

Honolulu, Hawaii

April 5, 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 Committee on Finance, to which was referred S.B. No. 2424, S.D. 2, H.D. 2, entitled:

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

begs leave to report as follows:

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

- (1) Establishes the Professional Employer Organization Special Fund;
- (2) Prohibits the use by an entity 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 is registered and in compliance with statutory requirements and the rules and regulations of the Director of Labor and Industrial Relations (Director);
- (3) Requires each registered professional employer organization to provide written notice within 30 days to the Department of Labor and Industrial Relations



(Department) 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;

- (4) Requires professional employer organizations to file the organization's current mailing address with the Department;
- (5) Authorizes the Director to deny, suspend, revoke, or deny renewal of registration of any professional employer organization or to impose a penalty under certain conditions;
- (6) Establishes various fees for applicants for registration as a professional employer organization to be effective until amended by the Director by rule adopted 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) Establishes requirements for professional employer agreements between a professional employer organization and its client company;
- (10) Establishes various penalties for non-compliance with the professional employer organization law;
- (11) Provides a hearings process for professional employer organizations applicable 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, and provides for judicial review by the circuit court;
- (12) Clarifies an existing general excise tax exemption relating to professional employer organizations in the Tax Code;



- (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) Provides a method for professional employer organizations consisting of fewer than 100 full-time or part-time employees to calculate their number of employees for purposes of determining bond requirements;
- (16) Specifies that bonds posted shall be financial guaranty type bonds and not performance type bonds;
- (17) Requires the surety to give the Director 45 days prior written notice of cancellation of the bond;
- (18) 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;
- (19) Stipulates 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;
- (20) Stipulates that, with respect to bonds:
 - (A) The Director, or any person claiming to have sustained damage resulting from noncompliance of a professional employer organization with statutory requirements, 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;

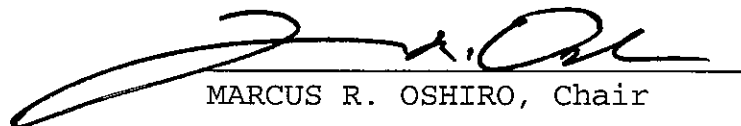


- (C) Upon receiving any sum from the surety, the Director may deduct all money due to the State of Hawaii resulting from the noncompliance of the professional employer organization;
 - (D) Any remaining balance shall be held by the Director for the benefit of all other persons damaged by the noncompliance 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;
- (21) Repeals Chapter 373K, HRS, relating to professional employment organizations, which contains conflicting or duplicative provisions;
 - (22) Allows the Director to establish three .5 full-time permanent positions; and
 - (23) Appropriates funds to the Department.

The Department of Labor and Industrial Relations, Tax Foundation of Hawaii, and ALTRES, Inc., provided comments on this measure.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2424, S.D. 2, H.D. 2, and recommends that it pass Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



