

Honolulu, Hawaii
March 23, 2012

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

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

Sir:

Your Committees on Consumer Protection & Commerce and
Judiciary, to which was referred S.B. No. 2424, S.D. 2, H.D. 1,
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 Chapters 209E and 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 ILWU Local 142 testified in support of this measure. ALTRES, Inc. testified in support of the intent of this measure. The Department of Labor and Industrial Relations, Department of Taxation, ProService Hawaii HR Administration, Tax Foundation of Hawaii, and Employer Services Assurance Corporation provided comments.

Your Committees have amended this measure by:

- (1) Inserting language that would prohibit the use of the terms professional employer organization, PEO, staff leasing company, registered staff leasing company, employee leasing company, administrative employer or other similar name unless the entity was registered per the requirements of Chapter 373L, HRS;
- (2) Requiring the professional employer organization to provide written notice of the relationship between the professional employer organization and the client company to each covered employee of the client company within 14 calendar days;
- (3) Amending the hearings process for professional employer organizations to apply to cases in which the Director denies, suspends, revokes, or denies renewal of registration, or proposes to impose a penalty on a professional employer organization;



- (4) Providing a method for professional employer organizations consisting of fewer than 100 full-time or part-time employees to calculate their number of employees when determining bond requirements;
- (5) Specifying that bonds posted shall be financial guaranty type bonds and not performance type bonds;
- (6) Requiring the surety to give the Director 45 days prior written notice of cancellation of the bond rather than thirty days notice;
- (7) Stipulating that the surety shall remain obligated for any claims against the bond after cancellation or expiration of the bond; provided that:
 - (A) The surety was provided written notice of such claim during the six month period immediately following the cancellation or expiration of the bond; and
 - (B) The claim accrued, but only for the amount accrued, before the expiration or cancellation of the bond;
- (8) Stipulating that:
 - (A) The Director, or any person claiming to have sustained damage resulting from noncompliance of a professional employer organization with this chapter, may bring an action on the bond to recover such damage;
 - (B) The surety may fulfill its obligation under the bond by depositing the penal sum of the bond with the Director;
 - (C) Upon receiving any sum from the surety, the Director may deduct all money due to the State of Hawaii resulting from the noncompliance of the professional employer organization;
 - (D) Any remaining balance shall be held by the Director for the benefit of all other persons damaged by the noncompliance of the professional employer organization and that the Director may deposit such



balance with a court of competent jurisdiction in order to resolve competing claims; and

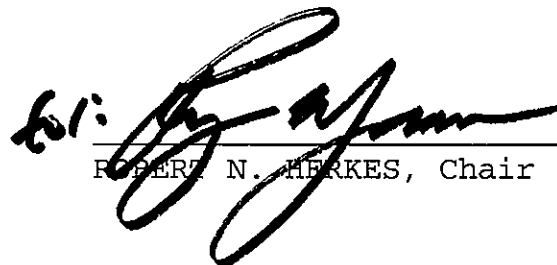
(E) After all claims are finally resolved or settled, any remaining balance from the bond proceeds shall be returned to the surety; and

(9) Making technical, nonsubstantive amendments for clarity, consistency, and style.

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

Respectfully submitted on
behalf of the members of the
Committees on Consumer
Protection & Commerce and
Judiciary,


GILBERT KEITH-AGARAN, Chair

cc: 
ROBERT N. HERKES, Chair



HSCR 1299-12

State of Hawaii
House of Representatives
The Twenty-sixth Legislature

Record of Votes of the Committee on Consumer Protection & Commerce

Bill/Resolution No.: SB 2424 SDR HDI	Committee Referral: LAB/ERB, CPC/JUD, FIN	Date: 3/19/12		
<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)				
CPC Members	Ayes	Ayes (WR)	Nays	Excused
1. HERKES, Robert N. (C)				/
2. YAMANE, Ryan I. (VC)	/			
3. BROWER, Tom	/			
4. CABANILLA, Rida T.R.	/			
5. CARROLL, Mele				/
6. COFFMAN, Denny	/			
7. ITO, Ken	/			
8. KEITH-AGARAN, Gilbert S.C.	/			
9. LUKE, Sylvia	/			
10. McKELVEY, Angus L.K.	/			
11. SOUKI, Joseph M.	/			
12. TSUJI, Clift	/			
13. CHING, Corinne W.L.				/
14. MARUMOTO, Barbara C.		/		
15. THIELEN, Cynthia		/		
TOTAL (15)	10	2		3
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: _____ 				
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State of Hawaii
House of Representatives
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Issue 1299-12

Record of Votes of the Committee on Judiciary

Bill/Resolution No.: SB2424 502 HD1	Committee Referral: LAB/ERB, CPC/JUD, FIN	Date: 3/19/12
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The committee is reconsidering its previous decision on the measure.

The recommendation is to: Pass, unamended (as is) Pass, with amendments (HD) Hold
 Pass short form bill with HD to recommit for future public hearing (recommit)

JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. KEITH-AGARAN, Gilbert S.C. (C)	/			
2. RHOADS, Karl (VC)	/			
3. BROWER, Tom	/			
4. CABANILLA, Rida T.R.	/			
5. CARROLL, Mele				/
6. COFFMAN, Denny	/			
7. HERKES, Robert N.				/
8. ITO, Ken	/			
9. LUKE, Sylvia	/			
10. McKELVEY, Angus L.K.	/			
11. SOUKI, Joseph M.	/			
12. TSUJI, Clift	/			
13. FONTAINE, George R.		/		
14. MARUMOTO, Barbara C.		/		
15. THIELEN, Cynthia		/		
TOTAL (15)	10	3	0	2

The recommendation is: Adopted Not Adopted
 If joint referral, _____ committee acronym(s) did not support recommendation.

Vice Chair's or designee's signature: *Karl Rhoads*

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