



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

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LATE TESTIMONY

February 6, 2012

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

Tuesday, February 7, 2012
8:30 a.m. Room 312

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

Chair McKelvey, Vice Chair Choy and members of the House Committee on Economic Revitalization & Business—thank you for the opportunity to provide testimony on HB2645 RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS. The department strongly supports the measure, which will facilitate the implementation of the Professional Employer Organizations law in a meaningful way.

DLIR and the Department of Commerce and Consumer Affairs (DCCA) have been working together closely to both implement the current law and to develop recommendations for the legislature's deliberations on this measure. In short, the departments agree that developing a special fund to help defray the costs of implementing the registration of PEO's and a moderate approach to regulation are prudent at this time. Should the legislature choose to pass this bill into law, both departments will continue to work together to implement changes in the law and keep the legislature informed for the need of any potential, further adjustments.

DLIR has a number of comments that include both substantive and technical suggestions for your consideration, and they follow below:

SECTION 1

1. Pg. 1, line 10 add "373L-C" and delete "373L-E, 373L-F, 373L-J".
2. Pg. 3, lines 2-3: delete "directors, officers, owners, members, managers, or general partners" and insert "controlling persons". Add another new definition in Section 3 for controlling person. Delete subsections (3) and (4).
3. Delete "Unless" to "chapter 91." (pg. 4, lines 10-12) and insert Section 6 with the following language: "Effective July 1, 2012, the department of commerce and

consumer affairs shall collect fees pursuant to chapter 373L as follows:" (insert (1)-(4) from Section 6 followed by: "until such time as the director of labor and industrial relations amends such fees by rulemaking in accordance with chapter 91.'

4. Delete subsections (4) and (5) in §373L-E (pg. 5, lines 11-16).
5. Delete the current §373L-F, §373L-H, §373L-I, and §373L-J and change the current §373L-G to §373L-F.

SECTION 2

1. Insert at the end (pg. 12, line 18) "Notwithstanding the provisions of 373K and 373L 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."

SECTION 3

1. Add a definition (for a total of two): "Controlling persons" means any individual, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the professional employer organization.

SECTION 4

1. Pg. 17, lines 10-12 revise as follows, "(c) Registration under this section shall expire on ~~[December 31 of each odd-numbered year.]~~ June 30 of each even-numbered year. Before ~~[December 31 of each odd-numbered year]~~ June 30 of each even-numbered year."
2. Pg. 17, line 18 insert as follows, "Failure to renew a registration shall result in forfeiture of that registration. Registrations that have been forfeited may be restored within one year of the forfeiture date upon payment of renewal and restoration fees. Failure to restore a forfeited registration within one year shall result in the automatic termination of the registration. Registrations that have been terminated pursuant to this section shall be required to reapply for a new registration as a new applicant.
~~[(d) The director shall establish fees and requirements for registration, maintenance of registration, renewal, and restoration of registration for professional employer organizations by rule pursuant to chapter 91.]~~

SECTION 6

1. Delete entire Section and insert into Section 1 as described above.