



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

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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: 9:30 a.m.  
Place: Conference Room 309, State Capitol

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

**Re: H.B. No. 2009 Relating to Exemptions from Civil Service**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB2009 proposes to:

- Eliminate a .5 FTE Executive Director and directs the department to provide administrative support to support the Hoisting Machine Operators Advisory Board's (Board) functions.
- Eliminates the Board's revolving fund and lapses the balance into the general fund.

DLIR offers comments pertaining to the measure.

**II. CURRENT LAW**

Chapter 396, Hawaii Revised Statutes (HRS) provides for an Executive Director and a revolving fund to support the functions of the Board.

**III. COMMENTS ON THE HOUSE BILL**

Fees for certification of hoisting machine operators currently fund the Board's functions, which is a State, not Federal function. If enacted, the measure would require a general fund appropriation and an Office Assistant III position because the Occupational Safety and Health Administration (OSHA) will not fund State

functions undertaken by the Hawaii Occupational Safety & Health Division (HIOSH).

An entry level Office Assistant III position currently earns \$26,700 per annum with a fringe rate of 41.77%, which adds \$11,153 to the Department of Human Resources Development's budget.



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
**Hoisting Machine Operators Advisory Board**  
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ROBERT M. ARMSTRONG  
EXECUTIVE DIRECTOR

February 22, 2016

Mr. Mark M. Nakashima, Chairperson  
Labor and Public Employment Committee  
Hawai'i House of Representatives  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Aloha Mr. Nakashima,

Enclosed, please find documents and evidence concerning the **Hawai'i Hoisting Machine Operators Advisory Board** and our strongest objections and concerns regarding House Bill 2009.

Sixteen years ago, your body in agreement with the Senate, created our agency to oversee and certify the multitude of global crane and hoisting machine operators who come and work in our Islands. Since then, we have acted as good and responsible stewards of this sacred public trust and have kept both our more than 440 workers and the general public safe from life threatening accidents.

Despite the lack of enforcement or compliance regulations by our own Labor and Industrial Relations Department (with whom we are "attached"), today we operate on the direction of a five-member Governor-appointed Board using a part-time Executive Director, with ONLY user application fees (and investment interest) to run the agency. In fact, under the current Executive Director, who is also an MBA, HMOAB has returned a surplus to the State, two years in a row.

Put another way, the Hoisting Machine Operators Advisory Board prevents accidents from happening by insuring operators are criminally and medically fit and have been trained for the important work they do on the Islands for less than ten dollars per application.

After a decade and a half of frugal management especially in light of the bust-and-boom nature of the construction economy in the Islands, our revolving fund today stands at precisely \$358,592. HB 2009 is merely an attempt to covet that income (again, it is not taxpayer money but user fees) and use it to mask the over-spending of the first year of the Labor Department's new Director.

Given the robust construction economy here in Hawai'i where workers, not employers, now freely move from job to job; the continued influx of potential crane workers from southeast Asia and the COFA nations; and the appalling frequency of hoisting machine accidents in other parts of our country and abroad; now is NOT the time to gut this agency's revolving fund, increase costs to the taxpayers of Hawai'i, increase the burdens of HIOSH; and raise the risk of a serious accident in our beautiful State.

In fact, HMOAB operations and expertise, like boiler and elevator inspection and certification, is very specific. While it certainly can be studied, the learning curve is steep as it's not just an administrative office. An argument should also be made to separate certification procedures (which allow for employment) from enforcement, which is why this office was spun off from HIOSH nearly a decade ago.

Instead, our future is currently concerned with deploying a fully digital website and communication platform with the help of the Hawai'i Information Consortium. This process, which is two-thirds complete, is scheduled to go live online in May 2016. It will allow employee and employer to instantly know certification status and billing, get up-to-date with the latest Statewide and national hoisting machine news, and most importantly, watch and become involved with monthly public HMOAB meetings, something neighbor island members have been currently unable and prohibited from doing.

Additionally, with the anticipation of new hoisting regulations to be promulgated from the Federal government in 2017, we anticipate approaching the Legislature next year to update our own administrative rules, expand our outreach and regulatory abilities, and begin the process of co-partnering with others to create an Island-specific educational training center for the next generation of operators here in Hawai'i.

While we may have been quiet, we have clearly not been idle since our inception. Any changes to this forward and progressive trajectory must be stopped, especially as it is politically and financially motivated. If not for our silent membership, think of the million-plus residents and eight million visitors to our State who count on our operational and fiscal responsibility to protect them daily. Can this Committee honestly provide the same quality, affordability and service elsewhere?

Mahalo,

Robert M. Armstrong  
HMOAB Executive Director

February 15, 2016

The Honorable Mark M. Nakashima, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
and members  
House Committee on Labor and Public Employment  
415 South Beretania Street  
Honolulu, Hawai'i 96813

**RE: Support for HB2009, Relating to Hoisting Machine Operators**

Dear Chair Nakashima, Vice Chair Keohokalole, 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, Relating to Hoisting Machine Operators.** 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.

**Current Process to Become a Hoisting Machine Operator in the State of Hawai'i**

Currently, anyone operating a hoisting machine (e.g. a crane) in the State of Hawai'i must be certified by the Hoisting Machine Operators Advisory Board. In order to receive a certificate, one must fill out the "Hoisting Machine Operators Certification Application" and submit the application to the Board. There are five certification requirements which need to be met:

1. Two current forms of identification, such as a driver's license, passport, etc.
2. A recent photo of the applicant
3. A physical examination certificate
4. A current copy of a certificate from an accredited crane operator testing organization:
  - a. NCCCO (National Commission for the Certification of Crane Operators)
  - b. CIC (Crane Institute Certification)
  - c. NCCER (National Center for Construction Education and Research)
  - d. Operating Engineers
5. A \$50.00 fee, plus \$100.00 per year (up \$500.00 to five years)

Additionally, the application for state certification asks whether applicants have a criminal history, any physical or mental conditions that would impair their ability to work, any history of substance use, and any history of accidents while operating a hoisting machine.

### **OSHA Regulations Applicable to Hoisting Machine Operators**

OSHA recently issued new rules that revise the safety requirements for cranes and derricks in construction (29 CFR Part 1926). The new federal OSHA rules provide for four options for operator qualification or certification, all of which OSHA believes are satisfactory to ensure the health and safety of operators and the public. The four options are:

1. Certification by an accredited crane operator testing organization
2. Qualification by an audited employer program
3. Qualification by the U.S. Military
4. Licensing by a government entity

The federal OSHA rules provide for a number of other strict requirements which all hoisting machine operators in Hawai'i and all other states must abide by.

### **New OSHA Regulations Render Hawai'i Certification Process Redundant**

As explained in the previous section, OSHA regulations provide that hoisting machine operators must be certified by either a nationally recognized accreditation organization or an audited employer program such as that provided by the Operating Engineers.

The Hawai'i Hoisting Machine Operators Certification Application is therefore redundant, since one has to receive a federally-recognized certification or qualification from either an accredited crane operator testing organization" or a certificate from the Operating Engineers in order to receive the Hawai'i certification. The additional steps in the process to become certified by the state of Hawai'i, such as the expensive fee, the requirement to submit a photograph, and the requirement to receive a physical examination as part of one's certification (rather than at the time of hire by an employer), are also unnecessary, and may prove burdensome for hoisting machine operators and their employers.

For the above reasons, we respectfully request your committee's favorable action on **HB2009, Relating to Hoisting Machine Operators**.

Mahalo,



Tyler Dos Santos-Tam  
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**GCA of Hawaii**  
GENERAL CONTRACTORS ASSOCIATION OF HAWAII  
Quality People. Quality Projects.

Uploaded via Capitol Website

February 16, 2016

**LATE**

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT  
KEOHOKALO, VICE CHAIR, HOUSE COMMITTEE ON LABOR AND PUBLIC  
EMPLOYMENT

SUBJECT: **OPPOSITION TO H.B. 2009, 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: Tuesday, February 16, 2016  
TIME: 10:00 a.m.  
PLACE: Conference Room 309

Dear Chair Nakashima and Vice Chair Keohokalole 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, Relating to Hoisting Machine Operators, which proposes to repeal the Hoisting Machine Operators Advisory Board ("Hoisting Board") for reasons unknown as the proposal does not include a preamble. This proposal to repeal the Hoisting Board is premature and not appropriate as it is unknown who will fill the role of the Board. While there has been discussion that federal oversight may be on the horizon with regard to crane operators, such decisions have yet been initiated, 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, as it 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, this is of concern because there has been a shortage of staff at HIOSH regarding management duties of licensing and permitting. Further, with regard to the funding that this Board currently

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