

S.B. NO. 2907

JAN 23 2020

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. Chapter 397, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§397- Third-party determinations and review. (a) The
5 director shall issue determinations on applications for third-
6 party inspector certificates of competency and certifications of
7 third-party elevator inspection companies. The determinations
8 shall be sent by electronic service or certified mail and shall
9 be final and conclusive, unless a written appeal is filed,
10 clearly stating what items are being contested. The appeal must
11 be addressed to the director and received or, if mailed,
12 postmarked by no later than the twentieth calendar day following
13 receipt of the determination, or, if received by electronic
14 service, no later than the twentieth day after receipt of the
15 determination.

16 (b) The director or the director's designee may hold a
17 formal hearing, which shall result in a decision by the
18 director. Any party who disagrees with the director's decision

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1 may appeal in writing to the director within twenty calendar
2 days of receipt of the decision. The director shall promptly
3 notify the appeals board of the notice of contest. Where a
4 prior formal hearing is held at the department level, the
5 appeals board shall conduct a case review using only the record.

6 (c) Except where a decision has already become final for
7 failure to contest, the decision of the appeals board shall be
8 final and conclusive unless the director or any party to the
9 proceedings before the appeals board obtains a review thereof in
10 the manner provided in chapter 91 by instituting proceedings in
11 the circuit court. The hearing on review shall be on the record
12 and the department shall be deemed a party to any such
13 proceedings."

14 SECTION 2. Section 397-3, Hawaii Revised Statutes, is
15 amended by adding new definitions to be appropriately inserted
16 and to read as follows:

17 "Amusement ride" means a mechanically or electrically
18 operated device designed to carry passengers in various modes
19 and used for entertainment and amusement.

20 "Certified third-party elevator inspection company" means
21 any person, firm, or corporation that is registered with the

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1 department of commerce and consumer affairs pursuant to chapter
2 444 and is certified by the department.

3 "Chief boiler inspector" means the person appointed and
4 delegated by the director to administer the state boiler and
5 pressure vessel inspection program and implement and enforce the
6 requirements of this chapter and rules promulgated thereunder,
7 and shall take all action necessary to enforce the laws and
8 rules pertaining to the inspection of pressure retaining items.

9 "Pressure retaining item" means boiler, pressure
10 vessel, or pressure system.

11 "Third-party inspector" means:

12 (1) Any person, as defined as in the American Society of
13 Mechanical Engineers Qualification for Elevator
14 Inspectors as an inspector who possesses an elevator
15 inspector's certificate of competency issued by the
16 department; and

17 (2) Has satisfied requirements established by the
18 department."

19 SECTION 3. Section 397-4, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

21 "(b) Inspection and investigation.

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- 1 (1) Authorized representatives of the director shall have
2 the right to enter without delay during regular
3 working hours and at other reasonable times any place,
4 establishment, or premises in which are located
5 boilers, pressure systems, amusement rides, or
6 elevators and kindred equipment requiring inspection
7 pursuant to this chapter;
- 8 (2) The department shall inspect for the purpose of
9 ensuring compliance with the purposes and provisions
10 of this chapter any activity related to the erection,
11 construction, alteration, demolition, or maintenance
12 of buildings, structures, bridges, highways, roadways,
13 dams, tunnels, sewers, underground buildings or
14 structures, underground pipelines or ducts, and other
15 construction projects or facilities;
- 16 (3) The department shall review plans and make
17 inspections, and investigations of boilers and
18 pressure systems, and the premises appurtenant to each
19 at times and at intervals determined by the director
20 for the purpose of ensuring compliance with the
21 purposes and provisions of this chapter. This
22 paragraph shall not apply to single family dwellings

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1 or multiple dwelling units of less than six living
2 units;

3 (4) The department shall review plans and make
4 inspections, and investigations of elevators and
5 kindred equipment and the premises appurtenant to each
6 at times and at intervals determined by the director
7 for the purpose of ensuring compliance with the
8 purposes and provisions of this chapter. This
9 paragraph shall not apply to single family dwellings;

10 (5) The department shall inspect, at least semi-annually,
11 all mechanically or electrically operated devices
12 considered as major rides and used as amusement rides
13 at a carnival, circus, fair, or amusement park for the
14 purpose of protecting the safety of the public. This
15 paragraph shall not apply to any coin operated ride or
16 mechanically or electrically operated devices
17 considered or known in the amusement trade as kiddie
18 rides;

19 (6) The department may investigate accidents involving
20 boilers, pressure systems, amusement rides, and
21 elevators and kindred equipment inspected under this
22 chapter and may issue orders and recommendations with

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1 respect to the elimination and control of the cause
2 factors;

3 (7) The department shall have the right to question any
4 employer, owner, operator, agent, or employee in
5 investigation, enforcement, and inspection activities
6 covered by this chapter; [~~and~~]

7 (8) Any employee of the State acting within the scope of
8 the employee's office, employment, or authority under
9 this chapter shall not be liable in or made a party to
10 any civil action arising out of the administration and
11 enforcement of this chapter[~~-~~];

12 (9) The department shall establish an application
13 procedure and all requirements for certification of
14 third-party elevator inspection companies. At a
15 minimum, the individual qualifying on behalf of a
16 corporation, the owner on behalf of a sole ownership,
17 or the partners on behalf of a partnership, shall meet
18 the following requirements:

19 (A) Five years' work experience at a journey person
20 level in the construction, installation,
21 alteration, testing, maintenance, and service and
22 repair of elevators, kindred equipment, and

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1 amusement rides covered by this chapter. This
2 experience shall be verified by current and
3 previously licensed elevator contractors or by
4 third-party elevator inspection companies; and

5 (B) Satisfactory completion of a written examination
6 administered by the department on the most recent
7 applicable codes and rules;

8 (10) The department shall conduct quality control
9 monitoring of inspections conducted by third-party
10 inspectors and certified third-party elevator
11 inspection companies;

12 (11) Companies with certified third-party elevator
13 inspectors shall submit to the department insurance
14 policies, or certified copies thereof, issued by an
15 insurer licensed to conduct business in the State, to
16 provide professional liability coverage of at least
17 \$1,000,000, and general casualty coverage of at least
18 \$1,000,000 for injury or death of any number of
19 persons in one occurrence, with the coverage of at
20 least \$500,000 for property damage in any one
21 occurrence, and proof of valid compliance with
22 chapters 383, 386, 392, and 393; and

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1 (12) Whenever any owner, user, contractor, or vendor fails
2 to pay any fees required under this chapter and rules
3 within sixty days after notification, the director
4 shall suspend or revoke the operating permit and shall
5 require the owner, user, contractor, or vendor to
6 ensure the pressure retaining item, elevator and
7 kindred equipment, or amusement ride not be used."

8 SECTION 4. Section 397-5, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) The director may prescribe reasonable fees to be
11 charged for inspection, examination, other services rendered and
12 for permits, certificates, or licenses, the issuance of which
13 are required by this chapter or by any rules of the department
14 adopted pursuant to this chapter, and for:

15 (1) Inspections by the department of any boiler, pressure
16 system, amusement ride, and elevator and kindred
17 equipment for which a permit or certificate is
18 required for its installation, operation, or use, and
19 which is required to be inspected by this chapter or
20 by any rules of the department; [~~and~~]

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1 (2) Examination of any person applying for permits,
2 certificates, or licenses as required by this chapter
3 or by any rules of the department~~[]~~; and

4 (3) The department shall charge \$200 for a third-party
5 inspector certificates of competency, and \$500 for
6 certification of a third-party elevator inspection
7 company, both of which shall be valid for two years,
8 provided that the director may adopt rules pursuant to
9 chapter 91 to amend the fees specified in this
10 subsection."

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

13 "**§397-6 Safety inspection by qualified inspectors.** (a)
14 All safety inspections required under this chapter of boilers
15 and pressure systems shall be performed by deputy boiler
16 inspectors in the employ of the department who are qualified
17 boiler inspectors and, when authorized by the director, may be
18 performed by special inspectors who are qualified boiler
19 inspectors in the employ of insurance companies insuring boilers
20 or pressure systems in this State.

21 (b) A qualified boiler inspector is a person eligible for
22 or in possession of a valid commission issued by the National

1 Board of Boiler and Pressure Vessel Inspectors, who has
2 satisfied the requirements established by the department, and
3 who has received from the director or the director's authorized
4 agent briefings and instructions regarding the rules pertaining
5 to boilers and pressure systems in this State.

6 (c) The director shall appoint a chief boiler inspector
7 who shall have had at the time of appointment not less than ten
8 years practical experience in the construction, maintenance,
9 repair, or operation of boilers and pressure vessels as a
10 mechanical engineer, steam engineer, boilermaker, or boiler
11 inspector.

12 [~~e~~] (d) All safety inspections required under this
13 chapter of elevators and kindred equipment, and amusement rides
14 and the premises appurtenant thereto, shall be performed by
15 deputy elevator inspectors of the department who are qualified
16 elevator inspectors and who are employed primarily for purposes
17 of elevator and related inspection work~~[r]~~, and when authorized
18 by the director and this chapter, may be performed by third-
19 party inspectors. Only deputy elevator inspectors of the
20 department shall conduct the following:

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- 1 (1) Final acceptance inspection of all new elevators and
2 kindred equipment prior to issuance of the initial
3 permit to operate;
- 4 (2) Final acceptance inspections of the modernization or
5 alteration of elevators and kindred equipment;
- 6 (3) Investigation of accidents and complaints;
- 7 (4) Follow-up inspections to confirm corrective action;
8 and
- 9 (5) Inspections of elevators and kindred equipment owned
10 by the State or any political subdivision thereof.

11 [~~d~~] (e) A qualified elevator inspector is a person who
12 meets the criteria of the American Society of Mechanical
13 Engineers and the standards for the qualification of elevator
14 inspectors of the American National Standards Institute and has
15 satisfied requirements established by the department.

16 (f) When authorized by the director, third-party
17 inspectors employed by certified third-party elevator inspection
18 companies may conduct inspections and witness tests of elevators
19 and kindred equipment, and amusement rides and the premises
20 appurtenant thereto, subject to the limitations of subsection
21 (d). Third-party inspectors shall have the right to question
22 any employer, owner, operator, agent, or employee in inspection

1 and periodic tests activities covered by this chapter. Third-
2 party inspectors shall not be employed as elevator and kindred
3 equipment consultants, or by contractors who are required to
4 obtain elevator permits, owners of amusement rides, licensed
5 elevator contractors, or be the same person that has performed
6 or assisted in the performance of construction, installation,
7 maintenance, relocation, alteration, repair, or management of an
8 elevator, kindred equipment, or amusement ride.

9 (g) The department shall determine the qualifications of
10 any applicant for a third-party inspector certificate of
11 competency, either by examination or by other satisfactory proof
12 of qualifications. The department may rescind at any time, upon
13 good cause being shown therefor, and after hearing, if
14 requested, any certificate of competency issued by it to a
15 third-party inspector.

16 (h) The department shall require third-party inspectors to
17 file a written report of each inspection or test with the
18 department and owner within fifteen business days after the
19 inspection or test. A third-party inspector who fails to file a
20 written report of an inspection or test within fifteen business
21 days after the date that the inspection or test was completed
22 shall pay a late filing fee of \$50 to the department, provided

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1 that the director may adopt rules pursuant to chapter 91 to
2 amend the fee in this subsection. The department shall reject a
3 written report of an inspection or test if it is submitted more
4 than thirty business days after the completion of the inspection
5 or test. The results of an inspection or test rejected pursuant
6 to this subsection shall be deemed invalid and the inspection or
7 test must be performed again. Failure to comply with this
8 section shall be grounds to cancel a certificate of competency
9 of a third-party inspector or certification of a third-party
10 elevator inspection company."

11 SECTION 6. The director shall submit a report to the
12 legislature on the status of third-party inspections of
13 elevators and kindred equipment and amusement rides, including
14 program results, not less than twenty days prior to the
15 convening of each regular session.

16 SECTION 7. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act, upon its approval, shall take effect
19 on July 1, 2020, and shall be repealed on June 30, 2025.

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INTRODUCED BY: *M. N. M.*

BY REQUEST

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Report Title:

Boiler and Elevator Safety Law; Third-Party Inspectors; Third-Party Inspection Companies

Description:

Authorizes the Director of Labor and Industrial Relations to allow third-party inspectors and third-party inspection companies to conduct certain types of elevator inspections; effective July 1, 2020, repealed June 30, 2025.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

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

PURPOSE: To add definitions for amusement ride, certified third-party inspection company, chief boiler inspector, pressure retaining item, and third-party inspector into the law.

To allow third-party elevator inspectors and certified third-party elevator inspection companies to conduct inspections and witness tests of elevators and kindred equipment and amusement rides.

To delineate what kinds of inspections and witnessing of tests third-party inspectors and agencies can conduct.

To allow the director to revoke or suspend the operating permit for equipment for which the required fees are not submitted within sixty days to the department after notification.

To authorize the director to establish qualifications, insurance requirements, and procedures for registering and regulating third-party elevator inspectors and agencies.

To establish reporting requirements for third-party inspectors that conduct inspections or witness tests.

MEANS: Add a new section to 397, amend sections 397-3, 397-4(b), 397-5(a), and 397-6, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The purpose of this Act is to augment the capacity of the department to inspect

elevators and kindred equipment and amusement rides. The Supplemental Appropriations Act of 2012 included six additional elevator inspector positions. Act 103, Session Laws of Hawaii (SLH) 2012, established the boiler and elevator special fund, changed the means of financing to special funding, and provided a mechanism for self-sustainability for the Boiler and Elevator Branch (Branch) of the Occupational Safety and Health Division (HIOSH).

In passing Act 103, the Legislature recognized that the boiler and elevator inspection program staffing and budget had suffered from across-the-board cuts and neglect that had rendered it ineffective and a hindrance to economic revitalization, and most importantly, a threat to public safety.

Act 186, SLH 2018, amended the law by changing the special fund to a revolving fund to properly align the fund with the statutory definition of a revolving fund found in section 37-62, HRS.

However, despite the additional resources and elevator inspector positions, the department has struggled to perform inspections of all elevators and kindred equipment in a timely manner.

Therefore, the department is seeking the ability to make use of third-party inspectors and agencies to help with the ongoing backlog challenges. Nationally, thirty-seven states permit the use of third-party inspectors.

The department intends to utilize the third-party inspectors to augment the capacity of the department's existing thirteen inspector positions.

Impact on the public: There will be a positive impact on the public as developers will be able to obtain building permits, occupancy permits,

and permits to operate on a timely basis. Contractors will be able to better plan for ongoing and future construction projects. Building owners will also obtain timely permits, assuring them that the equipment is safe.

Impact on the department and other agencies:
This proposal will improve the department's ability to conduct inspections and witness safety tests.

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM
DESIGNATION: LBR143.
OTHER AFFECTED
AGENCIES: None.
EFFECTIVE DATE: July 1, 2020.