

JAN 26 2009

A BILL FOR AN ACT

RELATING TO THE BOILER AND ELEVATOR SAFETY LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to allow the
2 department of labor and industrial relations to establish re-
3 inspection frequencies for elevators and kindred equipment based
4 on factors that may affect the safe operation of the equipment.
5 Currently, the law requires that re-inspections for renewals of
6 permits to operate not exceed one year. The intent is to
7 provide incentives to building owners and managers to take the
8 necessary steps to provide for the safe operation of elevators
9 and kindred equipment. Those who have newer equipment with
10 fail-safe technology and who regularly maintain the equipment in
11 a safe operating condition will be allowed a longer interval
12 between re-inspections and thus incur less costs in inspections.
13 Equipment that is older and inadequately maintained will be
14 subjected to more frequent re-inspections and the owner will
15 have to pay for the additional inspections. Involvement by the
16 regulated community is necessary to assure the safe operation of
17 the equipment.

1 Other amendments are mostly housekeeping in nature, and
2 where the department needs to gather information as part of its
3 investigations or inspections, records and documents may be
4 requested in addition to asking questions.

5 SECTION 2. Section 397-4, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§397-4 Powers and duties.** (a) Administration.

8 (1) The department shall establish a boiler and elevator
9 inspection branch for the enforcement of the rules
10 adopted under this chapter and other duties as
11 assigned;

12 (2) The department shall:

13 (A) Implement and enforce the requirements of this
14 chapter; and

15 (B) Keep adequate and complete records of the type,
16 size, location, identification data, and
17 inspection findings for boilers, pressure
18 systems, amusement rides, and elevators and
19 kindred equipment required to be inspected
20 pursuant to this chapter;

21 (3) The department shall formulate definitions and adopt
22 and enforce standards and rules pursuant to chapter 91

1 that may be necessary for carrying out this chapter.
2 Definitions and rules adopted in accordance with
3 chapter 91 under the authority of chapter 396, prior
4 to the adoption of this chapter that pertain to
5 boilers, pressure systems, amusement rides, and
6 elevators and kindred equipment required to be
7 inspected pursuant to this chapter, shall be continued
8 in force under the authority of this chapter;

9 (4) Emergency temporary standards may be adopted without
10 conforming to chapter 91 and without hearings to take
11 immediate effect upon giving public notice of the
12 emergency temporary standards or upon another date
13 that may be specified in the notice. An emergency
14 temporary standard may be adopted, if the director
15 determines:

16 (A) That the public or individuals are exposed to
17 grave danger from exposure to hazardous
18 conditions or circumstances; and

19 (B) That the emergency temporary standard is
20 necessary to protect the public or individuals
21 from danger.

1 Emergency temporary standards shall be effective until
2 superseded by a standard adopted under chapter 91, but
3 in any case shall be effective no longer than six
4 months;

5 (5) Variances from standards adopted under this chapter
6 may be granted upon application of an owner, user,
7 contractor, or vendor. Application for variances
8 shall correspond to procedures set forth in the rules
9 adopted pursuant to this chapter. The director may
10 issue an order for variance, if the director
11 determines that the proponent of the variance has
12 demonstrated that the conditions, practices, means,
13 methods, operations, or processes used or proposed to
14 be used will provide substantially equivalent safety
15 as that provided by the standards;

16 (6) Permits.

17 (A) The department shall issue a "permit to operate"
18 regarding any boiler, pressure system, amusement
19 ride, or elevator and kindred equipment if found
20 to be safe in accordance with rules adopted
21 pursuant to chapter 91;

1 (B) The department may immediately revoke any "permit
2 to operate" of any boiler, pressure system,
3 amusement ride, or elevator and kindred equipment
4 found to be in an unsafe condition or where a
5 user, owner, or contractor ignores prior
6 department orders to correct specific defects or
7 hazards and continues to use or operate the above
8 mentioned apparatus without abating the hazards
9 or defects;

10 (C) The department shall reissue a "permit to
11 operate" to any user, owner, or contractor who
12 demonstrates that the user, owner, or contractor
13 is proceeding in good faith to abate all
14 nonconforming conditions mentioned in department
15 orders and the boilers, pressure systems,
16 amusement rides, and elevators and kindred
17 equipment are safe to operate; and

18 (D) The department shall establish criteria for the
19 periodic reinspection and renewal of the permits
20 to operate, and may provide for the issuance of
21 temporary permits to operate while any
22 noncomplying boiler, pressure system, amusement

1 ride, and elevator and kindred equipment are
2 being brought into full compliance with the
3 applicable standards and rules adopted pursuant
4 to this chapter[~~; provided that the period~~
5 ~~between an initial safety inspection or the~~
6 ~~inspection used as a basis for the issuance of a~~
7 ~~permit to operate, and any subsequent inspection~~
8 ~~of elevators and kindred equipment shall not~~
9 ~~exceed one year;]. Criteria to be used for the
10 periodic reinspection and renewal of a permit to
11 operate shall include age and type of equipment,
12 discrepancy history, and whether the equipment is
13 regularly and adequately maintained in a safe
14 operating condition, but in no case shall the
15 reinspection period exceed three years for
16 elevators and kindred equipment;~~

- 17 (7) No boiler, pressure system, amusement ride, or
18 elevator and kindred equipment which are required to
19 be inspected by this chapter or by any rule adopted
20 pursuant to this chapter shall be operated, except as
21 necessary to install, repair, or test, unless a permit

1 to operate has been authorized or issued by the
2 department and remains valid; and
3 (8) The department, upon the application of any owner or
4 user or other person affected thereby, may grant time
5 that may reasonably be necessary for compliance with
6 any order. Any person affected by an order may for
7 cause petition the department for an extension of
8 time.

9 (b) Inspection and investigation.

10 (1) Authorized representatives of the director shall
11 have the right to enter without delay during
12 regular working hours and at other reasonable
13 times any place, establishment, or premises in
14 which are located boilers, pressure systems,
15 amusement rides, and elevators and kindred
16 equipment requiring inspection pursuant to this
17 chapter.

18 (2) The department shall inspect for the purpose of
19 insuring compliance with the purposes and
20 provisions of this chapter any activity related
21 to the erection, construction, alteration,
22 demolition or maintenance of buildings,

1 structures, bridges, highways, roadways, dams,
2 tunnels, sewers, underground buildings or
3 structures, underground pipelines or ducts, and
4 other construction projects or facilities.

5 (3) The department shall review plans and make
6 inspections, and investigations of boilers, and
7 pressure systems, and the premises appurtenant to
8 each at times and at intervals determined by the
9 director for the purpose of insuring compliance
10 with the purpose and provisions of this chapter.
11 This section shall not apply to single family
12 dwellings or multiple dwelling units of less than
13 six living units.

14 (4) The department shall review plans and make
15 inspections, and investigations of elevators and
16 kindred equipment and the premises appurtenant to
17 each at times and at intervals determined by the
18 director for the purpose of insuring compliance
19 with the purposes and provisions of this
20 chapter. This section shall not apply to single
21 family dwellings.

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- 1 (5) The department shall inspect, at least semi-
2 annually all mechanically or electrically
3 operated devices considered as major rides and
4 used as amusement rides at a carnival, circus,
5 fair, or amusement park for the purpose of
6 protecting the safety of the general public.
7 This section shall not apply to any coin operated
8 ride or mechanically or electrically operated
9 devices considered or known in the amusement
10 trade as kiddie rides.
- 11 (6) The department may investigate accidents
12 involving boilers, pressure systems, amusement
13 rides, and elevators and kindred equipment
14 inspected under this chapter and may issue orders
15 and recommendations with respect to the
16 elimination and control of the cause factors.
- 17 (7) The department shall have the right to question
18 and to obtain records and documents of any
19 employer, owner, operator, agent, or employee in
20 investigation, enforcement, and inspection
21 activities covered by this chapter.

1 (8) Any employee of the State acting within the scope
2 of the employee's office, employment, or
3 authority under this chapter shall not be liable
4 in or made a party to any civil action growing
5 out of the administration and enforcement of this
6 chapter.

7 (c) Education and training.

8 (1) The department may disseminate through
9 exhibitions, pictures, lectures, pamphlets,
10 letters, notices, and any other method of
11 publicity, to owners, users, vendors, architects,
12 contractors, employees, and the general public
13 information regarding boilers, pressure systems,
14 amusement rides, and elevators and kindred
15 equipment required to be inspected pursuant to
16 this chapter.

17 (2) Where appropriate, the department may undertake
18 programs in training and consultation with
19 owners, users, property management firms,
20 vendors, architects, contractors, employees, and
21 the general public regarding the safety

1 requirements of this chapter and the rules and
2 regulations.

3 (d) Enforcement.

4 (1) Whenever right of entry to a place to inspect any
5 boiler, pressure system, amusement ride, or
6 elevator and kindred equipment required by this
7 chapter to be inspected is refused to an
8 authorized representative of the director, the
9 department may apply to the circuit court where
10 such place exists for a search warrant providing
11 on its face that the wilful interference with its
12 lawful execution may be punished as a contempt of
13 court.

14 (2) Whenever the department finds that the
15 construction of or the operation of any boiler,
16 pressure system, amusement ride, or elevator and
17 kindred equipment required to be inspected by
18 this chapter is not safe, or that any practice,
19 means, method, operation, or process employed or
20 used is unsafe or is not in conformance with the
21 rules and regulations promulgated pursuant to
22 this chapter, the department shall issue an order

1 to render the construction or operation safe or
2 in conformance with this chapter or rules and
3 regulations and deliver the same to the
4 contractor, owner, or user. Each order shall be
5 in writing and may be delivered by mail or in
6 person. The department may in the order direct
7 that, in the manner and within a time specified
8 such additions, repairs, improvements, or changes
9 be made and such safety devices and safeguards be
10 furnished, provided and used as are reasonably
11 required to insure compliance with the purposes
12 and provisions of this chapter. The owner, or
13 user, or contractor shall obey and observe all
14 orders issued by the department or be subject to
15 appropriate civil penalties.

- 16 (3) Whenever in the opinion of the department the
17 condition of, or the operation of boilers,
18 pressure systems, amusement rides, or elevators
19 and kindred equipment required to be inspected by
20 this chapter, or any practice, means, method,
21 operation, or process employed or used, [~~is~~
22 ~~unsafe, or is not properly guarded or is~~

1 ~~dangerously placed,~~] constitutes an imminent
2 hazard to the life or safety of any person, the
3 use thereof may be prohibited by the department,
4 an order to that effect shall be posted
5 prominently on the equipment, or near the place
6 or condition referred to in the order. The order
7 shall be removed when a determination has been
8 made by an authorized representative of the
9 department that the boilers, pressure systems,
10 amusement rides, or elevators and kindred
11 equipment are safe and the required safeguards or
12 safety devices are provided.

13 [~~(4) When in the opinion of the department the~~
14 ~~operation of boilers, pressure systems, amusement~~
15 ~~rides, or elevators and kindred equipment,~~
16 ~~required to be inspected by this chapter or any~~
17 ~~practice, means, method, operation or process~~
18 ~~employed or used constitutes an imminent hazard~~
19 ~~to the life or safety of any person, or to~~
20 ~~property, the department may apply to the circuit~~
21 ~~court of the circuit in which such boilers,~~
22 ~~pressure systems, amusement rides, or elevators~~

1 ~~and kindred equipment are situated or such~~
2 ~~practice, means, method, operation or process is~~
3 ~~employed for an injunction restraining the use or~~
4 ~~operation until the use or operation is made~~
5 ~~safe. The application to the circuit court~~
6 ~~accompanied by an affidavit showing that the use~~
7 ~~or operation exists in violation of a standard,~~
8 ~~rule, regulation, variance, or order of the~~
9 ~~department and constitutes an imminent hazard to~~
10 ~~the life or safety of any person or to property~~
11 ~~and accompanied by a copy of the standard, rule,~~
12 ~~regulation, variance, or applicable order, shall~~
13 ~~warrant, in the discretion of the court, the~~
14 ~~immediate granting of a temporary restraining~~
15 ~~order. No bond shall be required from the~~
16 ~~department as a prerequisite to the granting of a~~
17 ~~restraining order.]~~

18 ~~(+5)~~ (4) The director and the director's authorized
19 representative shall have the same powers
20 respecting the administering of oaths, compelling
21 the attendance of witnesses, the production of
22 documentary evidence, and examining or causing to

1 be examined witnesses as are possessed by the
2 court and may take depositions and certify to
3 official acts. The circuit court of any circuit
4 upon application by the director shall have the
5 power to enforce by proper proceedings the
6 attendance and testimony of any witness so
7 subpoenaed. Subpoena and witness fees and
8 mileage in such cases shall be the same as in
9 criminal cases in the circuit courts. Necessary
10 expenses of, or in connection with, such hearings
11 or investigations shall be payable from the funds
12 appropriated for expenses of administration of
13 the department. No person shall be excused from
14 attending or testifying or producing materials,
15 books, papers, correspondences, memoranda, and
16 other records before the director or in obedience
17 to subpoena on the grounds that the testimony or
18 evidence, documentary or otherwise, required of
19 the person may tend to incriminate the person or
20 subject the person to a penalty or forfeiture;
21 but no individual shall be prosecuted or
22 subjected to any penalty or forfeiture for or on

1 account of any transaction, matter, or thing
2 concerning which the individual is compelled,
3 after having claimed the individual's privilege
4 against self-incrimination, to testify or produce
5 evidence, documentary, or otherwise, except that
6 such individuals so testifying shall not be
7 exempt from prosecution and punishment for
8 perjury committed in so testifying.

9 [+6+] (5) Where a condition or practice involving any
10 boiler, pressure system, amusement ride, or
11 elevator and kindred equipment required to be
12 inspected by this chapter could reasonably be
13 expected to cause death or serious physical harm,
14 the department shall have the right, independent
15 of any other enforcement powers under this
16 chapter, to:

17 (A) Immediately take steps to obtain abatement
18 by informing the owners, users, contractors, and
19 all persons in [~~harm~~] harm's way of such hazard
20 by meeting, posted notice, or otherwise;

21 (B) Take steps to immediately obtain abatement
22 through direct control or elimination of the

1 hazard if after reasonable search, the user,
2 owner, or contractor or their representative is
3 not available;

4 (C) Take steps to obtain immediate abatement
5 when the nature and imminency of the danger or
6 hazard does not permit a search for the owner,
7 user, or contractor; and

8 (D) Where appropriate, initiate necessary legal
9 proceedings in the circuit court of the circuit
10 in which such boiler, pressure system, amusement
11 ride, or elevator and kindred equipment is
12 situated for an injunction to require abatement
13 by the owner, user or contractor.

14 [~~7~~] (6) The department may prosecute, defend,
15 and maintain actions in the name of the
16 department for the enforcement of the provisions
17 of this chapter, including the enforcement of any
18 order issued by it, the appeal of any
19 administrative or court decision, and other
20 actions necessary to enforce this chapter."

21 SECTION 3. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

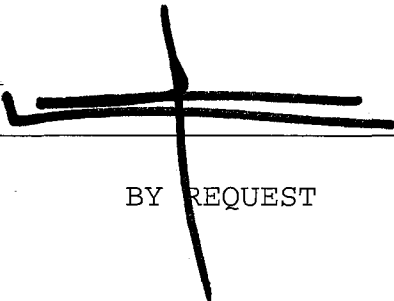
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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:



4

BY REQUEST

Report Title:

Boiler and elevator safety; renewal inspections; housekeeping amendments.

Description:

Permits the department to set re-inspection frequencies for renewal permits based on factors relevant to the safe operation of the equipment; clarifies that in addition to asking questions relating to an investigation, enforcement and inspection activities, that the department may also obtain relevant records; housekeeping amendments for spelling and clarification.

SB 948

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO THE BOILER AND ELEVATOR SAFETY LAW.

PURPOSE: The purpose of this Act is to allow the department to establish reinspection frequencies for boilers, pressure systems, amusement rides, elevators, and kindred equipment based on factors that may affect the safe operation of the equipment. Currently, the law requires that reinspections for renewals of permits to operate not exceed one year. The intent is to provide incentives to building owners and managers to take the necessary steps to provide for the safe operation of elevators and kindred equipment. Those who have newer equipment with fail-safe technology, and who regularly maintain the equipment in a safe operating condition will be allowed a longer interval between reinspections and thus incur less costs in inspections. Equipment that is older and inadequately maintained will be subjected to more frequent reinspections and greater costs. Involvement by the regulated community is necessary to assure the safe operation of the equipment. Other amendments include clarifying that records and documents may also be obtained when the department conducts an investigation or inspection under the chapter; and housekeeping amendments for clarity and grammar.

MEANS: Amend section 397-4, Hawaii Revised Statutes (HRS).

JUSTIFICATION: New technology has made elevator use safer than ever before. It has also increased the knowledge and skill level required to conduct inspections necessary for public safety. The department is experiencing a shortage of qualified elevator inspectors as

a result of having to compete with the private sector where the pay is two to three times more than the State is able to pay.

Data shows that the primary causes of accidents are not equipment malfunction but rather misuse of the equipment - the prevention of which is the responsibility of the owner and manager of the equipment. It is, therefore, in the best interest of public safety to involve the building owner or manager in the safe operation and use of elevators and kindred equipment. A transparent reinspection structure would motivate building owners and managers to ensure the safe use of elevators and kindred equipment. Less frequent inspections means less cost in paying fees to the department and more money available to maintain the equipment. Those who choose not to maintain their equipment will face more frequent inspections and greater inspection costs.

Impact on the public: Improved safety.

Impact on the department and other agencies:
Greater efficiency in inspection activities.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LBR-143.

OTHER AFFECTED
AGENCIES: Department of Accounting and General
Services.

EFFECTIVE DATE: Upon approval.