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STATE OF HAWAII  
KA MOKU'ĀINA O HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
KA 'OIHANA PONO LIMAHANA

March 5, 2026

To: The Honorable Karl Rhoads, Chair,  
The Honorable Mike Gabbard, Vice Chair, and  
Members of the Senate Committee on Judiciary

Date: Thursday, March 5, 2026  
Time: 10:01 a.m.  
Place: Conference Room 016, State Capitol

From: Jade T. Butay, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: S.B. 3144 S.D.1 RELATING TO THE HAWAII OCCUPATIONAL  
SAFETY AND HEALTH LAW**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The **DLIR strongly supports** this Governor's Package measure, which repeals the Hoisting Machine Operators Advisory Board (HMOAB) and the rules requiring a separate State crane operator certificate. The measure also provides additional time for the Director of Labor and Industrial Relations to complete investigations of discrimination complaints involving employees who exercise their rights under the Occupational Safety and Health Law, without the need for a formal extension.

**II. CURRENT LAW**

§396-19 (Act 165, SLH 1998) created the HMOAB, which is composed of five members appointed by the Governor. The HMOAB is responsible for adopting rules for State certification of crane operators and is authorized to employ a 0.5 FTE position without regard to HRS Chapters 76 and 89.

§396-8(e) prohibits retaliation (discharge or discrimination) against employees who report workplace hazards.

Paragraph (7) of 396-8(e) requires the Director to notify an employee, within 90 days of the filing of a complaint, of the final determination and any subsequent action the department will take to resolve the complaint, unless the Director formally extends the response period.

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

The law establishing the HMOAB was enacted in 1998, through Act 165, before OSHA promulgated a federal standard for crane operators. At that time, OSHA had only begun considering updates to its crane and derrick regulations in response to a series of high-profile crane accidents in the early 1990s, and industry groups had been urging modernization for years. OSHA formally initiated a negotiated rulemaking process in 2003 by convening the Cranes and Derricks Advisory Committee (C-DAC). C-DAC completed a consensus draft in 2004, and OSHA subsequently published a proposed standard in 2008.

OSHA published the final Cranes and Derricks in Construction standard on August 9, 2010 (75 FR 48135). Although the 2010 rule included operator certification requirements, OSHA repeatedly delayed enforcement: first to 2014, then to 2017, and finally to 2018. This rulemaking process is widely regarded as one of the longest and most complex in OSHA's history.

During this period, the HMOAB adopted its own rules (HAR §12-48) requiring certification of hoisting machine operators. As a result, Hawai'i law currently requires a State certification in addition to the certification mandated by OSHA under 29 C.F.R. §1926.1427. The Hawai'i certificate is not required by OSHA regulations, it is issued only after an operator already holds OSHA-compliant certification. This duplicative requirement adds paperwork, fees, and delays without providing any additional safety benefit.

Repealing §396-19 will eliminate the Board and its authority to require a separate state certificate, while OSHA's rigorous national certification standards will continue to apply. This change streamlines governance and the administrative process.

The proposed amendment to §396-8(e)(7) is consistent with the OSHA standard at 29 C.F.R. § 1977.16. This amendment ensures that the Department can complete complex investigations that cannot reasonably be resolved within ninety days by allowing one additional ninety-day period without notice, and by requiring that any further extensions be made by the Director with notice to the employee explaining the additional time needed and the expected date of the final determination.

This amendment will provide the Director with adequate time to properly investigate whistleblower complaints and will give employees and employers clearer expectations regarding investigation timelines and resulting determinations.

Thank you for the opportunity to provide testimony on this matter of importance to the Department.