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February 12, 2016

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

Date: Tuesday, February 16, 2016
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 2289 SD1 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

SB2289 HD1 proposes to amend section 371-11, Hawaii Revised Statutes (HRS) to allow DLIR to require employers to make, keep, and preserve records of the business name, physical location address, North American Industry Classification System (NAICS) business activity code, and number of employees employed by the employer.

The department strongly supports this proposal.

This proposal does not impact the quarterly wage records collected from employers through the Unemployment Insurance Wage Records System. Those records are confidential and retained separately from the Multiple Worksite Report (MWR) data collected by the Research & Statistics Office.

The department's federal funding levels are in jeopardy because the Bureau of Labor Statistics (BLS) ties funding to the number of employing units reported and some employers, especially national chains, are not responding to surveys unless they are required. If the measure is enacted, the information gathered about businesses, locations, workers, and industries in local areas will greatly improve.

II. CURRENT LAW

Section 371-11, HRS, currently allows DLIR's Research and Statistics Office (R&S) to investigate and gather data regarding wages, hours, and other related employment information. However, the current law is limited in that it does not provide for the collection of the employer's physical location, NAICS classification code, and the number of employees. Paragraph 4 contains a provision that is anachronistic and no longer necessary after the passage of the Prepaid Health Care Act.

III. COMMENTS ON THE SENATE BILL

This legislation will allow DLIR to gather information necessary for preparing accurate industrial and geographical summaries of economic conditions within Hawaii. These data are important input to funding formulas for many of our State's programs and agencies that rely on federal funding.

The Department of Transportation Statewide Transportation Planning Office uses this information for updating travel demand forecasting models to develop land transportation plans for all islands in the State. The plans utilize the employer and employment data to quantify land use activity and trip purposes correlated to the amount of employment in specific areas.

The information that will be collected from all employers, including PEOs, would be employment and wages by worksite. While Unemployment Insurance can provide total employment and wages for the State, the MWR would provide much needed detail to produce employment distribution by county and industry to assess shifts in employment and wages at the local level. The worksite level information enables DLIR to track growth and decline in employment for smaller areas such as local area communities, for example, like Kapolei or the counties. Currently, twenty-five (25) other states mandate collection of this type of information from employers and businesses in their states.

This legislation will also greatly improve the Quarterly Census of Employment and Wages (QCEW) program conducted by R&S, which is a near census of monthly employment and quarterly wage information by industry at the state and county levels. The QCEW provides information on major shifts in employment or wage levels because of various economic activities.

In addition to the federally funded state agencies listed above, other state agencies and consumers including the Legislature, the Council on Revenues, the Department of Business, Economic Development and Tourism (DBEDT), the Economic Research Organization at the University of Hawaii (UHERO), and the Hawaii Tourism Authority (HTA), need the data for economic studies and Workforce development and planning.

Lastly, DLIR supports the deletion of section 371-11(4), which is a housekeeping action that would conform the statute to accurately reflect the current State organizational structure. Act 135, Session Laws of Hawaii 1957, was intended to, "... make available government services toward rendering feasible the extending of benefits of group life, medical, hospitalization and health insurance and pension and retirement plans to employees of smaller employers at costs comparable to those benefits presently enjoyed by the employees of the larger employers." *Senate Committee Report No. 610 Hawaii Senate Journal (1957)*.

R&S has not conducted such research for decades, especially since the passage of the Prepaid Health Care Act in 1974 rendered moot the provision of health insurance coverage of smaller employers by requiring it. Furthermore, many of the other insurance functions above are now regulated by the Insurance Division of the Department of Commerce and Consumer Affairs.



February 15, 2016

Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
Committee on Labor and Public Employment
State Capitol
Honolulu, Hawaii 96813

Subject: SB 2289 (SD1) February 9, 2016, 9:30 am

Dear Representatives Nakashima and Keohokalole:

My name is Barron Guss, President and second-generation owner of ALTRES, Inc., a 45-year old Hawaii company and Hawaii's original and oldest Professional Employer Organization (PEO).

In recent weeks, I have testified before your committee on both HB2368 and HB2014. SB 2289 (SD1) is essentially the same bill which modifies the statutes to mandate all employers to report essential information regarding the NAICS codes. Last week your committee chose to defer HB 2368 and pass HB2014 with my suggested amendment –

"In addition, every employer, regardless of whether they use a PEO or third-party administrator shall keep a record of the physical addresses of the employer and the North American Industry Classification System code applicable to the employer."

For your convenience, I have included excerpts from my testimony for reference. It is my hope that this committee will continue to see the value that PEOs bring Hawaii employers and continue to support both the DLIR's need for accurate data and the PEO's need to operate with consistency and within the law by including my suggested language

Thank you for your time.

Sincerely,

Barron L. Guss
President and CEO

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Excerpts from testimony -
HB2014 February 9, 2016, 9:30 am

It has been the Department of Labor's stance that the data of PEO clients was being missed because of the PEO relationship and, therefore, it was important to include a reporting requirement that PEOs provide this information. Although I am in agreement that this information is important for the purposes of the state fulfilling its obligations to the federal government, as well gathering data for economic analysis, I have concerns about the process and mechanism for doing so.

First, the best way to ensure that this information is gathered is to change the reporting requirement in the proposed legislation to:

"In addition, every employer, regardless of whether they use a PEO or third-party administrator shall keep a record of the physical addresses of the employer and the North American Industry Classification System code applicable to the employer."

With this amendment to the proposed bill, the mandate will be on "All Employers" regardless of how they go about administering their employment requirements.

To make PEOs responsible for reporting their client's data is contrary to the statute 373L-B, which is the area of the law that governs Professional Employer Organizations. Under the law, PEOs are solely responsible for complying with all statutory provisions relating to the unemployment insurance, workers' compensation, temporary disability insurance, and prepaid health care programs with respect to the assigned employees.

To attempt to use the term "All Employers" as a catch-all "net" to mandate PEOs to report client level data is not effective, as PEOs are only allowed to report on the four areas as expressly outlined within the law recited above.

Any other assumption creates ambiguity. Instead, it makes perfect sense to leave this reporting responsibility at the PEO client level (workplace) similar to other responsibilities within the law, such as workers' rights, wage and hour, OSHA (workplace safety), etc.

Secondly, PEOs do not possess enough data to accurately report the proper NAICS code. The NAICS system takes into account certain information that is best reported by the business itself, and to erroneously report the information is contrary to the intent of this initiative.

Lastly, the DLIR suggests that PEOs should simply report the data to the federal government using the BLS data base reporting system. The BLS is NOT configured to accept data from PEOs; i.e., one Federal/State Tax ID number with thousands of workplaces and thousands of NAICS codes. The BLS system is created to report on single employers in contrast to multiple employers under one Tax ID number.

Recognizing the problem above, the DLIR representative suggested that PEOs should only report all of the worksite data for its clients under the PEO's address and NAICS code. In our case, an "Administration" company with 14,000 employees. There are approximately fifty PEOs operating in the state with over 40,000 employees reporting under their Tax ID numbers. I don't believe we should create skewed data by erroneously reporting it.

With the preceding in mind, the PEO community is able and willing to assist in finding better ways to achieve the Department of Labor's ultimate goal, which is to ensure compliance with the law. We only ask that we be included in this discussion in a meaningful way.

Thank you for your time.

Sincerely,

*Barron L. Guss
President and CEO*