



GOV. MSG. NO. 1396

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 10, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

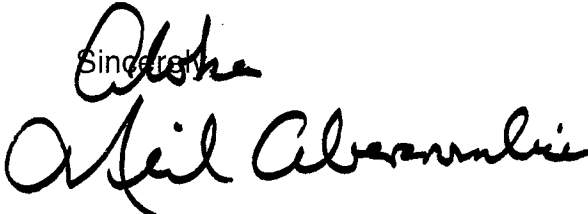
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

I am transmitting herewith SB2424 SD2 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB2424 SD2 HD2 CD1

RELATING TO PROFESSIONAL EMPLOYER  
ORGANIZATIONS.

*Sincerely,*  


NEIL ABERCROMBIE  
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2012

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2424

Honorable Members  
Twenty-Sixth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2424, entitled "A Bill for an Act Relating to Professional Employer Organizations."

The purpose of this bill is to facilitate the implementation of the professional employer organization law established by Act 129, Session Laws of Hawaii 2010. In 2007, the Legislature passed Act 225, relating to professional employer organizations (PEOs), now codified as chapter 373K, Hawaii Revised Statutes. The primary purpose of Act 225 was to provide a general excise tax exemption for PEOs. Act 225 also addressed rights and benefits of the employees and certain responsibilities as between the PEO and its client companies. In 2010, the Legislature passed Act 129, which is codified in chapter 373L, Hawaii Revised Statutes, requiring PEOs to register with the State.

Senate Bill No. 2424 repeals chapter 373K and amends chapter 373L, Hawaii Revised Statutes. The bill preserves the general excise tax exemption; amends certain definitions; and clarifies certain requirements for registration, including bonding.

PEOs need to be further regulated, beyond registration, and may require a licensing procedure. The interests of all – the consumer of PEO services; the worker who works under a PEO arrangement; the regulatory agencies; and the PEOs, large and small – need further consideration.

STATEMENT OF OBJECTIONS  
SENATE BILL NO. 2424  
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For the foregoing reasons, I am returning Senate Bill No. 2424 without my approval.

*Respectfully*  
*Neil Abercrombie*

NEIL ABERCROMBIE  
Governor of Hawaii

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# A BILL FOR AN ACT

RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Act 225, Session  
2 Laws of Hawaii 2007, established a new chapter on professional  
3 employment organizations that provided a general excise tax  
4 exemption on amounts a client company paid to a professional  
5 employment organization.

6           The legislature further finds that Act 129, Session Laws of  
7 Hawaii 2010, established a new chapter in the Hawaii Revised  
8 Statutes on professional employer organizations. The  
9 legislature notes that the proper term for this type of business  
10 entity is professional employer organization, as established in  
11 Act 129. The legislature also notes that two chapters relating  
12 to professional employer organizations are unnecessary.

13           Act 129 established registration requirements for  
14 professional employer organizations. Although these  
15 requirements went into effect on July 1, 2011, additional  
16 operational provisions are needed to enable the department of  
17 labor and industrial relations to fully implement Act 129.

18           The purpose of this Act is to:



- 1 (1) Eliminate duplicative provisions relating to
- 2 professional employer organizations by repealing
- 3 chapter 373K, Hawaii Revised Statutes, and incorporate
- 4 the existing general excise tax exemption into chapter
- 5 373L, Hawaii Revised Statutes; and
- 6 (2) Facilitate the implementation of the professional
- 7 employer organization law as established by Act 129,
- 8 Session Laws of Hawaii 2010.

9 SECTION 2. Chapter 373L, Hawaii Revised Statutes, is  
10 amended by adding eleven new sections to be appropriately  
11 designated and to read as follows:

12 **"§373L-A Professional employer organization special fund.**

13 There is established in the state treasury a special fund to be  
14 known as the professional employer organization special fund to  
15 be administered by the department to implement and operate the  
16 registration of professional employer organizations established  
17 by this chapter. Moneys collected as fees or penalties under  
18 sections 373L-C, 373L-D, 373L-E, and 373L-H shall be deposited  
19 in the fund. Interest earned from the balance of the fund shall  
20 become a part of the fund. Moneys in the fund may be expended  
21 for personnel and operating expenses and staff training.



1        §373L-B Registration required. No person within the  
2 purview of this chapter shall use the terms "professional  
3 employer organization," "PEO", "staff leasing company",  
4 "registered staff leasing company", "employee leasing company",  
5 "administrative employer", or other similar name unless the  
6 person is registered and in compliance with this chapter and the  
7 rules and regulations of the director.

8        §373L-C Notice of judgments, penalties. (a) Each  
9 registered professional employer organization shall provide  
10 written notice within thirty days to the department of any  
11 judgment, award, or disciplinary sanction imposed against the  
12 organization for violating a statutory provision in an action  
13 brought by any state or federal regulatory agency.

14        In addition to any other penalties provided by law, the  
15 failure of a professional employer organization to comply with  
16 this subsection is a violation punishable by a penalty  
17 established by the director pursuant to section 373L-F. Any  
18 action taken to impose or collect the penalty provided for in  
19 this subsection shall not be considered a criminal action.

20        (b) Each professional employer organization shall file  
21 with the department the organization's current mailing and  
22 business address. It shall be the professional employer



1 organization's duty to provide written notice to the department  
2 of any change of address within thirty days of the change.  
3 Failure of the professional employer organization to provide the  
4 notice shall absolve the department or director from any duty to  
5 provide notice of any matter required by law to be provided to  
6 the professional employer organization.

7 **§373L-D Denial, suspension, revocation, denial of renewal**  
8 **of registration, or penalty.** In addition to any other actions  
9 authorized by law, the director may deny, suspend, revoke, or  
10 deny renewal of registration of any professional employer  
11 organization or impose a penalty when the professional employer  
12 organization, including its controlling persons:

- 13 (1) Fails to meet the requirements for registration as  
14 provided in this chapter;  
15 (2) Fails to satisfy a civil fine, penalty, or restitution  
16 order arising out of any administrative or enforcement  
17 action brought by any governmental agency for conduct  
18 involving fraud or dishonest dealing;  
19 (3) Has had an order or judgment entered against it in the  
20 past ten years in any criminal, administrative, or  
21 enforcement action for conduct involving fraud or



1 dishonest dealing, or for any violation of any state's  
2 laws or rules;

3 (4) Fails to post a bond in accordance with this chapter;

4 (5) Makes any false statement, representation, or  
5 certification in any document or record required to be  
6 maintained under this chapter;

7 (6) Fails to keep, maintain, and disclose, upon request of  
8 the department, the books and records required to be  
9 maintained under this chapter for inspection or audit  
10 for the period of time designated by the director;

11 (7) Fails to timely pay wages, withholding taxes, or any  
12 other payments pursuant to the professional employer  
13 agreement; or

14 (8) Otherwise violates this chapter, or any rule adopted or  
15 final order of the director issued pursuant to this  
16 chapter.

17 **§373L-E Fees.** No applicant shall be allowed to register  
18 pursuant to this chapter unless the appropriate fees have been  
19 paid. Effective July 1, 2012, the director shall collect fees  
20 pursuant to this chapter as follows:

21 (1) Application fee \$100





1        (2) Biennial renewal fee based on the average annual count  
2        of covered employees as follows:

3	<u>0 - 100 covered employees</u>	<u>\$2,500</u>
4	<u>101 - 250 covered employees</u>	<u>\$3,000</u>
5	<u>251 - 499 covered employees</u>	<u>\$5,000</u>
6	<u>500 or more covered employees</u>	<u>\$10,000</u>

7        (3) Restoration fee                         \$500

8        until such time as the director amends the fees by rulemaking in  
9        accordance with chapter 91. The fees to be established by the  
10       director may include but shall not be limited to an application  
11       fee, biennial renewal fee, restoration fee, and other reasonable  
12       and necessary fees related to the department's administrative  
13       costs. The fees shall be deposited into the professional  
14       employer organization special fund established under section  
15       373L-A. The number of covered employees for purposes of this  
16       section shall be calculated based on the average number of  
17       employees reported on a professional employer organization's  
18       form UC-B6 (Quarterly Wage, Contribution and Employment and  
19       Training Assessment Report) filed with the department for the  
20       first quarter of the taxable year, as well as the three quarters  
21       preceding the first quarter.



1        **§373L-F Responsibilities and duties of the director.**    The  
2    general duties and powers of the director shall include but not  
3    be limited to:

4        (1) Adopting, amending, and repealing rules in accordance  
5        with chapter 91 to issue, deny, condition, renew, or  
6        deny renewal of registrations;

7        (2) Establishing fees and penalties;

8        (3) Inspecting and auditing the books and records of the  
9        professional employer organization; and

10       (4) Doing all things necessary to carry out the functions,  
11       powers, and duties of this chapter.

12       **§373L-G Professional employer agreements; notification to**  
13    **covered employees; notification to department.**    (a) During the  
14    term of the agreement between a professional employer  
15    organization and its client company, the professional employer  
16    organization shall be deemed the employer for purposes of  
17    unemployment insurance, workers' compensation, temporary  
18    disability insurance, and prepaid health care coverage.

19       (b) The professional employer organization shall provide  
20    written notice of the relationship between the professional  
21    employer organization and the client company to each covered



1 employee of the client company when assigned to the worksite of  
2 the client company.

3 (c) The professional employer organization shall provide  
4 written notice to the department on a form provided by the  
5 department of the relationship between the professional employer  
6 organization and the client company within five business days of  
7 the initiation of the relationship and within five business days  
8 of the termination of the relationship. The department shall  
9 keep the notice provided by the professional employer  
10 organization confidential, including the names of the client  
11 companies and information that may identify the client  
12 companies.

13 **§373L-H Failure to comply; penalty; injunction.** (a) If a  
14 professional employer organization fails to comply with this  
15 chapter or any rule or final order of the director, the  
16 professional employer organization shall be liable for a penalty  
17 in an amount:

18 (1) Not less than \$1,000; or  
19 (2) \$500 for every day during which the failure continues;  
20 whichever sum is greater. The director may, in the director's  
21 discretion, for good cause shown, remit all or any part of the  
22 penalty in excess of \$1,000 to the professional employer



1 organization; provided that the professional employer  
2 organization complies with this chapter, rules adopted pursuant  
3 to chapter 91, and final orders of the director.

4 (b) If a professional employer organization fails to  
5 comply with this chapter, a rule, or an order for a period of  
6 thirty consecutive days, the professional employer organization  
7 may be enjoined, by the circuit court of the circuit in which  
8 the professional employer organization's principal place of  
9 business is located, from carrying on business anywhere in the  
10 State so long as the noncompliance continues. An action for an  
11 injunction under this subsection shall be prosecuted by the  
12 attorney general or any county attorney if so requested by the  
13 director.

14 **§373L-I Hearings.** Unless otherwise provided by law, in  
15 every case in which the director denies, suspends, revokes, or  
16 denies renewal of registration, or proposes to impose a penalty  
17 on a professional employer organization, the proceeding shall be  
18 conducted in accordance with chapter 91 by the director or an  
19 appointed hearings officer.

20 In all proceedings before it, the director or hearings  
21 officer shall have the same powers respecting administering  
22 oaths, compelling the attendance of witnesses and the production



1 of documentary evidence, and examining witnesses, as are  
2 possessed by circuit courts. In case of disobedience by any  
3 person of any order of the director or hearings officer, or of  
4 any subpoena issued by the director or hearings officer, or the  
5 refusal of any witness to testify to any matter on which the  
6 person may be questioned lawfully, any circuit court judge, on  
7 application by the director or hearings officer, shall compel  
8 obedience as in the case of disobedience of the requirements of  
9 a subpoena issued by a circuit court or a refusal to testify  
10 therein.

11 **§373L-J Judicial review by circuit court.** Any  
12 professional employer organization aggrieved by a final decision  
13 and order of the director in a contested case, as defined in  
14 chapter 91, is entitled to judicial review thereof by the  
15 circuit court of the circuit in which the professional employer  
16 organization's principal place of business is located. The  
17 review shall be as provided by chapter 91.

18 **§373L-K Payroll cost exemption.** (a) Amounts received by  
19 a professional employer organization from a client company equal  
20 to amounts that are disbursed by the professional employer  
21 organization for employee wages, salaries, payroll taxes,  
22 insurance premiums, and benefits, including retirement,



1 vacation, sick leave, health benefits, and similar employment  
2 benefits with respect to covered employees at a client company  
3 shall not be subject to the general excise tax as provided by  
4 section 237-24.75.

5 (b) The general excise tax exemption under section  
6 237-24.75 shall not apply to the professional employer  
7 organization if:

8 (1) By or through any contract between the client company  
9 and any professional employer organization, or  
10 otherwise, employees are excluded from any employee  
11 rights or employee benefits required by law to be  
12 provided to employees of the client company by the  
13 client company; or

14 (2) The professional employer organization fails to pay  
15 any tax withholding for covered employees or any  
16 federal or state taxes for which the professional  
17 employer organization is responsible."

18 SECTION 3. Section 209E-2, Hawaii Revised Statutes, is  
19 amended by amending the definition of "leased employee" to read  
20 as follows:

21 "Leased employee" means an employee under a professional  
22 [~~employment~~] employer organization arrangement, or other



1 employee leasing arrangement, who is assigned to a particular  
2 client company on a substantially full-time basis for at least  
3 one year."

4 SECTION 4. Section 237-24.75, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§237-24.75 Additional exemptions.** In addition to the  
7 amounts exempt under section 237-24, this chapter shall not  
8 apply to:

- 9 (1) Amounts received as a beverage container deposit  
10 collected under chapter 342G, part VIII;
- 11 (2) Amounts received by the operator of the Hawaii  
12 convention center for reimbursement of costs or  
13 advances made pursuant to a contract with the Hawaii  
14 tourism authority under section 201B-7[+]; and[+]  
15 +](3) Amounts received[+] by a professional [~~employment~~]  
16 employer organization from a client company equal to  
17 amounts that are disbursed by the professional  
18 [~~employment~~] employer organization for employee wages,  
19 salaries, payroll taxes, insurance premiums, and  
20 benefits, including retirement, vacation, sick leave,  
21 health benefits, and similar employment benefits with  
22 respect to [~~assigned~~] covered employees at a client



1 company; provided that this exemption shall not apply  
2 to a professional [~~employment~~] employer organization  
3 if: [~~upon failure of the professional employment~~  
4 ~~organization to collect, account for, and pay over any~~  
5 ~~income tax withholding for assigned employees or any~~  
6 ~~federal or state taxes for which the professional~~  
7 ~~employment organization is responsible.]~~

8 (A) By or through any contract between a client  
9 company and any professional employer  
10 organization, or otherwise, employees are  
11 excluded from any employee rights or employee  
12 benefits required by law to be provided to  
13 employees of the client company by the client  
14 company; or

15 (B) The professional employer organization fails to  
16 pay any tax withholding for covered employees or  
17 any federal or state taxes for which the  
18 professional employer organization is  
19 responsible.

20 As used in this paragraph, [~~professional employment~~  
21 ~~organization~~"], professional employer organization,  
22 "client company", and [~~assigned employee~~] covered





1            employee" shall have the meanings provided in section  
2            [~~373K-1.~~] 373L-1."

3            SECTION 5. Section 373L-1, Hawaii Revised Statutes, is  
4 amended as follows:

5            1. By adding two new definitions to be appropriately  
6 inserted and to read:

7            "Controlling person" means any individual, firm,  
8 association, or corporation that directly or indirectly has the  
9 power to direct or cause to be directed, the management,  
10 control, or activities of the professional employer  
11 organization.

12            "Department" means the department of labor and industrial  
13 relations."

14            2. By amending the definitions of "client company",  
15 "covered employee", "professional employer agreement",  
16 "professional employer organization", and "temporary help  
17 services" to read:

18            "Client company" means any person [~~who enters into a~~  
19 ~~professional employer agreement with a professional employer~~  
20 ~~organization.] that contracts with a professional employer  
21 organization and is assigned employees by the professional  
22 employer organization under that contract.~~



1 "Covered employee" means an individual having a [~~ee-~~  
2 ~~employment~~] relationship with a professional employer  
3 organization and a client company who meets all of the following  
4 criteria:

- 5 (1) The individual has received written notice of [~~ee-~~  
6 ~~employment~~] the relationship with the professional  
7 employer organization; and
- 8 (2) The individual's [~~ee-employment~~] relationship is  
9 pursuant to a professional employer agreement subject  
10 to this chapter. Individuals who are officers,  
11 directors, shareholders, partners, and managers of the  
12 client company shall be covered employees to the  
13 extent that the professional employer organization and  
14 the client company have expressly agreed in the  
15 professional employer agreement that the individuals  
16 shall be covered employees; provided that the  
17 individuals meet the criteria of this definition and  
18 act as operational managers or perform day-to-day  
19 operational services for the client company.

20 "Professional employer agreement" means a written contract  
21 by and between a client company and a professional employer  
22 organization that provides for the following:



1 (1) The [~~co-employment~~] assignment of covered employees[+]   
 2 to the client company; and

3 (2) The allocation of employer rights and obligations   
 4 between the client company and the professional   
 5 employer organization with respect to the covered   
 6 employees.

7 "Professional employer organization" or "organization"   
 8 means [~~any person that is a party to a professional employer~~   
 9 ~~agreement with a client company regardless of whether the person~~   
 10 ~~uses the term or conducts business expressly as a "professional~~   
 11 ~~employer organization", "PEO", "staff leasing company",~~   
 12 ~~"registered staff leasing company", "employee leasing company",~~   
 13 ~~"administrative employer", or any other similar name.] a   
 14 business entity that offers employees that are assigned to the   
 15 worksites of its client companies.~~

16 "Temporary help [~~services~~]" means an arrangement by which   
 17 [~~a person recruits and hires the person's own employees and:~~

18 (1) ~~Finds other organizations that need the services of~~   
 19 ~~those employees;~~

20 (2) ~~Assigns those employees to perform work or services~~   
 21 ~~for other organizations to support or supplement the~~   
 22 ~~other organizations' workforces or to provide~~



1 ~~assistance in special work situations, including~~  
 2 ~~employee absences, skill shortages, seasonal~~  
 3 ~~workloads, or special assignments or projects, and~~  
 4 ~~(3) Customarily attempts to reassign the employees to~~  
 5 ~~successive placements with other organizations at the~~  
 6 ~~end of each assignment.]~~

7 an organization hires its own employees and assigns them to a  
 8 client to support or supplement the client's workforce in a  
 9 special situation, including:

- 10 (1) An employee absence;
- 11 (2) A temporary skill shortage;
- 12 (3) A seasonal workload; or
- 13 (4) A special assignment or project."

14 3. By deleting the definition of "co-employment".

15 [~~"Co-employment" means a relationship that is intended to~~  
 16 ~~be an ongoing relationship rather than a temporary or project-~~  
 17 ~~specific one, wherein the rights, duties, and obligations of an~~  
 18 ~~employer that arise out of an employment relationship have been~~  
 19 ~~allocated between the client company and the professional~~  
 20 ~~employer organization pursuant to a professional employer~~  
 21 ~~agreement and this chapter." ]~~



1 SECTION 6. Section 373L-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~§~~373L-2~~§~~ **Registration required.** (a) Every  
4 professional employer organization shall register with the  
5 director by providing all of the information required by this  
6 section and by rules adopted by the director pursuant to chapter  
7 91 prior to entering into any professional employer agreement  
8 with any client company in this State.

9 (b) Registration information required by this section  
10 shall include:

- 11 (1) The name or names under which the professional  
12 employer organization conducts or will conduct  
13 business;
- 14 (2) The address of the principal place of business of the  
15 professional employer organization and the address of  
16 each office that the professional employer  
17 organization maintains in this State;
- 18 (3) The professional employer organization's general  
19 excise tax number;
- 20 (4) A copy of the certificate of authority to transact  
21 business in this State issued by the director of



- 1 commerce and consumer affairs pursuant to title 23 or  
2 title 23A, if applicable;
- 3 (5) A list, organized by jurisdiction, of each name under  
4 which the professional employer organization has  
5 operated in the preceding five years, including any  
6 alternative names; names of predecessors; and, if  
7 known, names of successor business entities;
- 8 (6) A statement of ownership, which shall include the name  
9 of each person who, individually or acting in concert  
10 with any other person or persons, owns or controls,  
11 directly or indirectly, twenty-five per cent or more  
12 of the equity interests of the professional employer  
13 organization;
- 14 (7) A statement of management, which shall include the  
15 name of any person who serves as president or chief  
16 executive officer or who otherwise has the authority  
17 to act as a senior executive officer of the  
18 professional employer organization;
- 19 (8) Proof of valid workers' compensation coverage in  
20 compliance with all laws of this State;
- 21 (9) Proof of compliance with the Hawaii temporary  
22 disability insurance law;



- 1 (10) Proof of compliance with the Hawaii prepaid health  
2 care act [~~as regards all employees of the professional~~  
3 ~~employer organization~~];
- 4 (11) Proof of compliance with the Hawaii employment  
5 security law, including payment of any applicable  
6 employer liability pursuant to chapter 383; [~~and~~]
- 7 (12) A financial statement prepared in accordance with  
8 generally accepted accounting principles, audited  
9 within three months of registration or renewal by an  
10 independent certified public accountant licensed to  
11 practice in the State, and without qualification as to  
12 the going concern status of the professional employer  
13 organization[-]; provided that if the professional  
14 employer organization has not had sufficient operating  
15 history to have audited financial statements, a  
16 financial statement that has been reviewed within  
17 three months of registration by an independent  
18 certified public accountant licensed to practice in  
19 the State who can attest that the professional  
20 employer organization has \$150,000 in working capital  
21 shall be required; and



1        (13) The name, address, and phone number of the financial  
2            institution utilized by the professional employer  
3            organization for payroll purposes that operates and  
4            maintains branches in the State.

5            (c) Registration under this section shall expire on  
6        ~~[December 31]~~ June 30 of each ~~[odd-numbered]~~ even-numbered year.  
7        Before ~~[December 31]~~ June 30 of each ~~[odd-numbered]~~ even-  
8        numbered year, the director or the director's authorized  
9        delegate shall mail a renewal application for registration to  
10       the address on record of the registrant. In connection with  
11       renewal of registration, a professional employer organization  
12       shall provide all of the information required by subsection (b).  
13       Failure to renew a registration shall result in forfeiture of  
14       that registration. Registrations that have been forfeited may  
15       be restored within one year of the forfeiture date upon payment  
16       of renewal and restoration fees. Failure to restore a forfeited  
17       registration within one year shall result in the automatic  
18       termination of the registration. Registrations that have been  
19       terminated pursuant to this section shall be required to reapply  
20       for a new registration as a new applicant.

21            (d) The director shall ~~[establish fees and requirements~~  
22        ~~for registration, maintenance of registration, renewal, and~~





1 ~~restoration of registration for professional employer~~  
2 ~~organizations by rule pursuant to chapter 91.]~~ to the extent  
3 practicable permit the acceptance of electronic filings in  
4 conformance with chapter 489E, including applications,  
5 documents, reports, and other filings required under this  
6 chapter. The director may provide for the acceptance of  
7 electronic filings by a professional employer organization.  
8 Nothing in this subsection shall limit or change the director's  
9 authority to register or terminate registration of a  
10 professional employer organization or to investigate or enforce  
11 any provision of this chapter."

12 SECTION 7. Section 373L-3, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "~~[+]§373L-3[+]~~ **Bond required.** (a) No professional  
15 employer organization shall enter into a professional employment  
16 agreement with a client company in the State unless the  
17 professional employer organization posts a bond [~~in the amount~~  
18 ~~of \$250,000, which is a performance or financial guaranty type~~  
19 ~~bond naming the director as the obligee and which may be~~  
20  ~~canceled only if the professional employer organization gives~~  
21 ~~sixty days prior written notice to the surety or if the surety~~  
22 ~~gives thirty days prior written notice to the director of~~



1 ~~cancellation of the bond. The requirements of this section~~  
2 ~~shall be satisfied by a single bond. If a professional employer~~  
3 ~~organization has more than one branch location, the bond shall~~  
4 ~~cover all locations.] as follows:~~

5       (1) Professional employer organizations consisting of  
6       fewer than one hundred full-time or part-time  
7       employees shall post a minimum of \$250,000; provided  
8       that the number of employees shall be calculated in  
9       the same manner as required under 373L-E; and

10       (2) All other professional employer organizations shall  
11       post a bond in an amount equal to:

12       (A) One per cent of the organization's prior year's  
13       total wages, benefits, workers' compensation  
14       premiums, and unemployment compensation  
15       contributions; or

16       (B) \$1,000,000;  
17       whichever is less; provided that the amount of the  
18       bond shall be no less than \$500,000.

19       (b) Any bond posted pursuant to this section shall name  
20       the director as the obligee and may be canceled only if either  
21       the professional employer organization or the surety gives sixty  
22       days prior written notice to the other and the surety gives at



1 least forty-five days prior written notice to the director of  
2 cancellation of the bond. If a professional employer  
3 organization has more than one branch location in the State, the  
4 bond shall cover all locations. The requirements of this  
5 section shall be satisfied by a single bond. The bond required  
6 by this section shall be issued by [a] an A-rated surety [or  
7 federally insured lending institution] authorized to do business  
8 in the State to [indemnify a] fulfill the obligations of the  
9 professional employer organization to the State, client  
10 [company] companies, and covered employees who may suffer loss  
11 as a result of [~~nonperformance~~] noncompliance and failure to  
12 make payment by a professional employer organization[-],  
13 including but not limited to unemployment insurance, workers'  
14 compensation, temporary disability insurance, prepaid health  
15 care benefits, wages, employee benefits, and employment taxes.

16 (c) [~~Upon cancellation or expiration of the bond, the~~] The  
17 surety [or insurer] shall remain [liable] obligated for any  
18 claims against the bond [~~for a period of six months,~~] after  
19 cancellation or expiration of the bond; provided that:

20 [~~(1) The debts were incurred while the bond was in effect,~~  
21 and



1       ~~(2) The director notifies the surety or insurer, as the~~  
2           ~~case may be, of any claims within ninety days of~~  
3           ~~discovery of any claims.]~~

4       (1) The surety was provided written notice of such claim  
5           during the six month period immediately following the  
6           cancellation or expiration of the bond; and

7       (2) The claim accrued, but only for the amount accrued,  
8           before the expiration or cancellation of the bond.

9       (d) The surety [~~or insurer~~] is not required to release any  
10       moneys or collateral to the professional employer organization  
11       during the six months after cancellation of the bond.

12       (e) Failure to have in effect a current bond shall result in  
13       automatic forfeiture of registration pursuant to this chapter  
14       and shall require the professional employer organization to  
15       immediately cease doing business in the State. Notwithstanding  
16       section 373L-H, if the professional employer organization does  
17       not cease doing business, the director may immediately apply to  
18       the court for an order to enjoin the professional employer  
19       organization. A professional employer organization whose  
20       registration is forfeited shall apply as a new applicant for  
21       registration in order to resume business in the State.



1       (f) The director, or any person claiming to have sustained  
2 loss resulting from noncompliance and failure to make payments  
3 by a professional employer organization as required by this  
4 chapter, may bring an action on the bond to recover such damage.  
5 The surety may fulfill its obligation under the bond by  
6 depositing the penal sum of the bond with the director. Upon  
7 receiving any sum from the surety, the director may deduct all  
8 money due to the State resulting from the noncompliance and  
9 nonpayment by the professional employer organization. Any  
10 remaining balance shall be held by the director for the benefit  
11 of all other persons who sustained loss by the noncompliance and  
12 nonpayment by the professional employer organization, and the  
13 director may deposit such balance with a court of competent  
14 jurisdiction in order to resolve competing claims. After all  
15 claims are finally resolved or settled, any remaining balance  
16 from the bond proceeds shall be returned to the surety."

17       SECTION 8. Chapter 373K, Hawaii Revised Statutes, is  
18 repealed.

19       SECTION 9. The director of labor and industrial relations  
20 may establish two .5 full-time equivalent (FTE) permanent  
21 additional positions, subject to chapters 76 and 89, Hawaii  
22 Revised Statutes, to carry out the purposes of chapter 373L,



1 Hawaii Revised Statutes. The positions may include a disability  
2 compensation enforcement specialist IV and office assistant IV.

3 SECTION 10. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$177,500 or so much  
5 thereof as may be necessary for fiscal year 2012-2013 to be  
6 deposited to the credit of the professional employer  
7 organization special fund established pursuant to section  
8 373L-A, Hawaii Revised Statutes.

9 SECTION 11. There is appropriated out of the professional  
10 employer organization special fund the sum of \$177,500 or so  
11 much thereof as may be necessary for fiscal year 2012-2013 for  
12 the department of labor and industrial relations to carry out  
13 the purposes of this Act, including the hiring of two .5 full-  
14 time equivalent (FTE) permanent positions pursuant to section 9  
15 of this Act, necessary equipment, and fees to the department of  
16 commerce and consumer affairs.

17 The sum appropriated shall be expended by the department of  
18 labor and industrial relations for the purposes of this Act.

19 SECTION 12. This Act does not affect rights and duties  
20 that matured, penalties that were incurred, and proceedings that  
21 were begun before its effective date.



1 SECTION 13. In codifying the new sections added by section  
2 2 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5 SECTION 14. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 15. This Act shall take effect upon its approval;  
8 provided that sections 10 and 11 shall take effect on July 1,  
9 2012.

APPROVED this                      day of                      , 2012

GOVERNOR OF THE STATE OF HAWAII