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February 23, 2012

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

Date: Friday, February 24, 2012  
Time: 9:00 a.m.  
Place: Conference Room 211, State Capitol

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

**Re: S.B. No. 2433 SD1 Relating to Challenge Course Technology**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB2433SD1 adds a new chapter to the Hawaii Revised Statutes (HRS) to regulate ziplines and canopy tours. DLIR **strongly opposes** this measure, but suggests a Sunrise Review by the Office of the Auditor.

Major provisions of the bill include:

- Require operators to construct, install, maintain and operate all zipline and canopy tours according to the standards of the Association for Challenge Course Technology.
- Ensure annual inspections by the department or a Qualified Challenge Course Professional (QCCP) inspector.
- Require operators to procure and maintain commercial general liability insurance.
- Require operators to maintain records including proof of insurance, inspection reports, maintenance records and participant acknowledgement of risks and duties.
- Require DLIR to issue permits and certificates of inspection and charge for

annual and safety inspections unless a third party QCCP inspector does the inspection.

- Require the department to certify QCCP inspectors.
- Indemnification of the department, state, the state's officers and employees from any and all claims arising out of or resulting from activities undertaken under the new law.

We oppose this measure as written as it includes recommendations that are too problematic to implement and would entail significantly higher costs. However, the department appreciates the intent to ensure the safety and security for participants—we note the department is still in the process of investigating a zipline accident that killed one employee and seriously hurt another. The department also appreciates the growing contribution of zipline and canopy tours to the state's economy. Therefore, the department suggests further study and offers that a sunrise review by the Office of the Auditor may be the most prudent approach.

## **II. CURRENT LAW**

HIOSH's Boiler and Elevator Inspection Branch regulates amusement rides, which are defined as, "Amusement ride means a mechanically or electrically operated device designed to carry passengers in various modes and used for entertainment and amusement." (HAR, 12-250-2) The department does not regulate zipline or canopy tours.

The department does permit special inspectors and owner-user inspectors, not employed by the department, to undertake boiler and pressure vessel inspections with a valid certificate of competency issued by the department. Special inspectors are required to be employed by an insurance company authorized to insure boiler or pressure vessels in the state. Owner-user inspectors must hold a valid a valid National Board Owner-User Commission, pass an examination prescribed by the director, and be continuously employed by an owner-user inspection agency.

## **III. COMMENTS ON THE SENATE BILL**

- Elevator inspectors currently also perform the inspections on amusement rides and the department already struggles with maintaining the training and certification standards of elevator inspectors for amusement rides. In order to do a credible job the inspectors and manager would need to develop expertise to both undertake inspections and certify QCCP inspectors, adding an additional burden to the Boiler and Elevator Inspection Branch.
- The inspection, permit and certification fees in the measure are far too low to

cover the costs of developing the expertise to regulate ziplines and canopy tours in the manner prescribed in the bill. Most of these operations are located in remote areas of the Neighbor Islands, which would require the department to pay for airfare, car rental, per diem, etc.

- The department questions whether owners and operators of ziplines and canopy tours should be allowed to inspect their own equipment in the manner that owner-users do for boilers and pressure vessels. The department lacks the expertise to render judgment at this time, but notes that the criteria for owner-users of boilers and pressure vessels are high standards. Such inspectors hold a national certification, pass examinations prescribed by the department, develop and maintain rigorous self-regulatory regimes approved by the department, and are continuously employed by an inspection agency. Insurance companies authorized to insure boiler and pressure vessels in the state employ special boiler inspectors.
- Considering all the above and the Hawaii Regulatory Reform Act, chapter 26H, HRS, the department suggests the legislature consider asking the Office of the Auditor to conduct a Sunrise Review regarding the matter.