



NEIL ABERCROMBIE
GOVERNOR

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

<http://labor.hawaii.gov>

March 25, 2013

To: The Honorable David Y. Ige, Chair,
The Honorable Michelle N. Kidani, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Monday, March 25, 2013
Time: 9:10 a.m.
Place: Conference Room 211, State Capitol

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

Re: H.B. No. 144 HD2SD1 Relating to Professional Employer Organizations

I. OVERVIEW OF PROPOSED LEGISLATION

HB144HD2SD1 combines and amends provisions of Chapter 373L and Chapter 373K, Hawaii Revised Statutes (HRS), presumably to clarify responsibilities of the client company and the professional employer organization (PEO), as well as to lessen the financial and administrative requirements contained in the existing statutes.

The DLIR has struggled with implementing the conflicting laws (373L, 373K) in a meaningful way, especially as Act 129 (SLH, 2010) required regulatory functions and expertise outside the scope of the department's existing scope of regulation. Therefore, the DLIR has engaged in internal deliberations and discussions with various stakeholders since the passage of SB2424 SD2HD2CD1, which was vetoed, in order to provide recommendations for the Legislature to deliberate this session.

The DLIR is seeking to enhance implementation by clarifying inconsistencies between two separate but interrelated chapters in the HRS and limiting regulatory controls to only those essential to preserving the integrity of the PEO industry and the statutorily required benefits and protections of Hawaii's labor laws.

The Department is in the process of analyzing the current financial requirements in the measure (bonding/letter of credit, no audit) and will inform the Legislature of any recommendations as deliberations on the measure continue, if necessary.

II. CURRENT LAW

Chapter 373K was enacted in 2007 for purposes of qualifying PEOs for the state general excise tax (GET) exemption (GET) under section 237-24.75, whereas Chapter 373L was passed in 2010 to regulate the PEO industry by enforcing registration and bonding requirements. Effective implementation of both laws has been hampered by incompatible language, obscure objectives and lack of a common appreciation of the benefits intended or results to be realized.

III. COMMENTS ON THE HOUSE BILL

DLIR understands that the stakeholders with interest in current PEO legislation are in agreement with the need to reconcile the two PEO chapters and all parties concur that the regulatory functions required by Chapter 373L would be best enforced by tying compliance to the general excise tax exemption provided for in §237-24.75. The department also maintains that the statutes must be simplified and procedures streamlined for PEO registration to proceed and effectively accomplish its objectives.

The proposal seeks to balance PEO business interests with state regulatory oversight by establishing a resolute and balanced registration process to qualify for tax incentives while protecting employees' rights and benefits.



From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: pamela@mauichamber.com
Subject: Submitted testimony for HB144 on Mar 25, 2013 09:10AM
Date: Monday, March 25, 2013 9:10:10 AM

HB144

Submitted on: 3/25/2013

Testimony for WAM on Mar 25, 2013 09:10AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Pamela Tumpap	Maui Chamber of Commerce	Comments Only	No

Comments: Aloha, We support a bill that works with the Professional Employer Organizations (PEOs) to allow PEOs of all sizes to operate. Previously, the high bonding requirements would have put many smaller PEOs out of business. We stand with the industry and support HAPEO's stance on this bill. Mahalo.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



**HAWAII ASSOCIATION OF
PROFESSIONAL EMPLOYER ORGANIZATIONS**

March 24, 2013

Honorable David Y. Ige, Chair
Honorable Michelle N Kidani, Vice-Chair
Members of the Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, HI 96813
Hearing Date: March 25, 2013
Time: 9:10 a.m.

Re: House Bill 144 HD2 SD1: related to Professional Employer Organizations

Dear Chair Ige, Vice-Chair Kidani, and members of the committee,

My name is Matthew S. Delaney, President of the Hawaii Association of Professional Employer Organizations (“HAPEO”). On behalf of HAPEO, I would like to thank you for this opportunity to share with you and the committee HAPEO’s comments as they relate to H.B. No. 144 HD2 SD1. While HAPEO supports the intent of this measure, as noted in our testimony, HAPEO requests the Committee’s consideration of certain amendments to insure fairness and clarity in the definitional section. HAPEO believes that this measure will generate new registration fees for the state and will not burden the state with any additional expense. HAPEO has been working with Senator Baker’s Office and Committee, Representative McKelvey’s Office and Committee, as well as working very closely with DLIR. **It is our intention to work with the Senate, House and DLIR and bring resolution and compromise to the outstanding differences prior to Conference.** Our group supports the intent of HB144 HD2 SD1; however, we recommend the bill to be rewritten as SB No. 510 HD2 SD2 (as passed last week by House Consumer Protection Committee on Wednesday, March 20th). HAPEO looks forward to working with all stakeholders to implement effective and reasonable registration and regulations for the PEO industry.

Background of PEOs

By way of background, PEOs are businesses that partner with existing small businesses to enable them to cost-effectively outsource the management of human resources, employee benefits, payroll, and workers’ compensation. This allows PEO clients to focus on their core competencies to maintain and grow their bottom lines. By forming an employment relationship with these small businesses and their employees, PEOs are able to offer enhanced access to employee benefits, as well as helping small businesses be in compliance with federal and state payroll tax laws, insurance laws, employment laws, and many other required mandates of employers.

History of HAPEO

The people and businesses of Hawaii have a long history of working together, the islands offer a warm and welcoming environment energized by aloha and collaboration. True to this heritage,





the Hawaii Professional Employer Organization (“PEO”) industry has evolved a positive culture of shared ideas and goodwill. In 2012, a core group of smaller and medium sized Hawaii PEO’s formalized their alignment with the establishment of the Hawaii Association of Professional Employer Organizations (“HAPEO”). Our organization was founded on the principles of transparency and supporting the thousands of small businesses in Hawaii.

HAPEO Membership

HAPEO represents approximately twenty (20) local members, which collectively service over 1,000 small to medium sized businesses in Hawaii and represent over 10,000 worksite employees. HAPEO represents approximately ninety-three percent (93%) of the State’s PEOs.

HAPEO’s Priorities

Overall, HAPEO supports the intent of H.B. No. 144 HD 2 SD1, but has concerns about provisions pertaining to the scope of the regulatory functions and the allocation of responsibilities regarding compliance with labor laws that may be out of our direct control.

HAPEO has the following three (3) priorities regarding the proposed PEO legislation:

- (1) We agree with the Scalable Bond in H.B. No. 144 HD 2 SD1– It is HAPEO’s priority to have a scalable bond as we have detailed out in our prior testimony to equitably represent the sizes of PEOs in annual taxable payroll.

Letter of Credit

HAPEO suggests that a Letter of Credit may be used as a substitute for a surety bond.

- (2) Removal of the Audit – We and the DLIR strongly supports H.B. No. 144 HD 2 SD1 as currently written with the elimination of the audited financial statements.
- (3) Amendments to the “definition” section – HAPEO has been working diligently with DLIR on suggested language changes. DLIR has been open and agreed to some of the suggested changes and has disagreed with other changes. **DLIR is currently reviewing with the Attorney General’s Office our proposed language changes.** Our dialogue and interaction has been very professional and with the same intent of clearly defining the rights and responsibilities between the DLIR, the PEO and their clients.

Suggested Definitional Changes:

- (i) “Administrative employer” means a professional employer organization pursuant to a professional employer agreement to which is contractually responsible for various financial and administrative



duties of a client company, including human resources administration, payroll and payroll taxes, workers' compensation, temporary disability coverage, state unemployment, and prepaid health care coverage of worksite employees.

- (ii) "Worksite employer" means the client company, pursuant to a professional employer agreement, that retains workplace management and supervisory control and responsibility of the worksite employees including compliance with labor or employment laws, (with the exception of the four areas listed above under the Administrative Employer of Record definition: workers' compensation and temporary disability coverage, state unemployment, and prepaid health care coverage of assigned employees), collective bargaining rights, anti-discrimination provisions, occupational safety and health laws, or other laws with respect to the protection and rights of employees under the Hawaii Employment Relations Act and the Employment Practices laws of chapters 377 and 378.



2013 Legislative Session

We will continue to work collaboratively with all stakeholders to improve the current laws that were passed back in 2010, and which have still not been implemented in their entirety as a result of challenges with bonding requirements, audited financials, and some other factors. HAPEO is also committed to working with both the DLIR and DCCA to assist in the implementation of the registration process.

HAPEO has also reached out to the larger PEOs in the State for their input and support regarding the co-employment definitional language. Mahalo for your time and consideration. We very much appreciate being part of this process and having our voice be heard during this 2013 Legislative Session.

Respectfully submitted,

Matthew S. Delaney
President of the Board
HAPEO

March 24, 2013

Honorable David Y. Ige, Chair
Honorable Michelle N Kidani, Vice-Chair
Members of the Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, HI 96813
Hearing Date: March 25, 2013
Time: 9:10 a.m.

Re: House Bill 144 HD2 SD1: related to Professional Employer Organizations

Dear Chair Ige, Vice-Chair Kidani, and members of the committee,

Our names are Matthew S. Delaney, Co-Founder, CEO and President and Scott Meichtry, Co-Founder and Executive Vice-President of Hawaii Human Resources, Inc. (“HiHR”), a locally owned and operated Professional Employer Organization (“PEO”) and member of the Hawaii Association of Professional Employer Organizations (HAPEO). On behalf of HiHR, we would like to thank you for this opportunity to share with you and the committee HiHR’s comments as they relate to H.B. No. 144 HD2 SD1. Our group supports the intent of HB144 HD2 SD1; however, we recommend the bill to be rewritten as SB No. 510 HD2 SD2 (as passed last week by House Consumer Protection Committee on Wednesday, March 20th). HiHR is working with HAPEO and all stakeholders to implement effective and reasonable registration and regulations for the PEO industry.

HiHR is one of the 3 largest PEOs in the State of Hawaii. We currently service 385 different businesses and approximately over 7,000 client worksite employees on all of the major Hawaiian Islands. We formed this company in January 2009 to provide an alternative option for small and medium-sized businesses of Hawaii to outsource their human resource needs and focus on their core businesses. Prior to HiHR entering the market, the market was controlled by two large companies. HiHR is a member of the Hawaii Association of Professional Employer Organizations (“HAPEO”).

HiHR’s Priorities

Overall, HiHR supports the intent of H.B. No. 144 HD 2 SD1, but has concerns about provisions pertaining to the scope of the regulatory functions and the allocation of responsibilities regarding compliance with labor laws that may be out of our direct control.



HiHR has the following three (3) priorities regarding the proposed PEO legislation:

- (1) We agree with the Scalable Bond in H.B. No. 144 HD 2 SD1– It is HiHR’s priority to have a scalable bond as we have detailed out in our prior testimony to equitably represent the sizes of PEOs in annual taxable payroll.

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Suggested Definitional Changes:

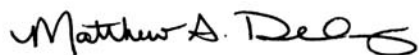
- (i) “Administrative employer” means a professional employer organization pursuant to a professional employer agreement to which is contractually responsible for various financial and administrative duties of a client company, including human resources administration, payroll and payroll taxes, workers’ compensation, temporary disability coverage, state unemployment, and prepaid health care coverage of worksite employees.



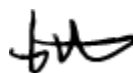
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Mahalo for your time and consideration. We look forward to working with all stakeholders to implement effective and reasonable registration and regulations for the PEO industry. We very much appreciate being part of this process and having our voice be heard during this 2013 Legislative Session.

Respectfully submitted,



Matthew S. Delaney
CEO/President



Scott Meichtry
Executive Vice-President



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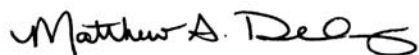
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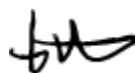
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Respectfully submitted,



Matthew S. Delaney
CEO/President



Scott Meichtry
Executive Vice-President



TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Professional employer organizations

BILL NUMBER: HB 144, SD-1

INTRODUCED BY: Senate Committee on Commerce and Consumer Protection

BRIEF SUMMARY: Amends HRS section 237-24.75 to replace the term “professional employment organization” with “professional employer organization.” Clarifies that the general excise tax exemption shall not apply to a professional employer organization if: (1) the professional employer organization fails to properly register with the department of labor and industrial relations (DLIR); 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.

Makes other nontax amendments to simplify the regulation of the professional employer organization law and clarify the application of existing laws.

EFFECTIVE DATE: July 1, 2050

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. Act 129, SLH 2010, established registration requirements for the professional employment organizations and established a new HRS chapter 373L. However, this measure repeals HRS chapter 373K and strengthens the provisions of HRS 373L and also clarifies the general excise tax exemption for professional employment organizations.

Digested 3/22/13