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RONALD BOYER
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TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Monday, March 29, 2010
4:00 p.m.

**TESTIMONY ON SENATE BILL NO. 1062, S.D. 1 – RELATING TO PROFESSIONAL
EMPLOYER ORGANIZATIONS.**

TO THE HONORABLE MARCUS OSHIRO, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”),
testifying on behalf of the Department of Commerce and Consumer Affairs
(“Department”). The Department appreciates the opportunity to testify on Senate Bill
No. 1062, S.D. 1, Relating to Professional Employer Organizations.

This bill creates a new chapter to regulate professional employer organizations
(“PEO”) by requiring registration with the Commissioner.

Hawaii Revised Statutes (“HRS”) § 26H-6 currently requires new regulatory
measures being considered for enactment to be referred to the Legislative Auditor for a
sunrise analysis. Referral shall be by concurrent resolution that identifies a specific
legislative bill to be analyzed. The statute further requires that the analysis shall set
forth the probable effects of regulation, assess whether its enactment is consistent with
the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess
alternative forms of regulation.

The Department strongly supports a sunrise study on this measure, as mandated
by law, before regulating PEO.

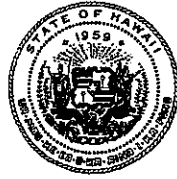
If, however, the PEO regulation is enacted, the Department offers the following concerns.

This version of the bill requires every PEO to register with the Commissioner and to post a \$1 million bond. As defined in section -1, a PEO is any person who is a party to a professional employer agreement with a client company, regardless of the term used. A "professional employer agreement" is defined as a written contract by and between a client company and a PEO that provides for the co-employment of covered employees and the allocation of employer rights and obligations between the client company and the PEO with respect to covered employees. The Department does not regulate employers or the labor-management relationship.

Required registration information includes proof of compliance with State labor laws, including workers' compensation, temporary disability insurance, prepaid health care, and employment security. These laws are administered and enforced by the Department of Labor and Industrial Relations ("DLIR"), pursuant to HRS § 26-20. The Insurance Division does not have personnel with experience or expertise in labor laws.

We thank this Committee for the opportunity to present testimony on this matter.

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 25, 2010

To: The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Finance

Date: Monday, March 29, 2010

Time: 4:00 p.m.

Place: Conference Room 308, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

S.B.1062 SD1 - Relating to Professional Employment Organizations

I. DLIR'S COMMENTS ON S. B. 1062 S.D.1

While the Department does not support placing additional regulations on businesses at this time, if the legislature feels that this regulation is necessary, the Department believes that the DLIR is the appropriate Department to handle the registering of PEOs.



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March 29, 2010

The Honorable Marcus Oshiro, Chair
The Honorable Marilyn Lee, Chair
State Capitol
415 Beretania Street
Honolulu, HI 96813

Dear Representatives Oshiro and Lee,

On behalf of the National Association of Professional Employer Organizations, (NAPEO),¹ I am writing to express general support for Senate Bill 1062, a measure which requires professional employer organizations (PEOs) to register with the State of Hawaii. However, NAPEO's support is contingent upon the inclusion of a surety bond in the type and amount consistent with what is customarily required for PEOs operating in a state.

By way of background, Professional Employer Organizations are businesses that partner with existing small businesses to enable them to cost-effectively outsource the management of human resources, employee benefits, payroll and workers' compensation, so that PEO clients can focus on their core competencies to maintain and grow their bottom line. By forming an employment relationship with these small businesses and their employees, PEOs are able to offer enhanced access to employee benefits.

To date, 36 states across the country regulate the PEO industry through licensing and/or registration programs to provide a level of transparency to consumers and state agencies that regulate aspects of the PEO employment relationship. Senate Bill 1062 would create a similar regulatory framework for the industry and would significantly benefit small businesses and workers in PEO arrangements, as well as those state agencies that have responsibility for administering employer-based statutes and regulations.

¹ The National Association of Professional Employer Organizations (NAPEO) is a national trade association of the professional employer organization (PEO) industry, representing a membership that generates more than 90% of the industry's total PEO gross revenues.

NAPEO supports Senate Bill 1062 because it provides a necessary and consistent framework for registering and regulating PEOs located and operating in Hawaii. Specifically, this bill will:

1. Require transparency through annual registration of all PEOs, both domestic and mainland, and ensure proper documentation is provided to the state (i.e. proof of workers' compensation, unemployment insurance, etc.);
2. Ensure PEOs are financially solvent through annual financial disclosures to ensure that small businesses that partner with PEOs are not harmed; and
3. Detail clear responsibilities of both the PEO and client to ensure consumers are aware of the rights and responsibilities involved in the PEO relationship;

NAPEO strongly supports both transparency through registration and regulatory frameworks that create minimum standards and operational requirements. This legislation provides clear and transparent rules for PEOs that will be helpful to small businesses that engage PEOs, as well as providing the state with proper regulatory standards governing this important industry.

NAPEO firmly believes that this important legislation will help protect consumers, achieve greater efficiencies at the state regulatory level and lead to a more robust, competitive and compliant PEO industry in the state of Hawaii. We urge you to carefully consider this legislation and to vote in support. If you have any questions about this bill or NAPEO's views, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Tucker", with a long horizontal flourish extending to the right.

Tim Tucker
Vice President, Government Affairs



**Testimony to the House Committee on Finance
Monday, March 29, 2010
4:00 p.m.
Conference Room 308**

SUPPORTS THE INTENT

RE: SENATE BILL 1062 SD1 RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

ProService Hawaii provides employee administration services to over 900 small businesses in Hawaii. We support the intent of SB1062, Relating to Professional Employer Organizations.

Professional Employer Organizations (PEOs) provide outsourced human resources and employee administration services to over 2,000 small businesses through Hawaii. By partnering with a PEO, small businesses are able to focus on their core operations, while cost-effectively outsourcing their human resources management needs. PEOs also play a valuable role by assisting small businesses with providing their employees with mandatory employment benefits (e.g., workers' compensation, prepaid healthcare, TDI coverage, etc.), and by providing these businesses compliance assistance with Hawaii labor and employment laws. In addition, by partnering with PEOs, small businesses are able to provide their employees with enhanced employee benefits packages normally only available to the largest employers in the state.

For close to 20 years, ProService Hawaii has been providing these services to Hawaii-based small businesses. During this time, we have seen rapid growth in our industry, with a number of providers entering the market.

While we firmly believe that many of the PEOs operating in Hawaii operate responsibly and efficiently, over the past several years we have seen a number of firms who have not, resulting in increased risk to small businesses. Some of these PEOs have shut down suddenly in response to

unbudgeted payroll tax liabilities, catastrophic workers' compensation claims, and other financial troubles. When a PEO suddenly shuts its business, its clients are left exposed without any workers' compensation coverage or healthcare coverage for its employees. Rather than easing the burden for small businesses, partnering with a PEO with limited capital resources, poor risk management and a limited client base exposes Hawaii's businesses to greater risk.

For these reasons, ProService supports the intent of SB1062 SD1 in creating a mechanism for greater transparency and accountability to common financial solvency standards for the PEO industry.

Thank you for the opportunity to submit testimony.



Hawai'i's Employment Expert



altres.com

Hawai'i's Employment Expert

March 26, 2010

Representative Marcus R. Oshiro, Chair
Committee on Finance
House of Representatives
415 South Beretania Street
Honolulu, HI 96813

**Re: Support for SB1062, SD1 Relating to Professional Employer Organizations
March 29, 2010, 4:00 p.m., CR 308**

Dear Representative Oshiro:

My name is Barron Guss, President and second-generation owner of ALTRES, Inc., a 40-year old Hawaii company. I am here today to testify in support of SB1062, SD1, Relating to Professional Employer Organizations.

Background

Professional Employer Organizations act as the human resources and administrative arm of over 2,000 of Hawaii's small businesses. In this capacity, a PEO prepares payroll, provides workers' compensation, health insurance and enhanced lifestyle benefits to the employees of the clients they serve, which now number over 20,000.

For more than 30 years, ALTRES has been providing these services and promoting the benefits of the PEO relationship for Hawaii's businesses. Since that time, the industry has grown with a solid list of local providers of these services. In recent years, the Legislature has recognized PEOs with the passing of Act 225, which clarified the manner in which PEOs handle the monies they receive for distribution on behalf of their clients and employees as well as how the General Excise Tax is applied.

Why Registration

Last year, when we began this process, I cited that we were very fortunate that the local PEO providers had been reputable and professional in the manner in which they conducted business, and that the questionable business practices had been limited to the mainland. A year has passed and I am sorry to report that due to the failing economy and desperate measures, new providers have started up and some are simply modifying or interpreting laws to fit their needs.

PEO failures can have a negative impact on local government, businesses and their employees. It can come in the form of failure to pay taxes, including withholding, social security and retirement benefits, as well as sometimes creating a lapse or gaps in insurance coverage, leaving affected parties to fend for themselves.

Traditionally, an industry asks for licensure and registration to protect its home turf and to provide a competitive advantage for its incumbent businesses. That's not true in this case, as in my 30-year history of promoting these services, I have come across businesses that have subscribed to the services of a mainland PEO, and now local ones as well, only to discover that there has been no adherence to Hawaii State laws, including our pre-paid health act, TDI, as well using non-admitted carriers for workers' compensation insurance. Registration would allow Hawaii authorities to put these businesses on notice for our requirements as well as ensure that Hawaii's businesses and their employees are protected from these bad faith providers.

Transparency

Two sessions ago, there was a working group formed to study the current status of PEOs in the State and their effect, if any, on labor issues, insurance practices and general business issues. At that time, it was agreed that there were no issues with the industry locally, but the establishment of transparency and operational standards would be a prudent measure, given the past problems on the mainland. Currently, there are over 35 states that have adopted PEO registration and the National Association of Professional Employer Organizations (NAPEO) is working to ensure that the other 15 will not have to worry about exposure in this area.

The proposed Legislation calls for declaration of the PEO as well as adherence to certain operational standards, including audited financial statements, positive net worth, and proof of coverage for workers' compensation insurance. I would like to work with the various committees to strengthen the Bill to include proof of coverage for medical insurance, if applicable, as well as TDI.

Revenue Positive

NAPEO, the National Association of Professional Employer Organizations, cites that over 25 of its current members claim to have employment relationships with persons in the State of Hawaii. It is important to note that there are a number of PEOs in the State that currently do not belong to NAPEO, as well as service providers that do not necessarily show up on the radar, bringing the potential number of service providers to more than 50.

March 26, 2010
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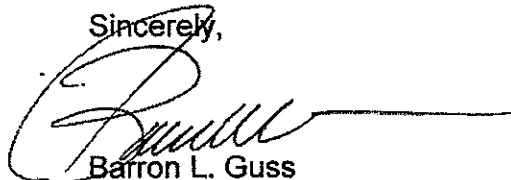
There is currently a proposed \$1,500 service fee for each registration, bringing a positive financial impact of \$75,000 to the State.

Summary

Coming from an industry that stresses that its main benefit is to provide simplicity for business owners, it is ironic that I am asking for more government regulation and paperwork. However, I feel it is imperative that our industry and the State move toward creating an environment of transparency and accountability in the PEO industry.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Barron L. Guss", with a long horizontal line extending to the right.

Barron L. Guss
President and CEO

BLG:lo

To the House Committees on Labor & Public Employment and Economic Revitalization, Business, & Military Affairs:

Testimony against Senate Bill No. 1062 SD1, Relating to Professional Employer Organizations:

My name is Jack Schneider, President of JS Services, Inc. JS Services Inc is an Employee Leasing Company (PEO) that has served Hawaii since 1982. During the past 28 years, I have welcomed competition in the industry. Competition improves practices, products, services and also reduces costs. These cost savings have been passed on to our clients enabling them to pay higher wages and/or employ more workers.

SB 1062 SD1 Will increase cost factors and decrease competition dramatically. Each PEO would be required to obtain a one million dollar performance bond. The cost of obtaining and pledging one million dollars in assets, plus the cost of bonding is extremely expensive. SB1062 SD1 would require an annual PEO audit, also expensive. SB 1062 SD1 would require a periodic registration/renewal fee. This could potentially be expensive. These high cost factors will effectively force most small, reputable PEOs out of business and leave the market to a few large local and mainland PEOs

Since Hawaii Revised Statute Section 26H-6 currently requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise analysis. I would request that HB1062 SD1 be submitted to the Auditor for said purpose.

I would also ask that the committee request that regulations in SB1062 SD1 pertaining to the PEO organizations also be referred to the Auditor as per statute.

Thank you for the opportunity to offer testimony against Senate Bill No.1062, SD1

Jack Schneider