

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: Wednesday, June 24, 2020 5:09:16 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: Andrea

Last Name: McHenry

Title: Associate General Counsel, Governmental Affairs

Organization you are affiliated with: Insperty

Email: andrea.mchenry@insperty.com

City: Kingwood

State: Texas

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

Thank you for the opportunity to submit comments regarding the Sunset Advisory Commission Staff Report (Staff Report) on Texas Department of Licensing and Regulation (TDLR), specifically its recommendations concerning the Professional Employer Organization (PEO) licensing program. Insperty opposes the elimination of the PEO licensing program under the regulatory authority of TDLR and submits the following comments in support of our position.

The Staff report recommends the elimination of the PEO licensing program and asserts that PEOs no longer need state licensure and are able to operate effectively without regulatory oversight. In 1993, the Texas legislature enacted HB 456 which provided a regulatory structure to govern co-employment arrangements between PEOs and its clients. Insperty, Inc., formerly known as "Administaff," was one of the lead proponents of this legislation and worked with industry leaders over several years in order to achieve its passage. According to the House Research Organization (HRO) analysis of HB 456, the purpose of the legislation was to "assure the financial soundness of PEOs, protect workers and ensure that the duties and responsibilities between the parties are clearly spelled out". (The "workers" referred to in HB 456 are the employees that work at the small business clients of PEOs and are referred to as "covered employees" in the current PEO statute and are also referred to as "worksites employees" or "co-employees." Under the statute, the PEO and client are "co-employers" of these workers.) Insperty believes the reasons for licensure expressed as part of the legislative intent of HB 456, continue to be compelling reasons for the continuation of licensure, and that licensure by TDLR is critical to protecting small businesses and the 360,000 workers who are served by PEOs in the State of Texas.

Texas was one of the first states to enact provisions establishing a PEO licensing program and several states patterned their regulatory programs after the Texas model. Today, 42 states have adopted provisions for licensing, registration, certification or recognition of PEOs, and several others are considering such regulation. In the majority of these states, there is a designated agency with enforcement authority over PEOs. Removal of TDLR as the regulatory authority in Texas would weaken regulatory oversight of the PEO industry. Consumers and businesses will no longer have an agency solely dedicated to the resolution of questions and complaints related to the many professional employer services provided by PEOs.

The Texas PEO Act, Title 2, Labor Code, Chapter 91, sets forth general license requirements which establish minimum qualifications for entities that offer professional employer services and individuals that are responsible for the management of PEOs. These provisions assist clients in identifying a PEO that is uniquely qualified and adequately funded to administer PEO services.

The background investigations required under Section 91.013 are equally important to ensure that key members of a PEO's management team have not been convicted of financial crimes and do not pose a material risk to clients who could become potential victims of fraud by entities posing as PEOs.

Similarly, Section 91.014 of the PEO Act outlines the working capital requirements that a PEO must satisfy in order to demonstrate to the department that the PEO has adequate financial resources in to fulfill its responsibilities as a co-employer under the PEO agreement. These responsibilities include the payment of wages and the remittance of payroll taxes and may also include the payment of premiums due as the sponsor of employee-benefits plans. A PEO must be able to meet these financial obligations. Continued regulatory oversight by TDLR will help to ensure that financial standards and assurances are maintained. PEO licenses are renewed annually by TDLR, which allows it to verify that financial standards are met.

The Staff report suggests that ESAC accreditation and CPEO certification could replace the rigorous financial review presently conducted by TDLR.

However, the accreditation program offered by Employer Services Assurance Corporation (ESAC) and the CPEO certification program conducted by the Internal Revenue Service are purely voluntary and will not protect those "worksite employees" and small businesses that choose to enter into an arrangement with a non-accredited or non-certified PEO.

Finally, the staff report asserts that the public is not the primary consumer of PEO services and the PEO provides services to businesses and only indirectly to its employees. However, the PEO relationship impacts the PEO and the client, and the "worksite employees." The PEO and the client become co-employers of the client's existing workforce and the PEO assumes certain employer responsibilities. In fact, the PEO enters into an employment agreement with the co-employee, thereby establishing an employment relationship. Therefore, PEO services directly benefit the co-employee as well as the small business client.

For these reasons, Insperty supports continued licensure of PEOs. Further, Insperty firmly believes that TDLR is in a unique position to effectively license PEOs. For the past 27 years, TDLR has established a strong working relationship with the PEO industry and has shown a unique ability to effectively regulate PEOs. PEOs provide multi-functional services including

- human resource compliance, payroll, payroll tax payment and reporting, benefits, workers compensation. Because of this suite of services, the licensing of PEOs does not easily "fit" the regulatory oversight mission of any other agency. TDLR has demonstrated the ability to provide such cross-functional review and oversight resulting in the most efficient and effective means of licensing PEOs. Insperty believes that the PEO licensing program under the auspices of TDLR serves a meaningful public interest and would respectfully request that the program not be eliminated.

Any Alternative or New Recommendations on This Agency: We recommend that the existing licensing program be maintained.

My Comment Will Be Made Public: I agree