

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

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January 30, 2012

To: The Honorable Karl Rhoads, Chair, Kyle Yamashita, Vice Chair,  
and Members of the House Committee on Labor & Public Employment

The Honorable Angus L.K. McKelvey, Chair, Isaac W. Choy, Vice Chair,  
and Members of the House Committee on Economic Revitalization &  
Business

Date: Tuesday, January 31, 2012  
Time: 11:30 a.m.  
Place: Conference Room 309, State Capitol

From: Dwight Y. Takamine, Director  
Department of Labor and Industrial Relations

**Re: H.B. No. 1725 Relating to Elevator Safety**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB1725 requires the department to authorize third party elevator inspections to perform safety inspections required by law.

Key provisions of the bill include the following:

- The department appreciates the intent of the measure but suggests that establishing a special fund for the operations and staffing of the Boiler and Elevator Inspection Branch as proposed in HB2575 is the best method of addressing the current elevator safety problem.
- Adding a new section to chapter 397 the Hawai'i Revised Statutes to authorizing private third party elevator inspectors who meet the requirements under §397-6(d), HRS, to perform elevator safety inspections.
- Allows private third party inspectors to charge reasonable fees provided any revenue be remitted to the director for deposit into the general fund.

## II. CURRENT LAW

The Boiler and Elevator Inspection Branch has the responsibility for ensuring the safety of elevators and kindred equipment. Only inspectors employed by the department who meet the criteria of the American Society of Mechanical Engineers (ASME) and the standards for elevator inspectors of the American National Standards Institute (ANSI) may conduct elevator inspections in this state.

## III. COMMENTS ON THE HOUSE BILL

- The department appreciates the intent of the measure but suggests that establishing a special fund for the operations and staffing of the Boiler and Elevator Inspection Branch as proposed in HB2575 is the best method of addressing the current elevator safety problem
- Allowing private third party inspections would raise a potential conflict of interest issue if a private elevator inspector, who is employed by an elevator maintenance company, conducts an inspection of an elevator for which his company is responsible. The department believes that public safety is of paramount importance and permitting potential conflicts of interest is not in the public's interest.
- HB2575 establishes a boiler and elevator special fund to provide a mechanism for self-sufficiency for the Boiler and Elevator Inspection Branch of the Hawai'i Occupational Safety and Health Division (HIOSH). HB2575 takes away the likelihood that the program will suffer from repeated and often automatic across the board cuts because it establishes a boiler and elevator special fund that is funded by fees assessed on the elevator owners who are most immediately impacted by the program.
- The department has been working with the various stakeholders since last session to reach consensus and draft HB2575.
- Utilizing private third party inspectors appears to be in conflict with the Hawai'i Supreme Court's ruling in the *Konno v. County of Hawai'i*, 85 Haw. 61, 937 P.d 397 (1997), wherein the court ruled that where the state provides a service that is customarily and historically provided by civil service, it cannot deprive these workers of the protections of civil service by privatization.



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The Twenty-Sixth Legislature, State of Hawaii  
House of Representatives  
Committee on Labor and Public Employment  
and  
Committee on Economic Revitalization and Business

Testimony by  
Hawaii Government Employees Association  
January 31, 2012

H.B. 1725 – Relating to Elevator Safety

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of H.B. 1725, which authorizes the third party elevator inspectors to perform safety inspections of elevators. We oppose this bill for several important reasons.

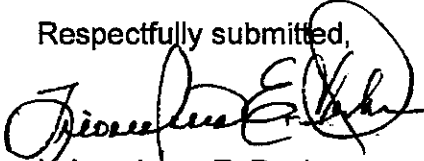
First, it is unnecessary because of H.B. 2575, which creates a special fund and provides a viable mechanism for the program to become self-sustaining and hire a sufficient number of qualified elevator inspectors. The bill increases a wide range of fees that have not been raised since the late 1990's. H.B. 2575 also gives the Director of the Department of Labor and Industrial Relations (DLIR) the authority to establish 10 additional positions, which may include a branch manager, six full-time elevator inspectors, one boiler inspector and two office assistants.

Second, ensuring public health and safety with respect to elevators, escalators, boilers and amusement rides should remain within the public sector and not be contracted out to third parties. This is a fundamental responsibility of the DLIR and the Hawaii Occupational Health and Safety Division (HIOSH) and has been for decades.

Third, under the "nature of the services" test established through the *Konno* decision, services that have been "customarily and historically provided by civil servants" cannot be privatized absent a showing that civil servants cannot provide those services. Clearly, these services have been historically provided by civil servants, and H.B. 2575 will provide the additional inspectors required to eliminate the backlog of elevator inspections.

For all of these reasons, we oppose H.B. 1725 and support H.B. 2575.

Respectfully submitted,



Leiomalama E. Desha  
Deputy Executive Director

Testimony in opposition to HB1725.

With respect to authorizing the Department of Labor to initiate third party inspections of elevators and related equipment I would like to offer some pertinent insight. I am retired from the elevator industry after a thirty-six year career, during which I participated in various levels throughout the industry. I served as the chairman of the elevator licensing board, and achieved the highest level of journeyman status for my final 15 years in the trade. Subsequent to my retirement I accepted a position as an elevator inspector with the state. Having witnessed first hand the rapid changes that have occurred in the elevator industry for the past twenty years, combined with the state's neglect in adopting regulatory codes designed specifically to address this changing technology, prompted me to join the department in order to strongly encourage the long overdue updating of the codes.

Examining the recent history of the Boiler and Elevator Inspection branch clearly reveals the reasons behind it's current situation. Severe staffing cuts, non-competitive wages, and returning to a general fund rather than a revolving fund basis of operation, combined with a steadily growing inventory of elevators to be inspected has resulted in a large backlog of expired operating permits. Despite recent efforts to improve productivity, the simple fact of inadequate manpower remains an unavoidable obstacle in keeping pace with the demand.

A significant advantage we have has been the quality of work performed by the elevator contractors in our state. Additionally, the licensing requirements currently in place, combined with the industry's own excellent educational program, has to date provided our riding public with safe, reliable transportation. The advent of microprocessor control systems has introduced a myriad of new challenges, especially with respect to the maintenance and repair of virtually proprietary equipment. This fact alone dramatically increases the importance of legislatively ensuring regulatory codes are in place to deal with the ramifications of these advances in technology.

With respect to addressing the current backlog there is a bill being submitted that will add six more elevator inspectors, a boiler inspector, and additional clerical staff to the department. Also, this bill will increase fees to a level that will allow a revolving fund to provide operating costs for the entire department, with excess monies returning to the general fund. This bill also contains a provision for the Department of Labor Director to establish a wage scale sufficient to attract qualified applicants.

Authorizing private inspections may indeed reduce the looming backlog, but I would urge your consideration with the implications of such a solution. Currently there are 16 individuals in this state that have the necessary credentials to be able to perform elevator inspections. All but one are employed either by the state or are supervisors in the industry. Effective third party inspection services would require importing qualified individuals from the mainland. Another potential source of candidates might emerge from the industry itself, although active employees in the elevator trade would face an obvious conflict of interest if performing inspections on either their own equipment or a competitor's. Additionally, should a mainland company relocate here and perform inspections, considerable confusion would occur due to this state's outdated level of regulatory codes combined with the impending rules change that hopefully will provide a code level more reflective of current elevator technology. The transition between the older code and the newer one will require extensive and ongoing cooperation between the industry, the community, and the inspection department.

In summation, I would encourage you to proceed with a revitalization plan for the department, and allow it to regain functional status. Although the situation is reaching a critical point, we here

in Hawaii have benefited from a professional, highly qualified industry, which continues to provide the riding public with safe equipment. Equally important in the department's recovery is the necessity of providing relevant levels of regulatory code requirements as mentioned already. Rather than authorizing privatization as a short term solution, certainly a viable option, I hope you will chose to provide the existing elevator inspection department with the tools it needs to be successful.

Please feel free to contact me at any time. I certainly am not very familiar with legislative procedures, but I am somewhat knowledgeable with regard to the elevator industry as well as the constantly changing code requirements attempting to keep pace with it's changes.

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## **HB1725**

Relating to Third Party Inspectors  
House Committee on Labor & Public Employment  
House Committee on Economic Revitalization & Business  
House Committee on Finance

Joint Public Hearing – February , 2012  
1: 15 p.m., State Capitol, Conference Room 225

By

Michael J Panzo, Dynamic Elevator Systems, LLC

HB 1725 indicates a need in the community for consistent elevator inspection, which has been inconsistent in the last twenty years to due State budgetary shortfalls. The introduction of third party elevator inspectors will enhance safeguards to the population of the State of Hawaii in various measures. It will place responsibility, of the owner of an elevator to hire and pay a third-party qualified elevator inspector to conduct required inspections and certified compliance, it will as required by law and according to ASME A17.1/CSA B44.1.

Findings by the Division of Labor and Industrial relations has shown that historically, the State has been unable to keep pace with the demands of inspections mandated to insure the riding public's safety. Allowing third-party inspectors will reduce costs to the State, eliminate delays and inconveniences to the public and the property owner while increasing the safety of the vertical riding public.

With the unintended lapse in elevator inspections due to insufficient budgeting, has placed the general publics safety in harms way, in an environment, where its an accident waiting to happen, and constant state of near misses. Part of the consequences of under budgetary shortfalls, has left the State inspecting modern technology with utilizing codes (1996) that are not applicable. This too enhances problematic conditions, regarding elevator safety factors, and places the general public in harms way. Its not an intentional act, but the consequence of budgetary restraints, causes forward movement conditions to keep current with applicable requirements, to be placed on hold. Currently, State employed elevator inspectors are having to self interpret elevator codes, stretching the codes intent to certify an elevator.

This places the State employed elevator inspector directly responsible for the safety, injury or death for millions of daily riders throughout the year. One accident would have the ripple effect from the individual who has been hurt or killed, the lives of those individual's affected by the person hurt or killed, and the emotional and financial well being of the State elevator inspector themselves, as well as the State. To prevent foreseen and unforeseen problems or accidents, the circumstances are plain and clear. The State has the responsibility to look after and protect the general public by implementing what is necessary to carry out that mission. In this case, I humbly ask this committee to do that now.

I understand there will be individuals and organizations that will argue against the implementation of third party inspectors, but when you take into consideration the past history of budgetary restrictions and affecting elevator compliance certification to mandated laws, industry codes and standards the elevator industry, It is time to implement acceptable, reasonable and responsible measures.

By passing HB 1979, to approve third party inspections, you will diminish elevators operating without being properly inspected according to law and industry standards, elevators will be inspected with the most current applicable codes, specific to the elevator equipment, it will generate more jobs and revenue for the State, elevator equipment will be able to apply the elevator codes more precisely by automatically adopting the most current elevator codes, as written, no interpretation, creating safer conditions for the public. By approving legislation, for third party elevator inspectors, there will never be a shortage of inspectors due economic conditions by the state.

Thank you for the opportunity to comment on this bill.

The Twenty-Sixth Legislature  
Regular Session of 2012

HOUSE OF REPRESENTATIVES  
Committee on Labor & Public Employment  
Rep. Karl Rhoads, Chair  
Rep. Kyle T. Yamashita, Vice Chair  
Committee on Economic Revitalization & Business  
Rep. Angus L.K. McKelvey, Chair  
Rep. Isaac W. Choy, Vice Chair

LATE

State Capitol, Conference Room 309  
Tuesday, January 31, 2012; 11:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1725  
RELATING TO ELEVATOR SAFETY**

The ILWU Local 142 opposes H.B. 1725, which requires DLIR to authorize private third party elevator inspectors and provides minimum standards for private third party elevator inspectors.

Due to staff layoffs over the past several years, the Elevator Inspection Branch has suffered a backlog of elevator inspections. This clearly poses a hazard for the public if inspections of elevators are put off for too long. However, using third-party inspectors is not the solution for several reasons. Third-party inspectors will charge a fee, which contractors will, of course, prefer not to pay, and private inspectors may present a conflict of interest. State inspectors will likely be the most impartial.

The Department of Labor and Industrial Relations is proposing establishment of a Special Fund into which will be placed fees for permits, inspections, and certificates. The Fund will be used to support and sustain the Elevator Inspection Branch. We believe this is a more rational, feasible, and impartial way of addressing the need for elevator inspections rather than resorting to third-party inspectors.

The ILWU urges that H.B. 1725 be filed. Thank you for the opportunity to testify.



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**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

**LATE**

Uploaded via Capitol Website

January 31, 2012

**TO: HONORABLE REPRESENTATIVES KARL RHOADS, CHAIR, KYLE YAMASHITA, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**

**HONORABLE REPRESENTATIVES ANGUS MCKELVEY, CHAIR, ISAAC CHOY, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS**

**SUBJECT: COMMENTS REGARDING H.B. 1725, RELATING TO ELEVATOR SAFETY. Requires DLIR to authorize private third party elevator inspectors. Provides minimum standards for private third party elevator inspectors.**

**NOTICE OF HEARING**

**DATE: Tuesday, January 31, 2012**  
**TIME: 11:30 AM**  
**PLACE: Conference Room 309**

Dear Chair Rhoads, Vice Chair Yamashita, Chair McKelvey, Vice Chair Choy and Members of the Committees:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is celebrating its 80<sup>th</sup> anniversary this year; it remains the largest construction association in the State of Hawaii. GCA is submitting **comments regarding H.B. 1725, Relating to Elevator Safety.**

H.B. 1725 proposes to require the Department of Labor and Industrial Relations to allow third party inspectors to perform elevator safety inspections required by law. The third-party inspectors will be held to the highest standards of professionalism, quality and ethics and shall meet the requirements provided under Section 397-6(d), Hawaii Revised Statutes, the current Boiler and Elevator Safety Law.

Although GCA supports the intent of H.B. 1725, which is to curtail the backlog of elevator inspections, GCA has its reservations due to the decision of the Hawaii Supreme Court in *Konno vs. County of Hawaii*, 85 Haw. 61, 937 P. 2d 397 (1997), governing civil service positions. The Court held that civil service “encompasses those services that have been customarily and historically provided by civil servants,” unless one of the enumerated exceptions applies. Therefore, GCA defers to the Department of Labor and Industrial relations on this measure.

Thank you for the opportunity to testify on this measure.

George M. Waialeale  
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Email: [geedubbyou@aol.com](mailto:geedubbyou@aol.com)  
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LATE

January 31, 2012

HB 1725 Relating to Elevator Safety

Committee on Labor and Public Employment

Committee on Economic Revitalization and Business

I am here to testify against House Bill 1725. To required the Department of Labor to authorize private third party elevator inspectors. Provides minimum standards for private third party elevator inspectors.

I request this bill held.

George Waialeale