



March 8, 2010

Representative Karl Rhoads, Chair
Committee on Labor & Public Employment
House of Representatives
415 South Beretania Street
Honolulu, HI 96813

Representative Angus L.K. McKelvey, Chair
Committee on Economic Revitalization, Business & Military Affairs
House of Representatives
415 South Beretania Street
Honolulu, HI 96813

**Re: Support for SB1062, SD1 Relating to Professional Employer Organizations
March 9, 2010, 10:30 a.m., CR 309**

Dear Representative Rhoads and Representative McKelvey:

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.

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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.

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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.

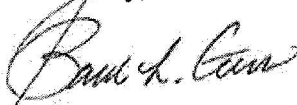
There is currently a proposed \$1,500 service fee for each registration, bringing a positive financial impact of \$75,000 to the State.

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,



Barron L. Guss
President and CEO

BLG:lo



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March 8, 2010

Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair
Committee on Labor & Public Employment

Representative Angus L.K. McKelvey, Chair
Representative Isaac W. Choy, Vice Chair
Committee on Economic Revitalization, Business & Military Affairs

RE: SB 1062 SD 1, Relating to Professional Employer Organization

Dear Chair Rhoads, Vice Chair Yamashita, Chair McKelvey, Vice Chair Choy and Members of the Committee:

My name is John Radcliffe and I represent NAPEO, the National Association of Professional Employer Organization. We strongly support the passage of SB 1062, SD 1.

PEO's or Professional Employer Organizations are operating in all 50 states and are regulated, certified, or registered with some body of state government in about 39 states. Hawaii does not now regulated, certify, or register these businesses despite the fact that they are provide human resources/administrative serves to over 2,000 Hawaii businesses, both large and small. The legislature has already recognized the existence of these businesses by passing Act 225 which clarifies the manner in which PEO's handle the funds that they receive for distribution on behalf of their clients and the employees of their clients. The Act also clarifies how they apply the GET on behalf of their clients and the employees of their clients.

Whichever arm of the executive branch oversees these so far unregulated, uncertified, not registered businesses will do, but some state agency should, because there is an awful lot of responsibility and money placed in the hands of these businesses. The ones that we represent are the people calling for this legislation. Simply put, they are upright business people who want to make sure that everyone in their industry plays by the best rules. The office of the Insurance Commissioner is well suited to the task of keeping tabs on PEO's and we hope that you pass this legislation as is.

Thank you for this opportunity to submit written comments.

Respectfully Submitted,

John H. Radcliffe
Vice President

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THE HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

and

COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

Hearing March 9, 2010

Testimony on S.B. 1062 SD1
(RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS)

Chairs Rhoads and McKelvey and Vice-Chair Yamashita and Choy and members of the Committees:

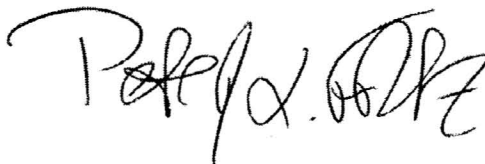
My name is Peter Fritz. I am an attorney licensed to practice law in Hawaii. The intent of this bill is to regulate Professional Employer Organizations ("PEO") by requiring such organizations to register with the Department of Commerce and Consumer Affairs. **I support this bill provided** that it requires a PEO to submit a tax clearance issued by the Department of Taxation. Accordingly, I suggest that the language on page 5, lines 1 and 2 be amended to read as follows:

- 1 (3) The professional employer organization's general
- 2 excise tax number and a tax clearance issued by the department of taxation

Considering the long history relating to the proper taxation of payments to PEOs, such a provision is justified.

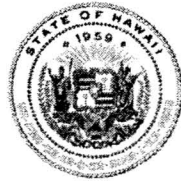
Thank you for the opportunity to testify.

Very truly yours,



Peter L. Fritz

LATE



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

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TO THE HOUSE COMMITTEES ON LABOR & PUBLIC EMPLOYMENT
AND ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Tuesday, March 9, 2010
10:30 a.m.

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

TO THE HONORABLE KARL RHOADS AND ANGUS MCKELVEY, CHAIRS, AND
MEMBERS OF THE COMMITTEES:

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 Department. 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.

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

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**Testimony to the House Committees on
Labor and Public Employment, and
Economic Revitalization, Business and Military Affairs
Tuesday, March 9, 2010
10:30 a.m.
Conference Room 309**

SUPPORTS THE INTENT

RE: SENATE BILL 1062 SD1 RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS

Chairs, Vice Chairs, and Members of the Committees:

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.