Landon State Office Building
900 S.W. Jackson, Room 504
Topeka, KS 66612

Kansas
Division of the Budget

phone: 785-296-2436
fax: 785-296-0231
steve.anderson@budget.ks.gov

Steven J. Anderson, CPA, MBA, Director

Sam Brownback, Governor

February 15, 2012

REVISED

The Honorable Susan Wagle, Chairperson
Senate Committee on Commerce
Statehouse, Room 135-E
Topeka, Kansas 66612

Dear Senator Wagle:

SUBJECT: Revised Fiscal Note for SB 413 by Senate Committee on Commerce

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 413 is respectfully submitted to your committee.

SB 413 creates the Professional Employer Organization Registration Act. Professional Employer Organizations (PEOs) are businesses that provide professional employer services. PEOs would be required to register under this act with the Department of Labor on an annual basis with an annual registration fee not exceeding $1,000. The act would determine the relationship of the parties (lessor, employer, and employee) by statute. The bill would allow the parties involved to determine by agreement who the employer would be for the purposes of enforcing various laws, including workers compensation coverage and unemployment taxes. Two or more Professional Employer Organizations that are owned or commonly controlled by the same entity, parent or controlling person would be classified as a Professional Employer Group. The Secretary of Labor would administer and enforce the bill.

PEOs would be required to maintain "positive" working capital at all times, as reflected in financial statements submitted to the Secretary of Labor. PEOs within a group could satisfy the financial and reporting requirements of SB 413 on a combined or consolidated basis. For those that do not have sufficient working capital, the PEO must submit a bond, irrevocable letter of credit, or security valued at $100,000 plus an amount sufficient to cover the deficit in working capital.

In addition, PEOs must submit the most recent audit of the applicant's company, which cannot be older than 13 months. Every year after the initial registration, the financial audit must be provided. In cases where the PEO may not have enough operating history to have its financial statements audited, it could provide the agency with one of the three financial options previously mentioned, or if the PEO does not have working capital, it would have to provide a bond, letter of credit, or security valued at $100,000 plus an amount sufficient to cover the deficit in working capital. The bill also provides for a limited registration of a PEO under circumstances specified in the bill.

The Department of Labor would be responsible for administering the bill's provisions. According to the agency the bill references a registration fee, however, the bill does not grant the Secretary authority to impose or collect a fee. The bill grants the Secretary authority to impose fines for violations, but there is no provision for use of those revenues for administration of the act. The agency therefore assumes that State General Fund support would be required to operate the new program. Initial IT expenses would include part of two employees' time to develop an electronic application and record keeping system. The agency assumes existing servers can be used and some software licensing costs would be incurred. Total estimated startup costs are $29,393 for FY 2013 and ongoing costs are projected to be $10,390.

An increase in litigation is expected by the Department from enactment of SB 413, as the bill would attempt to shift statutory employer/employee responsibility from the employer by contract, but leave the employer in control or with the right to control, which is the litmus test for employment under the Employment Security Act. While the bill may create some question as to which co-employer's experience rating would be used for taxation purposes, the Department believes there would be no change in revenues, as the Employment Security Act would be applied. Any fiscal effect resulting from enactment of SB 413 is not accounted for in *The FY 2013 Governor's Budget Report*.

Sincerely,

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Kathie Sparks, Department of Labor