

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 67

STATE OF NEW JERSEY  
218th LEGISLATURE

DATED: DECEMBER 5, 2018

SUMMARY

- Synopsis:** Establishes system for portable benefits for workers who provide services to consumers through contracting agents.
- Type of Impact:** Potential annual State expenditure and revenue increases, which may partially, if not fully, offset one another.
- Agencies Affected:** Department of Labor and Workforce Development.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost	Indeterminate
State Revenue	Indeterminate

- The Office of Legislative Services (OLS) notes that the enactment of this bill may result in an indeterminate annual increase in expenditures from the General Fund due to costs incurred by the Department of Labor and Workforce Development (DOLWD) in the implementation, administration, and enforcement of the provisions of the bill regarding the provision of portable benefits to workers who provide services to consumers through contracting agents.
- The OLS also notes that the bill may result in an indeterminate annual increase in revenue to the State General Fund due to the unspecified fee the DOLWD would charge contracting agents to fund the DOLWD’s compliance efforts and any fine and penalty payments the DOLWD would collect from violations of the bill provisions and their implementing rules and regulations.

BILL DESCRIPTION

This bill establishes a system for the provision of portable benefits to workers who provide services to consumers through contracting agents. Pursuant to the bill, a contracting agent is a business entity that facilitates the provision of services by workers to consumers seeking the

services and makes payments to workers, and the provision of services is taxed as an independent contractor.

The bill requires the DOLWD to adopt rules for organizations to become qualified benefit providers. At a minimum, the rules governing qualified benefit providers must require that the following criteria are met: (1) the organization must be a nonprofit organization, operating under 26 U.S.C. s.501(c)(3) federal tax status; (2) at least one-half of the organization's board of directors must be comprised of workers performing work for customers of contracting agents or representatives of bona fide independent organizations of those workers; (3) the organization must be independent from all business entities, organizations, corporations, or individuals that would pursue any financial interest in conflict with that of the workers; (4) all action of the organization regarding providing benefits must be for the sole purpose of maximizing benefits to the covered workers; (5) the board of directors of the organization must hold a fiduciary duty to the workers with respect to provision of the benefits; and (6) the organization must demonstrate adequate viability and financial sufficiency as determined by the department. At a minimum, the organization must have cash reserves, liability coverage, access to bonding, and any other demonstrated competencies as determined by the department.

The bill also requires the DOLWD to establish rules to implement and administer the bill, including rules for monitoring contracting agents and qualified benefit providers, establishing fees on contracting agents to fund compliance efforts, administering workers' compensation coverage for workers, and providing procedures for workers to select and change qualified benefit providers.

In addition to remedies provided by the DOLWD to a worker for a contracting agent's noncompliance, a worker may bring a private cause of action against a contracting agent for the contracting agent's failure to comply with the bill's contribution requirements.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS notes that the bill may result in an indeterminate annual increase in expenditures from the State General Fund due to costs incurred by the DOLWD in the implementation, administration, and enforcement of the provisions of the bill regarding the provision of portable benefits to workers who provide services to consumers through contracting agents.

The OLS also notes that the enactment of the bill may result in an indeterminate annual increase in State revenue to the State General Fund due to the unspecified fee the DOLWD would charge contracting agents to fund the DOLWD's compliance efforts and any fine and penalty payments the DOLWD would collect for violations of bill provisions and their implementing rules and regulations.

While the OLS notes that the bill's revenue and expenditure impacts may partially, if not fully, offset one another, the magnitude of the bill's impacts will be dependent upon the regulatory scheme that will be established by DOLWD. Therefore, the OLS is unable to quantify the impact of the revenues and administrative expenditures under the bill.

To provide context for the number of total workers in the State to whom the provisions of the bill may apply and therefore the scope of the program, the United States Census Bureau indicates

that in CY 2015 there were 670,765 nonemployer businesses in New Jersey. A nonemployer business is one that has no paid employees, has annual business receipts of \$1,000 or more (\$1 or more in the construction industries), and is subject to federal income taxes. Most nonemployers are self-employed individuals operating very small unincorporated businesses, which may or may not be the owner's principal source of income.

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).