

**From:** [Elizabeth Jones](#)  
**To:** [Trisha Linebarger](#)  
**Subject:** FW: Public Input Form for Agencies Under Review (Public/After Publication)  
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From: sunset@sunset.texas.gov On Behalf Of Texas Sunset Commission  
Sent: Thursday, June 25, 2020 1:46:16 PM (UTC-06:00) Central Time (US & Canada)  
To: Sunset Advisory Commission  
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS DEPARTMENT LICENSING AND REGULATION

First Name: Michael

Last Name: Kreiter

Title: Director, State Government Affairs

Organization you are affiliated with: National Association of Professional Employer Organizations

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City: Alexandria

State: Virginia

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

Dear Sunset Advisory Commission,

On behalf of the National Association of Professional Employer Organizations (NAPEO) and its Texas Leadership Council, I want to thank you for the opportunity to provide this comment letter in response to the Sunset Advisory Commissions staff's recommendation regarding the professional employer industry and its regulatory status with the Texas Department of Licensing & Regulation (TDLR). NAPEO is the largest trade association for professional employer organizations (PEOs), which provide comprehensive HR solutions for small and mid-sized businesses. NAPEO represents approximately 300 PEO member companies that provide services to over 156,000 businesses employing more than 2.7 million workers nationwide.

NAPEO disagrees with the recommendation submitted by Sunset staff. We support the work of the TDLR in our industry, and respectfully request that our industry continue to be regulated by TDLR for the reasons set forth below.

The PEO Industry Has Encouraged and Supported Regulation Nationwide

Since its inception, the industry has sought to create and cultivate a legislative and regulatory climate in all 50 states that recognizes the key role PEOs play in supporting small and mid-size businesses by delivering statutory recognition, legal certainty, and important protections to industry participants, clients and worksite employees. Currently, there are over 40 states that regulate our industry. The industry believes its growth is due – in part – to this certainty.

Under this regulatory framework, PEOs are held accountable for the critical human resource services they provide to the small and medium-sized business community. For the client and worksite employee, it means an agency conducting oversight, whom they can contact should there ever arise any problems. As noted in the staff's recommendation, PEOs provide a variety of services and assume responsibility for paying their worksite employees

– the liability for which can be in the billions. Licensing of PEOs by TDLR allows vetting of the entities that assume this responsibility and removing oversight by TDLR could result in fractured regulation and enforcement, leaving clients and worksite employees at risk. The regulatory framework in place in Texas and in many states is a valuable protection for all parties.

### The PEO Industry Has Grown, Clients Have Thrived Under Regulation

The Sunset Staff report accurately indicates that the PEO industry in Texas has flourished since the industry became regulated in the state. Over 27 years ago, Texas became one of the first states to create a regulatory framework for PEOs providing services within its borders when the Texas PEO Act was passed in 1993. Today, 396 entities are licensed as PEOs with TDLR, providing services to thousands of businesses and over a quarter of a million co-employees. Indeed, every year, PEOs in Texas handle over \$18 billion in worksite employees' wages. A handful of licensed PEOs are even publicly-traded. The industry would point to the current regulatory framework as a large part of the reason that the industry is enjoying this success and one of the primary reasons that there have been limited to no enforcement actions against PEOs in Texas. This is because it provides assurance to the small business marketplace in Texas that they can rely on the fact that PEOs meet specified financial and operational requirements before they can offer services to such businesses.

Client employers have also thrived as a result of a regulated and burgeoning PEO industry in Texas. Our research shows that employers that partner with PEOs have a higher growth rate, experience a lower turnover rate, and are 50% less likely to fail when compared to similar companies. Removing licensure could erase gains for Texas employers made since the state implemented licensure for all PEOs.

### Texas Licensure versus Voluntary Programs

From the beginning, PEO licensing has been administered by the TDLR and includes numerous safeguards to protect all stakeholders, including worksite employees. The Sunset staff offers in its report that the accreditation by the Employer Services Assurance Corporation (ESAC) or the certification by the Internal Revenue Service (IRS) would provide the same protection to clients and worksite employees as the current regulatory and licensing structure. This observation, however, does not fully account for the entirely voluntary nature of both the ESAC accreditation and the IRS certification programs. Only a fraction of PEOs have chosen to undergo these processes. Relying on these programs alone would potentially expose clients and worksite employees to entities that have not been subjected to any type of vetting.

The mandatory statutory requirement that all PEOs be licensed and regulated by TDLR is a primary contributing factor to the low incidence of complaints filed with TDLR involving PEOs. We think the low incidence of PEO complaints is directly attributable to the thorough, yet reasonable, PEO licensing requirements that include the following:

- i. Background checks for all persons who own 20% or more of equity, officers, directors, and persons with authority to bind the company under contractual agreements, including biographical data, fingerprinting and criminal background checks conducted by both the FBI and the Texas Department of Public Safety;
- ii. Submission of audited financial statements—prepared by independent CPAs—both during initial licensing and on an annual basis during license renewal; and
- iii. Minimum financial conditions regarding statutory requirements for working capital.
- iv. Verification that insurance coverage is provided by insurers authorized by the Texas Department of Insurance.

Further, PEOs must renew their license annually to ensure continued compliance. Annual license renewals include the submission of audited financial statements and working capital requirements.

Licensing also provides a public benefit in that it clearly conveys which entities are approved to operate as a PEO and are subject to oversight and which are not. This clarity benefits the PEO industry by removing ambiguity about compliance obligations. More importantly, this clarity also benefits the customers of PEOs by providing a clear indicator of which entities are actually covered by the law. Similarly, licensing serves an important role in making clear for other state agencies as to whether an entity is a PEO and thus covered by Texas Labor Chapter 91 or not.

Accordingly, NAPEO respectfully requests that PEOs doing business in Texas continue to be regulated by the Texas Department of Licensing & Regulation.

PEOs, small and mid-sized employers, and Texas workers have all realized the benefits of being regulated by TDLR. Removing this regulatory structure places these gains at risk. Please feel free to reach out to me directly at (703) 739-8170 if you have any questions.

Sincerely,

Michael Kreiter  
Director, State Government Affairs

Any Alternative or New Recommendations on This Agency: We recommend the industry continue to be regulated by the Texas Department of Licensing & Regulation.

My Comment Will Be Made Public: I agree