

# SB 2401

## **RELATING TO ELEVATOR INSPECTIONS**

*Description:*

Authorizes the department of labor and industrial relations to use qualified third-party elevator inspectors when necessary.



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

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February 14, 2012

To: The Honorable Will Espero, Chair, Michelle N. Kidani, Vice Chair, and  
Members of the Senate Committee on Public Safety, Government  
Operations, and Military Affairs

Date: Tuesday, February 14, 2012  
Time: 3:15 p.m.  
Place: Conference Room 224, State Capitol

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

**RE: SB2401 RELATING TO ELEVATOR INSPECTIONS**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB2401 requires the department to authorize third party elevator inspections to perform safety inspections required by law.

Key provisions of the bill include:

- An amendment to chapter 397, Hawai'i Revised Statutes (HRS), to permit qualified third-party inspectors, who meet the requirements under §397-6(d), to provide elevator and related inspection work to the department.
- The ability of the department to procure such third-party inspections through the Hawaii Public Procurement Code (chapter 103D).

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 SB2220 is the best method of addressing the current elevator safety problem.

**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 SENATE 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 SB2220 is the best method of addressing the current elevator safety problem
- SB2220 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). SB2220 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 a measure similar to SB2220.
- 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.
- 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.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION  
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Sixth Legislature, State of Hawaii  
Hawaii State Senate  
Committee on Public Safety, Government Affairs and Military Affairs

Testimony by  
Hawaii Government Employees Association  
February 14, 2012

S.B. 2401 – Relating to Elevator Inspections

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of S.B. 2401, 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 S.B. 2220, 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. S.B. 2220 also gives the Director of the Department of Labor and Industrial Relations (DLIR) the authority to establish ten 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 S.B. 2220 will provide the additional inspectors required to eliminate the backlog of elevator inspections.

For all of these reasons, we oppose S.B. 2401 and support S.B. 2220.

Respectfully submitted,

Randy Perreira  
Executive Director



The Twenty-Sixth Legislature  
Regular Session of 2012

THE SENATE

Committee on Public Safety, Government Operations, and Military Affairs

Senator Will Espero, Chair

Senator Michelle N. Kidani, Vice Chair

State Capitol, Conference Room 224

Tuesday, February 14, 2012; 3:15 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2401  
RELATING TO ELEVATOR INSPECTIONS**

The ILWU Local 142 opposes S.B. 2401, which authorizes the Department of Labor and Industrial Relations to use qualified third-party elevator inspectors when necessary.

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 to 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 requests that S.B. 2401 be held. Thank you for the opportunity to testify.

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**GCA of Hawaii**  
GENERAL CONTRACTORS ASSOCIATION OF HAWAII  
**Quality People. Quality Projects.**

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February 14, 2012

TO: HONORABLE SENATORS WILL ESPERO, CHAIR, MICHELLE KIDANI,  
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON PUBLIC  
SAFETY, GOVERNMENT OPERATIONS AND MILITARY AFFAIRS

SUBJECT: **COMMENTS REGARDING S.B. 2401, RELATING TO ELEVATOR  
INSPECTIONS.** Authorizes the department of labor and industrial relations to  
use qualified third-party elevator inspectors when necessary.

HEARING

DATE: Tuesday, February 14, 2012  
TIME: 3:15 p.m.  
PLACE: Conference Room 224

Dear Chair Espero, Vice Chair Kidani and Members:

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 S.B. 2401, Relating to Elevator Inspections.**

S.B. 2401 is proposing to allow third party elevator inspectors in the event that an inspection by a state deputy elevator inspector is not feasible. Third party inspectors would have to go through the procurement process under Chapter 103D, Hawaii Revised Statutes (HRS). Furthermore, any third-party elevator inspectors must meet the requirements under Section 397-6(d), HRS, the current Boiler and Elevator Safety Law. This bill also allows the department to adopt rules pursuant to Chapter 91.

Although GCA supports the intent of S.B. 2401, 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. It is unclear whether hiring third party inspectors through the procurement processes are one of the enumerated exceptions. Therefore, GCA defers to the Department of Labor and Industrial relations on this measure.

Thank you for the opportunity to testify on this measure.

## **SB2401**

### **Relating to Third Party Inspectors**

House Committee on Public Safety & Military Affairs

2/14/2012 3:15 PM, State Capitol, Conference Room 224

By

Michael J Panzo, Dynamic Elevator Systems, LLC

### **Specificities to Third Party Inspectors**

#### RELATING TO ELEVATOR INSPECTIONS.

The law requires annual checks plus more stringent safety exams by the state every three to five years, along with Annual Inspections. I would agree the State needs assistance in getting elevators inspected. Economic hardships have led to understaffing for two decades. Even when the elevator inspection branch has all positions filled for elevator inspectors, the amount of inspectors is far below the number of inspectors required to adequately inspect the approximate 7,000 elevator related equipment.

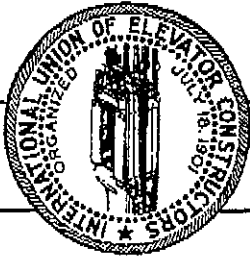
Should the State pass the use of third party inspectors, the third party inspectors would deal directly with property owners and managers under contract. No cost would be incurred by the State.

- The State would still charge the State filing and administrative fee's from building owners or property managers to get their elevators inspected.
- After property owners/managers file appropriate inspection request and pay State fee's, third party inspectors will get into contract for actual inspection services directly with property owners or managers, then submit elevator results to the State Elevator inspection Branch to update documents to specific elevators.
- State employed elevator inspectors would focus on State operated/owned buildings. Ensure private sector elevators are current on all required inspections. Contact building owners or property owners to inform them which elevators are not in compliance and oversee documentation submittal of third party inspectors.
- Third party inspectors would utilize the most current codes, compared to the 1996 elevator codes the State of Hawaii now utilizes.

Three year, Five year and Annual inspections are necessary to ensure maintenance companies are properly maintaining elevators. An improperly maintained elevator or maintenance practices by elevator technician's can cause someone's death or serious injuries. Most noted accidents in New York, California and Texas, has all been caused by elevator technicians not being able to figure out the problem or cause of a broken elevator. The quick solution is to bypass circuits or to use quick faulty repairs to get the elevators running and keep clients happy, in order to keep the maintenance contract.

The States responsibility is to ensure the owner or property owner of an elevator complies with current elevator codes, in protecting the general public. The current shortage of State elevator inspectors poses a serious risk to public safety. Allowing third-party elevator inspectors to conduct elevator inspections, would improve public safety, diminish State budget requirements and lessen the burden on taxpayers.

Thank you for the opportunity to comment on this bill.



LOCAL UNION NO. 126



OF THE

## **International Union of Elevator Constructors**

AFFILIATED WITH THE AFL-CIO

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**To: The Honorable Chair Espero, V-Chair Kidani and Members of the Senate Committee on Public Safety, Government Operations and Military Affairs**

**Date: February 14, 2012**

**Time: 3:15 PM**

**Place: Conference Room 224, State Capitol**

**From: Thad Tomei, Bus. Rep.**

**Elevator Constructor's Local 126**

**Testimony not in support of SB2401**

**Aloha,**

**Initially, I had been a supporter of "Third Party" inspectors but with much discussion among the different stakeholders, I now believe it is imperative that the inspectors be employed by the State of Hawaii DLIR to provide consistency and competent inspections of the many elevator and kindred equipment that will ensure a safe means of transportation by the general public.**

**I believe that issues of this importance must be addressed by all of the industry stakeholders for consensus and by the Legislature for proper rule-making to achieve fairness and balance.**

**Mahalo for your kokua**