



February 11, 2018

Michael Nagao
Branch Manager

KONE Inc.
3375 Koapaka St.
D160
Honolulu, HI 96819
Tel 808-833-3299
Mobile 808-479-9660

Re: Opposition to H.B. 1630

Hawaii House Committee on Consumer Protection and Commerce,

KONE Inc. (KONE) appreciates the opportunity to submit comments and convey our company position regarding H.B. 1630. Due to the time difference between Hawaii and KONE's Corporate Headquarters in Illinois (C.S.T.), by the time KONE received notice of this hearing on Friday, February 9th, obtaining input from all KONE corporate colleagues involved was challenging. Therefore, while we have detailed several of our concerns regarding H.B. 1630 below, KONE reserves the right to supplement its written comments and provide additional input as the bill moves through the process.

First and foremost, KONE is an active and integral member of the National Elevator Industry, Inc. (NEII) and fully supports the attached NEII written comments. In addition, in general, while KONE fully supports licensing requirements, some of the requirements listed in H.B. 1630 conflict with and/or impose additional requirements than industry standards, the model elevator law developed by NEII and the International Union of Elevator Constructors (IUEC), the Collective Bargaining Agreement (CBA) between the companies and the IUEC, and the National Elevator Industry Education Program (NEIEP). As a result, the bill will negatively impact elevator industry business operations in Hawaii.

More specifically, the areas below are of particular concern to KONE:

- **Scope of Work** – The language regarding elevator mechanics' scope of work is inconsistent with the model elevator law.
- **Remote Interaction** – The language regarding remote interaction is also beyond the industry's model elevator law. Moreover, there is no safety reason to require only licensed mechanics for this type of work.
- **Qualifications** – NEIEP already has industry requirements to qualify for an elevator mechanics' license. There is no reason, safety or otherwise, for Hawaii to impose additional requirements above and beyond those already mandated by the industry.

KONE unites with NEII and our industry counterparts to oppose the licensing requirements set forth in H.B. 1630 in Hawaii. KONE is available to answer any questions or provide any assistance. We request that the Hawaii House Committee on Consumer Protection and Commerce reject this bill. Thank you for your time and attention to this important industry issue.

Sincerely,

KONE Inc.
Michael Nagao
Branch Manager



Government Affairs Office

5537 SW Urish Road • Topeka Kansas 66610 • Office: 785.286.7599 • Cell: 785.580.5070

Statement of the National Elevator Industry, Inc. in OPPOSITION to H.B. 1630

Hawaii House Committee
on Consumer Protection & Commerce
February 12, 2018

The National Elevator Industry Inc (“NEII”) is the premier trade association representing the interests of elevator manufacturers across the United States. NEII member companies, which include KONE, Mitsubishi, Otis, Schindler and thyssenkrupp, have significant operations across Hawaii and represent approximately 85% of the total industry work hours. NEII implores the Committee to reject H.B. 1630 due to its potentially crippling impact on the state of Hawaii, building owners and managers, and the industry itself. In addition, this bill legislates issues already negotiated through the industry’s collective bargaining agreement with the International Union of Elevator Constructors (“IUEC”).

Safety for the riding public and industry personnel is the top priority for NEII and member companies. In pursuit of that goal, NEII supports licensing requirements, which set minimum standards for the training, education and proficiency of elevator mechanics. Around the country, NEII collaborates with labor to secure the adoption of standards that ensure elevator mechanics have the appropriate education and training required for complicated and technical equipment. In fact, the current law in Hawaii was developed with input from an industry coalition of NEII member companies, labor representatives and others, and is based on nationally developed industry standards and model legislation negotiated and agreed to under a separate process.

H.B. 1630, however, goes beyond the industry standards and circumvents well-established labor management law and the industry’s collective bargaining agreement. Without a clear validation and empirical data, there is no need to modify current law and risk negative impacts on Hawaii and its elevator industry. In fact, industry data confirms that the current regulations are working. From 2005 through 2016, the OSHA Lost Time Incident Rate decreased by 69% and the OSHA Recordable Incident Rate decreased by 60% for NEII member companies.

H.B. 1630 Will Have a Negative Impact on Safety

The proposed legislation threatens to eliminate technology that enhances safety for the people of Hawaii and industry workers. By making it impossible to use this longstanding technology, which monitors and diagnoses problems in real time, Hawaii is rejecting innovation built specifically to protect riders and elevator workers. Standard in most elevators sold today, remote technology allows the service provider to dispatch a mechanic before the customer knows the elevator is down; determines whether there are trapped passengers that require a high priority dispatch; and, allows for the determination of quality of service.

Elevator Industry has a Unique Labor-Management Agreement

The elevator industry is one of only a few unions to negotiate a national contract. The National Elevator Bargaining Association (“NEBA”) and the International Union of Elevator Constructors enter into a collective bargaining agreement (“CBA”) every five years on behalf of all signatory companies and a list of local unions, including Local #126 Honolulu Hawaii. As a result, the CBA applies nationwide. Unlike most unions, our industry does not negotiate with each local to set individual parameters for scope of work, wages, benefits, etc. The most recent CBA went into effect on July 9, 2017 and expires on July 8, 2022.

The CBA explicitly states that no local union listed as a party to the CBA shall, through its by-laws, constitution, or otherwise, change any of the articles of the CBA or its intent unless a separate agreement is negotiated under specific parameters delineated in the CBA as well. NEII supports this process and encourages the legislature not to interfere.

Collective Bargaining Rights Need to be Maintained

H.B. 1630 intrudes on the area of law left solely to federal labor policy and the parties’ collective bargaining rights. The CBA specifically enumerates the details of the work to be performed exclusively by elevator mechanics, elevator helpers and elevator apprentices. Any change or expansion of worker duties in this draft bill such as those set forth at Section 448H-D regarding scope of work, related to “electrical work or adjustments” and “remote interaction” should be left to the collective bargaining and arbitral processes pursuant to the CBA and not be the subject of state regulation.

Further, the CBA explicitly states that any difference or dispute regarding the application and construction of the agreement shall be referred to as a "grievance" and shall be resolved under specific arbitration procedures. The scope and duties of elevator mechanics, apprentices and helpers can be and has been the subject of collective bargaining negotiations between the IUEC (union) and NEBA (employer group) over many decades.

Although NEII recognizes the State of Hawaii's role in licensing, this bill goes well beyond minimum standards and licensure by establishing work jurisdiction, required job duties and the scope of work of elevator mechanics which has already been fully delineated between the parties in their collective bargaining agreement.

The National Labor Relations Act, 29 U.S.C. § 151 et seq. (“NLRA”) preempts state regulation that conflicts with the federal system of collective bargaining between private sector unions and employers. Since collective bargaining is a protected right under Section 7 of the NLRA, the State’s jurisdiction to act on H.B. 1630 as outlined is displaced.

The reason preemption is necessary in this instance is that Congress envisioned the NLRA regulating a uniform national labor policy. There is no compelling state interest in the regulation of the job duties and work jurisdiction of elevator mechanics in Hawaii that are expressly provided for in the parties' existing national collective bargaining agreement. The Supreme Court in Building Trades Council (San Diego) v. Garmon, 359 U.S. 236, 246 (1959) held:

The governing consideration is that to allow the State to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy.

This Supreme Court holding has specific application to the attempts in the draft bill to modify scope of work, work jurisdiction, and the proposed direct involvement of mechanics in remote elevator "interaction."

H.B. 1630 Will Disrupt the Workforce and Have Significant Cost Impacts

The National Elevator Industry Education Program ("NEIEP") is recognized in the CBA as the industry authority on training and education. The NEIEP program has been collectively developed since 2002 and is supported by industry stakeholders, including the IUEC. Local representatives administer the NEIEP apprenticeship program, but do not have the unilateral authority to change it. Changes can be considered, negotiated and approved by the NEIEP Trustees (comprised of union and company representatives) and staff, and then disseminated to the Joint Apprenticeship Committee (again including union and company officials) across the country, including Hawaii.

NEIEP, through its Trustees, set 8,000 hours as the necessary amount of on-the-job training needed to be an elevator mechanic. All parties agree that 8,000 hours is both substantial and adequate to prepare apprentices for their work as an elevator industry mechanic and to ensure their safety as well as the safety of the riding public. The NEIEP program, curriculum and materials have been approved by the U.S. Department of Labor or its state equivalent using this number. Currently, 33 states have elevator mechanic licensing programs based on the 8,000 training hours and at least four more are considering legislation to create a program using this standard. No justification has been put forth to demonstrate that an additional 1,000 hours of training is needed or will reach any state, industry or business objective.

Personnel currently working in Hawaii who have completed the requisite program and are deemed qualified by NEIEP standards will be prevented from sitting for the mechanics' exam until an additional 1,000 OJT hours are obtained (see Article X of CBA). As a result, these workers will not be in the "correct" job and will delay the addition of full mechanics into the workforce. In addition, the additional 1,000 hours required in Hawaii would be a disincentive for potential mechanics who can go to another state where they can sit for the mechanic's exam and move into a mechanic position at least six months earlier than they could in Hawaii. Hawaii is a remote market and already faces workforce challenges – additional strain on the number of mechanics could also delay construction, modernization and repair projects impacting development and tourism.

The costs associated with this bill will have a significant negative impact on both workers and businesses in Hawaii. Workers who are delayed in sitting for the mechanic's exam and moving up to the position of mechanic will not be paid the appropriate wage for their skills. Specifically, the salary for these workers will be 20% less than a mechanic, and their benefits will be reduced accordingly as well.

For the business community, increased costs will be realized when licensed mechanics are required for work currently performed safely and more economically by a variety of personnel including engineers, building security or facility staff and/or other operational employees. In addition, Section 448H-E requires an elevator mechanic to be onsite for "remote interaction" to occur. Remote interaction is undertaken on a continuous basis, but it is unlikely that businesses will opt to have a mechanic onsite 24 hours every day. Instead, this valuable technology which provides the ability to track performance and receive advance notice of potential issues of concern might be abandoned. Without this "early warning system," units may run at less than optimal performance increasing energy/usage costs and causing undiagnosed damage to equipment that results in more complicated or expensive repairs.

Additional Concerns with H.B. 1630

- Expands the scope of work for mechanics beyond what is prescribed in any other state.
- Regulates "work done by others" that may not be under the elevator company contract.
- Reverses 35 years of industry practices and standards.

I am available to address any questions or provide additional information as needed. Please do not hesitate to contact me at 785-286-7599 or via e-mail at ajblankenbiller@neii.org. We also have local representatives from the NEII member companies and Capitol Consultants of Hawaii (CCH) available to assist the Committee as they work through these important issues. Ross Yamasaki (CCH) is our local point of contact and can be reached at 808-227-3650 or via email at ryamasaki808@gmail.com.

NEII is confident that once the Committee on Consumer Protection and Commerce reviews the information provided in this testimony and carefully considers the broad and potentially damaging impacts H.B 1630 may have on the State of Hawaii, business owners and the elevator industry, it can reach no other conclusion than to defeat H.B 1630.

Respectfully submitted,



Amy J. Blankenbiller
Vice President, Government Affairs



LOCAL UNION NO. 126



OF THE

International Union of Elevator Constructors

AFFILIATED WITH THE AFL-CIO

SUITE 215, 707 ALAKEA STREET • HONOLULU, HI 96813 • TELEPHONE (808) 536-8653 • FAX (808) 537-3779

The Twenty-Ninth Legislature
Regular Session of 2018
Hawaii State House of Representatives
Committee on Consumer Protection and Commerce

Monday, February 12, 2018
2:00 PM, Conference Room 329

House Bill No. 1630 – Relating to Elevator Mechanics

The Honorable Roy M. Takumi, Chair, Linda Ichiyama, Vice-Chair, and Esteemed Members of the House Committee on Consumer Protection and Commerce

HB 1630 proposes to amend the current statutes that govern the licensing of elevator mechanics within the State of Hawaii. It has been numerous years since the statute has been updated and during this same period technology has advanced exponentially. In order for elevator mechanics to keep pace with this technology they must show, and exhibit continued competence in their craft. Not only does this hone the skillset of the elevator mechanic but it will necessitate the elevator mechanic to stay current with the latest codes and technology.

The International Union of Elevator Constructors, Local 126 represents the men and women installing, repairing, and maintaining all elevators, escalators, and other vertical transportation in the State of Hawaii. The Elevator Constructor is a highly skilled craft with some of the most stringent and extensive education within the elevator industry and the construction industry as a whole. However, the current State of Hawaii licensing requirements does not coincide with the standards and the level of technology that are currently being introduced and installed.

The proposed amendments to HRS 448H are meant to strengthen the licensing law and would help to discourage unlicensed activity by adding continued competency, increasing and defining the qualifications to become licensed, adding a 9000 hour on the job training requirement which, will remove the task of apprenticeship registration by the DCCA, better defining an elevator mechanic's scope of work, and better defining the powers and duties of the elevator mechanic's licensing board.

We have been actively working with the Department of Commerce and Consumer Affairs (DCCA) and the residential lift portion of the industry regarding these proposed amendments. With the exception of one minor item we have been able to address all of their concerns through SB 2494 SD1. We will continue to work with DCCA to address this last item and hope to arrive at a resolution soon. Should this last item be resolved we respectfully request that the CPC Committee look at the possibility of adopting the language from SB 2494 SD1 and to include this last agreed upon item.

Licensing is in place for the safety and protection of the consumer and strengthening the elevator mechanic's licensing laws can only serve to benefit our industry as a whole by raising the bar for elevator mechanics which in turn will provide a better and safer product to the riding public. When it comes to safety there is no compromise and for these reasons the International Union of Elevator Constructors, Local 126 is in **strong support** of HB 1630.

Respectfully submitted,

Marc Yamane

Business Representative

International Union of Elevator Constructors, Local 126

**PRESENTATION OF THE
ELEVATOR MECHANICS LICENSING BOARD**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Monday, February 12, 2018
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1630, RELATING TO ELEVATOR MECHANICS.

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Kedin Kleinhans, and I am the Executive Officer of the Elevator Mechanics Licensing Board ("Board"). Thank you for the opportunity to testify on H.B. 1630, which is a companion to S.B. 2494. The Board appreciates the intent of this measure and provides comments.

This measure amends Hawaii Revised Statutes chapter 448H by revising the requirements for apprenticeship and licensure of elevator mechanics and adding provisions relating to examination, license renewals, continued competency, scope of work, and remote interaction.

Regarding the new examination section of this bill, the Board recommends deleting paragraph (1), page 1, lines 11-13 and paragraph (3), page 1, lines 16-17. Since the Department of Commerce and Consumer Affairs' Professional and Vocational Licensing Division provides for elevator mechanic fees (as well as the fees for all other boards, commissions, and programs) in Hawaii Administrative Rules ("HAR") chapter 53, paragraph (1) is unnecessary. In addition, paragraph (3) is too restrictive and therefore should be removed. The Board recommends retaining paragraph (4), as that will help retain the integrity of the exam.

Regarding sections 448H-B (Application fees; license renewals) and 448H-C, (Continued competency; renewals), the Board recommends combining both sections into one section, as section 448H-8 (Fees) already provides existing language. For purposes of clarity, the Board respectfully suggests deleting from 448H-8 (Fees),

“Licenses shall expire on June 30 of each even-numbered year,” if this section were to be added. In addition, the Board recommends adding language that would allow elevator mechanics licensed in the second half of the biennium to begin meeting the continuing education (“CE”) requirements in the following biennium. The Board also recommends adding language for a random audit, similar to language other licensing boards have regarding CE requirements, as this will help the Board enforce the CE requirements while reducing the workload in verifying compliance of those requirements. To this end, the Board respectfully suggests the following language:

“§448H-B License renewals; continuing education. (a) Licenses shall expire on June 30 of each even-numbered year. Licensees seeking renewal shall pay all applicable fees and complete the continuing education requirements pursuant to subsection (b).

(b) Prior to each license renewal, all licensed elevator mechanics shall complete:

(1) An educational course, approved by the board, of no less than eight hours related to the elevator industry; or

(2) A qualified elevator inspector continuing education course of no less than eight hours offered by an American National Standards Institute accredited certifying organization.

(c) An elevator mechanic initially licensed within one year prior to the applicable renewal date shall not be required to complete the eight hours of continuing education to renew the elevator mechanic’s license.

(d) The board may conduct random audits to determine compliance with the continuing education requirement. The board shall provide written notice of an audit to a licensee randomly selected for audit. Within sixty days of notification, the licensee shall provide the board documentation verifying compliance with the continuing education requirement established by this section.”

Regarding proposed section 448H-D(a) (Elevator mechanics scope of work), the Board respectfully requests the exclusion on page 4, lines 1-2 be revised to make clear that only cleaning and painting elevators cabs are excluded from the scope of work

requiring an elevator mechanic's license. As currently drafted, the exclusion could be broadly interpreted to apply to all the work enumerated on page 4, lines 1-6. To that end, "with the exclusion of cleaning and painting" could be removed, as it is provided in the Board's rules under HAR section 16-81-4(1)(2).

Regarding the language on page 4, subsection (b), if the intent of this subsection is to not require licensure for elevator demolition where the entire building is being demolished, the Board respectfully suggests adding "being" on page 4, line 17 before "completely" so that the sentence reads "entire building is being completely demolished down to and including" This revision may more accurately capture work that would occur during demolition. The Board also suggests that this subsection be included as its own section under "Exemptions." Correspondingly, the Board is aware that certain small businesses in Hawaii's elevator mechanic industry work solely on a specific set of conveyances, such as American with Disabilities Act lifts, and these businesses do not perform work on elevators and escalators. However, the repair of these lifts falls within the scope of a licensed elevator mechanic. The Board is also aware that employees of these businesses have difficulty getting licenses due to their limited training. Thus, the Board recommends adding the following language to exempt these small businesses to address their concerns:

§448H-C Exemptions. Licensure as an elevator mechanic shall not be required for:

- (1) Dismantling or removing a conveyance; provided that the conveyance will not be reused and the building or structure, as defined by its foundation outline, is totally secure from public and unauthorized access and the entire building is being completely demolished down to and including the foundation; and
- (2) Employees of a contractor duly licensed under chapter 444 who enters into the contract to install, repair, or remove the platform lift or stairway lift within a private residence not accessible to the general public or to other occupants in the building."

The Board agrees with the language regarding remote interaction provided in section 448H-E; however, the Board respectfully suggests that its definition on page 5, lines 14-16 be amended to delete “monitor” and “diagnose,” as any individual may monitor the controls of a conveyance without an elevator mechanic’s license.

The Board supports the definitions for “conveyance” on page 5, lines 11-13 and “elevator mechanic” on page 6, lines 7-19, and the Board agrees that electrical adjustments such as updating software, changing parameters, and resetting faults of any conveyance fall within the scope of an elevator mechanic.

Regarding the definition of “apprentice elevator mechanic”, the Board recommends the language be amended to include apprenticeship programs registered with a state apprenticeship counsel or the Bureau of Apprenticeship and Training, United States Department of Labor. Correspondingly, the Board also recommends amending the language on section 448H-6 subsection (1) on page 9, lines 19-20. As currently drafted, it could be interpreted that the apprentice elevator mechanic seeking licensure must attend the apprenticeship program registered with the Hawaii Department of Labor and Industrial Relations, which would preclude qualified out-of-state applicants from obtaining a license.

The Board respectfully suggests the word “direct” be added to each instance of the word “supervision” on page 6, line 5, page 10, line 8, and page 11, line 5, to accurately reflect the on-the-job-learning process pertaining to apprenticeships.

Should this bill pass through the Committee, the Board requests a delayed implementation date of July 1, 2020, to the following sections: 448H-B (Application fees; license renewals) in section 2, 448H-C (Continued competency; renewals) in section 2, and 448H-6 (Qualifications for license) in section 5, to help facilitate the transition.

Thank you for the opportunity to provide testimony on H.B. 1630.