

Honolulu, Hawaii

March 16, 2012

RE: S.B. No. 2424
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committees on Labor & Public Employment and Economic Revitalization & Business, to which was referred S.B. No. 2424, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS,"

beg leave to report as follows:

The purpose of this measure is to facilitate the implementation of the professional employer organization law established by Act 129, Session Laws of Hawaii 2010. Specifically, this measure, among other things:

- (1) Establishes the Professional Employer Organization Special Fund;
- (2) Requires each registered professional employer organization to provide written notice within 30 days to the Department of Labor and Industrial Relations of any judgment, award, or disciplinary sanction imposed against the organization for violating a statutory provision in an action brought by any state or federal regulatory agency and provides for a penalty for non-compliance;



- (3) Requires professional employer organizations to file the organization's current mailing address with the Department;
- (4) Authorizes the Director of Labor and Industrial Relations (Director) to deny, suspend, revoke, or deny renewal of registration of any professional employer organization or impose a penalty under certain conditions;
- (5) Establishes various fees on applicants for registration as a professional employer organization;
- (6) Requires the Director to collect the various fees from professional employer organizations and registrants upon adoption of rules pursuant to chapter 91, Hawaii Revised Statutes (HRS);
- (7) Establishes a method for calculating the number of covered employees of a professional employer organization;
- (8) Gives additional responsibilities and duties to the Director regarding the registration and regulation of professional employer organizations;
- (9) Provides requirements for professional employer agreements between a professional employer organization and its client company;
- (10) Provides various penalties for non-compliance with the professional employer organization law;
- (11) Provides for a hearings process for cases in which the Director refuses to issue, renew, restore, or reinstate a registration, or proposes to impose a penalty on a professional employer organization, as well as a judicial review process by the circuit court;
- (12) Incorporates an existing general excise tax exemption relating to professional employer organizations into chapter 373L, HRS;
- (13) Amends various definitions in chapter 373L, HRS, for the purpose of consistency;



- (14) Creates a protocol for the acceptance of electronic filings;
- (15) Amends bond level requirements for professional employer organizations and specifies that bonds must be issued by an A-rated surety, rather than a federally-insured lending institution;
- (16) Repeals chapter 373K, HRS, relating to professional employment organizations;
- (17) Allows the Director to establish three .5 full-time permanent positions; and
- (18) Appropriates funds to the Department of Labor and Industrial Relations.

The Department of Labor and Industrial Relations and ILWU Local 142 testified in support of this measure. ALTRES, Inc. testified in support of the intent of this measure. The Department of Budget and Finance, Department of Taxation, Tax Foundation of Hawaii, and ProService Hawaii HR Administration provided comments.

Act 225, Session Laws of Hawaii 2007, established chapter 373K, HRS, relating to professional employment organizations. The main purpose of Act 225 was to provide a general excise tax exemption for these organizations. In 2010, the Legislature enacted Act 129, Session Laws of Hawaii 2010, which established chapter 373L, HRS, relating to professional employer organizations and provided registration requirements for professional employer organizations in Hawaii. Although the registration requirements went into effect on July 1, 2011, amendments to the existing statutes are needed before the Department of Labor and Industrial Relations can fully implement the law.

Chapter 373K and 373L, HRS, address the same type of entities and contain duplicative subject matter. Your Committees find that having these two chapters in the HRS is unnecessary, and that this measure will eliminate duplicative provisions relating to professional employer organizations and facilitate the implementation of the professional employer organization law, as established by Act 129, Session Laws of Hawaii 2010.



Your Committees note that this measure remains a work in progress and that parties continue to negotiate the details of this legislation.

Your Committees have amended this measure by:

- (1) Deleting the establishment of an initial registration fee;
- (2) Clarifying language specifying that the fees established by this measure shall remain in effect until such time that the Director changes the fees through the adoption of rules;
- (3) Specifying that the covered worker count used to assess the fees should be based on the average number of employees reported on the UC-B6 form submitted by a professional employer organization;
- (4) Clarifying the definition of "leased employee" to ensure that it covers employees leased in arrangements in addition to those covered under a professional employer organization arrangement;
- (5) Correcting inconsistencies with regard to the loss of general excise tax benefits;
- (6) Changing its effective date to July 1, 2012, to facilitate further discussion; and
- (7) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Labor & Public Employment and Economic Revitalization & Business that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2424, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2424, S.D. 2, H.D. 1, and be referred to the Committees on Consumer Protection & Commerce and Judiciary.



Respectfully submitted on
behalf of the members of the
Committees on Labor & Public
Employment and Economic
Revitalization & Business,



ANGUS L.K. MCKELVEY, Chair



KARL RHOADS, Chair



State of Hawaii
House of Representatives
The Twenty-sixth Legislature

HSR 1053-12

Record of Votes of the Committee on Labor & Public Employment

Bill/Resolution No.: SB2424 SD2	Committee Referral: LAB, ERD, CPC/JUD, FIN	Date: 3-13-12		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
LAB Members	Ayes	Ayes (WR)	Nays	Excused
1. RHOADS, Karl (C)	/			
2. YAMASHITA, Kyle T. (VC)	/			
3. AQUINO, Henry J.C.	/			
4. CULLEN, Ty	/			
5. ICHIYAMA, Linda	/			
6. LEE, Marilyn B.	/			
7. LUKE, Sylvia	/			
8. OKAMURA, Tom				
9. SAIKI, Scott K.				/
10. SOUKI, Joseph M.				/
11. TAKUMI, Roy M.	/			
12. FONTAINE, George R.	-	/		
13. JOHANSON, Aaron Ling	/			
TOTAL (13)	9	1	-	2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small style="margin-left: 100px;">committee acronym(s)</small>				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				

State of Hawaii
 House of Representatives
 The Twenty-sixth Legislature

House 1053-12

Record of Votes of the Committee on Economic Revitalization & Business

Bill/Resolution No.: SB 2424, SD 2 ^(66CR) ₍₂₇₉₄₎	Committee Referral: LAB/ERB, CPC/UD, FIN	Date: 3/13/12		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
ERB Members	Ayes	Ayes (WR)	Nays	Excused
✓ 1. McKELVEY, Angus L.K. (C)	✓			
✓ 2. CHOY, Isaac W. (VC)	✓			
✓ 3. AWANA, Karen L.	✓			
4. BROWER, Tom	✓			
5. EVANS, Cindy	✓			
✓ 6. HASHEM, Mark J.	✓			
7. NISHIMOTO, Scott Y.	✓			
8. TOKIOKA, James Kunane	✓			
✓ 9. TSUJI, Clift	✓			
✓ 10. MARUMOTO, Barbara C.		✓		
11. PINE, Kymberly Marcos				/
TOTAL (11)	9	1	—	1
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: <i>[Signature]</i>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				