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## FISCAL IMPACT REPORT

SPONSOR STBTC LAST UPDATED 2/22/23  
ORIGINAL DATE 2/7/23  
SHORT TITLE Employee Leasing Benefit Programs BILL NUMBER CS/Senate Bill 204/STBTCS  
ANALYST Campbell

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Duplicates CS/House Bill 255/HLVMCS

### Sources of Information

LFC Files

#### Responses Received From

Office of the Superintendent of Insurance (OSI)  
Regulation and Licensing Department (RLD)

## SUMMARY

### Synopsis of STBTC Substitute for Senate Bill 204

The Senate Tax, Business and Transportation Committee Substitute for Senate Bill 204 provides that employee leasing contractors (ELCs, sometimes referred to as professional employer organizations or PEOs) be treated as multiple employer welfare arrangements (MEWAs) for purposes of the insurance code. The bill would prevent OSI from setting different requirements for the health plans and coverage provided by ELCs than for those provided by other MEWAs. Regulations currently set to take effect January 1, 2024 if approved would require health insurance plans offered by ELCs and other MEWAs to meet major medical plan requirements.

## FISCAL IMPLICATIONS

OSI identified no fiscal implications from the bill.

## SIGNIFICANT ISSUES

OSI's analysis explains:

Under NMSA 1978 Section 59A-18-16.2(A)(1) and 42 USCA Section 18021 all small group health plans, meaning those covering between 2 and 50 employees, including those offered by an MEWA, must provide “essential health benefits” as defined under 59A-18-16.2(B) and 42 USCA Section 18022. Large group health plans, meaning those covering 51 or more employees, are not subject to this same requirement.

Some state insurance laws, such as the prohibition on cost sharing for behavioral health services found in NMSA 1978 Section [59A-46-57], apply to all health insurance issued to residents of this state regardless of group size.

OSI’s original analysis of the original bill highlighted that using workers leased from PEOs can allow small businesses to avoid certain protections in the Affordable Care Act that only apply when an employer has 50 or fewer employees:

In recent years, state and federal insurance regulators have seen an increasing number of companies, employer organizations and associations try to eschew individual and small group ACA protections by declaring themselves to be large groups. In eschewing individual and small group ACA mandates, they then offer unsubsidized and subpar coverages to covered members. In New Mexico, this leads to health insurance coverage that lowers costs by not complying with state coverage mandates or cost-sharing prohibitions, and discriminating against individuals with health conditions.

However, OSI point out that it is in the process of promulgating a regulation that would require all the insurance provided by all MEWAs (including PEOs/ELCs) to meet major medical plan requirements. That regulation, if approved, would take effect January 1, 2024. OSI eDocket Case Number 2022-0065, <https://edocket.osi.state.nm.us/case-view/5786>. (To use the link to view the regulations, one must register an account.)

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates House Labor, Veterans and Military Affairs Committee Substitute for House Bill 255.

JBC/al/ne