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Honolulu, Hawaii

FEB 15 2013

RE: S.B. No. 510
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 510 entitled:

"A BILL FOR AN ACT RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Repeal chapter 373K, Hawaii Revised Statutes; and
- (2) Clarify professional employer organization responsibilities with respect to meeting the statutory requirements of the repealed chapter 373K, Hawaii Revised Statutes, and the nexus between the registration of professional employer organizations and qualification for the state general excise tax exemption.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations and ALTRES, Inc. Your Committee received testimony in opposition to this measure from Professional Administrative Co-Employers. Your Committee received comments on this measure from the Department of Taxation; Employer Services Assurance Corporation; ProService Hawaii; Hawaii Association of Professional Employer Organizations; Talent HR Solutions LLC; Hawaii Human Resources, Inc.; Dunhill Professional Staffing of Hawaii; OneSource, Inc.; and Tax Foundation of Hawaii.



Your Committee finds that chapter 373K, Hawaii Revised Statutes, was codified in 2007 to allow professional employer organizations to become eligible for the general excise tax exemption under section 237-24.75, Hawaii Revised Statutes. Chapter 373L, Hawaii Revised Statutes, was codified in 2010 to regulate the professional employer organization business by enforcing regulation and bonding requirements. Your Committee further finds that effective implementation of both chapters has been hampered by incompatible and ambiguous language. This measure is intended to enhance implementation of the professional employer organization laws by clarifying inconsistencies between two separate but interrelated chapters of the Hawaii Revised Statutes and limit regulatory controls to those critical to maintaining the integrity of the professional employer organization industry.

Your Committee additionally finds that professional employer organizations should be effectively regulated to protect clients, employees, taxing authorities, insurers, and the professional employer organization industry. Ensuring financial responsibility and solvency is just as important in the professional employer industry as it is in banking, insurance, and other industries that aggregate client cash flow and assume fiduciary responsibility.

Your Committee is therefore encouraged by the discussions that have occurred on this measure and is pleased to note that all interested stakeholders are committed to working together to ensure consumer protection and healthy industry competition. Although your Committee heard a similar measure, S.B. No. 813, Relating to Professional Employer Organizations, a consensus was reached amongst the interested stakeholders that the current measure was the more appropriate vehicle.

Your Committee has heard the concerns about the current bond requirement under chapter 373L, Hawaii Revised Statutes. Although your Committee concludes that a scalable bonding requirement is more appropriate for this measure, your Committee disagrees with the assumption that a bond fee is a barrier to entry into the marketplace. Your Committee notes that a nationally-licensed surety only brokerage company, Alpha Surety and Insurance Brokerage, which is licensed to do business in Hawaii, has indicated to your Committee that it provides surety bonds for professional employer organizations at a cost of one to two percent of the face value of the bond. Your Committee notes that a bond of \$25,000 could therefore be obtained for as little as



\$250. Your Committee has communicated this information to the interested stakeholders during discussions and finds this to be an entirely reasonable amount.

Your Committee has also heard testimony expressing concern that this measure eliminates provisions for auditing financial statements. After much discussion, your Committee concludes that language eliminating audited financial statements should remain in this measure.

Your Committee also finds that this measure will ensure that all professional employer organizations are appropriately registered with the Department of Labor and Industrial Relations and have all applicable certificates of authority from the Department of Commerce and Consumer Affairs. This measure also ensures that the general excise tax exemption offered by the Department of Taxation is only available to the professional employer organizations that have complied with all necessary requirements under chapter 373L, Hawaii Revised Statutes.

Your Committee has amended this measure by:

- (1) Clarifying that notification to the Department of Labor and Industrial Relations shall be given within twenty-one business days of the initiation of a professional employer agreement and within twenty-one business days of the termination of an agreement;
- (2) Requiring professional employer organizations, as a condition of registering with the Department of Labor and Industrial Relations, to include a copy of the Internal Revenue Service Form W-3, Transmittal of Wage and Tax Statements, filed with the federal government, to be used to calculate total payroll for purposes of obtaining a bond;
- (3) Specifying that a copy of the Internal Revenue Service Form W-3 shall be submitted to the Department of Labor and Industrial Relations on an annual basis no later than June 30 of each year and requiring the professional employer organization to obtain a new bond under specific circumstances;
- (4) Requiring professional employer organizations to post a surety bond that is based on the previous year's



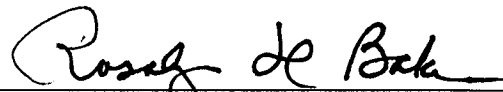
certified total payroll of the professional employer organization, based on the amount reported on the Internal Revenue Service Form W-3, and determined by a sliding bond scale; and

- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee notes that the language in this amended measure is the result of an agreement between interested parties, including the Department of Labor and Industrial Relations and the small and large professional employer organizations currently doing business in Hawaii.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 510, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 510, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



