



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)

February 9, 2012

To: The Honorable Angus McKelvey, Chair,  
The Honorable Isaac Choy, Vice Chair, and  
And members of the House Committee on Economic Revitalization & Business

Date: Thursday, February 9, 2012  
Time: 8:30 a.m.  
Place: Conference Room 312, State Capitol

From: Dwight Y. Takamine, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 2346 Relating to Professional Employer Organizations**

**I. OVERVIEW OF PROPOSED LEGISLATION**

This proposal consolidates laws regarding professional employer organizations and establishes a professional employer organization special fund to deposit registration fees and defray the costs of administering the program.

The department is opposed to this bill with respect to the reference that the "employer" shall be the client company because of the impact this determination will have on the department's administration of the Unemployment Insurance, Workers' Compensation, Temporary Disability Insurance, and Prepaid Health Care laws.

**II. CURRENT LAW**

Chapter 373L (Professional Employer Organizations), HRS, neither defines or determines whether the Professional Employer Organization or the client company is the "employer".

Chapter 373K (Professional Employment Organizations), however, does deem the employer to be the client company and not the Professional Employment Organization.

**III. COMMENTS ON THE HOUSE BILL**

The department is opposed to the reference made in lines 6 - 11 on page two of the

bill where the "employer shall be deemed to be the client company and not the professional employer organization.

- The Unemployment Insurance Division currently registers the Professional Employment Organization, and not its client companies, as the "employer" making the PEO responsible for paying the requisite UI taxes under chapter 383. If the client companies become the statutory employer, as proposed in this measure, the department will be required to break out all client companies from the PEOs and register each one separately and collect UI taxes from each entity.
- The Disability Compensation Division that administers the Workers' Compensation, Temporary Disability Insurance, and Prepaid Health Care laws (chapters 386, 392 and 393), also considers the PEOs as the "employer" and enforces the coverage requirements for each law against the PEO. If the client companies become the statutory employer, each client company will need to be covered under its own workers' compensation and temporary disability insurance policies.

The department recommends amending the measure by replacing the sentence in lines 6 - 13 on page two ("Notwithstanding any statute, local ordinance, ...") with the following:

- "Notwithstanding the provisions of this chapter, relating to co-employment of Professional Employer Organizations and Client Companies, the Professional Employer Organization as the paying agent pursuant to Title 26, section 3401(d)(1), shall be deemed to be the employer of record, who shall be responsible for all obligations of assigned employees at the client companies worksites for purposes of chapters 383, 386, 392, and 393."

The Twenty-Sixth Legislature  
Regular Session of 2012

## **LATE TESTIMONY**

HOUSE OF REPRESENTATIVES  
Committee on Economic Revitalization & Business  
Rep. Angus L.K. McKelvey, Chair  
Rep. Isaac W. Choy, Vice Chair  
State Capitol, Conference Room 312  
Thursday, February 9, 2012; 8:30 a.m.

### **STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2346 RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS**

The ILWU Local 142 supports H.B. 2346, which consolidates laws regarding professional employer organizations and establishes a Professional Employer Organization Special Fund into which registration fees are to be deposited.

This bill proposes to clarify what Professional Employer Organizations (PEO) are permitted to do, what taxes the PEO's are required or not required to pay, what the client company's responsibilities are, and what rights employees retain as provided by law, including the right to collective bargaining. With the growth of PEO's doing business in Hawaii, and client companies seeking ways to reduce their costs for benefits and payroll, the Legislature must ensure that PEO's and their client companies are not permitted to use the law to circumvent employee rights to collective bargaining, legal benefits, and the like or to allow employers to hide behind PEO's to avoid taking responsibility as the employer.

In one instance, a former ILWU member was employed by an agricultural company that used a PEO. The worker was not aware of the relationship but only knew that she reported to her supervisor, who was an employee of the employer. However, when she found herself unable to come to work because her source of transportation was no longer available (and there was no bus service to the jobsite), she was terminated because, although she reported her transportation problem to her supervisor, she failed to inform the PEO. She was caught between the PEO, her "employer of record," and the company that she believed was her employer.

This cloudy arena of employment needs to be monitored and regulated to ensure that workers, unaware of the relationships, do not fall through the cracks. H.B. 2346 could be strengthened to provide for this monitoring while clarifying the responsibilities of both parties to the PEO contract. The monitoring will ensure compliance with all laws and provide greater protection for workers.

The ILWU urges passage of H.B. 2346. Thank you for the opportunity to testify on this measure.



## LATE TESTIMONY

February 8, 2012

Committee on Economic Revitalization and Business  
Conference Room 312, State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Re: HOUSE BILL 2346 RELATING TO PROFESSIONAL  
EMPLOYER ORGANIZATIONS  
Thursday, February 9, 8:30 a.m., Conference Room 312

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

My name is Barron Guss, President and second-generation owner of ALTRES, Inc., a 43-year old Hawaii company and Hawaii's oldest Professional Employer Organization.

I support HB 2346, with modifications. I would like to reserve comment as I am currently working with the Department of Labor as well as the DCCA to ensure congruency of the language across all bills affecting PEOs currently being heard in the legislature. I look forward to the continuing support of your committee as well as others to move these very important initiatives to fruition.

Thank you for your consideration.

Sincerely,

Barron L. Guss  
President and CEO