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February 21, 2020

LATE

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

Date: Friday, February 21, 2020
Time: 10:45 a.m.
Place: Conference Room 016, State Capitol

From: Scott T. Murakami, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 2263 S.D. 1 RELATING TO EDUCATION

I. OVERVIEW OF PROPOSED LEGISLATION

SB2263 SD1 amends Section 302A-420, Hawaii Revised Statutes (HRS), by including commercial enterprises as a pursuit that students may earn compensation or school credit for.

The DLIR provides comments and notes concerns about some unintended consequences.

II. COMMENTS ON THE SENATE BILL

The DLIR recognizes that this measure is attempting to provide opportunities for students to experience commercial enterprises while earning either compensation or school credits.

The DLIR notes the following about the measure:

- It is unclear who the employer of the students would be. If the Department of Education (DOE) is the employer, then students would be exempt from the State's Minimum Wage and Child Labor Laws as State employees are exempted from these laws. However, students would fall under the federal Fair Labor Standards Act (FLSA), meaning that the students would be subject to child labor, minimum wage, and overtime provisions in federal law.

- If a private commercial enterprise is the employer, then students would be subject to the State's Minimum Wage and Child Labor Laws.
- If a private commercial enterprise is the employer, then depending on the number of hours worked, students would be entitled to Prepaid Health Care.
- If the DOE is the employer, then depending on the number of hours worked and the duration of the program, students may be eligible for health insurance as the State offers health insurance to full-time employees that work ninety days or more.
- Under this measure as drafted, for unemployment insurance purposes, the DOE would be the employer of the students as the DOE is responsible for the accounting and determining the distribution of the profits, whether it be to the DOE or to the students themselves.
- Regardless of who the employer is, students would be entitled to workers' compensation and temporary disability insurance.
- Regardless of who the employer is, the employer would be subject to Safety and Health laws and standards. The Department notes that its Occupational Safety and Health division inspects most employers, including the DOE, for compliance with the Safety and Health laws and standards.