

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

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813

<http://labor.hawaii.gov>

January 29, 2013

To: The Honorable Mark M. Nakashima, Chair,  
The Honorable Mark J. Hashem, Vice Chair, and  
Members of the House Committee on Labor and Public Employment

Date: Tuesday, January 29, 2013

Time: 9:00 a.m.

Place: Conference Room 309, State Capitol

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

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

**I. OVERVIEW OF PROPOSED LEGISLATION**

H.B. No. 144 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 relieve the onerous financial and administrative requirements contained in the existing statutes, for which the department does not have the experience or expertise to oversee.

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. Those recommendations are contained in S.B. 510.

Overall, the Department supports the intent of H.B. No. 144, but has concerns about provisions pertaining to the scope of the regulatory functions, the allocation of responsibilities regarding compliance with labor laws, and the proposed amendments to section 383-66 (b) (1) affecting an employer's experience rating in Unemployment

Insurance law. Therefore, the Department requests that the contents of this measure be deleted and replaced in its entirety with the language contained in S.B. No. 510, which addresses the major concerns of PEOs while maintaining sufficient oversight to protect employees' rights and benefits. S.B. No. 510, is a collaborative effort, endorsed by its legislative sponsor, the Department of Taxation and the Department of Labor & Industrial Relations to facilitate 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.

## **II. CURRENT LAW**

Chapter 373K was enacted in 2007 for purposes of qualifying PEOs for the state general excise tax exemption 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**

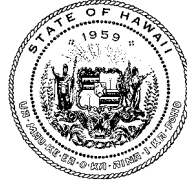
DLIR believes that the stakeholders with interest in current PEO legislation are mostly in agreement with the needed changes to reconcile the two PEO chapters. All parties agree that the regulatory functions required by §373L would be best enforced by tying compliance to the general excise tax exemption provided for in §237-24.75, that the registration requirements for PEOs should be lessened, and the notification to DLIR and covered employees in professional employer agreements.

However, one area of difference is the amendments under section 383-66 (b) (1), which HB144 is proposing, would require overhauling the entire Hawaii Unemployment Insurance Tax System at an estimated cost of approximately \$23 million to accomplish automation of the experience rating process. Considering the prohibitive costs, limited staff resources, competing, ongoing IT projects and the inconceivable option of alternative manual processing of the amendments to section 383-66(b)(1), this measure, as is, cannot be implemented without significant sacrifice to current operations.

Another area of difference amongst the parties is the language describing the rights and responsibilities allocated between the PEO and the client companies. DLIR's position, consistent during the deliberations in the 2012 legislative session and all HD and SD drafts of SB2424 and reflected in SB510, is that the PEO is the employer for the purposes of workers' compensation, temporary disability insurance, prepaid healthcare and unemployment insurance laws.

NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1530  
FAX NO: (808) 587-1584

FREDERICK D. PABLO  
DIRECTOR OF TAXATION

JOSHUA WISCH  
DEPUTY DIRECTOR

To: The Honorable Mark M. Nakashima, Chair  
and Members of the House Committee on Labor and Public Employment

Date: Tuesday, January 29, 2013

Time: 9:00 a.m.

Place: Conference Room 309, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: H.B. No. 0144 Relating to Professional Employer Organizations

The Department of Taxation (Department) defers to the Department of Labor and Industrial Relations (DLIR) on the merits of this measure, but provides the following information and comments for your consideration.

H.B. 144, as it relates to tax, amends the general excise tax exemption for professional employer organizations that is set forth under section 237-24.75, Hawaii Revised Statutes (HRS), to provide that the exemption is not applicable upon the occurrence of certain specified events. The measure is effective upon approval.

With respect to the general excise tax exemption, the Department notes that it has no means of knowing whether or not a Professional Employer Organization (PEO) is excluding otherwise coverable persons; whether or not the PEO has failed to properly register with DLIR or to pay any required fees; or, whether or not the PEO is otherwise in compliance with chapter 373K, HRS. These determinations are solely within the province of the DLIR. Therefore, the Department can only suspend the GET exemption upon notification from DLIR that the PEO has failed to comply with its rules and regulations.

In addition, the Department believes that the statute clearly sets forth the date upon which the exemption would no longer be applicable upon the occurrence of one of the listed events, to avoid unnecessary litigation with the taxpayer over when the exemption became ineffective. Although proposed subsection (3)(D) provides for the suspension to be upon notification from DLIR, that provision applies only to subsection (3)(D) and not to (3)(A) or (3)(B). The Department recommends that the loss of the exemption should be clearly set forth to avoid time consuming litigation with taxpayers.

The Department suggests that subsection 3 of section 237-24.75 read as follows:

[-(3) Amounts received[-] by a professional [~~employment~~] employer organization from a client equal to amounts that are disbursed by the professional [~~employment~~] employer organization for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick leave, health benefits, and similar employment benefits with respect to [~~assigned~~] covered employees at a client company; provided that this exemption shall not apply to a professional [~~employment~~] employer organization [~~upon failure of the professional employment organization to collect, account for, and pay over any income tax withholding for assigned employees or any federal or state taxes for which the professional employment organization is responsible.]~~ after:

- (A) Notification from the department of labor and industrial relations that the professional employer organization has, by or through any contract between a client company and any professional employer organization, or otherwise, excluded employees from any employee rights or employee benefits required by law to be provided to covered employees of the client company by the professional employer organization;
- (B) A determination by the department that the professional employer organization has failed to pay any tax withholding for covered employees or any federal or state taxes for which the professional employer organization is responsible;
- (C) Notification from the department of labor and industrial relations that the professional employer organization has failed to properly register with the director of labor and industrial relations or to pay fees as required by chapter 373K; or
- (D) Notification from the department of labor and industrial relations that the professional employer organization is not in compliance with chapter 373K.

Thank you for the opportunity to provide comments.



**Testimony to the Committee on Labor & Public Employment  
Tuesday, January 29, 2013  
9:00 a.m.  
Conference Room 309**

**RE: HOUSE BILL 144 RELATING TO PROFESSIONAL EMPLOYER  
ORGANIZATIONS**

Chair Nakashima, Vice Chair Hashem, and Members of the Committee:

I. BACKGROUND

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.

Despite some PEOs' claims that there is no need for regulation of the industry, or minimal regulation at best, when PEOs are handling large sums of client funds, the opportunities for misuse or error are present, and such behavior (while fortunately rare), has happened both on the mainland and in Hawaii – in Hawaii as recently as 2007 with a start up PEO. In fact, a simple Google search of the phrase, "fraud PEO" returns a number of instances where PEOs have abused their fundamental responsibilities. Because of our belief that our clients deserve the peace of mind that they have contracted with reputable PEO, ProService has been voluntarily regulated by the Employer Services Assurance Corporation (ESAC), the gold standard for national independent oversight, auditing, and bonding, since 2006.

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.

## II. HB 144

- The current PEO registration law, HRS 373L is a consumer protection law; protecting Hawaii's businesses and our working families who depend on PEOs for payroll, health care, workers' comp coverage, and temporary disability insurance.
- HB 144 seeks to repeal the fundamental elements of current registration law, including the security bond and financial audit.
  - o A surety bond is needed to protect consumers and the State from poor business practices by a PEO. Maintaining a bond will ensure that PEOs act in the best interest of their Client Companies. In the event that a PEO does not act in the best interest of consumers, for example, collecting workers' compensation insurance premiums but not remitting the premiums to an insurance carrier and a claim is incurred, both the consumer and the State may be indemnified by the bond, and therefore, allowing the injured worker to receive workers' compensation coverage. A bond keeps PEO clients and their employees safe in the event the PEO engages in unlawful business practices.
  - o The bond requirement in HRS 373L is reasonable and is not anti-competitive to smaller PEOs. For example, ProService Pacific, LLC secured a bond at the required amount of \$250,000 for less than \$2,000. This cost is nominal for the surety that it provides the Client Companies of the PEO and the State of Hawaii. The bond fee is not a barrier to entry into the marketplace.
  - o An independent financial audit by a CPA is necessary to verify financial stability and the ability to meet financial obligations. We respectfully ask that the financial audit requirement (373L-2(b)(12)) be maintained. The financial audit requirement is reasonable and necessary to provide our regulators a tool to ensure a PEO is financially sound to meet its obligations.. Financial audits are part of PEO registration regulations in most other states and are a best practice rather than a hindrance to doing business in Hawaii.
- HB 144 also attempts to **eliminate** requirements that PEOs, as a condition of doing business in Hawaii provide proof of coverage for: of: (1) workers' compensation; (2) Temporary Disability Insurance; (3) Prepaid Healthcare; and Unemployment Insurance. These are requirements of the current law, HRS 373L, and requirements for every business. It appears the proponents of this bill are asking that the state be more lenient on PEOs than other businesses or employers. Therefore, we believe that as a requirement to do business, PEOs should maintain a Certificate of Compliance – proof of Workers' Compensation Insurance, TDI, Prepaid Healthcare, and tax clearance per HRS 373L as this assures the State and the Client Companies of the PEO that standard requirements are adhered to.

- We recommend that the legislature allows the current law, HRS 373L to be fully implemented before taking any action on new PEO registration bills. Many PEOs are in compliance with 373L, we should look to maintain consumer protections by enforcing the existing law rather than repealing and implementing a new law that has fewer consumer protections.
- The Bill attempts to amend how PEO clients should be treated under our state unemployment insurance laws. This provision is misplaced in a PEO registration bill and we defer to the DLIR UI Division for their opinion before providing our comments.

Thank you for the opportunity to submit testimony.



707 North St. Asaph Street  
Alexandria, Virginia 22314

T 703 836.0466  
F 703 836.0976  
www.napeo.org

January 28, 2013

***Electronic Delivery***

Honorable Mark M. Nakashima, Chair  
Committee on Labor and Public Employment,  
House of Representatives,  
State of Hawaii  
Room 406, State Capitol  
Honolulu, Hawaii 96813

**In re: House Bill 144, relating to: Professional Employer Organizations**

Dear Chair Nakashima,

On behalf of the National Association of Professional Employer Organizations (NAPEO), thank you for this opportunity to share with you and the committee NAPEO's comments on House Bill 144 (HB 144). Unfortunately, HB 144 contains provisions that NAPEO cannot support and urges the committee to consider improvements before acting on the bill.

NAPEO strongly believes it is important that minimum standards be established that create a level and competitive playing field. That is why NAPEO and its members sought enactment of Chapter 373L. Under that chapter, a PEO must register with the state and submit audited financial statements without a qualification as to the PEO's ability to continue to do business. This standard has been enacted in a number of other states and is a proven to be both effective and fair to PEOs of all sizes. *As introduced, this bill makes a number of changes to that framework, including repealing this important safeguard.*

NAPEO stands ready to engage in discussions with the committee or other stakeholders on how this bill might be improved.

Thank you in advance for considering these comments. If you have any questions, or need any further assistance, please feel free to contact me at [apeer@napeo.org](mailto:apeer@napeo.org) or 703-739-8179.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Peer", is written over a white background.

Adam Peer, Director

*State Government Affairs*

National Association of Professional Employer Organizations





January 28, 2013

The Honorable Mark M. Nakashima, Chair  
The Honorable Mark J. Hashem, Vice Chair  
Committee on Labor and Public Employment  
State Capitol  
Honolulu, Hawaii 96813

Subject: House Bill 144, January 29, 2013, 9:00 a.m.  
**Strong Opposition**

Dear Rep. Nakashima and Rep. Hashem:

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 (PEO). I am writing you today in strong opposition to HB 144.

The authors of HB 144 would like you to believe that the current law (Act 129) regulating PEO activities in the State is over-burdensome and not needed. They claim that there are more than ample controls in place to ensure consumer protection via current law and regulation, as well as oversight by DLIR and insurance carriers, which is simply not true. On a federal level, there are no statutes in place that regulate the PEO third party employer relationship. Hence, that is why 39 other states, in addition to Hawaii, have passed registration, bonding and audit requirements similar to Act 129.

The PEO industry in Hawaii touches more than 25,000 Hawaii employees for the purposes of payroll, health benefits and taxes, and controls more than \$1 billion in associated monies. For this legislature to repeal the modest oversight of the current law which has barely had time to take effect would be irresponsible. This would be similar to introducing legislation to remove banking regulation and the FDIC.

The proponents of HB 144 further justify this legislation because they claim the payroll industry moves similar amounts of money yet goes unregulated. Again, this is simply not true. In the client payroll service bureau relationship there is federal oversight via the Reporting Agent authority by which a client company turns over payroll, taxes and associated monies to be remitted by the Reporting Agent. Once the client turns over the monies to the Reporting Agent in good faith, the IRS holds the Reporting Agent responsible in the event of default.

On the other hand, the PEO relationship has no such federal regulation and relies on the State governments to provide the much-needed consumer protection and clarification in this area. The PEO industry falls through the cracks because we are not a payroll agent, nor are we an insurance company or a bank that has their own regulatory bodies.

January 28, 2013  
Page Two

In addition to some housekeeping items including grammatical changes and clarifications, the balance of HB 144 addresses the complex subject of successor employers for UI purposes. I would urge the committee to refrain from making any decisions about this area of the law, as unemployment insurance, rate promulgation and its funding have far-reaching effects and deserve a separate bill and discussion.

For the purpose of providing an in-depth understanding, I have provided some additional information below.

### **Background**

The PEO industry originated on the mainland in the 1970s and found its way to the islands via my firm, ALTRES, in 1980.

PEOs are businesses that partner with existing small businesses (employers) to enable them to cost-effectively outsource the management of human resources, payroll, employee benefits and workers' compensation so that PEO clients can focus on their core competencies to maintain and grow their businesses.

An added benefit is that by forming an employment relationship with these small businesses and their employees, PEOs are able to offer enhanced access to employee benefits while saving money for both the business and the employees.

### **Legislative Background**

Upon the industry's inception, Hawaii's employment and general excise tax laws did not match the operational needs of the industry. One example is that under the G.E.T., our clients' payroll monies, taxes and insurances, when passed through the PEO, were subject to 4% general excise tax, while our service fee was only 3%. In other words, the tax outstripped any fee income we were to earn on the transaction. The only way to remedy this was through legislation. For 16 years, I and others worked tirelessly with the legislature, various administrations, along with their tax directors and attorney generals, to finally get appropriate relief through the implementation of Act 225 in the 2007 legislative session.

### **PEO Failures**

Throughout the history of the PEO industry, there have been multiple failures on a national level. Some states, like Florida, are very dense with PEOs, where at one time approximately 80% of the population in Bradenton County was employed through a PEO. This was because PEOs were able to bring financial relief to businesses in crisis in the areas of high workers' compensation premiums and unattainable health insurance. Many of those fledgling PEOs got in over their heads and could not deliver on their promises and, in some cases, mismanaged the affairs and monies of their client companies. Some of these failures were actual fraud and some were simply the result of naiveté regarding the complexities of running a PEO. It was not uncommon to hear of PEOs losing multiple tens of millions of dollars, closing their doors in the

middle of the night and leaving town with trails of unpaid taxes and insurance premiums in their wake.

Hawaii had one such close call about four years ago when a mainland PEO commenced business here through an unscrupulous local agent who committed fraud and stole \$2 million of tax and insurance money that was to be paid to the federal and Hawaii state government. It was fortunate that the mainland PEO understood the local ramifications of the situation and quickly made restitution.

From the above illustration, you can see the need for regulation in this industry.

In the ensuing years, various issues arose, including some consumer protection questions that were handed down from national bodies such as NCOIL (National Council of Insurance Legislators) and others. It was agreed by members of the legislature (with concerns), DLIR, DOT, DOI, DCCA and others that the industry should pursue registration with consumer protection components similar to what has been implemented in 39 other states.

In 2010, the legislature enacted Act 129, the PEO Registration Act, which provides for registration and bonding requirements, under the supervision of the Department of Labor, to be implemented on July 1, 2011.

### **Current Status**

Today DLIR estimates that there are approximately 40 PEOs operating in the state. Of this number, more than half are mainland based. Of the locally based PEOs, only six are registered with the Department of Labor, with the balance failing to file, either under protest of the law or claiming that the bond and audit requirements are too costly.

Specifically, the contested components of the current law are the bond amount and the audit requirement. Let me address these items below:

### **Bond**

The initial introduction of the PEO Registration Act required a \$1 million bond, and through deliberation, testimony, collaboration and compromise, the current \$250,000 level was decided upon because of a mutual concern that the \$1 million bond would create a barrier to entry into the market for small and start up PEOs.

It is important to note that a \$250,000 bond does not cost \$250,000. Traditionally, a bond requirement would be met by applying to a surety carrier and paying a nominal percentage of the face value of the bond. For example, ALTRES pays \$1,700 per year to meet the \$250,000 requirement of the law.

The idea of posting a bond is not so much about the amount of the bond as it is the process and due diligence of the surety who posts the bond on behalf of the business. The surety process is a very thorough and complex one in which the underwriters will review every financial aspect of

January 28, 2013  
Page Four

the business as well as background information of the principles and the overall condition of the organization. As you can imagine, this is a very arduous undertaking not only for the surety underwriter, but the PEO registrant as well.

Nationally, the trend is for \$50,000 to \$100,000 bonds as well as net worth requirements. I believe this number is simply too low because it is very easy for the average business operator to arrange assets in a way to post this moderate amount and forego the scrutiny of the bond process. With the number at a more business-like amount of \$250,000, a PEO operator will look to the financially viable process of purchasing a bond from a surety with a moderate cash outlay as compared to tying up \$250,000 in cash. This path of bond posting provides an additional level of consumer protection.

#### Audit requirements

The current law requires PEOs to maintain audited financial statements under GAAP, which is not uncustomary for any organization that is in the financial sector, which PEOs are. Opponents have said that this is burdensome for a number of reasons.

There has been testimony that audited financial statements are too costly for these small businesses. Fees for an independent audit are scaled according to the size of the business. A small PEO with relatively simple accounting, as compared to a large one, could pay as little as \$5,000 a year. The benefits of this audit to the PEO operator are many, including an understanding of cash flow, long term debt and the effect that unforeseen circumstances can have on their business. It is important to note that the current law is not giving the DLIR intrusive access or even oversight into the operations of the business. Instead, the PEO operator employs their own CPA/auditor to provide this valuable insight into the operation and financial health of their business. It provides the PEO operator comfort in knowing whether or not they are doing things right. Because many small PEO operators most likely do not have the staff on hand with credentials to maintain strong internal controls, it becomes even more important for them to hire an independent auditor.

#### In Conclusion

Although not perfect, the current law provides a strong foundation to ensure proper oversight. A small handful of PEOs should not be allowed to ignore the law just because they don't agree with it. Allowing them to do so sends the wrong message to all law abiding citizens.

I urge this legislature to allow the current law a chance to take effect and do what it was designed to do.

Sincerely,



Barron L. Guss  
President and CEO



January 29, 2013

Honorable Mark M. Nakashima, Chair  
Honorable Mark J. Hashem, Vice-Chair  
House Committee on Labor and Public Employment  
State Capitol, Room 309  
Hearing Date: January 29, 2013  
Time: 9:00 a.m.

**Re: House Bill 144: related to Professional Employer Organizations (“PEO”)**

Dear Chair Nakashima and Vice-Chair Hashem,

Our names are Desirea Aguinaldo-Helsham, CEO and Jody Dennett, President of OneSource, Inc. (“OneSource”), a locally owned and operated Professional Employer Organization (“PEO”). We submit this testimony in favor of HB 144 and humbly ask for your support.

OneSource was founded with the intention of catering to the true small businesses of Hawaii. Our clients typically have less than twenty-five (25) employees, who do not have the resources to hire a full time human resources person but realize the need to be in compliance with all the various laws such as; providing medical coverage to employees who qualify, workers compensation, temporary disability insurance, payroll, payroll taxes being filed on time and so forth. These tasks can be quite a burden to the small business owner who is trying to do what they know best, which is provide the services they specialize in.

HB144 will keep the PEO industry alive which provides the consumer options instead of being left with only a handful of PEOs to choose from. We support registration and reasonable regulations which is why we have been working with stakeholders since the 2012 legislative session ended.

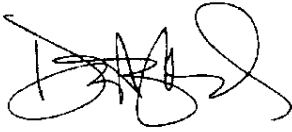
HB 144 would repeal Chapter 373L, Hawai'i Revised Statutes (“HRS”), in its entirety and make certain targeted amendments to other provisions of the PEO law, HRS Chapter 373K, to simplify and improve the implementation of the law, and to clarify and amend the statutory responsibilities between a client company and the PEO.

In addition, the bill would simplify the regulation of PEOs by empowering the Director of the Department of Labor and Industrial Relations to notify the Department of Taxation when the GET tax exemption under HRS Section 237-24.75 is being denied for a PEO that violates Chapter 373K, HRS.

Besides registration and the payment of fees, other technical amendments are provided in the bill that furthers the goals of accountability and consumer protection in a balanced manner.

Mahalo for your time and consideration and hoped support of this important measure.

Respectfully submitted,



Desirea Aguinaldo-Helsham  
CEO



Jody Dennett  
President



January 28, 2013

Honorable Mark M. Nakashima, Chair

Honorable Mark J. Hashem, Vice-Chair

House Committee on Labor and Public Employment

State Capitol, Room 309

Hearing Date: January 29, 2013

Time: 9 a.m.

Re: House Bill 144: related to Professional Employer Organizations (“PEO”)

Dear Chair Nakashima and Vice-Chair Hashem,

My name is Inder Mirchandani and I am retired. I have been a business consultant to the owner of a small boutique PEO/Recruiting and Staffing Company, Talent HR Solutions, LLC. I am also the owner’s parent.

The existing laws in effect currently, would adversely impact all businesses in Hawaii. The existing laws are monumentally flawed, imposes unattainable bonding requirements, far exceeding mainland standards, imposes unnecessary and very expensive audit requirements. Existing laws stifle competition, innovation and entrepreneurship. It favors large PEOs and violates our Honorable Governor’s requirements of PEOs laws to be fair to large, medium and small firms. Definitions of co employment are misunderstood and places statutory requirements on the PEO for the actions of Client companies who are fully responsible for their worksite behaviour, when the PEO has no control over Clients worksite employees on their day to day operations. **SIMPLY PUT THE EXISTING LAWS ARE NOT ENFORCEABLE AND BADLY FLAWED.** Existing laws attempt to solve problems that don’t exist.

HB 144 would repeal HRS Chapter 373L, ”), in its entirety and make certain amendments to other provisions of the PEO law, HRS Chapter 373K, to simplify and improve the implementation of the law, and to clarify and amend the statutory responsibilities between a client company and the PEO.

In addition, the bill would simplify the regulation of PEOs by empowering the Director of the Department of Labor and Industrial Relations to notify the Department of Taxation when the GET tax exemption under HRS Section 237-24.75 is being denied for a PEO that violates Chapter 373K, HRS.

Besides registration and the payment of fees, other technical amendments are provided in the bill.

I fully support HB 144 in it's entirety and is supported by HAPEO ( Hawaii Association of PEO's), which represents a sizeable majority of PEO's in the islands.

HB is fair, just, enforceable, simple to understand and follow and provides adequate consumer protection.

Humbly Submitted

Inder Mirchandani

7888 Makaaoa Place,

Honolulu

HI 9625

08-383-7155





January 29, 2013

Honorable Mark M. Nakashima, Chair  
Honorable Mark J. Hashem, Vice-Chair  
House Committee on Labor and Public Employment  
State Capitol, Room 309  
Honolulu, HI 96813  
Hearing Date: January 29, 2013  
Time: 9 a.m.

**Re: House Bill 144: Related to Professional Employer Organizations**

Dear Chair Nakashima and Vice-Chair Hashem,

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"). On behalf of HiHR, we would like to thank you for this opportunity to share with you and the committee our support for HB 144. *Our company submits this testimony in full support of HB 144.*

HiHR is one of the 3 largest PEOs in the State of Hawaii. We currently service 375 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.

We support the concept of registration and reasonable regulation of PEOs. In fact, we founded our company based on the principles of full disclosure and transparency, which are differentiating points.

**2013 Legislative Session**

We are looking forward to working collaboratively with all stakeholders to improve the current laws that were passed back in 2010, which have still not been implemented in their entirety as a result of challenges with bonding requirements, audited financials, and some other factors.

**HB144 Summary**

HB 144 would repeal Chapter 373L, Hawai'i Revised Statutes ("HRS"), in its entirety and make certain targeted amendments to other provisions of the PEO law, HRS Chapter 373K, to simplify and improve the implementation of the law, and to clarify and amend the statutory responsibilities between a client company and the PEO. In addition, the bill would simplify the regulation of PEOs by empowering the Director of the Department of Labor and Industrial Relations to notify the Department of Taxation when the GET tax exemption under HRS Section 237-24.75 is being denied for a PEO that violates Chapter 373K, HRS.





Mahalo for your time and consideration of our testimony. We very much appreciate being part of this process and having our voice be heard during this 2013 Legislative Session.

Respectfully submitted,

A handwritten signature in black ink that reads "Matthew S. Delaney".

Matthew S. Delaney  
CEO/President

A handwritten signature in black ink that reads "Scott Meichtry".

Scott Meichtry  
Executive Vice-President





**HAWAII ASSOCIATION OF  
PROFESSIONAL EMPLOYER ORGANIZATIONS**

---

January 29, 2013

Honorable Mark M. Nakashima, Chair  
Honorable Mark J. Hashem, Vice-Chair  
House Committee on Labor and Public Employment  
State Capitol, Room 309  
Honolulu, HI 96813  
Hearing Date: January 29, 2013  
Time: 9 a.m.

**Re: House Bill 144: related to Professional Employer Organizations (“PEO”)**

Dear Chair Nakashima and Vice-Chair Hashem,

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 support for HB 144. *Our organization submits this testimony in full support of HB 144.*

**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.

**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.

**2013 Legislative Session**

We are looking forward to working collaboratively with all stakeholders to improve the current laws that were passed back in 2010, 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 committed to working with both the DLIR and DCCA to assist in the implementation of the registration process.



**HAWAII ASSOCIATION OF  
PROFESSIONAL EMPLOYER ORGANIZATIONS**

---

**HB144 Summary**

HB 144 would repeal Chapter 373L, Hawai'i Revised Statutes ("HRS"), in its entirety and make certain targeted amendments to other provisions of the PEO law, HRS Chapter 373K, to simplify and improve the implementation of the law, and to clarify and amend the statutory responsibilities between a client company and the PEO. In addition, the bill would simplify the regulation of PEOs by empowering the Director of the Department of Labor and Industrial Relations to notify the Department of Taxation when the GET tax exemption under HRS Section 237-24.75 is being denied for a PEO that violates Chapter 373K, HRS.

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

# 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

INTRODUCED BY: Souki, McKelvey, Nakashima

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; (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; (3) the professional employer organization fails to properly register with the department of labor and industrial relations (DLIR) or pay required fees; or (4) the professional employer organization is not in compliance with HRS chapter 373K.

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

EFFECTIVE DATE: Upon approval

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 and established a new HRS chapter 373L, this measure repeals HRS chapter 373L and strengthens provisions of HRS 373K and also clarifies the general excise tax exemption for professional employer organizations.

Digested 1/29/13