

JAN 18 2013

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, established a new chapter on professional
3 employment organizations that provided a general excise tax
4 exemption on amounts a client company paid to a professional
5 employment organization.

6 The legislature further finds that Act 129, Session Laws of
7 Hawaii 2010, established a new chapter in the Hawaii Revised
8 Statutes on professional employer organizations which
9 established registration, audit, and bonding requirements for
10 professional employer organizations. Although these
11 requirements went into effect on July 1, 2011, most local small
12 professional employer organizations have been unable to comply
13 with surety bonding requirements because of the capital and cost
14 requirements and incurred or are faced with prohibitive audit
15 fee costs, which when passed on to their clients make them anti-
16 competitive with much larger or mainland based companies. Act
17 129, Session Laws of Hawaii 2010, clearly favors larger
18 professional employer organizations over smaller professional



1 employer organizations, is anti-small business and anti-
2 competitive, contains inconsistent definitions of co-employment
3 arrangements making application of the law confusing and
4 unenforceable, arbitrarily targets and regulates locally owned
5 professional employer organizations when other mainland owned or
6 much larger payroll service bureaus remain unregulated, and
7 makes it impossible for smaller professional employer
8 organizations without the financial wherewithal to obtain
9 bonding from insurance companies and banks.

10 The legislature further finds that professional employer
11 organizations, like most employers, are already heavily
12 regulated with civil and criminal tax and department of labor
13 and industrial relations penalties for failure to comply with
14 payroll and labor laws and that additional regulatory
15 enforcement by the department of labor and industrial relations
16 needs to be simplified.

17 Finally, the legislature finds that other sections of the
18 Hawaii Revised Statutes need to be amended to make definitions
19 and enforcement consistent with chapter 373K and to allow
20 professional employer organizations to become successor
21 employers of client companies.

22 The purpose of this Act is to:



- 1 (1) Repeal chapter 373L, Hawaii Revised Statutes, in its
2 entirety;
- 3 (2) Simplify and improve the implementation of the
4 professional employer organization law by amending
5 chapter 373K, Hawaii Revised Statutes, and clarify and
6 amend the statutory responsibilities allocated between
7 a client company and the professional employer
8 organization;
- 9 (3) Simplify the regulation of professional employer
10 organizations by providing the director of labor and
11 industrial relations the ability to notify the
12 department of taxation in denying the general excise
13 exemption under section 237-24.75, Hawaii Revised
14 Statutes, for professional employer organizations that
15 violate chapter 373K, Hawaii Revised Statutes;
- 16 (4) Amend the definition of "leased employee" for purposes
17 of enterprise zone coverage for a qualified business
18 to conform to the definition of chapter 373K, Hawaii
19 Revised Statutes; and
- 20 (5) Allow professional employer organizations to apply to
21 be successor employers and have the experience records
22 of client companies for unemployment insurance



1 contribution purposes be transferred to the
2 professional employer organizations.

3 SECTION 2. Chapter 373K, Hawaii Revised Statutes, is
4 amended by adding six new sections to be appropriately
5 designated and to read as follows:

6 "§373K-A Registration required. (a) Every professional
7 employer organization shall register with the director by
8 providing all of the information required by this section and by
9 rules adopted by the director pursuant to chapter 91 prior to
10 entering into any professional employer agreement with any
11 client company in this State.

12 (b) Registration information required by this section
13 shall include:

14 (1) The name or names under which the professional
15 employer organization conducts or will conduct
16 business;

17 (2) The address of the principal place of business of the
18 professional employer organization and the address of
19 each office that the professional employer
20 organization maintains in this State;

21 (3) The professional employer organization's general
22 excise tax number; and



1 (4) A copy of the certificate of authority to transact
 2 business in this State issued by the director of
 3 commerce and consumer affairs pursuant to title 23 or
 4 title 23A, if applicable.

5 (c) Failure to register or maintain registration shall
 6 result in a professional employer organization not being in
 7 compliance with this chapter and shall result in notification to
 8 the tax department that such professional employer organization
 9 is not in compliance and shall not be eligible for exemption
 10 under 237-24.75.

11 (d) The director shall establish fees and requirements for
 12 registration and maintenance of registration for professional
 13 employer organizations by rules adopted pursuant to chapter 91.

14 §373K-B Fees. Effective July 1, 2013, the director shall
 15 collect fees pursuant to this chapter as follows:

- | | | |
|----|---------------------------------|--------------|
| 16 | <u>(1) Registration fee</u> | <u>\$250</u> |
| 17 | <u>(2) Biennial renewal fee</u> | <u>\$500</u> |

18 until such time as the director amends the fees by rulemaking in
 19 accordance with chapter 91.

20 §373K-C Responsibilities and duties of the director. The
 21 general duties and powers of the director shall include but not
 22 be limited to:



- 1 (1) Adopting, amending, and repealing rules in accordance
2 with chapter 91 to issue, deny, condition, renew, or
3 deny renewal of registrations;
- 4 (2) Notifying the department of taxation in writing of any
5 violation of this chapter by the professional employer
6 organization and the denial, suspension, revocation,
7 or denial of the renewal of the registration as a
8 professional employer organization under chapter 373K
9 and the loss of the general excise tax exemption as
10 provided by section 237-24.75; and
- 11 (3) Doing all things necessary to carry out the functions,
12 powers, and duties of this chapter.

13 §373K-D Professional employer agreements; notification to
14 department. (a) The professional employer organization shall
15 provide written notice to the department on a form provided by
16 the department of the relationship between the professional
17 employer organization and the client company within thirty
18 business days of the initiation of the relationship and within
19 thirty business days of the termination of the relationship.
20 The department shall keep the notice provided by the
21 professional employer organization confidential, including the



1 names of the client companies and information that may identify
2 the client companies.

3 (b) The director, to the extent practicable, may permit
4 the acceptance of electronic filings in conformance with chapter
5 489E, including applications, documents, reports, and other
6 filings required under this chapter. The director may provide
7 for the acceptance of electronic filings by a professional
8 employer organization. Nothing in this subsection shall limit
9 or change the director's authority to register or terminate
10 registration of a professional employer organization or to
11 investigate or enforce any provision of this chapter.

12 §373K-E Hearings. Unless otherwise provided by law, in
13 every case in which the director denies, suspends, revokes, or
14 denies renewal of registration of a professional employer
15 organization, the proceeding shall be conducted in accordance
16 with chapter 91 by the director or an appointed hearings
17 officer.

18 In all proceedings before it, the director or hearings
19 officer shall have the same powers respecting administering
20 oaths, compelling the attendance of witnesses and the production
21 of documentary evidence, and examining witnesses, as are
22 possessed by circuit courts. In case of disobedience by any



1 person of any order of the director or hearings officer, or of
2 any subpoena issued by the director or hearings officer, or the
3 refusal of any witness to testify to any matter on which the
4 person may be questioned lawfully, any circuit court judge, on
5 application by the director or hearings officer, shall compel
6 obedience as in the case of disobedience of the requirements of
7 a subpoena issued by a circuit court or a refusal to testify
8 therein.

9 §373K-F Judicial review by circuit court. Any
10 professional employer organization aggrieved by a final decision
11 and order of the director in a contested case, as defined in
12 chapter 91, is entitled to judicial review thereof by the
13 circuit court of the circuit in which the professional employer
14 organization's principal place of business is located. The
15 review shall be as provided by chapter 91."

16 SECTION 3. Section 209E-2, Hawaii Revised Statutes, is
17 amended by amending the definition of "leased employee" to read
18 as follows:

19 ""Leased employee" means [~~an~~] a covered employee under a
20 professional [~~employment~~] employer organization arrangement or
21 co-employment arrangement who is assigned to a particular client



1 company [~~on a substantially full time basis for at least one~~
2 ~~year.~~] as defined under chapter 373K."

3 SECTION 4. Section 237-24.75, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§237-24.75 **Additional exemptions.** In addition to the
6 amounts exempt under section 237-24, this chapter shall not
7 apply to:

- 8 (1) Amounts received as a beverage container deposit
9 collected under chapter 342G, part VIII;
- 10 (2) Amounts received by the operator of the Hawaii
11 convention center for reimbursement of costs or
12 advances made pursuant to a contract with the Hawaii
13 tourism authority under section 201B-7[+]; and[+]
- 14 [+](3) Amounts received[+] by a professional [~~employment~~]
15 employer organization from a client company equal to
16 amounts that are disbursed by the professional
17 [~~employment~~] employer organization for employee wages,
18 salaries, payroll taxes, insurance premiums, and
19 benefits, including retirement, vacation, sick leave,
20 health benefits, and similar employment benefits with
21 respect to [~~assigned~~] covered employees at a client
22 company; provided that this exemption shall not apply



1 to a professional [~~employment~~] employer organization
2 [~~upon failure of the professional employment~~
3 ~~organization to collect, account for, and pay over any~~
4 ~~income tax withholding for assigned employees or any~~
5 ~~federal or state taxes for which the professional~~
6 ~~employment organization is responsible.] if:~~

7 (A) By or through any contract between a client
8 company and any professional employer
9 organization, or otherwise, employees are
10 excluded from any employee rights or employee
11 benefits required by law to be provided to
12 covered employees of the client company by the
13 professional employer organization;

14 (B) The professional employer organization fails to
15 pay any tax withholding for covered employees or
16 any federal or state taxes for which the
17 professional employer organization is
18 responsible;

19 (C) The professional employer organization fails to
20 properly register with the director of labor and
21 industrial relations or pay fees as required by
22 chapter 373K; or



1 (D) The professional employer organization is not in
2 compliance with chapter 373K and the director of
3 labor and industrial relations has notified the
4 department of taxation in writing of the denial,
5 suspension, revocation, or denial of renewal of
6 the registration of the professional employer
7 organization.

8 As used in this paragraph, [~~"professional employment~~
9 ~~organization",~~] "professional employer organization",
10 "client company", and [~~"assigned employee"~~] "covered
11 employee" shall have the meanings provided in section
12 373K-1."

13 SECTION 5. Chapter 373K, Hawaii Revised Statutes, is
14 amended by amending the title to read as follows:

15 "**PROFESSIONAL [~~EMPLOYMENT~~] EMPLOYER ORGANIZATIONS"**

16 SECTION 6. Section 373K-1, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By adding nine new definitions to be appropriately
19 inserted and to read:

20 "Co-employment" means an arrangement by which co-employees
21 of a professional employer organization are assigned to work at
22 the client company's work site and the assigned employee's



1 assignment is intended to be of a long-term or continuing
2 nature, rather than for temporary staffing or help services,
3 wherein the rights, duties, and obligations of an employer that
4 arise out of an employment relationship have been allocated
5 between the client company, which is the work site employer, and
6 the professional employer organization, which is the offsite
7 employer of record.

8 "Covered employee" means an individual having a co-
9 employment relationship with a professional employer
10 organization and a client company, and is an assigned employee
11 of the client company.

12 "Director" means the director of labor and industrial
13 relations.

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

21 "Person" means a natural or legal person.



1 "Professional employer agreement" means a written contract
2 by and between a client company and a professional employer
3 organization that provides for the following:

- 4 (1) The co-employment of covered employees; and
5 (2) The allocation of employer rights and obligations
6 between the client company and the professional
7 employer organization with respect to the covered
8 employees.

9 "Professional employer organization" means any person that
10 is a party to a professional employer agreement with a client
11 company regardless of whether the person uses the term or
12 conducts business expressly as a "professional employer
13 organization", "PEO", "staff leasing company", "registered staff
14 leasing company", "employee leasing company", or any other
15 similar name.

16 "Temporary staffing or help services" means an arrangement
17 by which a person recruits and hires the person's own employees
18 and:

- 19 (1) Finds other organizations that need the services of
20 those employees;
21 (2) Assigns those employees to perform work or services
22 for other organizations to support or supplement the



1 other organizations' workforces or to provide
2 assistance in special work situations, including
3 employee absences, skill shortages, seasonal
4 workloads, or special assignments or projects; and
5 (3) Customarily attempts to reassign the employees to
6 successive placements with other organizations at the
7 end of each assignment.

8 "Work site employer" means the client company, pursuant to
9 a professional employer agreement, that retains workplace
10 management and supervisory control and responsibility of the co-
11 employees including compliance with labor or employment laws,
12 collective bargaining rights, anti-discrimination provisions, or
13 other laws with respect to the protection and rights of
14 employees and compliance with chapters 377 and 378."

15 2. By amending the definitions of "assigned employee",
16 "client company", and "professional employment organization
17 services", to read:

18 "Assigned employee" means an employee under a professional
19 [~~employment~~] employer organization arrangement whose work is
20 performed in the State. The term does not include an employee
21 hired to support or supplement a client company's workforce as
22 temporary staffing or help[-] services. "Assigned employee" has



1 the same meaning as the term "leased employee" as defined in
2 section 414(n) (with respect to employee leasing) of the
3 Internal Revenue Code of 1986, as amended.

4 "Client company" means a person that contracts with a
5 professional [~~employment~~] employer organization and is assigned
6 employees by the professional [~~employment~~] employer organization
7 under that contract.

8 "Professional [~~employment~~] employer organization services"
9 means an arrangement by which co-employees of a professional
10 [~~employment~~] employer organization are assigned to work at the
11 client company and the assigned employee's assignment is
12 intended to be of a long-term or continuing nature, rather than
13 temporary. The term does not include temporary help."

14 SECTION 7. Section 373K-2, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[~~§~~373K-2[~~§~~] Professional [~~employment~~] employer
17 organization; employee rights; payroll cost exemption. (a)
18 Where any client company uses the services of assigned employees
19 and co-employs assigned employees with a professional
20 [~~employment~~] employer organization, the client company and the
21 professional [~~employment~~] employer organization, with respect to
22 the assigned employees, shall not be exempt from the



1 requirements of any federal, state, or county law, including
2 labor or employment laws, collective bargaining rights, anti-
3 discrimination provisions, or other laws with respect to the
4 protection and rights of employees, including chapters 377 and
5 378, that would apply to the assigned employees if the assigned
6 employees were employees of the client company alone, and were
7 not co-employees of the professional [~~employment~~] employer
8 organization.

9 These employee rights shall not be abrogated by any
10 contract or agreement between the client company and the
11 professional [~~employment~~] employer organization, or the
12 professional [~~employment~~] employer organization and the assigned
13 employee, which contains terms or conditions that could not be
14 lawfully contained in a contract or agreement directly between
15 the client company and the assigned employee in which no
16 professional [~~employment~~] employer organization is involved.
17 Notwithstanding any statute, local ordinance, executive order,
18 rule, or regulation to the contrary, where the laws, rights, and
19 protections referred to in this section define or require a
20 determination of the "employer", the [~~employer shall be deemed~~
21 ~~to be the client company and not the professional employment~~
22 ~~organization.~~] professional employer organization shall be



1 deemed the offsite employer of record for purposes of
2 unemployment insurance, workers' compensation, temporary
3 disability insurance, and prepaid health care coverage and the
4 client company shall be deemed the work site employer that
5 retains workplace management and supervisory control and
6 responsibility of the co-employees including compliance with
7 labor or employment laws, collective bargaining rights, anti-
8 discrimination provisions, or other laws with respect to the
9 protection and rights of employees and compliance with chapters
10 377 and 378. The employer shall be deemed to be the client
11 company and not the professional employment organization. The
12 department of labor and industrial relations shall notify the
13 department of taxation in writing of any violation of this
14 subsection.

15 (b) The client company shall be deemed to have satisfied
16 its obligations with respect to any assigned employee under any
17 applicable law, including, without limitation, workers'
18 compensation laws including chapter 386, employee insurance
19 coverage laws including chapters 383, 385, 392, and 393, and tax
20 withholding and reporting laws, if and to the extent that those
21 obligations are satisfied by the professional [employment]



1 employer organization acting in its capacity as co-employer of
2 such assigned employee.

3 (c) Amounts received by a professional [~~employment~~]
4 employer organization from a client company in amounts equal to
5 and that are disbursed by the professional [~~employment~~] employer
6 organization for employee wages, salaries, payroll taxes,
7 insurance premiums, and benefits, including retirement,
8 vacation, sick leave, health benefits, and similar employment
9 benefits with respect to assigned employees at a client company
10 shall not be subject to the general excise tax as provided by
11 section 237-24.75.

12 (d) The general excise tax exemption under section
13 237-24.75 shall not apply to the professional [~~employment~~]
14 employer organization if:

15 (1) By or through any contract between the client company
16 and any professional [~~employment~~] employer
17 organization, or otherwise, employees are excluded
18 from any employee rights or employee benefits required
19 by law to be provided to employees [~~of~~] assigned to
20 the client company by the client company; [~~or~~]

21 (2) The professional [~~employment~~] employer organization
22 fails to pay any tax withholding for assigned



1 employees or any federal or state taxes for which the
2 professional [~~employment~~] employer organization is
3 responsible [~~-~~]; or

4 (3) The professional employer organization fails to comply
5 with provisions of this chapter."

6 SECTION 8. Section 383-66, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§383-66 Contribution rates, how determined. (a) The
9 department, for the nine-month period April 1, 1941, to December
10 31, 1941, and for each calendar year thereafter, except as
11 otherwise provided in this part, shall classify employers in
12 accordance with their actual experience in the payment of
13 contributions and with respect to benefits charged against their
14 accounts with a view to fixing the contribution rates to reflect
15 this experience. The department shall determine the
16 contribution rate of each employer in accordance with the
17 following requirements:

18 (1) The standard rate of contributions payable by each
19 employer for any calendar year through 1984 shall be
20 three per cent. For calendar years 1985 and
21 thereafter, the standard rate of contributions payable



1 by each employer shall be five and four-tenths per
2 cent;

- 3 (2) No employer's rate for the calendar year 1942 and for
4 any calendar year thereafter shall be other than the
5 maximum rate unless and until the employer's account
6 has been chargeable with benefits throughout the
7 thirty-six consecutive calendar month period ending on
8 December 31 of the preceding calendar year, except
9 that, for the calendar year 1956 and for each calendar
10 year thereafter, an employer who has not been subject
11 to the law for a sufficient period to meet this
12 requirement may qualify for a rate other than the
13 maximum rate if the employer's account has been
14 chargeable throughout a lesser period but in no event
15 less than the twelve consecutive calendar month period
16 ending on December 31 of the preceding calendar year.
17 For the calendar years 1985 through 1991, the
18 contribution rate for a new or newly covered employer
19 shall be the sum of the employer's basic contribution
20 rate of three and six-tenths per cent and the fund
21 solvency contribution rate determined for that year
22 pursuant to section 383-68(a), until the employer's



1 account has been chargeable with benefits throughout
2 the twelve consecutive calendar month period ending on
3 December 31 of the preceding calendar year; except
4 that no employer's contribution rate shall be greater
5 than five and four-tenths per cent and no employer
6 with a negative reserve ratio shall have a
7 contribution rate less than the employer's basic
8 contribution rate. For calendar years 1992 and
9 thereafter, the contribution rate for a new or newly
10 covered employer shall be the contribution rate
11 assigned to any employer with .0000 reserve ratio,
12 until the employer's account has been chargeable with
13 benefits throughout the twelve consecutive calendar
14 month period ending on December 31 of the preceding
15 calendar year;

16 (3) Any amount credited to this State under section 903 of
17 the Social Security Act, as amended, which has been
18 appropriated for expenses of administration, whether
19 or not withdrawn from the trust fund, shall be
20 excluded from the fund for the purposes of this
21 paragraph. Any advance that may be made to this State
22 under section 1201 of the Social Security Act, whether



1 or not withdrawn from this trust fund, shall be
2 excluded from the fund for the purposes of this
3 paragraph. No employer's rate shall be reduced in any
4 amount that is not allowable as an additional credit,
5 against the tax levied by the federal Unemployment Tax
6 Act pursuant to section 3302(b) of the federal
7 Internal Revenue Code or pursuant to any other federal
8 statute, successor to section 3302(b), which provides
9 for the additional credit now provided for in section
10 3302(b);

- 11 (4) If, when any classification of employers is to be made
12 (which may be after the commencement of the period for
13 which the classification is to be made), the
14 department finds that any employer has failed to file
15 any report required in connection therewith or has
16 filed a report that the department finds incorrect or
17 insufficient, the department shall notify the employer
18 thereof by mail addressed to the employer's last known
19 address. Unless the employer files the report or a
20 corrected or sufficient report, as the case may be,
21 within fifteen days after the mailing of the notice,
22 the maximum rate of contributions shall be payable by



1 the employer for the period for which the contribution
2 rate is to be fixed. Effective January 1, 1987, the
3 director, for excusable failure, may redetermine the
4 assignment of the maximum contribution rate in
5 accordance with this section, provided the employer
6 files all reports as required by the department and
7 submits a written request for redetermination before
8 December 31 of the year for which the contribution
9 rate is to be fixed;

- 10 (5) For the purpose of sections 383-63 to 383-69, if after
11 December 31, 1939, any employing unit in any manner
12 succeeds to or acquires the organization, trade, or
13 business, or substantially all the assets thereof
14 (whether or not the successor or acquiring unit was an
15 "employing unit", as that term is defined in section
16 383-1 prior to the acquisition), or after
17 December 31, 1988 and prior to December 31, 1992,
18 acquires a clearly identifiable and segregable portion
19 of the organization, trade, or business of another
20 that at the time of the acquisition was an employer
21 subject to this chapter, and the successor continues
22 or resumes the organization, trade, or business and



1 continues to employ all or nearly all of the
2 predecessor's employees, or the successor continues or
3 resumes the clearly identifiable and segregable
4 portion of the organization, trade, or business and
5 continues to employ all or nearly all of the employees
6 of the clearly identifiable and segregable portion, or
7 after July 1, 2013, if a professional employer
8 organization contracts with a client company for the
9 co-employment of assigned employees as defined in
10 chapter 373K, an application may be made for transfer
11 of the predecessor's experience record. If the
12 predecessor employer has submitted all information and
13 reports required by the department including amended
14 quarterly wage reports identifying the employees
15 transferred or retained and executed and filed with
16 the department before December 31 of the calendar year
17 following the calendar year in which the acquisition
18 occurred on a form approved by the department a waiver
19 relinquishing the rights to all or the clearly
20 identifiable and segregable portion of the
21 predecessor's prior experience record with respect to
22 its separate account, actual contribution payment, and



1 benefit chargeability experience, annual payrolls and
2 other data for the purpose of obtaining a reduced
3 rate, and requesting the department to permit the
4 experience record to inure to the benefit of the
5 successor employing unit upon request of the successor
6 employing unit, the experience record for rate
7 computation purposes of the predecessor shall
8 thereupon be deemed the experience record of the
9 successor and the experience record shall be
10 transferred by the department to the successor
11 employing unit and shall become the separate account
12 of the employing unit as of the date of the
13 acquisition. Benefits chargeable to the predecessor
14 employer or successor employer in case of an
15 acquisition of a clearly identifiable and segregable
16 portion of the organization, trade, or business, after
17 the date of acquisition on account of employment prior
18 to the date of the acquisition shall be charged to the
19 separate account of the successor employing unit. In
20 case of an acquisition of a clearly identifiable and
21 segregable portion of the organization, trade, or
22 business, the experience record that inures to the



1 benefit of the successor employer shall be determined
2 as follows:

3 (A) Wages, as used in section 383-61, attributable to
4 the clearly identifiable and segregable portion
5 shall be for the period beginning with the most
6 recent three consecutive calendar years
7 immediately preceding the determination of rates
8 under sections 383-63 to 383-69 and through the
9 date of acquisition; and

10 (B) Reserve balance attributable to the clearly
11 identifiable and segregable portion shall be the
12 amount determined by dividing the wages, as used
13 in section 383-61, of the clearly identifiable
14 and segregable portion in the three calendar
15 years (or that lesser period as the clearly
16 identifiable and segregable portion may have been
17 in operation) immediately preceding the
18 computation date of the rating period prior to
19 which the acquisition occurred by the total
20 taxable payrolls of the predecessor for the
21 three-year period (or that lesser period as the
22 clearly identifiable and segregable portion may



1 have been in operation) and multiplying the
2 quotient by the reserve balance of the
3 predecessor employer calculated as of the
4 acquisition date;

5 provided the waiver or waivers required herein are
6 filed with the department within sixty days after the
7 date of acquisition, the successor employing unit,
8 unless already an employer subject to this chapter,
9 shall be subject from the date of acquisition to the
10 rate of contribution of the predecessor or of two or
11 more predecessors if they have the same contribution
12 rate. If there are two or more predecessors having
13 different contribution rates, the successor shall be
14 subject to the rate prescribed for new or newly
15 covered employers under paragraph (2) until the next
16 determination of rates under sections 383-63 to
17 383-69, at which time the experience records of the
18 predecessors and successor shall be combined and shall
19 be deemed to be the experience record of a single
20 employing unit and the successor's rate shall
21 thereupon be determined upon the basis of the combined
22 experience. If the successor at the time of the



1 transfer is an employer subject to this chapter, the
2 rate of contribution to which the successor is then
3 subject shall remain the same until the next
4 determination of rates under sections 383-63 to
5 383-69, at which time the experience records of the
6 predecessor and successor shall be combined and shall
7 be deemed to be the experience record of a single
8 employing unit and the successor's rate shall
9 thereupon be determined upon the basis of the combined
10 experience. For the purpose of determination of rates
11 under sections 383-63 to 383-69 of all successor
12 employing units, waivers as required herein, if not
13 previously filed as hereinabove provided, shall be
14 filed with the department not later than March 1 of
15 the year for which the rate is determined; provided
16 that no waiver shall be accepted by the department for
17 filing unless the employing unit executing the waiver
18 has filed all reports and paid all contributions
19 required by this chapter;

- 20 (6) The department may prescribe rules for the
21 establishment, maintenance, and dissolution of joint
22 accounts by two or more employers, and, in accordance



1 with the rules and upon application by two or more
2 employers to establish such an account, or to merge
3 their several individual accounts in a joint account,
4 shall maintain the joint account as if it constituted
5 a single employer's account. The rules shall be
6 consistent with the federal requirements for
7 additional credit allowance in section 3303 of the
8 federal Internal Revenue Code and consistent with this
9 chapter;

10 (7) Whenever there is an amendment to this chapter which,
11 if immediately effective, would change an employer's
12 rate of contributions, the rate of the employer shall
13 be changed in accordance with the amendment and the
14 new rate shall apply for the remainder of the calendar
15 year beginning with the calendar quarter immediately
16 following the effective date of the amendment
17 providing for the change, unless otherwise provided by
18 the amendment;

19 (8) For the purposes of this section, "contribution rate"
20 shall mean the basic contribution rate as defined in
21 section 383-68 when applied to calendar year 1978 or
22 any calendar year thereafter; and



1 (9) For the purposes of this section, the terms "employing
2 unit", "employer", "predecessor", and "successor"
3 shall include both the singular and the plural of each
4 term. Nothing in this section shall prevent two or
5 more successor employing units, which each succeed to
6 or acquire a clearly identifiable and segregable
7 portion of a predecessor employing unit, from gaining
8 the benefit of the clearly identifiable and segregable
9 portion of the predecessor's experience record;
10 provided that the terms of this section are complied with,
11 nothing herein shall bar a predecessor employer from waiving the
12 rights to all or the clearly identifiable and segregable portion
13 of the predecessor's prior experience record in favor of a
14 successor employer where the successor acquired a clearly
15 identifiable and segregable portion of the predecessor's
16 organization, trade, or business after December 31, 1988 and
17 prior to December 31, 1992.

18 (b) Notwithstanding any other provision of this chapter,
19 the following shall apply regarding assignment of rates and
20 transfers of experience:

21 (1) If an employing unit transfers its organization,
22 trade, or business, or a portion thereof, to another



1 employing unit, or contracts with a professional
2 employer organization for the co-employment of covered
3 employees as defined in chapter 373K, and, at the time
4 of the transfer[~~7~~] or contract with a professional
5 employer organization, there is substantially common
6 ownership, management, [~~or~~] control, or co-employment
7 of the two employing units, both employing units shall
8 file a notification of the transfer with the
9 department on a form approved by the department within
10 thirty days after the date of the transfer. The
11 department shall transfer the experience records
12 attributable to the transferred organization, trade,
13 or business to the employing unit to whom the
14 organization, trade, or business is transferred. The
15 rates of both employing units shall be recalculated
16 and made effective beginning with the calendar year
17 immediately following the date of the transfer of the
18 organization, trade, or business;

- 19 (2) If a person is not an employing unit as defined in
20 section 383-1 at the time it acquires the
21 organization, trade, or business of another employing
22 unit, both the person and the employing unit shall



1 file a notification of the acquisition with the
2 department on a form approved by the department within
3 thirty days after the date of the acquisition. If the
4 department determines at the time of the acquisition
5 or thereafter, based on objective factors that may
6 include:

7 (A) The cost of acquiring the organization, trade, or
8 business;

9 (B) Whether the person continued the activity of the
10 acquired organization, trade, or business;

11 (C) How long the organization, trade, or business was
12 continued; or

13 (D) Whether a substantial number of new employees
14 were hired for performance of duties unrelated to
15 the organization, trade, or business activity
16 conducted prior to the acquisition, that the
17 acquisition was solely or primarily for the
18 purpose of obtaining a lower rate of
19 contribution, the person shall not be assigned
20 the lower rate and shall be assigned the
21 contribution rate for a new or newly covered
22 employer pursuant to subsection (a)(2) instead;



1 (3) An employing unit or person who is not an employing
2 unit shall be subject to penalties under paragraph (4)
3 or (5) if the employing unit or person who is not an
4 employing unit:

5 (A) Knowingly violates or attempts to violate this
6 subsection or any other provision of this chapter
7 related to determining the assignment of a
8 contribution rate;

9 (B) Makes any false statement or representation or
10 fails to disclose a material fact to the
11 department in connection with the transfer or
12 acquisition of an organization, trade, or
13 business; or

14 (C) Knowingly advises another employing unit or
15 person in a way that results in a violation or
16 attempted violation of this subsection;

17 (4) If the person is an employing unit:

18 (A) The employing unit shall be subject to the
19 highest rate assignable under this chapter for
20 the calendar year during which the violation or
21 attempted violation occurred and for the



- 1 consecutive three calendar years immediately
2 following; or
- 3 (B) If the employing unit is already at the highest
4 rate or if the amount of increase in the
5 employing unit's rate would be less than two per
6 cent for the calendar year during which the
7 violation or attempted violation occurred, a
8 penalty equal to contributions of two per cent of
9 taxable wages shall be imposed for the calendar
10 year during which the violation or attempted
11 violation occurred and the consecutive three
12 calendar years immediately following. Any
13 penalty amount collected in excess of the maximum
14 contributions payable at the highest rate shall
15 be deposited in the special unemployment
16 insurance administration fund in accordance with
17 section 383-127;
- 18 (5) If the person is not an employing unit, the person
19 shall be subject to a penalty of not more than \$5,000.
20 The penalty shall be deposited in the special
21 unemployment insurance administration fund in
22 accordance with section 383-127;



- 1 (6) For purposes of this subsection, the following
2 definitions shall apply:
- 3 (A) "Knowingly" means having actual knowledge of or
4 acting with deliberate ignorance or reckless
5 disregard for the requirements or prohibition
6 involved;
- 7 (B) "Violates or attempts to violate" includes but is
8 not limited to intent to evade,
9 misrepresentation, or wilful nondisclosure;
- 10 (C) "Person" shall have the same meaning as defined
11 in section 7701(a)(1) of the Internal Revenue
12 Code of 1986, as amended; and
- 13 (D) "Organization, trade, or business" shall include
14 the employer's workforce;
- 15 (7) In addition to the civil penalties imposed by
16 paragraphs (4) and (5), any violation of this section
17 may be prosecuted under sections 383-142 and 383-143.
18 No existing civil or criminal remedy for any wrongful
19 action that is a violation of any statute or any rule
20 of the department or the ordinance of any county shall
21 be excluded or impaired by this section;



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1 (8) The department shall establish procedures to identify
2 the transfer or acquisition of an employing unit for
3 the purposes of this section; and

4 (9) This section shall be interpreted and applied in a
5 manner to meet the minimum requirements contained in
6 any guidance or regulations issued by the United
7 States Department of Labor."

8 SECTION 9. Chapter 373L, Hawaii Revised Statutes, is
9 repealed.

10 SECTION 10. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun before its effective date.

13 SECTION 11. In codifying the new sections added by section
14 2 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 12. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 13. This Act shall take effect upon its approval.

20

INTRODUCED BY: Manu Chum O'ama
Yee Han Jr.



S.B. NO. 813

Will Eyo

Mac (W) Eyo



S.B. NO. 813

Report Title:

Professional Employer Organizations; Registration and Fees; Enterprise Zone Coverage; General Excise Tax Exemption; Transfer of Experience Record as Successor Employer

Description:

Amends definitions and adds registration and fee requirements for professional employer organizations; repeals chapter 373L, Hawaii Revised Statutes; amends the definition of leased employees for enterprise zone coverage of a qualified business; amends the general excise tax exemption for professional employer organizations; allows professional employer organizations to apply for a transfer of a client company's experience record for unemployment insurance contribution purposes.

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

