

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

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813

<http://labor.hawaii.gov>

February 1, 2013

To: The Honorable Rosalyn H. Baker, Chair,  
The Honorable Brickwood Galuteria, Vice Chair, and  
Members of the Senate Committee on Commerce and Consumer Protection

Date: Friday, February 8, 2013

Time: 9:00 a.m.

Place: Conference Room 229, State Capitol

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

**Re: S.B. No. 813 Relating to Professional Employer Organizations**

**I. OVERVIEW OF PROPOSED LEGISLATION**

S.B. No. 813 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. No. 510.

Overall, the Department supports the intent of S.B. No. 813, 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 (UI) law. Therefore, the Department requests that the Committee instead consider 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, including between 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 SENATE 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 Chapter 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 S.B. No 813 is proposing, which would require overhauling the entire Hawaii UI tax system at an estimated cost of approximately \$23 million or more 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.



HAWAII ASSOCIATION OF  
PROFESSIONAL EMPLOYER ORGANIZATIONS

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February 7, 2013

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the Senate Committee on Commerce and Consumer Protection

Date: Friday, February 8, 2013  
Time: 9:00am  
Place: State Capitol, Conference Room 229

Re: **Senate Bills 510 and 813 Relating to Professional Employer Organizations (“PEO”)**

Dear Chair Baker and Vice-Chair Galuteria,

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 SB 510 and SB 813. While HAPEO supports the intent of these measures, as noted below, HAPEO requests the Committee’s consideration of certain amendments to insure fairness in the bonding requirement and clarity in the definitional section. HAPEO looks forward to working with all stakeholders to implement effective and reasonable registration and regulations for the PEO industry. For the record, HAPEO supports SB813, but wished to harmonize these bills so that the best provisions of both SB510 and SB813 are considered and implemented.

### **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



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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 ninety-three percent (93%) of the State’s PEOs.

### **Overview of Existing Laws (373L, 373K and Act 129)**

The State has currently struggled with implementing the existing conflicting laws (373L and 373K) in a meaningful way, especially as Act 129 (2010) required regulatory functions and expertise outside of the scope of the DLIR’s existing scope of regulation.

HAPEO has worked with various stakeholders since SB2424 SD2HD2CD1 was vetoed at the end of the 2012 legislative session. We have worked with DLIR, DCCA, Chamber of Commerce, SHRM, NAPEO, PACE, various neighbor island and community based Chamber of Commerce organizations, Hawaii based insurance companies, and dozens of other business and community groups to obtain input and feedback on reasonable registration and regulation requirements that should be applied to the PEO industry, which will be fair and equitable to PEOs of all sizes, large and small.

### **SB510 Summary**

SB 510 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.

### **Specific Requests for Amendments to SB510:**

#### **HAPEO supports the intent of SB 510 but asks the Committee to consider two amendments:**

##### **1) Scalable Bonding Requirements**

There are only four (4) states in the entire United States that require mandatory bonds: Hawaii, North Dakota, New Mexico and South Carolina. The other states only require a bond if the PEO does not meet a minimum net worth or working capital requirements (on average the net worth or working capital requirement is \$50,000 to \$100,000). Hawaii currently has a mandatory bond of \$250,000, which is the highest in the entire country of any state requiring a mandatory bond or a voluntary bond when a PEO does not meet minimum net worth



requirements. North Dakota, New Mexico and South Carolina all have mandatory bonding requirements of \$100,000 and none of these states requires audited or reviewed financial statements, because a mandatory bond is in place.

Of the other approximate twenty (20) states that have bonding requirements when the PEO does not meet minimum net worth requirements or bonds that are specific to PEO's that provide self-insured workers compensation or other insurances, the maximum bond for PEOs of all sizes is \$100,000.

HAPEO and many of the other stakeholders we have met and deliberated with are in agreement with the concept of a scalable bond. In the spirit of compromise we support a scalable bond per the following schedule:

<u>Annual PEO Payroll</u> <sup>1</sup>	<u>Bond Amount</u>
\$150,000,001 or higher	\$250,000.00
\$25,000,001 to \$150,000,000	\$ 50,000.00
\$0 to \$25,000,000	\$ 10,000.00

Letter of Credit

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

**2) HAPEO supports amendments to the "definition" section:**

- A. The definition of assigned employee should be amended to add language that equates an assigned employee with a leased employee as defined in Section 414(n) or the IRS Code.
- B. "Department" means the department of labor and industrial relations.
- C. Clarify that "Offsite employer of record" means a professional employer organization pursuant to a professional employer agreement to which is contractually assigned the financial and administrative duties of a client company, including human resources administration, payroll and payroll taxes, workers' compensation and temporary disability coverage, state unemployment, and prepaid health care coverage of assigned employees.
- D. "Work site employer" mean the client company, pursuant to a professional employer agreement, that retains workplace management and supervisory control and responsibility of the assigned employees including compliance with labor or employment laws, collective bargaining rights, anti-discrimination provisions, or other laws with respect to

<sup>1</sup> Source: IRS Form 941



HAWAII ASSOCIATION OF  
PROFESSIONAL EMPLOYED ORGANIZATIONS

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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 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.

HAPEO is also committed to working together with the larger PEOs in the State.

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



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hrsolutions  
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February 7, 2013

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the Senate Committee on Commerce and Consumer Protection

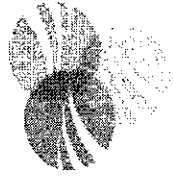
Date: Friday, February 8, 2013  
Time: 9:00am  
Place: State Capitol, Conference Room 229

Re: **Senate Bills 510 and 813 Relating to Professional Employer Organizations ("PEO")**

Dear Chair Baker and Vice-Chair Galuteria,

My name is Sanjay Mirchandani, and I am the owner of Talent HR Solutions LLC, a locally owned and operated boutique Professional Employer Organization. I am also a founding member of the board of directors for HAPEO. The 250K bonding and audit requirements are not only the highest in the country, but is also not attainable by smaller boutique PEO's. The annual audit costs of approximately \$25,000 plus is simply unaffordable by small PEO's. The total annual cost of the surety bond would be a \$250, 000 collateral cash deposit at a financial institution, plus banking and bonding insurance company fees, plus loss of interest on deposit. This cost would be in excess of \$275,000. The existing laws do not promote competition and it stifles innovation and entrepreneurship. There are many Hawaii small and medium size businesses that prefer working with a boutique PEO rather than a large PEO where they would not get as much personalized attention. Lastly, the existing laws attempt to solve problems that don't exist and are badly flawed.

I would like to thank you for this opportunity to share with you and your committee, our comments as they relate to SB 510. While we support the intent of these measures, as noted below, we request the Committee's consideration of certain amendments to insure fairness in the bonding requirement and clarity in the definition section (please refer to testimony submitted by HAPEO for definition amendments). For the record, we support SB813, but wish to harmonize these bills so that the best provisions of both SB510 and SB813 are considered and implemented. Our honorable Governor in his Veto letter of SB 2424, said to make the new PEO law fair to small and large PEO's. THE SCALABE BOND PROPOSED BY HAPEO achieves that request.



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### **Overview of Existing Laws (373L, 373K and Act 129)**

The State has currently struggled with implementing the existing conflicting laws (373L and 373K) in a meaningful way, especially as Act 129 (2010) required regulatory functions and expertise outside of the scope of the DLIR's existing scope of regulation.

### **SB 510 Summary**

SB 510 would repeal Chapter 373L, Hawaii 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.

There are only four (4) states in the entire United States that require mandatory bonds: Hawaii, North Dakota, New Mexico and South Carolina. The other states only require a bond if the PEO does not meet a minimum net worth or working capital requirements (on average, the net worth or working capital requirement is \$50,000 to \$100,000).

Hawaii currently has a mandatory bond of \$250,000, which is the highest in the entire country of any state requiring a mandatory bond or a voluntary bond when a PEO does not meet minimum net worth requirements. North Dakota, New Mexico and South Carolina all have mandatory bonding requirements of \$100,000 and none of these states require audited or reviewed financial statements, since a mandatory bond is in place.

Of the other approximate twenty (20) states that have bonding requirements when the PEO does not meet minimum net worth requirements or bonds that are specific to PEOs that provide self-insured workers compensation or other insurances, the maximum bond for PEOs of all sizes is \$100,000.

HAPEO and many of the other stakeholders we have met and deliberated with are in agreement with the concept of a scalable bond. In the spirit of compromise we support a scalable bond per the following schedule:





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Annual PEO Payroll <sup>1</sup>

\$150,000,001 or higher

\$25,000,001 to \$150,000,000

\$0 to \$25,000,000

Bond Amount

\$250,000.00

\$ 50,000.00

\$ 10,000.00

Respectfully submitted,

DocuSigned by:

*Sanjay Mirchandani*

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Sanjay Mirchandani

Owner

Talent HR Solutions LLC

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<sup>1</sup> Source: IRS Form 941



February 7, 2013

Honorable Rosalyn H. Baker, Chair  
Honorable Brickwood Galuteria, Vice-Chair  
Senate Committee on Commerce and Consumer Protection  
State Capitol, Room 229  
Honolulu, HI 96813  
Hearing Date: February 8, 2013  
Time: 9 a.m.

**Re: Senate Bill 510: related to Professional Employer Organizations ("PEO")**

Dear Chair Baker and Vice-Chair Galuteria,

My name is Ray O'Leary, the Executive Director/Administrator of the organization Professional Administrative Co-Employers (PACE), which is one of two trade associations representing the PEO industry. Our primary focus is on the federal level and we do not often get involved in state affairs. However, we have become increasingly alarmed by the excessive regulation at the state level that seems to unfairly target, or at least adversely affect, the smaller companies in our industry. We represent PEOs both large and small and believe fervently that the health of our industry is dependent on having a level playing field for all. While some oversight of our industry may be warranted, stacking the deck in favor of the larger PEOs is both unfair and unwise.

**PACE strongly opposes SB510.** SB 510 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.

Specifically our opposition is a result of: (a) the current \$250,000 bonding requirement; and (b) the inconsistent language and definitions of co-employment and covered employees between the PEO and the client. The bonding requirements are excessive for the smaller PEO's and the majority of Hawaii's PEO will have trouble meeting this requirement. Currently only four (4) states have mandatory bonding requirements. Insurance companies willing to provide this level of coverage are scarce and very expensive. Only the very large PEOs will be eligible for this coverage. The smaller PEOs will have no options.

Feel free to contact me with any questions or additional input.

Respectfully yours,

Ray M. O'Leary  
PACE Executive Director/Administrator



February 7, 2013

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the Senate Committee on Commerce and Consumer  
Protection

Date: Friday, February 8, 2013  
Time: 9:00am  
Place: State Capitol, Conference Room 229

**Re: Senate Bills 510 and 813 Relating to Professional Employer  
Organizations ("PEO")**

Dear Chair Baker and Vice-Chair Galuteria,

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 comments as they relate to SB 510 and SB 813. While HiHR supports the intent of these measures, as noted below, HiHR requests the Committee's consideration of certain amendments to insure fairness in the bonding requirement and clarity in the definitional section. HiHR looks forward to working with all stakeholders to implement effective and reasonable registration and regulations for the PEO industry. For the record, HiHR supports SB813, but wished to harmonize these bills so that the best provisions of both SB510 and SB813 are considered and implemented.

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.



### **Overview of Existing Laws (373L, 373K and Act 129)**

The State has currently struggled with implementing the existing conflicting laws (373L and 373K) in a meaningful way, especially as Act 129 (2010) required regulatory functions and expertise outside of the scope of the DLIR's existing scope of regulation.

### **SB 510 Summary**

SB 510 would repeal Chapter 373L, Hawaii 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.

### **Proposed Bonding Requirements**

There are only four (4) states in the entire United States that require mandatory bonds: Hawaii, North Dakota, New Mexico and South Carolina. The other states only require a bond if the PEO does not meet a minimum net worth or working capital requirements (on average, the net worth or working capital requirement is \$50,000 to \$100,000).

Hawaii currently has a mandatory bond of \$250,000, which is the highest in the entire country of any state requiring a mandatory bond or a voluntary bond when a PEO does not meet minimum net worth requirements. North Dakota, New Mexico and South Carolina all have mandatory bonding requirements of \$100,000 and none of these states require audited or reviewed financial statements, since a mandatory bond is in place.

Of the other approximate twenty (20) states that have bonding requirements when the PEO does not meet minimum net worth requirements or bonds that are specific to PEOs that provide self-insured workers compensation or other insurances, the maximum bond for PEOs of all sizes is \$100,000.

HAPEO and many of the other stakeholders we have met and deliberated with are in agreement with the concept of a scalable bond. In the spirit of compromise we support a scalable bond per the following schedule:



<u>Annual PEO Payroll</u> <sup>1</sup>	<u>Bond Amount</u>
\$150,000,001 or higher	\$250,000.00
\$25,000,001 to \$150,000,000	\$ 50,000.00
\$0 to \$25,000,000	\$ 10,000.00

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,

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

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

Matthew S. Delaney  
CEO/President

Scott Meichtry  
Executive Vice-President

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<sup>1</sup> Source: IRS Form 941

February 7, 2013

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the Senate Committee on Commerce and Consumer Protection

Date: Friday, February 8, 2013

Time: 9:00 am

Place: State Capitol, Conference Room 229

Re: **Senate Bills 510 and 813 Relating to Professional Employer Organizations ("PEO")**

Dear Chair Baker and Vice-Chair Galuteria,

My name is Nadine Stollenmaier, President of Dunhill Professional Staffing of Hawaii. I would like to thank you for this opportunity to share with you and the committee our comments as they relate to SB 510. Dunhill is a member of HAPEO and while we are a staffing company we stand firmly by our fellow HAPEO members and the PEO's in Hawaii.

We support the intent of these measures, as noted below, we request the Committee's consideration of certain amendments to insure fairness in the bonding requirement and clarity in the definitional section (please reference testimony submitted by HAPEO for definition amendments). For the record, we support SB813, but wished to harmonize these bills so that the best provisions of both SB510 and SB813 are considered and implemented.

#### **Overview of Existing Laws (373L, 373K and Act 129)**

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HAPEO and many of the other stakeholders we have met and deliberated with are in agreement with the concept of a scalable bond. In the spirit of compromise we support a scalable bond per the following schedule:

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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,



Nadine Stollenmaier  
President  
Dunhill Professional Staffing of Hawaii



February 8, 2013

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the Senate Committee on Commerce and Consumer Protection

Date: Friday, February 8, 2013  
Time: 9:00am  
Place: State Capitol, Conference Room 229

Re: **Senate Bills 510 and 813 Relating to Professional Employer Organizations (“PEO”)**

Dear Chair Baker and Vice-Chair Galuteria,

My name is Desirea Aguinaldo, CEO and Co-Founder of OneSource, Inc. (“OneSource”) and I am from Kahuku, Hawaii. We are a locally owned business, unlike most of the current registered PEOs. After 13 years of working in the PEO industry, I followed my father’s entrepreneur spirit, and co-founded my own PEO business in 2009. This is now my 16th year serving Hawaii’s PEO industry. I am a Board member of HAPEO.

My name is Jody Dennett, President and Co-founder of OneSource and I am from Pukalani, Maui, Hawaii. I followed my mother’s entrepreneur spirit and co-founded OneSource. We are also one of the few women owned PEOs in Hawaii. Our PEO is unique in that we focus our attention on assisting Hawaii’s small businesses and solo entrepreneurs. It is important for to you understand the type of client we represent as there is a need for a local PEO who serves the true small businesses in Hawaii. More than 50% of our clientele consist of fewer than ten (10) employees. Hawaii’s small businesses need a PEO like ours.

We would like to thank you for this opportunity to share with you and the committee our comments as they relate to SB 510.

While we support the intent of these measures, as noted below, we humbly request the Committee’s consideration of certain amendments to insure fairness in the bonding requirement and clarity in the definitional section (please reference testimony submitted by HAPEO for definition amendments). For the record, we support SB813, but wished to harmonize these bills so that the best provisions of both SB510 and SB813 are considered and implemented. Additionally, these amendments will allow us to continue to use our talents where needed and continue our dream of working for ourselves and helping Hawaii’s locally owned businesses thrive. If this bond is not reduced to a reasonable scale, it will cause unnecessary hardship, which will ultimately affect our clients.



Overview of Existing Laws (373L, 373K and Act 129)

The State has currently struggled with implementing the existing conflicting laws (373L and 373K) in a meaningful way, especially as Act 129 (2010) required regulatory functions and expertise outside of the scope of the DLIR's existing scope of regulation.

SB 510 Summary

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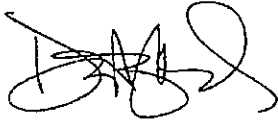
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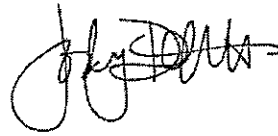
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<sup>1</sup> Source: IRS Form 941

Respectfully submitted,



Desirea Aguinaldo-Helsham  
CEO



Jody Dennett  
President

**PACIFIC BUSINESS NEWS**  
**FORTY**  
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February 7, 2013

Honorable Rosalyn H. Baker, Chair  
Honorable Brickwood Galuteria, Vice-Chair  
Senate Committee on Commerce and Consumer Protection  
State Capitol, Room 229  
Honolulu, HI 96813  
Hearing Date: February 8, 2013  
Time: 9 a.m.

**Re: Senate Bill 813: related to Professional Employer Organizations ("PEO")**

Dear Chair Baker and Vice-Chair Galuteria,

My name is Ray O'Leary, the Executive Director/Administrator of the organization Professional Administrative Co-Employers (PACE), which is one of two trade associations representing the PEO industry. Our primary focus is on the federal level and we do not often get involved in state affairs. However, we have become increasingly alarmed by the excessive regulation at the state level that seems to unfairly target, or at least adversely affect, the smaller companies in our industry. We represent PEOs both large and small and believe fervently that the health of our industry is dependent on having a level playing field for all. While some oversight of our industry may be warranted, stacking the deck in favor of the larger PEOs is both unfair and unwise.

**PACE strongly supports SB813.** SB 813 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.

Feel free to contact me with any questions or additional input.

Respectfully yours,

Ray M. O'Leary  
PACE Executive Director/Administrator



February 7, 2013

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the Senate Committee on Commerce and Consumer Protection

Date: Friday, February 8, 2013  
Time: 9:00am  
Place: State Capitol, Conference Room 229

Re: **Senate Bills 510 and 813 Relating to Professional Employer Organizations (“PEO”)**

Dear Chair Baker and Vice-Chair Galuteria,

My name is Anela Sanchez, Chief Executive Officer of Aloha International Employment, Inc. We are a licensed and bonded Employment Agency established in Hawaii in 1981. On behalf of Aloha International Employment, Inc., I would like to thank you for this opportunity to share with you and the committee our comments as they relate to SB 510. While we support the intent of these measures, as noted below, we request the Committee’s consideration of certain amendments to insure fairness in the bonding requirement and clarity in the definitional section. For the record, Aloha International Employment, Inc. support SB813, but wishes to harmonize these bills so that the best provisions of both SB510 and SB813 are considered and implemented.

Aloha International Employment, Inc. provides employment services to hundreds of small businesses on the four major Hawaiian Islands. We ensure they are in compliance with state and federal regulations which allow them the freedom to focus on their businesses.

As an Employment Agency, Aloha international Employment, Inc. is regulated by the DCCA. We understand the need for registration and reasonable regulation and we are confident that the stakeholders and legislators will combine efforts to come up with fair registration and regulations for the PEO industry.

**Overview of Existing Laws (373L, 373K and Act 129)**

The State has currently struggled with implementing the existing conflicting laws (373L and 373K) in a meaningful way, especially as Act 129 (2010) required regulatory functions and expertise outside of the scope of the DLIR’s existing scope of regulation.

**SB 510 Summary**

SB 510 would repeal Chapter 373L, Hawaii 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.

**Proposed bonding Requirements**

There are only four (4) states in the entire United States that require mandatory bonds: Hawaii, North Dakota, New Mexico and South Carolina. The other states only require a bond if the PEO does not meet a minimum net worth or working capital requirements (on average, the net worth or working capital requirement is \$50,000 to \$100,000).

Hawaii currently has a mandatory bond of \$250,000, which is the highest in the entire country of any state requiring a mandatory bond or a voluntary bond when a PEO does not meet minimum net worth requirements. North Dakota, New Mexico and South Carolina all have mandatory bonding requirements of \$100,000 and none of these states require audited or reviewed financial statements, since a mandatory bond is in place.

Of the other approximate twenty (20) states that have bonding requirements when the PEO does not meet minimum net worth requirements or bonds that are specific to PEOs that provide self-insured workers compensation or other insurances, the maximum bond for PEOs of all sizes is \$100,000.

HAPEO and many of the other stakeholders we have met and deliberated with are in agreement with the concept of a scalable bond. In the spirit of compromise we support a scalable bond per the following schedule:

<u>Annual PEO Payroll</u> <sup>1</sup>	<u>Bond Amount</u>
\$150,000,001 or higher	\$250,000.00
\$25,000,001 to \$150,000,000	\$ 50,000.00
\$0 to \$25,000,000	\$ 10,000.00

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,

A handwritten signature in black ink that reads "Anela Sanchez". The signature is fluid and cursive.

Anela Sanchez  
CEO



February 7, 2013

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the Senate Committee on Commerce and Consumer Protection

Date: Friday, February 8, 2013  
Time: 9:00am  
Place: State Capitol, Conference Room 229

Re: **Senate Bills 510 and 813 Relating to Professional Employer Organizations ("PEO")**

Dear Chair Baker and Vice-Chair Galuteria,

My name is Jennifer Brittin-Fulton, President of the Exceptional Inc. doing business as Employers Options. I have been an owner of an employment agency in Hawaii for over thirty years. I am an honest small business owner who pays my taxes and my employee's payroll. I would like to thank you for this opportunity to share with you and the committee our comments as they relate to SB 510. The cost of a \$250,000 bond, if you can find one is very costly to small business, this bonding requirement discriminates against small business and helps big business. I am a board member of HAPEO. While we support the intent of these measures, as noted below, we request the Committee's consideration of certain amendments to insure fairness in the bonding requirement and clarity in the definitional section (please reference testimony submitted by HAPEO for definition amendments). For the record, we support SB813, but wished to harmonize these bills so that the best provisions of both SB510 and SB813 are considered and implemented.

**Overview of Existing Laws (373L, 373K and Act 129)**

The State has currently struggled with implementing the existing conflicting laws (373L and 373K) in a meaningful way, especially as Act 129 (2010) required regulatory functions and expertise outside of the scope of the DLIR's existing scope of regulation.

**SB 510 Summary**

SB 510 would repeal Chapter 373L, Hawaii 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.

**I would be in support of a reasonable scalable bond.**

There are only four (4) states in the entire United States that require mandatory bonds: Hawaii, North Dakota, New Mexico and South Carolina. The other states only require a bond if the PEO does not meet a minimum net worth or working capital requirements (on average, the net worth or working capital requirement is \$50,000 to \$100,000).

Hawaii currently has a mandatory bond of \$250,000, which is the highest in the entire country of any state requiring a mandatory bond or a voluntary bond when a PEO does not meet minimum net worth requirements. North Dakota, New Mexico and South Carolina all have mandatory bonding requirements of \$100,000 and none of these states require audited or reviewed financial statements, since a mandatory bond is in place.

Of the other approximate twenty (20) states that have bonding requirements when the PEO does not meet minimum net worth requirements or bonds that are specific to PEOs that provide self-insured workers compensation or other insurances, the maximum bond for PEOs of all sizes is \$100,000.

HAPEO and many of the other stakeholders we have met and deliberated with are in agreement with the concept of a scalable bond. In the spirit of compromise we support a scalable bond per the following schedule:

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\$0 to \$25,000,000	\$ 10,000.00

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,

  
Jennifer L. Brittin-Fulton  
President



William L. Wong, CPA, PFS  
Lauren M. Smith, CPA, PFS  
Nona L. Nishina, CPA  
Hye C. Harper, CPA  
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Senator Rosalyn H. Baker, Chair  
Senator Brickwood Galuteria, Vice Chair  
Commerce and Consumer Protection Committee  
Senate District 6  
Hawaii State Capitol  
Honolulu, HI

February 7, 2013

RE: **SB510** and **SB813**  
Relating to Professional Employer Organizations

Ladies and Gentlemen:

I am a financial and tax consultant, CPA, real estate developer and an owner of a small Professional Employer Organization (PEO). I very much recognize that the existing PEO law must be revised to allow small PEO owners to comply with the law, to streamline the enforcement of the law by the Department of Labor and Industrial Relations (DLIR) and the Department of Taxation and to ease the standards of compliance on smaller local companies.

#### **SB813**

I am very much in favor of passing **SB813** through your committee as it removes very costly requirements such as audit and bonding requirements which unfairly penalizes small local companies and offers little or no protection to consumers. It also provides a streamlined reporting system in which any PEO violating the provisions of chapter 373K loses its tax exemption for general excise tax purposes, thereby eliminating its ability to stay in business.

DLIR has provided testimony that it will cost the State \$23 million to implement the successor employer provisions of a law that is already in place in the Hawaii Unemployment Law. I vigorously disagree with DLIR on not allowing PEOs the election of successor employers. However, if this prevents **SB813** from moving forward, I would very much favor eliminating this provision in favor of passing the rest of the bill as it cleans up various provisions of the law and correctly allocates responsibilities with respect to worksite and offsite employers.

#### **SB510**

Although I favor parts of this bill, if this becomes the prevailing Senate bill, I strongly suggest that the attached revisions be made to the bill. These revisions are summarized as follows:

1. If the definition of co-employer is being eliminated, it is critically important that responsibilities of employers (the PEO and the client company) be allocated in terms of functionality and control over the workplace and employees. In professional employer organization agreements, client companies

To ensure compliance with the requirements imposed by IRS Circular 230 (31 C.F.R part 10), you are hereby advised that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.



Personal Financial Specialist

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have total control over how employees are supervised and treated with respect to employment relations with employees, unfair labor practices, discrimination, equal pay, unlawful practices with employees, suspension, discharge and other employment practices. A PEO, on the other hand, acts as the offsite employer in charge of carrying out the administrative, wage and hour, employee benefits, tax, insurance coverage and financial reporting duties for the client company.

As a result, the PEO cannot become the sole employer in the case of all employment relations and practices, as **SB510** is drafted. By doing so would wrongfully allow client companies to abrogate their employer responsibilities, simply by entering into a contract with a PEO. This will limit DLIR enforcement on a perpetrator, the client company, of the unlawful labor practice. This may also allow client companies to hire independent contractors, when they are lawfully employees, to escape coverage from various employment laws.

2. A PEO actually helps client companies comply with payroll laws by employing assigned employees of client companies. A PEO also educates client companies on compliance with labor and tax laws and assists client companies with safety plans, hazard communication, drug testing, etc. to promote a safer workplace. However, PEOs do not have control over the worksite of the client company and therefore must rely on the client company to carry out its employer obligations with employees. **SB510** may have dangerous and unintended consequences of relieving client companies of certain obligations to its employees and transferring these obligations to the PEO.
3. **SB510** obviously tries to preserve the bonding requirements of PEOs. However, the main reason for the veto of SB2424 in the last session was that the existing law unfairly punishes small PEOs, especially locally owned companies, by draining all working capital and cash of the PEO as collateral for a bond. To date, only three large companies (the other eight are related to these three companies) in Hawaii have been able to procure bonds. If **SB510** insists on some amount of bonding, no matter the size of the company, it should instead amend the provision so that the amount of the bond is based on the size of the PEO measured by the total payroll processed by the PEO. This will certainly allow a fairer assessment and requirement for the PEO and allow smaller PEOs to compete in the marketplace.
4. With regard to bonding, a change should be made to allow a letter of credit equivalent normally contained in Hawaii State leases.

**If and only if SB813** succumbs to and in favor of **SB510**, I respectfully request the attached amendments be made to **SB510**.

Respectfully Submitted,

*William L. Wong*

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William L. Wong CPA, PFS  
Certified Public Accountant  
Personal Financial Specialist

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# A BILL FOR AN ACT

RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Act 225, Session  
2 Laws of Hawaii 2007, created a new chapter on professional  
3 employment organizations that provided a general excise tax  
4 exemption to business entities the department of taxation  
5 determined as qualified professional employer organizations.

6           The legislature further finds that Act 129, Session Laws of  
7 Hawaii 2010, established a new professional employer  
8 organizations chapter that required registration with the  
9 department of labor and industrial relations to ensure  
10 compliance with federal and state labor laws. The legislature  
11 notes that the two separately established statutes, while  
12 intended to operate interdependently for the mutual benefit and  
13 common public purposes of the department of labor and industrial  
14 relations and the department of taxation, could be implemented  
15 more effectively by clarifying any existing incompatible and  
16 ambiguous language.

17           The purpose of this Act is to clarify professional employer  
18 organization responsibilities, including meeting the statutory



1 requirements of chapter 373L, Hawaii Revised Statutes, and the  
2 nexus between the registration of professional employer  
3 organizations and qualification for the state general excise tax  
4 exemption.

5 SECTION 2. Chapter 373L, Hawaii Revised Statutes, is  
6 amended by adding four new sections to be appropriately  
7 designated and to read as follows:

8 "§373L-A Registration required. No person within the  
9 purview of this chapter shall use the terms "professional  
10 employer organization", or "PEO", or other similar name unless  
11 the person is registered and in compliance with this chapter and  
12 the rules and regulations of the director.

13 §373L-B Professional employer agreements; notification to  
14 covered employees; notification to department. (a) During the  
15 term of the agreement between a professional employer  
16 organization and its client company, the professional employer  
17 organization shall be deemed the offsite employer of record -for  
18 all assigned employees as defined in section 373L-1. As the  
19 employer of the assigned employees, the professional employer  
20 organization, not the client company, shall be solely  
21 responsible for complying with all statutory provisions relating  
22 to the unemployment insurance, workers' compensation, temporary



1 disability insurance, and prepaid health care programs with  
2 respect to the assigned employees.

3 §373L-C Payroll cost exemption. At the end of each  
4 calendar year, the department shall provide the names, date of  
5 registration, and contact information of all professional  
6 employer organizations that have successfully complied with the  
7 requirements of this chapter to the department of taxation. The  
8 exemption provided under section 237-24.75(3) shall only apply  
9 to professional employer organizations that fulfill and maintain  
10 the registration requirements under this chapter.

11 §373L-D Fees. No applicant shall be allowed to register  
12 pursuant to this chapter unless the appropriate fees have been  
13 paid. Effective July 1, 2013, the director shall collect fees  
14 pursuant to this chapter as follows:

15	<u>(1) Registration fee</u>	<u>\$500</u>
16	<u>(2) Biennial renewal fee</u>	<u>\$750</u>
17	<u>(3) Restoration fee</u>	<u>\$1500</u>

18 until such time as the director amends the fees by rulemaking  
19 pursuant to chapter 91. The fees shall be deposited into the  
20 state general fund."

21 SECTION 3. Section 237-24.75, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "§237-24.75 **Additional exemptions.** In addition to the  
2 amounts exempt under section 237-24, this chapter shall not  
3 apply to:

4           (1) Amounts received as a beverage container deposit  
5 collected under chapter 342G, part VIII;

6           (2) Amounts received by the operator of the Hawaii  
7 convention center for reimbursement of costs or  
8 advances made pursuant to a contract with the Hawaii  
9 tourism authority under section 201B-7 [†]; and [†]

10       [†] (3) Amounts received [†] by a professional [employment]  
11 employer organization that is registered with the  
12 department of labor and industrial relations pursuant  
13 to chapter 373L, from a client company equal to  
14 amounts that are disbursed by the professional  
15 [employment] employer organization for employee wages,  
16 salaries, payroll taxes, insurance premiums, and  
17 benefits, including retirement, vacation, sick leave,  
18 health benefits, and similar employment benefits with  
19 respect to assigned employees at a client company;  
20 provided that this exemption shall not apply to  
21 amounts received by a professional [employment]  
22 employer organization [upon failure of the



1 ~~professional employment organization to collect,~~  
 2 ~~account for, and pay over any income tax withholding~~  
 3 ~~for assigned employees or any federal or state taxes~~  
 4 ~~for which the professional employment organization is~~  
 5 ~~responsible.] after:~~

6 (A) Notification from the department of labor and  
 7 industrial relations that the professional  
 8 employer organization has not fulfilled or  
 9 maintained the registration requirements under  
 10 this chapter; or

11 (B) A determination by the department that the  
 12 professional employer organization has failed to  
 13 pay any tax withholding for assigned employees or  
 14 any federal or state taxes for which the  
 15 professional employer organization is  
 16 responsible.

17 As used in this paragraph, [~~professional employment~~  
 18 ~~organization"], professional employer organization,  
 19 "client company", and "assigned employee" shall have  
 20 the meanings provided in section [~~373K-1.~~] 373L-1."~~

21 SECTION 4. Section 373L-1, Hawaii Revised Statutes, is  
 22 amended as follows:



1 | 1. By adding ~~two~~four new definitions to be appropriately  
2 | inserted and to read:

3 | "Assigned employee" means an employee of the professional  
4 | employer organization who is assigned to perform services at the  
5 | worksite of a client company. Assigned employee has the same  
6 | meaning as the term "leased employee" as defined in section  
7 | 414(n) (with respect to employee leasing) of the Internal  
8 | Revenue Code of 1986, as amended.

9 | "Department" means the department of labor and industrial  
10 | relations."

11 | "Offsite employer of record" means a professional employer  
12 | organization pursuant to a professional employer agreement to  
13 | which is contractually assigned the financial and administrative  
14 | duties of a client company, including human resources  
15 | administration, payroll and payroll taxes, workers' compensation  
16 | and temporary disability coverage, state unemployment, and  
17 | prepaid health care coverage of assigned employees.

18 | "Work site employer" mean the client company, pursuant to a  
19 | professional employer agreement, that retains workplace  
20 | management and supervisory control and responsibility of the  
21 | assigned employees including compliance with labor or employment  
22 | laws, collective bargaining rights, anti-discrimination



1 provisions, or other laws with respect to the protection and  
2 rights of employees under the Hawaii Employment Relations Act  
3 and the Employment Practices laws of chapters 377 and 378.

4 2. By amending the definitions of "client company",  
5 "professional employer agreement", and "professional employer  
6 organization" to read:

7 "Client company" means any person [~~who enters into a~~  
8 ~~professional employer agreement with a professional employer~~  
9 ~~organization.~~] that enters into a professional employer  
10 agreement with a professional employer organization and is  
11 assigned employees to its worksite by the professional employer  
12 organization under that agreement.

13 "Professional employer agreement" means a written contract  
14 by and between a client company and a professional employer  
15 organization that provides for the following:

- 16 (1) [~~The co-employment of covered employees; and~~  
17 Assignment of employees to the worksite of the client  
18 company;
- 19 (2) [~~The allocation of employer rights and obligations~~  
20 ~~between]~~ Description of duties and responsibilities of  
21 the client company and the professional employer





1 organization with respect to the ~~[covered]~~ assigned  
2 employees [-]; and  
3 (3) Clarification of the Professional employer  
4 organization as the employer of the assigned employees  
5 for purposes of complying with all statutory  
6 provisions relating to the unemployment insurance,  
7 workers' compensation, temporary disability insurance,  
8 and prepaid health care programs with respect to the  
9 assigned employees.

10 "Professional employer organization" or "organization"  
11 ~~means [any person that is a party to a professional employer~~  
12 ~~agreement with a client company regardless of whether the person~~  
13 ~~uses the term or conducts business expressly as a "professional~~  
14 ~~employer organization", "PEO", "staff leasing company",~~  
15 ~~"registered staff leasing company", "employee leasing company",~~  
16 ~~"administrative employer", or any other similar name.] a~~  
17 business entity that assigns employees to the worksites of its  
18 client companies on a long-term, rather than temporary or  
19 project-specific basis. The term does not include temporary  
20 help services or other similar arrangements."

21 3. By deleting the definitions of "co-employment" and  
22 "covered employee".



1       ~~["Co-employment" means a relationship that is intended to~~  
2 ~~be an ongoing relationship rather than a temporary or project~~  
3 ~~specific one, wherein the rights, duties, and obligations of an~~  
4 ~~employer that arise out of an employment relationship have been~~  
5 ~~allocated between the client company and the professional~~  
6 ~~employer organization pursuant to a professional employer~~  
7 ~~agreement and this chapter.~~

8       ~~"Covered employee" means an individual having a co-~~  
9 ~~employment relationship with a professional employer~~  
10 ~~organization and a client company who meets all of the following~~  
11 ~~criteria:~~

12       ~~(1) The individual has received written notice of co-~~  
13 ~~employment with the professional employer~~  
14 ~~organization; and~~

15       ~~(2) The individual's co-employment relationship is~~  
16 ~~pursuant to a professional employer agreement subject~~  
17 ~~to this chapter. Individuals who are officers,~~  
18 ~~directors, shareholders, partners, and managers of the~~  
19 ~~client company shall be covered employees to the~~  
20 ~~extent that the professional employer organization and~~  
21 ~~the client company have expressly agreed in the~~  
22 ~~professional employer agreement that the individuals~~



1           ~~shall be covered employees, provided that the~~  
2           ~~individuals meet the criteria of this definition and~~  
3           ~~act as operational managers or perform day-to-day~~  
4           ~~operational services for the client company." ]~~

5           SECTION 5. Section 373L-2, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "[+]§373L-2[+] **Registration required.** (a) Every  
8 professional employer organization shall register with the  
9 director by providing all of the information required by this  
10 section and by rules adopted by the director pursuant to chapter  
11 91 prior to entering into any professional employer agreement  
12 with any client company in this State. Registration shall not  
13 be approved unless all of the applicable provisions of this  
14 chapter have been met to the satisfaction of the department.

15           (b) Registration information required by this section  
16 shall include:

- 17           (1) The name or names under which the professional  
18 employer organization conducts or will conduct  
19 business;
- 20           (2) The address of the principal place of business of the  
21 professional employer organization and the address of



- 1 each office that the professional employer  
2 organization maintains in this State;
- 3 (3) The professional employer organization's general  
4 excise tax number;
- 5 (4) A copy of the certificate of authority to transact  
6 business in this State issued by the director of  
7 commerce and consumer affairs pursuant to title 23 or  
8 title 23A, if applicable;
- 9 (5) A list, organized by jurisdiction, of each name under  
10 which the professional employer organization has  
11 operated in the preceding five years, including any  
12 alternative names; names of predecessors; and, if  
13 known, names of successor business entities;
- 14 (6) A statement of ownership, which shall include the name  
15 of each person who, individually or acting in concert  
16 with any other person or persons, owns or controls,  
17 directly or indirectly, twenty-five per cent or more  
18 of the equity interests of the professional employer  
19 organization;
- 20 (7) A statement of management, which shall include the  
21 name of any person who serves as president or chief  
22 executive officer or who otherwise has the authority



- 1 to act as a senior executive officer of the  
2 professional employer organization;
- 3 (8) Proof of valid workers' compensation coverage of  
4 assigned employees in compliance with all laws of this  
5 State;
- 6 (9) Proof of compliance with the Hawaii temporary  
7 disability insurance law for all assigned employees;
- 8 (10) Proof of compliance with the Hawaii prepaid health  
9 care act for all assigned employees [~~as regards all~~  
10 ~~employees of the professional employer organization~~];
- 11 (11) ~~Proof of compliance with the Hawaii employment~~  
12 ~~security law, including payment of any applicable~~  
13 ~~employer liability pursuant to chapter 383; [and]~~
- 14 (12) [~~A financial statement prepared in accordance with~~  
15 ~~generally accepted accounting principles, audited by~~  
16 ~~an independent certified public accountant licensed to~~  
17 ~~practice in the State, and without qualification as to~~  
18 ~~the going concern status of the professional employer~~  
19 ~~organization.~~] The name, address, and phone number of  
20 the financial institution utilized by the professional  
21 employer organization for payroll purposes that  
22 operates and maintains branches in the State; and



1        (13) The name of each client company that is party to a  
2            professional employer agreement with a professional  
3            employer organization to the department on a form  
4            approved by the department within ~~five~~-thirty business  
5            days of the initiation of the agreement and within  
6            ~~five~~-thirty business days of the termination of the  
7            agreement.

8            (c) Registration under this section shall expire on  
9        ~~[December 31]~~ June 30 of each ~~[odd-numbered]~~ even-numbered year.  
10       Before ~~[December 31]~~ June 30 of each ~~[odd-numbered]~~ even-  
11       numbered year, the director or the director's authorized  
12       delegate shall mail a renewal application for registration to  
13       the address on record of the registrant. In connection with  
14       renewal of registration, a professional employer organization  
15       shall provide all of the information required by subsection (b).  
16       Failure to renew a registration shall result in termination of  
17       that registration. Registrations that have been terminated  
18       pursuant to this section shall be required to pay the  
19       restoration fee.

20            (d) The director shall establish fees and requirements for  
21       registration, ~~[maintenance of registration,]~~ renewal, and



1 restoration of registration for professional employer  
2 organizations by rule pursuant to chapter 91."

3 SECTION 6. Section 373L-3, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 [[§373L-3]] Bond required. (a) No professional  
6 employer organization shall enter into a professional employment  
7 agreement with a client company in the State unless the  
8 professional employer organization posts a performance or  
9 payment bond or a letter of credit equivalent to the required  
10 bond amount, based on total payroll of the professional employer  
11 organization as follows:

12 (i) For payroll from \$0 to \$25,000,000, the bond amount  
13 shall be \$10,000;

14 (ii) For payroll from \$25,000,001 to \$150,000,000, the  
15 bond amount shall be \$50,000;

16 (iii) For payroll over \$150,000,000, the bond amount  
17 shall be \$250,000.

18 ~~in the amount of \$250,000, which is a performance or financial~~  
19 ~~guaranty type bond naming t~~The director shall be named as the  
20 obligee and the bond shall be called only if the department has  
21 proven damages with respect to the client company for  
22 nonperformance by the professional employer organization, other



1 | than non-payment by the client company of its obligations under  
2 | the professional employer organization agreement. and The  
3 | bond which may be canceled only if the professional employer  
4 | organization gives ~~sixty~~ thirty days prior written notice to the  
5 | surety or if the surety gives thirty days prior written notice  
6 | to the director of cancellation of the bond. The requirements  
7 | of this section shall be satisfied by a single bond. If a  
8 | professional employer organization has more than one branch  
9 | location, the bond shall cover all locations.

10  
11 | (b) The bond or its letter of credit equivalent required  
12 | by this section shall be issued by a surety or federally insured  
13 | lending institution authorized to do business in the State to  
14 | indemnify a client company who may suffer loss as a result of  
15 | nonperformance by a professional employer organization.

16  
17 | (c) Upon cancellation or expiration of the bond, the  
18 | surety or insurer shall remain liable for any claims against the  
19 | bond for a period of six months; provided that:

20  
21 | (1) The ~~debts were~~ loss was incurred by the client company  
22 | while the bond was in effect; and





1

2 | (2) The director notifies the surety, ~~or~~ insurer, or  
3 | lending institution as the case may be, of any claims within  
4 | ninety days of discovery of any claims.

5

6 | (d) The surety, ~~or~~ insurer, or lending institution is not  
7 | required to release any moneys or collateral to the professional  
8 | employer organization during the six months after cancellation  
9 | of the bond.

10

11 | (e) Failure to have in effect a current bond shall result  
12 | in automatic forfeiture of registration pursuant to this chapter  
13 | and shall require the professional employer organization to  
14 | immediately cease doing business in the State. A professional  
15 | employer organization whose registration is forfeited shall  
16 | apply as a new applicant for registration in order to resume  
17 | business in the State.

18 | SECTION ~~6~~7. Chapter 373K, Hawaii Revised Statutes, is  
19 | repealed.

20 | SECTION ~~7~~8. This Act does not affect rights and duties  
21 | that matured, penalties that were incurred, and proceedings that  
22 | were begun before its effective date.



1 | SECTION ~~8~~9. In codifying the new sections added by section  
2 | 2 of this Act, the revisor of statutes shall substitute  
3 | appropriate section numbers for the letters used in designating  
4 | the new sections in this Act.

5 | SECTION ~~9~~10. Statutory material to be repealed is  
6 | bracketed and stricken. New statutory material is underscored.

7 | SECTION ~~10~~11. This Act shall take effect upon its  
8 | approval.

9

INTRODUCED BY: \_\_\_\_\_



**Report Title:**

Professional Employer Organizations; Registration; Fees

**Description:**

Repeals chapter 373L, Hawaii Revised Statutes. Clarifies professional employer organization responsibilities with respect to meeting the statutory requirements of the repealed chapter 373L, Hawaii Revised Statutes, and the nexus between the registration of professional employer organizations and qualification for the state general excise tax exemption.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





February 11, 2013

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the Senate Committee on Commerce and Consumer Protection

Date: Tuesday, February 12, 2013

Time: 10:00am

Place: State Capitol, Conference Room 229

Re: **Additional Testimony and Follow-up: Senate Bills 510 and 813 Relating to PEOs**

Dear Chair Baker and Vice-Chair Galuteria,

Thank you for your and your committee's time last Friday to hear testimony from our group and individual members. We appreciate the time and consideration you have given us to address the bonding and definitional sections.

Since the hearing on Friday morning, HAPEO has taken the following steps:

- Telephone call on the afternoon of Friday, February 8 between DLIR (Bill Kunstman) and Matt Delaney (HAPEO) to discuss the different views being taken by the DLIR and the PEO industry pertaining to "co-employment", "worksite employer", "offsite employer" and the legal issues between the PEO and the client company.
- I offered to fly back from California to meet in person with the DLIR and Bill Kunstman and the DLIR reiterated we could accomplish everything we needed to over the phone and via email.
- HAPEO reached out to its membership to solidify its position and obtain approval from its membership regarding its priorities and suggested revisions.
- Reached out to the two larger PEOs (ProService and Altres) to see if they would like to join HAPEO's efforts and work collectively with the balance of the industry and the DLIR. As of 1:15pm on Monday, HAPEO has not received any response back from either of the two larger companies.

### **HAPEO's Priorities**

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

- (1) Scalable Bond – It is HAPEO's priority to have a scalable bond as we have detailed out in our prior testimony:



<u>Annual PEO Payroll</u> <sup>1</sup>	<u>Bond Amount</u>
\$150,000,001 or higher	\$250,000.00
\$25,000,001 to \$150,000,000	\$ 50,000.00
\$0 to \$25,000,000	\$ 10,000.00

Letter of Credit

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

Per our discussions with the DLIR, the bonding is not their area of expertise, however, if you recall from SB2424, the DLIR supported a scalable bond last year. The inequity in SB2424 was the scale was too low and PEO's of all sizes were automatically at the highest bond requirement.

There are only four (4) states in the entire United States that require mandatory bonds: Hawaii, North Dakota, New Mexico and South Carolina. The other states only require a bond if the PEO does not meet a minimum net worth or working capital requirements (on average the net worth or working capital requirement is \$50,000 to \$100,000). Hawaii currently has a mandatory bond of \$250,000, which is the highest in the entire country of any state requiring a mandatory bond or a voluntary bond when a PEO does not meet minimum net worth requirements. North Dakota, New Mexico and South Carolina all have mandatory bonding requirements of \$100,000 and none of these states requires audited or reviewed financial statements.

Of the other approximate twenty (20) states that have bonding requirements when the PEO does not meet minimum net worth requirements or bonds that are specific to PEO's that provide self-insured workers compensation or other insurances, the maximum bond for PEOs of all sizes is \$100,000.

There is a big difference between ProService and Altres (compared to a Costco or Safeway) and the smaller PEOs (compared to the local store on the neighborhood corner serving their community). Contrary to Mr. Barron Guss' written testimony for SB510, to date, there are only two (2) local PEO's that are registered and licensed as a PEO in Hawaii: Altres and ProService.

There is public testimony from Mr. Guss at the HB144 public hearing in which he states:

*"It's not about the numerical value of the bond. Truth be told, it could be less, it could be more. It's about the process of getting the bond that's so very important."*

- (2) Removal of the Audit – We and the DLIR strongly supports SB510 as currently written with the elimination of the audited financial statements.

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<sup>1</sup> Source: IRS Form 941 to be submitted to DLIR or DCCA for verification of Bond amount.



- (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. 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) The definition of assigned employee should be amended to add language that equates an assigned employee with a leased employee as defined in Section 414(n) or the IRS Code.
- (ii) Clarify that “Offsite employer of record” means a professional employer organization pursuant to a professional employer agreement to which is contractually assigned the financial and administrative duties of a client company, including human resources administration, payroll and payroll taxes, workers’ compensation and temporary disability coverage, state unemployment, and prepaid health care coverage of assigned employees.
- (iii) “Work site employer” mean the client company, pursuant to a professional employer agreement, that retains workplace management and supervisory control and responsibility of the assigned employees including compliance with labor or employment laws, collective bargaining rights, anti-discrimination provisions, 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 is also committed to working together with the larger PEOs in the State to insure that consumers are protected by some measure of financial responsibility coupled with healthy competition in the industry.



We have attached suggested changes to SB510 for your review and consideration.

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