, worksite employees providing services on which sales tax is due are considered employees of the client employer for sales tax purposes, and the bill states that the client employer and AEO are responsible for payment of sales tax liability. A comparable provision for PEOs in R.C. 4125.042(B) specifies that workers are "shared employees," and not "worksite employees." To the extent the number of "shared employees" and "worksite employees" and associated tax liability are the same for a PEO which transitions to an AEO, the sales tax revenue is likely to be the same.²

The bill's fiscal effect depends on whether additional firms would become AEOs that are not currently PEOs, or would in the future become AEOs that would not become PEOs in the absence of the bill. Related to this, the fiscal effect depends on whether additional firms would become clients of AEOs that are not already PEO clients, or would in the future become AEO clients that would not become PEO clients. Some such fiscal effect might occur, if the bill becomes law, but LBO economists do not expect that these situations would be common, and thus anticipate no more than a minimal revenue loss. The Department of Taxation estimated that the continuing law CAT exclusion for PEOs will reduce GRF revenue by \$19.7 million in

¹ Business income is taxed more favorably than nonbusiness income in Ohio, with up to the first \$250,000 of business income per taxpayer excluded from tax, and any business income in excess of this deduction taxed at a 3% rate rather than up to a 4.797% marginal rate for nonbusiness income.

² In cases where those would be different, the bill may result in a potential revenue loss from the sales and use tax.

FY 2021. The LBO expectation is that the combined revenue loss from the current law exclusion for PEOs and the proposed exclusion for AEOs would be approximately the same as the current law revenue loss. To the extent that additional firms would become AEOs that would not operate as PEOs, the bill could result in additional losses.

Any loss of CAT or income tax revenue would reduce distributions through the LGF and PLF to units of local government and libraries. In FY 2020 and FY 2021, the LGF receives 1.68% of GRF tax revenue and the PLF receives 1.70%, under uncodified provisions of H.B. 166 of the 133rd General Assembly. In codified law, both funds receive 1.66% of GRF tax revenue.

Administration of tax provisions

The bill may give rise to issues for tax administration. Among concerns with the bill according to the Department of Taxation, it mandates the identifying number (that of the client employer rather than the AEO) under which an AEO is to file federal payroll taxes, but does not impose the same requirement for filing state payroll taxes. The state-mandated number for federal filings could potentially be at odds with the federal requirement. The lack of a specification regarding the identifying number for state filings could result in mismatches. The Department also noted the absence in the bill of a requirement that the identifying number in the AEO's filing match that on W-2 forms the AEO issues, which could also create issues and confusion that would need to be resolved. Such issues could add to costs of administration.

Bureau of Workers' Compensation

The bill requires AEOs to register with and provide certain information, documents, and reports to the Bureau of Workers' Compensation (BWC), including annually certifying to the Administrator of BWC that all client employer federal payroll taxes have been timely and appropriately paid, and on request of the Administrator, providing proof of payment. The bill requires AEOs to comply with applicable state laws related to workers' compensation insurance coverage. The bill also specifies AEOs' duties and liabilities. Generally, the requirements, duties, and liabilities for AEOs in the bill are similar to those for PEOs. The bill requires the BWC Administrator to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) to administer and enforce the bill's provisions related to AEOs, including rules to administer and enforce the requirement related to worksite employees. The bill also allows the Administrator to adopt rules for the acceptance of electronic filings in accordance with the Uniform Electronic Transactions Act for applications, documents, reports, and other filings required under the bill.

The provision related to the registration requirement for AEOs would minimally increase administrative costs for BWC. The bill allows BWC to impose an annual registration fee that would offset such cost. Any additional costs would be paid from Workers' Compensation Fund (Fund 7023), line item 855409, Administrative Services.