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

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March 15, 2016

To: The Honorable Gilbert Keith-Agaran, Chair,
The Honorable Maile Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary & Labor

Date: March 17, 2016

Time: 9:30 a.m.

Place: Conference Room 016, State Capitol

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

Re: H.B. No. 2009 HD1 RELATING TO HOISTING MACHINE OPERATORS.

DLIR notes that the Hawaii Occupational Safety & Health Division (HIOSH) would require one Office Assistant III position (\$26,700) to undertake the clerical functions outlined in the current draft of the measure.

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GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

Uploaded via Capitol Website

March 17, 2016

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR, SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION TO H.B. 2009, HD1, RELATING TO HOISTING MACHINE OPERATORS.** Repeals the Hoisting Machine Operators' Certification Revolving Fund and the position of the executive director. Tasks the DLIR with the responsibility of administrative duties for the Hoisting Machine Operators Advisory Board. Allows the Hoisting Machine Operators Advisory Board to establish fees for the issuance of permits or certificates by administrative rule.

HEARING

DATE: Thursday, March 17, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran and Vice Chair Shimabukuro and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA **opposes** H.B. 2009, HD1, Relating to Hoisting Machine Operators ("Board"), which proposes to repeal the Hoisting Machine Operators Advisory Board's Certification Revolving Fund by transferring it to the general fund and additionally eliminating the position of the Board's Executive Director, which is currently a half time position. This proposal to transfer the funds of the Hoisting Board's Revolving Fund and its Executive Director is premature and not appropriate as the Board attempts to address future administrative rules governing Hawaii's crane operators. While there has been discussion that federal oversight may be on the horizon with regard to crane operators, such decisions have yet to be implemented, therefore it would be shortsighted to dismantle the Board without such confirmation in place.

The role of the Hoisting Board is to provide public and worker safety regarding crane use and operation. The Board was created in 1998 by Hawaii State Legislature and was tasked to adopt Hawaii Administrative Rules (HAR) for the certification of hoisting machine operators. This was done by adding Sections 19 and 20 to the Occupational Safety and Health Law, [Chapter 396](#) of the Hawaii Revised Statutes (HRS). The HMOAB developed and adopted [Chapter 12-48](#) (HAR), Hoisting Machine Operators, which became effective on December 6, 2002. Under these rules, certification is required for operators using equipment covered by American Society of Mechanical Engineers (ASME) B30.5 Mobile and Locomotive Cranes, having a lifting capacity of more than one ton and that are used to perform construction work as defined by Section 12-50-2 HAR.

The rules require operators to show that they have the experience, training, qualifications and certification to safely operate these hoisting machines. Enforcement of this requirement is covered in Section 12-110-50 HAR.

Several questions must be raised as to what this measure proposes, particularly with regard to the proposal that the Department of Labor and Industrial Relations take over the day to day operations, which is of great concern because there has been a shortage of staff at HIOSH regarding management duties of licensing and permitting. Furthermore, the depletion of this Board's Revolving Fund and the transfer of its existing budget to the general fund will make it difficult and nearly impossible to amend administrative rules, if the federal guidelines are introduced and must be incorporated into state law.

For these reasons we request this measure be held. **Thank you for the opportunity to share our opposition to H.B. 2009, HD1.**

Hawai'i Construction Alliance

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March 16, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
and members
Committee on Judiciary and Labor
Hawai'i State Senate
Honolulu, Hawai'i 96813

**RE: Support for HB2009 HD1, Relating to Hoisting Machine Operators,
and Suggested Amendments**

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We support HB2009 HD1, Relating to Hoisting Machine Operators. The current draft of the bill would repeal the Hoisting Machine Operators' Certification Revolving Fund and the position of its executive director, task DLIR with the responsibility of administrative duties for the Hoisting Machine Operators Advisory Board, and allow the Hoisting Machine Operators Advisory Board to establish fees for the issuance of permits or certificates by administrative rule.

In previous testimonies, we described the current process to become a hoisting machine operator in the State of Hawai'i, noted that new OSHA regulations will be coming into effect soon that will revise safety requirements for cranes and derricks in construction, and explained that the new OSHA regulations will likely render Hawai'i's current state-level certification process redundant.

At this time, we would like to offer amendments to the bill. Instead of the current contents, we would recommend that the legislature require the Hoisting Machine Operators Advisory Board to produce a comprehensive report to the legislature no later than 20 days prior to the convening of regular session of 2017 which:

- (1) Provides a thorough description of current and pending OSHA rules and regulations pertaining to Hoisting Machine Operators;
- (2) Identifies areas of duplication and unique provisions between the state law and OSHA rules and regulations, including federal provisions for state licensure;
- (3) Examines how other states administer certification of Hoisting Machine Operators;
- (4) Assesses the current fee structure to become a certified Hoisting Machine Operator in the State of Hawai'i; and
- (5) Recommends changes to current procedures for certifying Hoisting Machine Operators in the State of Hawai'i, based on the implementation of OSHA rules and regulations.

We believe that such a report will provide valuable insight to the legislature, DLIR, and other stakeholders to ensure that public and worker safety are indeed being adequately addressed by the current board processes and procedures.

Mahalo for your consideration of these suggested amendments.

Thank you,

A handwritten signature in black ink, reading "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org

February 15, 2016

Hon. Gilbert Keith-Agaran, Chairperson
Senate Judiciary and Labor Committee Hearing
Hawai'i State Capitol, Room 221
425 South Beretania Street
Honolulu, HI 96813

Re: **Oppose HB 2009**, Relating to Hoisting Machine Operators

Aloha Senator Keith-Agaran and Members,

For sixteen years, the Hoisting Machine Operators Advisory Board has operated as an “attached agency” within the Hawai'i Department of Labor and Industrial Relations. Similar to 16 other states and six municipalities, my office's sole task is to oversee, investigate and certify the nearly 450 mobile and tower crane operators within Hawai'i to ensure their safety and the well-being of citizens.

Not only do we fulfill this function with distinction and complete transparency, we do so at no expense to the taxpayer. Our annual user fees of \$100 per person cover the cost of the part-time HMOAB Executive Director and all office functions. Professionally, I am not only an MBA with more than a decade of administrative experience in government and non-profit agencies, act as the certifying agent under the direction of a five-member Legislature-appointed volunteer Board, comprised of industry and union leaders.

In the two years I've held this position, applications have increased 38%; revenues have risen 19%; expenses have been reduced 46%; and 93% of all applications are decided within 24 hours of its receipt. By even the harshest critic's standards, we perform remarkably well, with complete openness and very frugally. With the help of the Hawai'i Information Consortium, our agency is set to launch on June 1st a complete online digital overhaul of our operations enabling users and employers around the world to check their status, pay by credit card, and find the latest employment news among other things.

Unfortunately, HB 2009 repeals this established, effective and important agency by eliminating the part-time Executive Director position and returning the revolving fund, now valued at slightly more than \$350,000 back to the general operating fund. The legislation provides NO information about future administrative structure, fees, or the fate of its Advisory Board.

I suspect this legislation is an attempt by either the new DLIR administrators or a third party to take over this office's functions. However, there is no faculty or expertise within the DLIR for its immediate takeover and all changes in the current operations will result in taxpayers paying for any new incarnation.

More probable, the functions of the HMOAB office will be let to a third party operator who is knowledgeable about training, medical and legal requirements for crane operators. While fees have never risen during our 16 years, only one entity objects to our modest certification and application fees and now insists federal regulations are sufficient to safeguard Hawaii's workers and its citizens. Not only are these arguments dangerous and incorrect, they are suspect.

While the HMOAB regularly works with union leadership and includes their representation on our five-member Advisory Board and does its best to be a cooperative partner with the Department of Labor, I strenuously object this legislation and the possible inclusion of a non-neutral and biased party to potentially certify well-paid crane operators. I also am very concerned with the prospects of charging taxpayers for this privilege and what other backroom deals have been brokered.

In short, if this bill were to succeed, the entire integrity and safety of the hoisting industry in Hawai'i including major construction projects, utility operations, and the development of our Island's rapid transit system would be suspect and less safe. As evidence by recent crane disasters in New York City and elsewhere, those killed are usually citizens and innocent bystanders.

I urge you to be proactive, defeat this bill immediately, and send a message that the Senate Judiciary and Labor Committee wants to keep the public safe now and in the future.

Mahalo,

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