

LATE TESTIMONY

Testimony for SB2424 on 3/19/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 19, 2012 8:00 AM

To: CPCtestimony

Cc: tina500@juno.com

Categories: Red Category

Attachments: s2424a12.pdf (36 KB)

Testimony for CPC/JUD 3/19/2012 2:00:00 PM SB2424

Conference room: 325

Testifier position: Comments Only

Testifier will be present: No

Submitted by: Lowell Kalapa

Organization: Tax Foundation of Hawaii

E-mail: tina500@juno.com

Submitted on: 3/19/2012

Comments:

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Professional employer organizations; special fund

BILL NUMBER: SB 2424, HD-1

INTRODUCED BY: House Committees on Labor and Public Employment and Economic Revitalization and Business

BRIEF SUMMARY: Amends HRS section 237-24.75 to replace the term “professional employment organization” with “professional employer organization” and the term “assigned employees” with “covered employees.” Clarifies that the general excise tax exemption shall not apply to a professional employer organization if: (1) employees are excluded from any rights or benefits required by law to be provided to employees of the client company; or (2) the professional employer organization fails to pay any tax withholding for covered employees or any federal or state taxes for which the professional employment organization is responsible.

Repeals and merges HRS chapter 373K into chapter 373L. Transfers the statutory language delineating the general excise tax exemption including the requirement that employee benefits required by law be provided to employees of the client company by the client company from HRS 373K to chapter 373L and replaces the term “professional employment organization” with “professional employer organization” and the term “assigned employees” with “covered employees.”

Adds a new section to HRS chapter 373L to establish a professional employer organization special fund to be administered by the department to implement and operate the registration of professional employer organizations established by this chapter. Moneys collected as fees or fines under HRS sections 373L-B, 373L-C, 373L-D, and 373L-G shall be deposited in the fund. The fund may be expended for personnel and operating expenses and staff training.

Allows the director of labor and industrial relations (DLIR) to establish additional positions to carry out the purposes of HRS chapter 373L.

Appropriates \$_____ out of the professional employer organization special fund for fiscal 2013 to DLIR for the purposes of this act, including the hiring of additional staff. The appropriation shall take effect on July 1, 2012.

EFFECTIVE DATE: July 1, 2012

STAFF COMMENTS: In 2007 the legislature, by Act 225, established HRS chapter 373K to provide that amounts received by a professional employment organization from a client company in the course of providing professional employment services that are disbursed as employee wages, salaries, payroll taxes, insurance premiums, and benefits are exempt from the general excise tax. While in 2010, the legislature, by Act 129, established registration requirements for the professional employer organizations

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SB 2424, HD-1 - Continued

and established a new HRS chapter 373L, this measure merges HRS chapter 373K into chapter 373L, including the provisions delineating the general excise tax exemption.

While the measure also proposes to establish a professional employer organization special fund, it should be remembered that the 1990 legislature directed the State Auditor to evaluate all special and revolving funds as of July 1, 1990 and recommend whether they should be continued or eliminated. The Auditor is also to examine any new or proposed special or revolving funds that would decrease general fund revenues. While the Auditor had a completion date of 1995, the review was completed in 1992. The Auditor's report noted that, "Special funds give agencies full control of these unappropriated cash reserves, provide a way to skirt the general fund expenditure ceiling, and over time erode the general fund. Many experts say that special funds are likely to hamper budget administration. And from a legislative perspective, they are less desirable because they are not fully controlled by the appropriation process."

Given the findings of the Auditor and the current financial crisis, it is quite clear that the creation of numerous special funds has eroded the integrity of state finances. Moneys in special funds are neither subject to the general fund expenditure limitation nor to the close scrutiny that general funds are subject to in the budgeting process. Special funds that earmark general fund revenues cannot be justified as they restrict budget flexibility, create inefficiencies, and lessen accountability. Further, as evidenced by recent legislative sessions, special funds have been raided in the search for additional revenues. The creation of another special fund by this measure cannot be justified.

Digested 3/19/12



LATE TESTIMONY

DWIGHT Y. TAKAMINE
DIRECTOR
AUDREY HIDANO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor

March 19, 2012

The Honorable Robert N. Herkes, Chair,
The Honorable Ryan I. Yamane, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

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

Monday, March 19, 2012
2:00 p.m. Room 325

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

RE: SB2424 SD2HD1 RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS

Chair Herkes, Chair Keith-Agaran and members of the House Committees—thank you for the opportunity to provide testimony on SB2424 SD2HD1 RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS. DLIR and the Department of Commerce and Consumer Affairs (DCCA) have been working together closely to both implement the current law in a meaningful way 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 is the appropriate approach.

The departments and the measure's proponents are working together to refine this measure as it progresses through the legislative process. Overall, the department is supportive of the measure. The current draft combines two separate chapters in the Hawaii Revised Statutes (HRS) relating to professional employer organizations. The department's biggest concern with the proposal is ensuring that the fees established in the measure are sufficient to support the staffing and resources necessary to carry out the purposes of the proposal.

At this time, it is difficult for the department to forecast the workload required by this measure and the three (3) .5 positions may not be sufficient to carry out the purposes of this new chapter, especially considering that the measure creates a new hearings process. Moreover, the department notes that usually a new special fund is "seeded"

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with a general fund appropriation to help establish the positions and operations to be funded by a special fund.

DLIR respectfully offers the following comments and recommendations for your consideration in regards to the current draft of the proposal:

- ❖ DLIR strongly supports a single fee, as in the current draft, as opposed to dividing fees into an initial and biennial renewal fees. The department is concerned that the division of fees into an initial registration and subsequent biennial renewal may provide a loophole for entities to avoid paying the graduated biennial renewal fee. An entity, especially a large sized one, could change corporate information, including its name, and be eligible to register as a new PEO and pay the much lower initial fee as opposed to the larger fee under consideration.
- ❖ We suggest a sliding scale as follows:
 - 0-100 employees \$2,000
 - 101-250 \$5,000
 - 251-499 \$7,500
 - 500+ \$15,000
- ❖ Thirty-two (32) entities have self-identified as PEOs to the department to date. If the special fund is to be self-supporting as discussed during the legislative process so far, then the department needs to generate enough fees from those entities to regulate PEOs in the state. The total cost of the three (3) .5 positions and operating expenses the department estimates at \$177,500 over the two-year registration period. Positions funded by special funds include the salary plus an additional 40% for fringe benefits. Moreover, the measure provides for hearings, which puts an additional burden on the department. The department is open to the legislature providing general funds to help cover the costs of implementing PEO registration and regulation.
- ❖ DLIR is also concerned that the proposed registration requirements in the proposal may serve as an effective barrier to new entrants into the market; however, the department does not have a specific recommendation at this time. The department is engaged in further research and intends to bring those recommendations to the next committee in the legislative process.
- ❖ DLIR concurs with one of the proponent's suggestion regarding determining the bond amount in section 373L-3. DLIR suggests inserting the following into section 373L-3(a)(1): "The number of employees shall be calculated in the same manner as required in 373L-D"

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- ❖ DLIR recommends inserting a new section to chapter 373L that would prohibit the use of the terms professional employer organization, PEO, staff leasing company, registered staff leasing company, employee leasing company, administrative employer or other similar name unless registered per the requirements of chapter 373. Suggested wording would be as follows:

“Registration required. No person within the purview of this chapter shall use the terms, “professional employer organization,” “PEO,” “staff leasing company,” registered staff leasing company,” “employee leasing company,” “administrative employer,” or other similar name unless registered and in compliance with this chapter and the rules and regulations of the director.”

- ❖ DLIR recommends amending section 373L-F in the current draft by splitting the paragraphs into two sections (a) and (b) and adding “notification to covered employees” into the title. The department also suggests putting a time requirement into the notification—14 calendar days.
- ❖ For consistency between sections 373L-C and 373L-H the department suggests striking the following language on Pg. 8, lines 18 – 19 “refuses to issue, renew, restore, or reinstate a registration” and replacing it with “denies, suspends, revokes, or denies renewal of registration,”
- ❖ The department respectfully suggests several technical amendments and revisions pertaining to the bond section (373L-3) in the proposal. The current language in the draft is confusing and inconsistent and the DLIR suggests the following:

- ◆ Pg. 21, line 9, strike “performance or”
- ◆ Pg. 21, line 12, strike “thirty” and insert “forty-five”
- ◆ Replacing section 373L-3(d) with the following language:

“The surety shall remain obligated for any claims against the bond after cancellation or expiration of the bond; provided that:

- (1) The surety was provided written notice of such claim during the six month period immediately following the cancellation or expiration of the bond; and
- (2) The claim accrued, but only for the amount accrued, before the expiration or cancellation of the bond.”

- ◆ Replacing section 373L-3(g) with the following language:

“The director, or any person claiming to have sustained damage resulting

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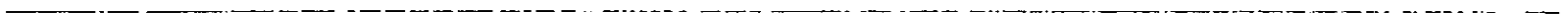
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from noncompliance of a professional employer organization with this chapter, may bring an action on the bond to recover such damage. The surety may fulfill its obligation under the bond by depositing the penal sum of the bond with the director. Upon receiving any sum from the surety, the director may deduct all money due to the State of Hawai'i resulting from the noncompliance of the professional employer organization. Any remaining balance shall be held by the director for the benefit of all other persons damaged by the noncompliance of the professional employer organization, and the director may deposit such balance with a court of competent jurisdiction in order to resolve competing claims. After all claims are finally resolved or settled, any remaining balance from the bond proceeds shall be returned to the surety."

DLIR believes the provision above needs further refinement in order to address the priorities for parties bringing an action on the bond, but has not had the wherewithal to develop language since the last hearing. The department will propose revised language to the next committee in the legislative process.



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March 19, 2012

The Honorable Robert Herkes, Chair
The Honorable Ryan Yamane, Vice Chair
Committee on Consumer Protection and Commerce
The Honorable Gilbert Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice Chair
Committee on Judiciary
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

**Re: SB2424 Relating to Professional Employer Organizations
March 19, 2012, 2:00am, CR 325**

Dear Representatives Herkes, Yamane, Keith-Agaran, and Rhoads:

I would like to thank you and your committee for your efforts to implement PEO registration. 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 am here today to provide testimony in support of SB2424 with modification

By way of background information, recently our industry representatives have worked hand in hand with legislators, the DLIR, DCCA and other government leaders to create the framework of the draft in its current form. Although it's not perfect, I feel we are making positive headway towards a bill with which we all can live.

Because of the complexity of the subject matter, I am submitting my comments in topic format so they may be easily followed and referred to during the legislative process.

Responsibilities

In recent discussions with various parties, we have brought up the concern that PEOs cannot assume all of the responsibilities associated with being the employer; i.e., payment of wages, taxes and insurances, unless their clients provide the funds to do so. Additionally, the way the draft law is written, if the PEO were made specifically responsible for the provision of workers' compensation, would there be a question as to whether the exclusive remedy provisions apply, even though the Hawaii Supreme Court ruled affirmatively on this very matter in Peter Frank vs. Hawaii Planing Mill Foundation?

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For purposes of clarity, may I suggest that Section 373-L-F be revised to read as follows:

Section 373-L-F - **Professional employer agreements.** 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 (and the exclusive remedies provision of Chapter 386 shall apply to both the client and the professional employer organization with respect to workers' compensation coverage secured by the professional employer organization), temporary disability insurance, and prepaid health care coverage, providing the client company meets its obligations under the Professional Employer Organization agreement.

Fees

Paragraph 373L-D provides that the Director "shall collect fees pursuant to this chapter." In previous drafts of SB2424, the various parties reached a compromise which appeared to be acceptable to all parties. In this current draft, the level of fees has been omitted and left open-ended. May I suggest that your committees reinsert the fees to the previous levels.

Bond Requirements

In previously submitted testimony, I suggested the use of the State's form UC-B6, Quarterly Wage, Contribution and Employment and Training Assessment Report for a basis of calculation regarding registration fees as well as bonding level requirements.

By using the information contained in UC-B6, the DLIR will have in hand a simplified way to gather and calculate the information necessary to establish the appropriate schedules for payment of fees and bond level, versus the current draft of the law, which requests information that must be gathered from various sources and, in some cases, is not applicable, i.e., a self-insured PEO that does not pay workers' compensation premiums to a third party carrier.

In light of the above, may I suggest that the following language be inserted in 373L-3 Paragraph (2):

"All other professional employer organizations shall post a bond in an amount equal to one percent of the organization's prior year's total wages or a bond amount of \$1,000,000, whichever is

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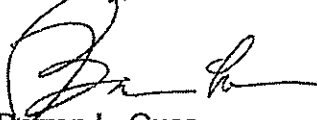
less; provided that the amount of the bond shall be no less than \$500,000. The bond amount, for the purposes of this section, shall be calculated based on the total gross payroll as reported on the professional employer organization's fourth quarter form UC-B6: Quarterly Wage, Contribution and Employment and Training Assessment Report filed with the department of the preceding year, annualized."

Assurance Organization and Bonding Language

Under separate testimony from ESAC, you will hear that the draft language is not in conformity with standard practices and protocol currently used in the financial industry as well as other states that have enacted registration. I ask that you please take their comments into consideration as you move this bill forward.

Thank you for this opportunity to provide testimony and comment on this proposed legislation.

Sincerely,



Barron L. Guss
President and CEO

BLG:lo

LATE TESTIMONY

Further Testimony of ESAC re SB 2424

Jay Morgan [JMorgan@ESACorp.org]

Sent: Monday, March 19, 2012 10:52 AM
To: CPCtestimony
Cc: William.G.Kunstman@hawaii.gov; Barron Guss [Barron.Guss@altres.com]; Kenyatta.k.Nichols@dcca.hawaii.gov; Tim Tucker [ttucker@napeo.org]; Jonathon Lindsey [jlindsey@esacorp.org]
Importance: High
Categories: Red Category
Attachments: ESAC's Testimony on Hawaii~1.pdf (142 KB) ; Letter to BKunstman(3-19-12).pdf (239 KB) ; ESACs 3-19-2012 Mark-up of~1.pdf (38 KB) ; OKApplicationForm.pdf (31 KB) ; OK Recommended Assurance O~1.pdf (85 KB)

For this afternoon's hearing on the subject legislation, please accept and acknowledge receipt of the submission of ESAC's attached testimony, which consists of:

- 1st - our testimony cover letter of today's date to the CPC and Judiciary Committee Chairs and Vice Chairs;
- 2nd - our letter of today's date responding to DLIR's 3-18-2012 request to provide amendatory language to SB 2424 (with this letter containing the reasons SB 2424 should be amended accordingly);
- 3rd - Exhibit A to the letter to DLIR, which is our suggested changes/mark-up to SB 2424;
- 4th and 5th - Exhibits B & C to the DLIR letter.

Thank you!

Jay Morgan
General Counsel & Vice President of Compliance & Regulatory Services
Employer Services Assurance Corporation
501.219.2045
jmorgan@ESACorp.org

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Sent March 19, 2012 via Email to CPCTestimony@capitol.hawaii.gov
And via US Mail to:

The Honorable Robert N. Herkes, Chair, & The Honorable Ryan I. Yamane, Vice Chair, of Hawaii House Committee on Consumer Protection & Commerce and

The Honorable Gilbert S. C. Keith-Agaran, Chair, & The Honorable Karl Rhoads, Vice Chair, of Hawaii House Committee on Judiciary
Hawaii's Twenty-Sixth Legislature
Regular Session of 2012

State Capitol
415 Beretania Street
Honolulu, HI 96813

Re: Testimony of Employer Services Assurance Corporation concerning the House Committee on Consumer Protection & Commerce and the House Committee on Judiciary March 19, 2012 hearing on SB 2424 relating to Professional Employer Organizations

Dear Representatives Herkes, Yamane, Keith-Agaran and Rhoads,

On behalf of the Employer Services Assurance Corporation ("E-S-A-C"), the only national accrediting entity and assurance organization for Professional Employer Organizations ("PEOs"), we once again appreciate the opportunity to provide testimony with respect to amendments you are considering to Chapter 373L, Hawaii Revised Statutes ("HI's PEO law").

ESAC respectfully submits as testimony the attached/enclosed letter of today's date and its exhibits, which ESAC submitted to Hawaii's Department of Labor and Industrial Relations ("DLIR") in response to DLIR's request of ESAC to submit needed amendatory language to SB 2424.

I hope you find this testimony helpful as you strive to create the best possible PEO law and regulatory structure for Hawaii. If you would like to discuss this further, I and the entire team at ESAC will be happy to help.

Sincerely,

Jay Morgan
General Counsel & Vice President of Compliance & Regulatory Services
Employer Services Assurance Corporation

501.219.2045

jmorgan@ESACCorp.org

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Cc: DLIR's Bill Kunstman

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Ryan Underwood, BKD, LLP

EMPLOYER SERVICES TRUST

Regions Bank, Trustee

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LATE TESTIMONY



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Ryan Underwood, BKD, LLP

EMPLOYER SERVICES TRUST

Regions Bank, Trustee

Sent March 19, 2012 via Email to William.G.Kunstman@hawaii.gov
and via US Mail to:

Bill Kunstman
Dept. of Labor & Industrial Relations
830 Punchbowl Street #321
Honolulu HI 96813

Re: Proposed Amendment to S.B. 2424 by Employer Services Assurance Corporation
("ESAC") relating to Professional Employer Organizations ("PEOs")

Mr. Kunstman,

Thanks for your email of March 18th requesting ESAC's proposed changes to the current version of the subject legislation (S.B. 2424; S.D.2; H.D.1). Exhibit A sets forth ESAC's suggested changes in red to Sections 6 & 7 and is consistent with ESAC's prior testimony (Feb 6th to CPN and Feb 23rd to WAM).

ESAC's Proposed Changes to Section 6; subsection (d) (beginning on Page 19; Line 13) - Restores model language I had included in my initial testimony (Feb 6) and which made its way into SB 2424 via its 1st amendment before the language was removed by the 2nd amendment to the bill. These words we're seeking to have restored to S.B. 2424 are taken directly from the Electronic Filing and Compliance Subsection (l) of the Registration Requirements Section 4 of NAPEO's Model PEO Recognition and Registration Act (and are neither excessive nor ambiguous as suggested by DLIR in its testimony right before the 2nd amendment was done). Such model language is in place in a host of states, with several others presently working on it via pending legislation and/or rules. Of the 38 states with PEO registration and/or licensing authority, ESAC is approved as an assurance organization in 13 states and approval is pending in 8 other states.

The intent is to simply add authority to HI's PEO law, to enable the Director to approve an assurance organization that would provide certification and financial assurance for qualified PEOs who elect to use an assurance organization as an alternative means of satisfying HI's PEO requirements within Chapter 373L.

Given the amendments that have been made since its introduction, SB 2424 presently fails to provide for such an alternative means of satisfying HI's PEO requirements. It appears from the present SB 2424 language that an accredited PEO, or the approved assurance organization acting on its behalf, would or could still be required to jump through the same registration hoops in the same ways, providing the same information via the same application form, etc. as is currently being required of non-accredited PEOs. As I stand ready to demonstrate to DLIR and/or DCAA, ESAC's requirements and the comprehensive compliance information we possess regarding our accredited PEOs far exceeds what HI's PEO law requires for registration.

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Without in any way diminishing the states' authority or ability to grant or terminate registration or investigate or enforce compliance, the model language would allow the director to accept ESAC's certification of the PEO's compliance, early warning system and other compliance information and assurances **that the director deems acceptable**, in lieu of an accredited PEO having to go through the normal registration process.

For example, in lieu of its normal PEO registration application, attached as Exhibit B is the alternative registration application we tailored for and that is presently in use at the Oklahoma Insurance Department for those PEOs utilizing an approved assurance organization that is providing OID information, certification and assurances which Commissioner Doak and his staff have determined to be acceptable. This form can be made available on the Department's website, but it also is set up on ESAC's website so that it can be executed electronically by both the applicant PEO and ESAC before being transmitted to the Department along with the registration fees.

After having reviewed all of ESAC's standards, verification procedures and reporting forms, the state decides whether or not ESAC qualifies to become an approved assurance organization. With respect to the application form and all that is made available to the state by ESAC concerning the PEO desiring registration, while reserving the right to request additional, more detailed information for any PEO for which it has have a concern, each state determines what is and is not acceptable in lieu of its normal registration process. More specifically, acceptable implementation procedures (such as you'll find in Exhibit C) are always put in place whereby it is the state which: (a) reviews the PEO's application, (b) verifies proper fee payment, (c) reviews applicant PEO's information on ESAC's Electronic Application and Compliance System ("eMAC") to the extent desired, and (d) if everything is in order, proceeds with registering applicant PEO.

Such an alternative and paperless registration process will: (i) increase savings and efficiencies for both the registrant and the state; (ii) give the director and DLIR access to important additional compliance information and assurances; (iii) minimize the cost of administration; and (iv) provide more effective public protection.

ESAC's Proposed Changes to Section 7; Subsection (c); Page 22 – The reasons for the attached changes in red to subsection (c) of Section 7's bonding requirements and an overview of ESAC's Financial Assurance Program, including all the coverage and other particulars regarding the \$11 million in bonds backing up the employer obligations of ESAC-accredited PEOs) were all set forth in my February 23, 2012 testimony to the Senate Committee on Ways and Means.

Most states that have approved ESAC as an assurance organization have accepted ESAC's financial assurance, including its bonds in place for ESAC-accredited PEOs, in lieu of otherwise applicable state PEO bonding requirements. DLIR currently has such a bonding requirement in place within §373L-3. Even though ESAC's standards, financial reporting, compliance monitoring, AND its bonds are designed to ensure the prompt and complete fulfillment of all of the PEO's financial obligations, and despite the fact ~~that the coverage amounts of ESAC's bonds significantly exceed the §373L-3 required bond amounts, if~~ S.B. 2424 were enacted without adding the language I've submitted, I'm not at all sure DLIR would have the authority to accept ESAC's financial assurance and bonds in lieu of the §373L-3 bond.

There are no downsides for DLIR and the great state of Hawaii proceeding with this legislation, as ESAC proposes to amend it within its Exhibit A, and ultimately approving ESAC as an assurance organization because:

- a) Nothing about the arrangement takes away any of your authority to issue or terminate registration or to investigate and enforce the laws of HI;
- b) Via eMAC you will have access to more information updated more frequently by the PEOs than you currently receive, so your staff can do as much hands-on compliance monitoring as you deem appropriate;
- c) Time is saved and mistakes are reduced by providing all information otherwise required by statute and rule in a convenient electronic format eliminating the need for manual entry of info (which info is also more easily supplied and more frequently updated by industry);
- d) Plus you will gain the benefit of ESAC's: (i) extensive compliance monitoring based on multi-state and "all affiliated entities" information; (ii) an early warning system that has been proven 100% effective over the past 17 years in preemptively detecting developing problems before they occur; and (iii) access to millions of dollars of surety bonding held in trust by Regions Bank (\$1M bond on each PEO, plus a \$10M excess bond providing umbrella coverage);
- e) With all of this provided at no cost to the Department; and
- f) If our services are not what we say and at any point you are unhappy with the arrangement, you can terminate your approval of ESAC and require the PEOs to comply via existing procedures.

If you or any member of the DLIR team has other questions, please do not hesitate to ask. We all at ESAC look forward to working with your Department to more effectively and efficiently regulate PEOs operating in Hawaii.

I am providing a copy of this as testimony at today's CPC/JUD hearing on SB 2424.

Sincerely,



Jay Morgan
General Counsel & Vice President of Compliance & Regulatory Services
Employer Services Assurance Corporation
501.219.2045
jmorgan@ESACCorp.org

cc (via email): The Honorable Robert N. Herkes, Chair & The Honorable Ryan I. Yamane, Vice Chair of
Hawaii House Committee on Consumer Protection & Commerce:

The Honorable Gilbert S. C. Keith-Agaran, Chair & The Honorable Karl Rhoads, Vice Chair of
Hawaii House Committee on Judiciary

LATE TESTIMONY

EXHIBIT A

ESAC's 3-19-2012 Proposed Mark-up in red of:

Page 19 (Section 6) and Page 22 (Section 7) of S.B. 2424; S.D. 2; H.D. 1

SECTION 6. Section 373L-2, Hawaii Revised Statutes, is amended to read as follows:

(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.]~~ to the extent practicable permit the acceptance of electronic filings in conformance with chapter 489E, including applications, documents, reports, and other filings required under this chapter. The director may provide for the acceptance of electronic filings and other assurance by an independent and qualified assurance organization approved by the director that provides satisfactory assurance of compliance acceptable to the director consistent with or in lieu of the requirements of §373L-2, §373L-3, and other requirements of this chapter or the rules promulgated pursuant to it. professional employer organization. A The director shall permit a professional employer organization may to authorize such an approved assurance organization to act on the professional employer organization's behalf in complying with the registration requirements of this chapter, including electronic filings of information and payment of registration fees. Use of such an approved assurance organization shall be optional and not mandatory for a professional employer organization. Nothing in this subsection shall limit or change the director's authority to register or terminate registration of a professional employer organization or to investigate or enforce any provision of this chapter."

SECTION 7. Section 373L-3, Hawaii Revised Statutes, is amended to read as follows:

"~~[§373L-3]~~ **Bond required.** (a) No professional employer organization shall enter into a professional employment agreement with a client company in the State unless the professional employer organization posts a bond ~~[in the amount of \$250,000, which is a performance or financial guaranty type bond naming the director as the obligee and which may be canceled only if the professional employer organization gives sixty days prior written notice to the surety or if the surety gives thirty days prior written notice to the director of cancellation of the bond. The requirements of this section shall be satisfied by a single bond. If a professional employer organization has more than one branch location, the bond shall cover all locations.]~~ as follows:

(1) Professional employer organizations consisting of fewer than one hundred full-time or part-time employees shall post a minimum of \$250,000; and

(2) All other professional employer organizations shall post a bond in an amount equal to:

(A) One per cent of the organization's prior year's total wages, benefits, workers' compensation premiums, and unemployment compensation contributions; or

(B) \$1,000,000;

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whichever is less; provided that the amount of the bond shall be no less than \$500,000.

(b) Any bond posted pursuant to this section shall be a performance or financial guaranty type bond naming the director as the obligee and may be canceled only if the professional employer organization gives sixty days prior written notice to the surety and if the surety gives thirty days prior written notice to the director of cancellation of the bond. If a professional employer organization has more than one branch location in the State, the bond shall cover all locations. The requirements of this section shall be satisfied by a single bond. The bond required by this section shall be issued by [a] an A-rated surety [or federally insured lending institution] authorized to do business in the State to indemnify [a] the State, client [company] companies, and covered employees who may suffer loss as a result of nonperformance by a professional employer organization.

(c) In lieu of the requirements of §373L-3 subsections (a) and (b), a professional employer organization that is a member of an assurance organization may post a bond through the assurance organization; provided that coverage shall consist of a bond of at least \$1,000,000 issued by an A-rated surety company plus a \$10,000,000 excess bond providing umbrella coverage for the benefit of the State, client companies, and client company employees, subject to the terms and conditions of the assurance organization's client assurance program and trust.

LATE TESTIMONY

Oklahoma Insurance Department
Financial Division
P.O. Box 53408
Oklahoma City, OK 73152-3408

Exhibit B

Professional Employer Organization
Registered through an Assurance Organization

Legal name of applicant: _____ FEIN #: _____

Legal name of assurance organization: _____ FEIN #: _____

PEO Registration Request and Information Release Authorization

The above named Professional Employer Organization (PEO) or PEO Group ("Applicant") requests the above named assurance organization ("Assurance Organization") to assist Applicant with registration by the Oklahoma Insurance Department ("Department") as authorized by the Oklahoma Professional Employer Organization Recognition and Registration Act, O.S. Title 40 §600.1 et seq. ("Act").

THE ASSURANCE ORGANIZATION IS HEREBY AUTHORIZED to release to the Department confidential information on behalf of Applicant in support of initial and renewal registration, including but not limited to the following information to be made available to duly authorized Department users through secure Internet access (hereinafter collectively the "Release"):

1. Basic Applicant information
 - Name of all PEO-relevant entities under common control
 - Headquarter address
 - Physical location of offices in Oklahoma
 - Contact information for Applicant and clients domiciled in Oklahoma
 - Cross guaranties of all relevant entities
 - Copy of surety bonds covering Applicant
2. Controlling persons information and attestations
3. Financial information
 - Most recent FYE audited financial statements
 - Spreadsheet showing prior FYE audited financial information and year-to-date calendar quarter updates, if available, including current assets & liabilities, net worth, net worth ratio, working capital and net income for each period
 - Quarterly certifications by an independent CPA of the timely payment of state and federal payroll taxes, insurance premiums and contributions to employee retirement plans for most recent calendar quarter and prior five calendar quarters, if available
4. Insurance information
 - Workers' compensation information
 - Health insurance information
5. Information regarding Applicant's continuing compliance with Assurance Organization's accreditation standards and procedures

This Release authorization shall apply to acts by Assurance Organization, its agents, employees, and other designated representatives, who submit confidential information to the Department as part of this application. Applicant on behalf of itself, its controlling persons, officers, directors, employees and agents, hereby indemnifies and holds harmless the Assurance Organization and its agents, employees, and other designated representatives and the Department and its agents, employees, and other designated representatives from any and all claims or damages that may arise as a result of the Release of information about Applicant or its controlling persons to the Department.

THE DEPARTMENT IS HEREBY AUTHORIZED to accept information provided by Assurance Organization for registration or renewal of registration of Applicant pursuant to Section 600.4 of the Act.

THE DEPARTMENT IS ALSO HEREBY AUTHORIZED, notwithstanding Section 600.6(C) of the Act, to release or disclose to Assurance Organization any information or document within its possession concerning Applicant or Applicant's controlling persons. Such authorization shall continue during accreditation by Assurance Organization and registration by the Department.

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Applicant on behalf of itself, its controlling persons, officers, directors, employees and agents, hereby indemnifies and holds harmless the Assurance Organization and its agents, employees, and other designated representatives and the Department and its agents, employees, and other designated representatives from any and all claims or damages that may arise as a result of the Release of information about Applicant or its controlling persons to the Assurance Organization.

PEO Certification of Information and Compliance

Agent designated for service of process in Oklahoma:

Name: _____ Email: _____
Address: _____ Phone: _____
City: _____ State: _____ Zip: _____

I hereby certify that the above named Applicant is in full and complete compliance with all requirements of the Oklahoma Professional Employer Organization Recognition and Registration Act, O.S. Title 40 §600.1 et seq. and the current Department rules promulgated thereunder, and that all of the information submitted in this Application and all of the information provided to the Assurance Organization for compliance with its standards and procedures is true and complete. I am aware that submitting false information or omitting pertinent or other material information in connection with this application is grounds for registration revocation or denial of registration and may subject me to civil or criminal penalties. I further certify that I grant permission to the Department and Assurance Organization to verify information provided by Applicant or its controlling persons with any federal, state, or local government agency, current or former employer, or insurance company. If the registration is issued, I agree to furnish to Assurance Organization any material change in information on this form and all attached or uploaded documents within twenty (20) days of the change in information so that within thirty (30) days of the change, Assurance Organization can provide the change in information, on Applicant's behalf, to the Department.

WITNESS THE SIGNATURE* of Applicant's duly authorized representative who, on behalf of Applicant, hereby agrees with and consents to be bound by the provisions of this application:

Signature: _____ Title: _____
Name: _____ Date: _____

Assurance Organization Certification of Compliance

Assurance Organization does hereby certify that Applicant is in compliance with Assurance Organization's standards and procedures and is qualified for registration or renewal of registration under the Act. Such certification shall be continuous and ongoing until Assurance Organization notifies the Department in writing within two (2) business days of determination by Assurance Organization of the failure of Applicant to meet the qualifications: (a) for registration under the Act; or (b) for accreditation by Assurance Organization.

WITNESS THE SIGNATURE* of Assurance Organization's duly authorized representative who, on behalf of Assurance Organization, hereby agrees with and consents to be bound by the provisions of this application:

Signature: _____ Title: _____
Name: _____ Date: _____

*Any person electing to sign this Application electronically does hereby agree to conduct business electronically with the State of Oklahoma in accordance with the federal Electronic Signatures in Global and National Commerce Act (E-Sign), 15 U.S.C.A. §§ 7001-7031 (Supp. 2001) and Oklahoma's Uniform Electronic Transactions Act O.S. Title 12A §15-101 et seq. I/we understand that transactions and/or signatures in records may not be denied legal effect solely because they are conducted, executed, or prepared in electronic form and that if a law requires a record or signature to be in writing, an electronic record or signature satisfies that requirement.

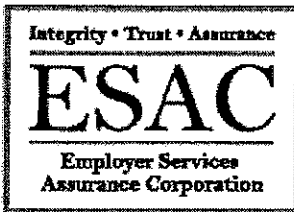


Exhibit C

Recommended Procedures for Implementing the recently amended O.S. Title 40 §600.4 with ESAC

Initial Set-up

- Step 1 – Web conference with OID staff to:
 - a) Review necessary implementation procedures;
 - b) Finalize new PEO application/authorization form for PEOs using an approved assurance organization; and
 - c) Review PEO information to be made available via ESAC's electronic multi-state application & compliance ("eMAC") system as part of the PEO's application and compliance reporting process.
- Step 2 – OID provides ESAC with names and email addresses of staff members to be set up with password-protected access to PEO information on eMAC.
- Step 3 – ESAC provides additional training and support on use of eMAC as needed.

PEO Application for Registration through ESAC

- Step 1 – Accredited PEOs desiring registration assistance through ESAC complete and digitally sign* the OID-approved application/authorization form available for online execution on ESAC's website and submit the registration fee payment to ESAC.**
** NOTE: It is recommended that payment of the initial and renewal registration fees route through ESAC since ESAC must review and execute the application/authorization form before transmittal to OID (see Step 2).
- Step 2 – ESAC verifies applicant's compliance, digitally signs* the application/authorization form, and provides form to OID along with registration fee payment.
- Step 3 – OID staff: (a) reviews PEO's application, (b) verifies proper fee payment, (c) reviews applicant PEO's information on eMAC to the extent desired, and (d) if everything is in order, proceeds with registering applicant PEO.

Ongoing Compliance Monitoring/Registration Renewal

- Step 1 – ESAC notifies designated OID staff of each quarterly update to registered PEO's information. OID staff reviews information as desired and requests additional information from ESAC and/or PEO as needed.
- Step 2 – ESAC's accreditation and certification of each PEO's compliance is continuous and ongoing and may be verified online by OID staff at any time. ESAC will provide OID with written notice within two (2) business days of termination of any PEO's accreditation or compliance certification, along with an explanation of the reason for termination.

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- Step 3 – ESAC collects renewal fees as required from registered PEOs and forwards to OID prior to each PEO's registration renewal date. ***

***Renewal application form not required because initial application/authorization form is ongoing until terminated and PEO is continuously updating compliance reporting information via eMAC on a quarterly basis.

* Digital signatures are provided in full compliance with the federal Electronic Signatures in Global and National Commerce Act (E-Sign), 15 U.S.C.A. §§ 7001-7031 (Supp. 2001) and Oklahoma's Uniform Electronic Transactions Act O.S. Title 12A §15-101 et seq.