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To: The Honorable Robert N. Herkes, Chair
and Members of the House Committee on Consumer Protection & Commerce

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the House Committee on Judiciary

Date: Monday, March 19, 2012
Time: 2:00 p.m.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2424, S.D. 2, H.D. 1 Relating to Professional Employer Organizations

The Department of Taxation (Department) defers to the Department of Labor and Industrial Relations and the Department of Commerce and Consumer Affairs as to the merits of S.B. 2424 S.D. 2, H.D. 1 and provides the following comments for the Committee's consideration.

S.B. 2424 SD2 proposes to repeal chapter 373K, Hawaii Revised Statutes (HRS), and move the general excise tax exemption provisions to a new chapter 373L, HRS.

The Department previously submitted testimony suggesting the language to make the bill's provisions easier to administer. The House took those suggestions into consideration and they are reflected in this version of the measure.

Thank you for the opportunity to provide comments.



**Testimony to the House of Representatives' Committee on Consumer
Protection & Commerce and Committee on Judiciary**

Monday, March 19, 2012

2:00 p.m.

Conference Room 325

**RE: SENATE BILL 2424 SD 2 HD 1 RELATING TO PROFESSIONAL EMPLOYER
ORGANIZATIONS**

Chair Herkes, Chair Keith-Agaran and Members of the Committees:

ProService Hawaii provides employee administration services to over 1,000 small businesses in Hawaii, representing over 13,000 employees in Hawaii. As a professional employer organization (PEO), we ensure that our clients remain compliant with Federal and State employment and labor laws, while allowing them to focus on their core business, providing needed and valuable services to the people and the economy of the State. In addition, we ensure that our clients' employees receive timely payment of wages, workers' compensation, TDI and benefits coverage. We also provide HR training and services, dispute resolution, and safety services to our clients and our clients' employees.

We support the efforts of this legislative body to regulate the PEO industry, as it is in this state's and our industry's best interests to have well-functioning firms serving the community. We support the intent of ensuring that only compliant and well-managed PEOs operate in Hawaii. However, we ask for balance between the need for regulatory oversight of the industry and PEOs' ability to conduct business in the State. **We offer the following comments on Senate Bill 2424:**

Fees

The current draft does not include the fees for registration. We respectfully request the bill be amended to include fees as follows:

- (1) Application Fee \$100

- (2) Initial registration fee \$2,500
- (3) Biennial renewal fee based on the average annual count of covered employees as follows:
 - 0-100 covered employees \$1,500
 - 101-1000 covered employees \$2,500
 - 1001-5000 covered employees \$3,500
 - 5000 or more covered employees \$5,000
- (4) Restoration fee \$500

The rates the DLIR are proposing would serve as a barrier for entry into the market and negatively impact Hawaii businesses due to lack of market competition. The rates we are proposing will already be the highest in the nation but according to the DLIR necessary to fund the oversight PEO registration. Please see attached NAPEO list of PEO Licensing and Registration Acts.

Responsibilities

The proposed language for Chapter 373L-F states,

The agreement between a professional employer organization and its client company shall state that the professional employer organization shall be deemed the employer for purposes of unemployment insurance, workers' compensation, temporary disability insurance, and prepaid health care coverage.

This language appears to allow client companies to contract out their liabilities and responsibilities as an employer for unemployment insurance, workers' compensation, temporary disability insurance and prepaid health care coverage. We are concerned about this provision, as the PEO cannot assume the sole responsibilities for such items unless the client company has remitted all of its hours and wages to the PEO, along with the associated payroll taxes, premiums, and other funds. We believe this is not good public policy and does not match the way other states and federal agencies have understood the co-employment relationship. For example, both OSHA and EEOC, along with many state agencies, hold the client or "worksite employer" responsible for conduct at the workplace and limit the PEOs responsibility to the scope of their services provided to the client under the client agreement.

We further believe that a complete transfer of liability from the client to the PEO will deteriorate self-enforcement that will negatively affect the worksite employees and their families. It will exacerbate the cash-paying economy, which will negatively impact state taxation revenues,

unemployment contributions, and the health of the workers' compensation, temporary disability and health care systems.

We respectfully ask that this be amended to read as follows:

The agreement between a professional employer organization and its client company shall state that the professional employer organization shall be deemed the employer for purposes of unemployment insurance, workers' compensation, temporary disability insurance, and prepaid health care coverage providing the client company has met its obligations and responsibilities under the agreement.

Bond Requirement

Under Chapter 373L-D, we note that form UC-B6, "Employer's Quarterly Wage, Contribution and Employment and Training Assessment Report", is used to determine the biennial renewal fees. We respectfully ask that, for sake of consistency, the same form and calculation methodology be used for purposes of calculating the bond requirement under Section 373L-3.

Co-employment

Since PEOs do not "assign employees" to client worksites, but rather enter into co-employment agreements with client companies in which employment responsibilities are shared between parties, we request that the definition of "client company" in Section 373L-1 to read as follows:

"Client company" means any person that contracts with a professional employer organization and ~~[is assigned employees by]~~ co-employs employees with the professional employer organization under that contract.

Other Concerns

We are also concerned that the language in Section 373L-C(5) may give the Director authority to revoke or deny licenses based on inadvertent, technical and non-material errors on any document. We ask that this committee revise this provision to read as follows:

(5) "Knowingly makes [any] a material false statement, representation, or certification in any document or record required to be maintained under this chapter."

Finally, we ask that Section 373L-E (2) be revised to read "Establishing fees and fines in accordance with chapter 91; and Section 373L-E (4) be deleted due to redundancy.

Thank you for the opportunity to submit testimony.



PEO Licensing and Registration Acts

PEOs operate currently in all fifty states. The following chart includes only the more comprehensive registration and licensing acts or regulations that are applicable to the PEO industry. Other states have legislation specifically referencing the PEO or employee leasing industry but do not have comprehensive registration or licensing requirements specific to the industry (see e.g. Georgia Code section 34-7-6 or the Washington Master Business Application Revised Code of Washington § 19.02.010).

Updated 7/8/10

State	Type of Act	Citation	Agency	PEO Initial Registration Fee- \$1,000 Registration Renewal Fee- \$500 Limited Registration Fee- \$500 Limited Registration Renewal- \$250
AL	Registration	Alabama Professional Employer Organization Registration Act, AL Stats. § 25-14-1, et al.	Department of Industrial Relations	PEO Initial Licensing Fee- \$1000.00 PEO Group Initial Licensing Fee- \$1,000/PEO applicant in group PEO Biennial Renewal Application Fee- \$1,000 PEO Group Biennial Renewal Application Fee- \$1,000/PEO applicant in group Exempt PEO Application Fee- \$100 Exempt PEO Biennial Renewal Fee- \$100 Change of Control Application Fee- \$500.00
AR	Licensing	Arkansas Employee Leasing Licensing Act, Arkansas Code Annotated § 23-92-301 et. seq.	Insurance Department	Pursuant to HB2462 (Chapter 291) passed by the Forty-eighth Legislature, Second Regular Session, Professional Employer Organization registration will be delayed until July 1, 2010.
AZ	Registration	Professional Employer Organizations Registration Act Arizona Code §23-567	Secretary of State	Garment Contractors Fee Ranging from \$250-\$1,000 Exam Fee- \$25
CA	Recognition/ Specialized Licensing	Reg. 8-13633(a)	Department of Industrial Relations	Not to exceed \$500
CO	Certification	Colorado Revised Statutes, 8-70-114 (2), et seq	CO Dept of Labor & Employment	Initial registration for PEO & PEO Group- \$1,500 Renewal for PEO & Group- \$1,000 Limited Registration Initial & Renewal- \$1,000
CT	Registration	Title 31. Labor Chapter 566A. Professional Employer Organizations	Department of Labor	

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FL	Licensing	Employee Leasing Companies, Florida Stat. Ann. § 468.520 et seq.	Florida Board of Employee Leasing	PEO Application Fee- \$250 & company assessment fee based on gross Florida payroll PEO Group Fee- \$250 & \$2,500 group license fee PEO Group Member Fee- \$250 for each company Controlling Person- \$150 application fee & \$1,000 license fee Change of Ownership- \$250 application fee & \$50 name change fee De Minimis PEO registration fee- \$250 De Minimis PEO group leader fee- \$500 De Minimis PEO group member fee- \$250 Biennial License Renewal Fee Controlling Person = \$1,000 Employee Leasing Company = \$1,500 Employee Leasing Company Group = \$2,500 De Minimis Operations (Registration Only) = none
HI*	Registration	SB1062, Professional Employer Organizations	Department of Labor & Industrial Relations	Department will establish fees for PEOs by rule Registration requirements will become effective July 1, 2011 Registration Fee- \$1,000 Annual Renewal Fee- \$1,000
IL	Registration	Employee Leasing Company Act, ILCS 215.113/1 et seq.	Department of Insurance	
IN	Licensing	Indiana Code 27-16-1, et seq, Professional Employer Organizations	Department of Insurance	Initial registration fee not to exceed \$500. Annual renewal fee not to exceed \$250. Limited registration initial fee and renewal fee not to exceed \$250. Alternative registration initial fee and renewal fee not to exceed \$250.
KY	Registration	Registration of Employee Leasing Companies, Kentucky Revised Statutes § 342.615	Dept. of Workers' Claims	No Application Fee or Yearly Fee
LA	Registration	LA RS 23:1761 et seq. and RS 22:1210.51 et seq.	Department of Insurance & Department of Labor	DOI Initial Registration- \$500 DOI Renewal- \$300
MA	Registration	430 CMR 5.07 through 5.13	Labor & Workforce Development	No Fee Prescribed
ME	Registration	Maine Revised Statutes Title 32, § 14051 - 14058	Department of Professional & Financial Regulation, Bureau of Insurance	Application Fee- \$500 Renewal Fee- \$100 Change Fee- \$35
MN	Registration	Minnesota Statutes § 79.255	Commerce	Registration Fee- \$100

MT	Licensing	Montana Code Annotated §39-8-202	Dept. of Labor & Employment Rel.	Full License Application Fee or Annual Renewal- \$750 Restricted License Application Fee or Annual Renewal- \$500
NE	Registration	Professional Employer Organization Registration Act	Department of Labor	Effective 1/1/12, the Department will establish fees not to exceed: Registration-\$2,500 Annual Renewal- \$1,500 Limited Registration- \$1,000 Registration or renewal fee- \$500
NV	Registration	Nevada Revised Statutes § 616B.670	Div. of Industrial Rel.	
NH	Licensing	New Hampshire Revised Statutes §§ 277-B:1 et. seq.	Dept. of Labor	Application Fee (Initial or Renewal)- \$100 License Fee- \$500
NJ	Registration	NJ Statute 34:8-67 to 34:8-78.	Dept. of Labor	Registration as Corporation or LLC- \$125 (no PEO specific fees)
NM	Licensing	New Mexico Statutes § 60-13A-1 et. seq.	Regulation and Licensing	Registration Fee- \$1,000 Renewal Fee- \$1,000 (Annual)
NY	Registration	NY Labor Code Article 31, Section 915 et seq.	Labor	Initial Full License- \$1,000 Renewal- \$500 De Minimis License- \$250
NC	Registration	NC General Statute Chapter 58, Article 89.	Insurance	Non-refundable application fee- \$1,000 (applicable to a group license, regular license, or de minimis); \$500 applicable to alternative license
ND	Licensing	ND Stats. 43-55-01 et seq.	Secretary of State	Application fee- \$1,000.00 Renewal fee- \$500.00
OH	Registration	Ohio Revised Code §4125.01 et seq.	Bureau of Workers' Comp.	Registration Fee- \$100 Renewal Fee- \$25
OK	Registration	Title 40. Labor, Section 600.1 et. seq.	Insurance	Initial registration- \$500 Renewal - \$250 De Minimis Registration and Renewal- \$250
OR	Licensing	Oregon Revised Statutes § 656.850 et. seq.	Consumer and Business Services	Licensing Fee for Two Years- \$2,050
RI	Registration	General Laws of Rhode Island §5-75-1 et seq.	Dept. of Admin., Div. of Taxation	First-time Applicants- \$500 Renewals- \$250

SC	Licensing	South Carolina Code of Laws § 40-68-10 et. seq.	Consumer Affairs	<p>Application Fee per Company- \$1,000</p> <p>Application Fee per Group- \$3,500</p> <p>Application Fee per Controlling Person- \$100</p> <p>Licensure Fee per Company - \$2,500</p> <p>Licensure Fee per Group (Up to Five)- \$5,000</p> <p>Renewal License Fee per Company- \$1,500</p> <p>Renewal License Fee per Group- \$3,000</p> <p>Restricted License Fee per Company- \$500</p> <p>Restricted License Fee per Group- \$1,000</p>
TN	Licensing	Tennessee Code Annotated § 62-43-101	Commerce and Insurance	<p>Application Fee for Unrestricted License per Company- \$250</p> <p>Application Fee for Unrestricted License per Group- \$250</p> <p>Application Fee for Restricted License per Company- \$100</p> <p>Application Fee for Restricted License per Group- \$250</p> <p>License Fee for Unrestricted License per Company- \$2,000</p> <p>License Fee for Unrestricted License per Group- \$4,000</p> <p>License Fee for Restricted License per Company- \$500</p> <p>License Fee for Restricted License per Group- \$1,000</p>
TX	Licensing	The Staff Leasing Services Act, Texas Civil Statutes, Article 9104.	Licensing and Regulation	<p>Full Application & Admin. fee: \$150 per application or renewal</p> <p>Limited License Application & Administrative fee: \$150</p> <p>License fees (effective for 1 year):</p> <p>For 0 to 249 employees: \$250</p> <p>For 250 to 750 employees: \$500</p> <p>For 750 or more employees: \$750</p> <p>Limited Staff Leasing Services License: \$750</p>
UT	Licensing	Professional Employer Organization Licensing Act, Utah Code § 58-59-101	Commerce	<p>Application Fee for PEO Not Licensed Through Assurance Org- \$2,050</p> <p>Application Fee for PEO Licensed Through Assurance Org- \$2,050</p> <p>Renewal Fee for PEO Licensed Through Assurance Org- \$1,050</p>
VT	Licensing	Vermont Statutes Annotated §§ 12-1031 Definitions	Department of Labor	<p>One-Time Application Fee- \$100</p> <p>Licensing Fee- \$1,000</p> <p>Renewal Fee- \$1,000</p>
VA	Registration	VA Statute § 65.2-101	Workers' Comp. Commission	<p>(A/B) x C where:</p> <p>A = payroll of the PEO for which assessment is being calculated;</p> <p>B = aggregate annual payroll; and</p> <p>C = sums necessary for registration and supervision of all PEOs.</p>
WV	Licensing	Statute 33-46A-4	WV Offices of the Insurance Commissioner	No Fee

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WI	Registration	Wisconsin Professional Employer Act, WI Statutes §461.02	Department of Regulation & Licensing	Application Fee- \$75 Annual Registration Renewal Fee- \$107 (\$132 if late)
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The Twenty-Sixth Legislature
Regular Session of 2012

HOUSE OF REPRESENTATIVES

Committee on Consumer Protection & Commerce

Rep. Robert N. Herkes, Chair

Rep. Ryan I. Yamane, Vice Chair

Committee on Judiciary

Rep. Gilbert S.C. Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

State Capitol, Conference Room 325

Monday, March 19, 2012; 2:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2424, SD2, HD1
RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS**

The ILWU Local 142 supports S.B. 2424, SD2, HD1, which adds powers and duties to the Director of Labor and Industrial Relations regarding the registration and regulation of professional employer organizations (PEO's); authorizes various penalties for noncompliance; amends definitions and bond level requirements; and establishes the PEO Special Fund.

Professional Employer Organizations meet a definite need for smaller employers who seek the advantage of numbers in negotiating for health plans and other insurance-based benefits as well as other human resource functions. However, the ILWU is opposed to the use of PEO's when there is a collective bargaining agreement in place as employers tend to use PEO's as a buffer between themselves and unions representing their employees. PEO's are also often used to muddy the waters when labor unions attempt to organize workers, raising the question of who the employer really is.

S.B. 2424, SD2, HD1 will provide more authority to the Department of Labor and Industrial Relations to register and regulate PEO's and ensure that they follow the law. We anticipate that DLIR will assist to ensure that PEO's are not used to circumvent the legal rights of workers who are in collective bargaining arrangements or are seeking to unionize.

The ILWU urges passage of S.B. 2424, SD2, HD1. Thank you for considering our views and concerns.