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February 9, 2021

To: The Honorable Richard H.K. Onishi, Chair,  
The Honorable Jackson D. Sayama, Vice Chair, and  
Members of the House Committee on Labor & Tourism

Date: Tuesday, February 9, 2021  
Time: 9:30 a.m.  
Place: Via Videoconference

From: Anne Perreira-Eustaquio, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 90 HD1 RELATING TO GOVERNMENT**

Chair Onishi, Vice Chair Sayama, and Members of the Committee,

This measure transfers the State Fire Council to the Department of Commerce and Consumer Affairs (DCCA), the authority for the boiler and elevator safety law from the DLIR to DCCA, and administration of the human trafficking victim services fund from DLIR to the Judiciary. The department offers comments on the measure.

The State Fire Council (SFC) was administratively attached to the DLIR by Act 103 (SLH, 1985). Act 241 (SLH, 1978) abolished the State Fire Marshall and transferred the functions and responsibilities to the respective counties because, "existing State laws and county ordinances divide the accountability of the county fire chiefs by subjecting them to the supervision of both the State Fire Marshal and the mayors and county councils.

The SFC is administratively attached to the department through a Memorandum of Agreement (MOA)

Act 19 (SLH, 1980) established the boiler and elevator safety law because, "the Hawaii occupational safety and health law does not adequately provide for the safe operation and use of boilers, pressure systems, amusement rides, and elevators and kindred equipment." The department notes that Part III of HB90HD1 § -5 Fees does not include the updated fees of either boilers or elevators that currently exist in the Hawaii Administrative Rules (HAR, §12-220 and §12-220).

Act 119 (SLH, 2014) established the human trafficking victim services fund. During FY20 \$50 was deposited in the fund and at the end of the fiscal year the balance was \$1,080.



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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Labor & Tourism  
Tuesday, February 9, 2021  
9:30 a.m.  
Via Videoconference**

**On the following measure:  
H.B. 90, H.D. 1, RELATING TO GOVERNMENT**

Chair Onishi and Members of the Committee:

My name is Catherine Awakuni Colón, and I am the Director of the Department of Commerce and Consumer Affairs (DCCA or Department), testifying in opposition to this bill. H.B. 90, H.D. 1 transfers: (1) the State Fire Council (SFC), for administrative purposes, from the Department of Labor and Industrial Relations (DLIR) to the DCCA; and (2) authority over the boiler and elevator safety law from the DLIR to the DCCA. The Department opposes this bill because the primary purpose of the SFC and the boiler and elevator safety law are to provide for safety, including, but not limited to, safe and healthful working conditions. As such, these programs are already located in the department whose mission is best aligned with its responsibilities.

**Transfer of SFC to DCCA**

The Department opposes transferring the SFC to the DCCA because the DLIR has the knowledge, expertise, and resources needed to oversee Hawaii fire services as part of its larger administration of programs under the DLIR's Occupational Safety and

Health Division. The responsibilities of the SFC<sup>1</sup> are well outside the jurisdiction of the DCCA, which protects consumers through business registration and professional licensure, monitoring the financial solvency of local financial institutions and insurance companies, and investigating complaints of unfair business practices and license violations. Given the tailored mission of the DCCA, it would be simply unfeasible for the Department to oversee all matters relating to fire prevention and protection, life safety, and other functions and activities of county fire departments.

### **Transfer of Authority Over Boiler and Elevator Safety Law to DCCA**

The Department opposes placing the boiler and elevator safety law under the jurisdiction of the DCCA, rather than the DLIR. This bill promulgates a new statutory chapter that will “assure the safe operation and use of boilers, pressure systems, amusement rides, and elevators and kindred equipment in Hawaii,” creates a boiler and elevator safety appeals board, and repeals Hawaii Revised Statutes chapter 397 (Boiler and Elevator Safety). This new statutory chapter falls squarely within the purview of the DLIR’s Occupational Safety and Health Division, whose core mission is to “assure safe and healthful working conditions for the women and men of the State.” In contrast, the DCCA’s core mission is to protect consumers and service its business community with respect and fairness to the interests of both. Accordingly, it would be inapposite for the DCCA, a consumer protection department, to also: adopt and enforce boiler and elevator safety standards through compliance inspections and investigations; issue permits regarding boilers, pressure systems, amusement rides, and elevators and kindred equipment; review and approve plans for new installation, repairs, or modification of equipment; and adjudicate appeals from decisions involving boiler and elevator safety.

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<sup>1</sup> As Hawaii’s equivalent of the State Fire Marshal’s Office, the SFC is responsible for: adopting the State Fire Code and corresponding rules; supporting and assisting with federal grant programs for fire services in Hawaii; advising and assisting county fire departments; prescribing standard procedures and forms related to inspections, investigations, and reporting of fires; and advising the Governor and Legislature on issues relating to fire prevention and protection, life safety, and other functions or activities of the county fire departments.

Finally, transferring the regulation and oversight, appropriations, and personnel of both the SFC and the Boiler and Elevator Safety Inspection Branch from the DLIR to the DCCA will be disruptive and time-consuming for both departments, with no budgetary or organizational benefit. Further, as a special-funded department, the DCCA expects its regulatory divisions to generate sufficient revenue to cover its personnel and operational costs, a contingency reserve, and an equitable share of the Department's administrative expenses. If the SFC, for example, is envisioned as a separate program, the Department is unsure how a general-funded division will be able to contribute to the DCCA's administrative costs.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE  
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To: The Honorable Richard H.K. Onishi, Chair,  
The Honorable Jackson D. Sayama, Vice Chair, and  
Members of the House Committee on Labor and Tourism

Date: Tuesday, February 9, 2021

Time: 9:30 a.m.

Place: Via Videoconference

From: Damien Elefante, Chair  
DLIR, Labor and Industrial Relations Appeals Board

**Re: H.B. No. 90 H.D.1 RELATING TO GOVERNMENT**

**I. OVERVIEW OF PROPOSED LEGISLATION**

A provision of the measure seeks in part to transfer jurisdiction over the Boiler and Elevator Safety law from the Department of Labor and Industrial Relations (DLIR) to the Department of Commerce and Consumer Affairs (DCCA), to repeal Chapter 397, and to create a new Boiler and Elevator Safety Appeals Board.

**II. CURRENT LAW**

Section 397-9 of the Hawaii Revised Statutes provides that an order of the Director of Labor and Industrial Relations issued pursuant to the Boiler and Elevator Safety Law may be appealed to the DLIR's Labor and Industrial Relations Appeals Board (LIRAB) by filing a notice of contest of the order within twenty days after receipt of such order.

Currently, LIRAB has jurisdiction over appeals filed pursuant to Chapter 397, the Boiler and Elevator Safety Law, and appeals filed pursuant to Chapter 386, the State Workers' Compensation Law.

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

LIRAB takes no position on the transfer of jurisdiction of the Boiler and Elevator Safety Law from DLIR to DCCA, the repeal of Chapter 397, or the creation of a Boiler and Elevator Safety Appeals Board.

However, LIRAB provides the following comments and recommendation to the committee regarding H.B.90 H.D.1:

- From 2011 to the present in 2021, only two Boiler and Elevator Safety Law appeals were filed with LIRAB. Both appeals resolved very early in the appeals process and neither went to hearing.
- Currently, LIRAB employees (both civil service and exempt) have duties and functions that relate to both Boiler and Elevator Safety and Workers' Compensation appeals. Because of these responsibilities, LIRAB would like to clarify the language in Part III, Section 8 of H.B.90 H.D.1 (p. 42) to ensure that LIRAB's employees remain with DLIR to administer Chapter 386 and are not transferred to DCCA. LIRAB recommends that the section be amended to read as follows:

All rights, powers, functions, and duties of the department of labor and industrial relations relating to the boiler and elevator safety law are transferred to the department of commerce and consumer affairs.

All employees whose only and primary functions relate to the boiler and elevator safety law are transferred to the department of commerce and consumer affairs. Employees who occupy civil service positions and whose functions are transferred to the DCCA by this part shall retain their civil service status, whether permanent or temporary.