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Committee on Regulated Industries

REVIEW OF ELEVATOR SAFETY AND REGULATION

Issue Description

This study addresses issues related to the enforcement of elevator safety code standards that require elevator owners to modify or retrofit elevators in order to comply with revisions or updates to those standards. The Elevator Safety Code (code) by the Bureau of Elevator Safety (bureau)¹ requires owners of existing elevators to retrofit elevators to comply with revisions or updates to the code. A recent decision by the Division of Administrative Hearings in the case of *City of Miami Beach v. Department of Business and Professional Regulation*,² held that the bureau could require elevator owners to retrofit their elevators to meet revisions of the code.

Representatives for elevator owners, including condominium associations and the City of Miami Beach, have expressed concerns regarding the expense of requiring elevator owners to retrofit or modify elevators to meet code revisions. According to the bureau, it has granted several requests from elevator owners for variances and waivers related to the expense of complying with revisions to the code.

Background

Elevator Regulation

Chapter 399, F.S., which may be cited as the “Elevator Safety Act,” establishes minimum standards for elevator safety. The bureau is the agency charged with enforcing the provisions of ch. 399, F.S.³ The term “elevator” includes a wide variety of mechanical devices, including escalators, dumbwaiters, moving walks, inclined stairway lifts, and inclined or vertical wheelchair lifts.⁴ According to the bureau, as of August 2009, there were approximately 75,897 elevators in Florida for which it has inspection responsibilities. This number includes approximately 25,000 elevators in the five contracted jurisdictions for which it has secondary oversight responsibility.⁵

Elevator Inspections

The owner of the elevator is responsible for the safe operation, proper maintenance, inspection, and correction of code deficiencies of the elevator.⁶ Elevators must have a certificate of operation before they can be operated. Certificates of operation are valid for two years and expire at the end of the period unless revoked. The certificates only can be renewed for vertical conveyances that have had a current satisfactory inspection.⁷

¹ The Bureau of Elevator Safety is within the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

² See, Final Order in *City of Miami Beach v. Dept. Business and Professional Regulation*, DOAH Case No. 03-5188RU, Final Order issued February 27, 2009.

³ Section 399.10, F.S.

⁴ Section 399.01(6), F.S.

⁵ The following five local governments are under contract with the department to provide elevator inspection services: the cities of Miami and Miami Beach, Broward and Miami-Dade counties, and Reedy Creek Improvement District.

⁶ Section 399.02(5)(b), F.S.

⁷ Section 399.07(1), F.S.

Section 399.061, F.S., requires the annual inspection of elevators by a certified elevator inspector.⁸ The certified elevator inspector may be a private elevator inspector, a state-employed elevator inspector, or an inspector for a municipality or county under contract with the department.⁹ The privatization of elevator inspections has helped to increase the number of licensed inspectors and has helped the bureau increase the number of inspections conducted each year, as mandated by the annual inspection requirement.¹⁰

An elevator inspection is not required if the elevator is not an escalator or a dumbwaiter, serves only two adjacent floors, and is covered by a service maintenance contract that remains in effect.¹¹ A statement verifying the existence and performance of each service maintenance contract must be filed at least annually with the division, and, if the service maintenance contract is cancelled, the cancellation must be reported to the division.

Municipalities and counties may choose to require that the inspections be performed by their own inspectors or by private certified elevator inspectors. The department may inspect elevators in the municipality and county to determine whether the provisions of ch. 399, F.S., are being met. The department may cancel its contract with any municipality or county that it finds has failed to comply with the contract or ch. 399, F.S.¹² Counties and municipalities may not issue or take disciplinary action against an elevator inspector's certification, but the department may initiate disciplinary action against a private inspector's certification at the request of a county or municipality.

Disciplinary Action, Administrative Fines, and Penalties

Section 399.07(6), F.S., authorizes the bureau to suspend a certificate of operation if it finds that the elevator is not in compliance with ch. 399, F.S., or the rules adopted pursuant to its authority.

Section 399.105(1), F.S., authorizes an administrative fine of not more than \$1,000 against any person who fails to respond to reasonable requests by the department to determine whether the provisions of a service maintenance contract and its implementation ensure safe elevator operation.

Section 399.11, F.S., provides second degree misdemeanors for violations of ch. 399, F.S., and rules adopted under this chapter. It provides a first degree misdemeanor for falsely representing oneself as credentialed under ch. 399, F.S.

Florida Building Code

In 1998, the Legislature authorized the creation of a single state-wide building code.¹³ The Florida Building Commission (commission) is authorized to adopt and maintain the Florida Building Code as a single, unified state building code consisting of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings or structures, and to enforce requirements providing for effective and reasonable protection for the public safety, health, and welfare of the citizens of Florida. The commission is administered and staffed by the Department of Community Affairs (DCA). Commission activities are funded through a surcharge of one-half cent per square foot on all construction permits. The local government collects the surcharge and remits it to the DCA quarterly.

The commission is charged with the responsibility of amending and updating the code every three years to make recommendations on which laws should be revised or repealed to maintain consistency with the code, and can

⁸ In 2001, the Legislature amended s. 399.061, F.S., to increase the frequency of elevator inspections from once every two years to annual inspections. *See*, s. 10, ch. 2001-186, L.O.F.

⁹ Section 399.061, F.S. In 2000, the Legislature amended s. 399.061, F.S., (s. 4, ch. 2000-356, L.O.F.) to provide for the use of private elevator inspectors.

¹⁰ *See, Privatization Has Helped Improve Elevator Safety: Additional State Oversight is Needed*, Report No. 08-18, Office of Program Policy Analysis & Governmental Accountability, Florida Legislature, April 2008.

¹¹ Section 399.061(1), F.S.

¹² Section 399.13, F.S.

¹³ Chapter 98-287, L.O.F.

approve technical amendments to the code once each year. The initial draft code was presented to the Legislature in 2000 and became effective on July 1, 2001.¹⁴

The first triennial update of the code became effective on July 1, 2005,¹⁵ and the second update became effective on March 1, 2009.¹⁶

Florida Elevator Safety Code

Section 399.02(1), F.S., requires the Elevator Safety Code to be the same as or similar to the American Society of Mechanical Engineers (ASME), which provides minimum model standards for the installation, operation, and maintenance of elevators. The ASME codes are meant to be adopted by the state and local agencies with jurisdiction over elevator safety. Standard ASME A17 serves as the basis for the Florida Elevator Safety Act and Florida Elevator Safety Code.

The elevator safety code establishes minimum requirements that provide a reasonable degree of safety for the general public and the safe operation of conveyances. For example:

- ASME A17.1 (2004), Part 8, provides requirements related to the installation, alteration, maintenance, repair, inspections, and testing to ensure the minimum safety requirements for *new and existing elevators*.
- ASME A17.2 (2204), provides a guide for the inspection of elevators, escalators, and moving walks.¹⁷
- ASME A17.3 (1996) is a code for existing elevators to ensure rider safety. The code provision specifically states that it is intended to guide *retroactive requirements for existing elevators*.

The bureau's rules indirectly adopt the ASME standards for the maintenance and installation of elevators. Instead of specifically referencing the ASME standards, the bureau adopted ch. 30 of the 2004 Florida Building Code, including the 2006 supplements, which relates to elevators.¹⁸ The Florida Building Code adopts the ASME standards, including ASME A17.1, PART 8, ASME A17.3. It also delegates the regulation and enforcement the ASME elevator codes to the bureau.¹⁹

ASME A17.1 Adoption

On March 1, 2002, the commission adopted the 2001 Florida Building Code which included the ASME elevator safety standards in ASME A17.1 (1996) and ASME A17.3.²⁰ Before its adoption into the Florida Building Code, the bureau had adopted ASME A17.1 (1996) in 2000.²¹ Effective October 1, 2005, the commission adopted the 2000 edition of the ASME A17.1 into the 2004 Florida Building Code.

ASME A17.3 Adoption

On October 1, 2005, ASME A17.3 (1996) was first adopted in the 2004 Florida Building Code as the code for the inspection and maintenance of existing elevators.²² On April 2, 2008, the bureau adopted the ASME elevator standards that were incorporated in the Florida Building Code.

¹⁴ Chapter 2000-141, L.O.F.

¹⁵ See, Rule 9B-3.047, F.A.C. (December 11, 2005), which adopted the Florida Building Code, 2004 edition as amended by the Commission on December 11, 2005. The 2004 code edition was subsequently amended by the Commission on December 11, 2005, December 8, 2006, and May 21, 2007. See also, Rule 9B-3.047(1), F.A.C. (December February 17, 2009), which details the history of amendment to the 2004 edition of the code.

¹⁶ See, Rule 9B-3.047(2), F.A.C. (February 17, 2009), which adopts the Florida Building Code, 2007 edition, as approved by the commission on August 21, 2007, and amended by the commission on December 10, 2008.

¹⁷ ASME A17.2 (2004). The bureau has adopted and incorporated by reference in rule 61C-5.001(1)(b), L.O.F.

¹⁸ Rule 61C-5.001, F.A.C.

¹⁹ Chapter 30, ss. 3001.1 and 3001.2, Florida Building Code.

²⁰ The 2001 Florida Building Code also incorporated the updates to ASME A17.1, which are termed A17.1a (1997) and A17.1b (1998).

²¹ Rule 61C-5.001, L.O.F. (2000), effective October 4, 2000.

²² Chapter 30, Florida Building Code.

According to state and local elevator inspection officials, the safety standards in ASME A17.3 (1996) that were adopted in the Florida Building Code and the elevator safety code in 2002 and 2005, respectively, were not new and were already in the ASME A17.1, part 8, before the adoption of those building codes.

City of Miami Beach v. Department of Business and Professional Regulation

In *City of Miami Beach v. Division of Hotels and Restaurants*,²³ the City of Miami Beach challenged as an unadopted rule the division's technical bulletins that advised elevator owners that they had to keep current with the elevator safety requirements, i.e., that elevator owners must retrofit elevators to meet current safety standards. The Administrative Law Judge's Final Order held that the technical bulletins were supported by law and by existing rules of the division. Specifically, Rule 9B-3.047, F.A.C., which incorporates the Florida Building Code, including ASME A17.1 and A17.3,²⁴ requires that existing elevators be maintained according to the current safety standards in the Florida Building Code and the Florida Elevator Safety Code.

2009 Regular Session

During the 2009 Regular Session, CS/CS/SB 2100 by the Regulated Industries Committee, Community Affairs Committee, and Senator Bennett amended s. 399.02(6), F.S., to prohibit the bureau from enforcing any updates to the elevator safety code that require modifications related to specific safety code provisions for heat sensors and electronic controls on existing elevators. This enforcement prohibition would have applied to elevators that were issued a certificate of operation by July 1, 2008, and would have applied until such time as the elevators were to be replaced. The bill died in the General Government Appropriations Committee.

Also during the 2009 Regular Session, CS/SB 1332 by the Regulated Industries Committee and Senator Jones amended provisions of ch. 399, F.S., to revise the laws related to elevator regulation. The bill also amended s. 399.02, F.S., to provide guidelines for the granting of variances. It required the bureau to expedite emergency requests for variances within 30 days after receiving the request and set variance petition fees at no more than \$150 for a routine variance request or \$300 for an emergency variance request. The bill also permitted elevator owners three years to retrofit elevators to comply with noncritical revisions of the elevator safety code and provided standards for determining whether a revision of the elevator safety code is critical or noncritical. The bill died in the Community Affairs Committee.

Variances and Waivers

State agencies may grant exemptions or modifications to their rules in cases that may lead to unreasonable, unfair, or unintended results. The Florida Administrative Procedures Act provides a process by which affected persons may petition state agencies for a variance or waiver from a rule.²⁵ Variances or waivers relate to state agency rules. Agencies may not grant a variance or waiver for any federal statutory or rule requirements.²⁶

A variance is an agency decision to grant a *modification* to all or part of the literal requirements of an agency rule to an affected person.²⁷ A waiver is an agency decision *not to apply* all or part of the literal requirements of an agency rule to an affected person.²⁸

Section 120.542(2), F.S., provides the conditions for the granting of a variance or waiver. To qualify for a variance or a waiver, a person must demonstrate that:

1. The purpose of the underlying statute will be or has been achieved by other means by the person; and

²³ See, Final Order in *City of Miami Beach v. Dept. Business and Professional Regulation*.

²⁴ Chapter 30, Florida Building Code, preempts the enforcement of the elevator safety requirement in the code to the division.

²⁵ Section 120.542(1), F.S.

²⁶ Section 120.542(1), F.S.

²⁷ Section 120.52(21), F.S.

²⁸ Section 120.52(22), F.S.

2. Application of a rule would create a substantial hardship or would violate principles of fairness.

The term “substantial hardship” means a “...demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.”²⁹ The term “principles of fairness” means that the “...literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.”³⁰

Findings and/or Conclusions

Elevator Safety Code

History of Retroactive Application of the ASME Code

The ASME code has not always required retroactive application of its standards for new elevators to existing elevators. The following history of the retroactive application of ASME code standards is derived from the forward to ASME A17.3 (1996).

The 1921 edition of the code did not distinguish between new and existing elevators. The 1925 and 1931 editions of the code delineated whether and when specific code provisions applied to existing elevators. The 1925 and 1931 editions required immediate application of some provisions, but permitted the application of the code only when affected cables or other elevator parts were renewed. They also permitted the delayed application of some provisions for a period of one year or up to 2 years after adoption of a code revision. This practice was discontinued with the 1937 edition of the code.

The 1937 edition of the code let the jurisdiction adopting the code decide whether changes to the code must be applied to existing elevators. The 1937 edition of the code noted that “...a too extensive application of the code was not advisable in any case.”³¹ The 1937 edition also noted that changes to the code intended to address minor hazards may involve a cost “...entirely out of proportion to the benefits secured.”³²

This practice continued through later editions of the code, including the 1981 edition which also noted that the jurisdictional authority, i.e., the agency that adopts and enforces the code, should consider experience supported by accident records in deciding whether to apply revised requirements to existing elevators.

The 1996 first edition of ASME A17.3 (1996) was the first ASME code to provide maintenance standards for existing elevators.³³

The preface to ASME A17.2 provides that existing elevators that do not meet the requirements of ASME A17.3 must be upgraded. Part 8, of ASME A17.1 (2004), specifies requirements that apply to new and existing elevators.

Effect of Retroactive Application of Specific Elevator Safety Code Provisions

Elevator inspection officials acknowledge that the number of elevators that fail to pass inspection has increased. According to the bureau and local elevator government inspectors, there are several reasons why the number of failed elevator inspections has increased in recent years. The retroactive application of code provisions is not a reason for the increase in failed inspections. Elevator officials cite other reasons for the increase in the number of violations and in the number variance requests.

²⁹ Section 120.542(2), F.S.

³⁰ *Id.*

³¹ Forward, ASME A17.3 (1996).

³² *Id.*

³³ *Id.*

The main reason given by the bureau is that the number of elevator inspections has doubled during the preceding four years. This is due to an increase in the number of elevator inspectors. According to the bureau, the number of inspectors state-wide, including bureau-employed inspectors, private inspectors, and inspectors employed by local governments, during FY 2004/2005 was 266. For FY 2008/2009, the bureau stated that there are 299 elevator inspectors state-wide. During this period, the number of inspections increased from 40,503 inspections in FY 2004/2005 to 60,332 inspections in FY 2008/2009. The number of elevators in Florida has also increased during this period. According to the bureau, there were 64,392 certified elevators in 2005 and there are 75,897 certified elevators as of August 2009.

In 2000, when the Legislature permitted elevator inspections to be conducted by private inspectors, it also required elevators to be inspected annually rather than once every two years. The increase in inspection frequency was a primary benefit of permitting inspection by private inspectors. Before the use of private inspectors was permitted, the bureau was not able to meet its workload demands and the number of elevators inspected each year had been declining.³⁴

According to the bureau and local inspection officials, an increase in the number of inspectors, the number of elevators, and the number of elevators inspected necessarily results in more violations being found.

Inspection officials note that it is possible that elevators that successfully passed previous inspections should have failed their inspection. For example, the inspector may have overlooked or missed a violation. Elevator officials also speculate that an elevator's components may have failed since the previous inspection. According to inspection officials, failure of components is more common in older elevators. Another factor that may have increased the number variance requests includes the down turn in the economy and elevator owners not having sufficient funds to make necessary repairs.

The bureau also notes that its use of industry bulletins, which inform the elevator industry about changes in the law or matters in the law that, in the judgment of the bureau, need to be stressed, also contribute to improved inspections.

According to the bureau and an inspection official in Miami-Dade County, the 2005 adoption of ASME A17.3 for existing elevators did not add any new requirements for existing elevators that would require a retrofit. In other words, if an elevator should have successfully passed an inspection before the adoption of ASME A17.3 in October 2005, that elevator should also successfully pass an inspection today, unless:

1. The previous inspections failed to note the code violations;
2. The elevator has been modified; or
3. The elevator may have a part or parts that have broken or otherwise ceased to operate properly.

Furthermore, bureau personnel were only able to specify the following two examples of a standard that was introduced by the adoption of ASME A17.1(2000) in October 2005 that was not previously applicable to existing elevators through the application of the standards in previous editions of part 8, ASME A17.1:

- Local firesafety officials were authorized to specify a uniform keyed lock box to contain the emergency elevator operation keys.³⁵
- Elevators were required to have a fire operation switch, stop switch, call cancel button, door open button, door close button, and visual signal behind a locked panel.³⁶

³⁴ See, *Privatization Has Helped Improve Elevator Safety: Additional State Oversight is Needed*, Report No. 08-18, Office of Program Policy Analysis & Governmental Accountability, Florida Legislature, April 2008.

³⁵ Section 211.8, ASME A17.1(2000), effective in the Florida Building Code on December 8, 2006.

³⁶ Section 2.27.3.3.7, ASME A17.1 (2004), effective in the Florida Building Code on December 8, 2006.

Variance Requests

The bureau must permit an elevator owner 30 days to correct any violations found during an inspection.³⁷ According to the bureau, 30 days is often not enough time to correct violations and obtain a follow-up inspection because of the expense and time needed to comply. The bureau initially permitted owners up to 180 days to complete work, but required elevator owners to submit a plan for corrective action (PCA) that included a schedule for completion of the corrective action and a copy of a contract for the work.³⁸ According to the bureau, it has ceased its use of PCA procedure after concluding that the agency was required to instead follow the variance and waiver procedures in s. 120.542, F.S.

The bureau provides information on its website to consumers regarding the process of petitioning the agency for a variance or waiver from elevator regulations.³⁹ As of August 11, 2009, the bureau has received 279 requests for variance related to violations of ASME A17.3 violations since October 2008.⁴⁰ The bureau has granted 87 requests and denied 8 requests. As of August 2009, there were 184 requests pending. Variance petitions also have been received by local governments that provide elevator inspection services. However, Metro-Dade County and the City of Miami Beach advised that they do not maintain data on the number of petitions for variance received and the number of petitions granted or denied.

Based upon a review of the petitions for variance received by the bureau, most of the petitioners for variance are condominium associations. However, variances from elevator requirements stemming from failed elevator inspections have also been filed by businesses, churches, and local governments.

As evidenced by the number of variances or waivers granted by the bureau during the preceding year, the bureau usually grants such petitions. According to the bureau, it attempts to accommodate the elevator owner's concerns regarding the expense of bringing an elevator into compliance and affords them the time they need to acquire the necessary funding and to perform the work. To receive a variance, the petitioner only needs to provide evidence of substantial hardship in the form of a clear explanation of the substantial hardship. According to the bureau, most of the few denied petitions simply fail to note any hardship.

The typical variance granted by the bureau provides additional three to six-months for petitioners to remedy violations, but the bureau also routinely grants extensions that range from one to three years. According to the bureau, the extent of the variance is intended to accommodate the elevator owner and help the owner bring the noncompliant elevator into compliance, e.g., giving the owner sufficient time to obtain needed funds and to complete the needed repair work. The petitioners' costs for compliance vary and depend on the nature of the required repair and the number of elevators that need repair, but some variance petitioners noted costs in excess of \$500,000.

Based on a review of variance petitions received by the bureau and discussion with bureau and local elevator inspection officials in Miami-Dade County, the most common type of elevator violations relate to the door restrictor requirement and the firefighter's service requirement.

It is not clear from a review of the variance requests and accompanying inspection reports whether any of the code violations that were the subject of the variance and waiver requests related to the retroactive application of code standards.

³⁷ Section 399.105(4), F.S.,

³⁸ See, Bureau of Elevator Safety, *Industry Bulletin for Florida's Elevator Industry*, No. 2006-04, dated August 1, 2006.

³⁹ See, <http://www.myflorida.com/dbpr/HR/faqs/hr-faq-elevatorvariance.html> (last visited August 28, 2009).

⁴⁰ The 279 variance petitions received by the bureau represent approximately one-third of 1 percent of the 75,897 certified elevators in Florida (excluding the approximately 25,000 elevators under the jurisdiction of the five local governments that provide inspection services). Since October 2009, the bureau has received an average 25 petitions each month for variances or waivers from elevator regulation. The bureau continues to receive variance and waiver requests.

According to the bureau, the door restrictor prevents an elevator door from opening more than four inches when the elevator car is between floors or outside the floor landing zone.⁴¹ The door restrictor prevents elevator riders from attempting to exit the elevator when it stops between floors to prevent death or injury.

The ASME firefighter service provisions were developed by the elevator industry in 1973.⁴² The ASME firefighters' service requirement has two primary components:

- Phase I emergency recall operation; and
- Phase II emergency in-car operation.⁴³

When smoke or heat is detected, the Phase I emergency recall operation requirement automatically or manually recalls an elevator to a specific landing and removes the elevator from normal service. This prevents riders from using the elevator and becoming trapped.

The Phase II emergency in-car operation requirement permits the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment.

The bureau stated that there have been no reported instances of injury or death in Florida related to the failure or absence of these elevator components in an elevator. However, according to an elevator inspector in Miami-Dade County, there have been deaths nationwide caused by passengers opening an elevator door between floors in a manner that would have been prevented had a ASME-compliant door restrictor been installed.

Enforcement Concerns

A representative for the City of Miami Beach indicated that a principal concern is that, before July 2006, the bureau's elevator inspection practices were irregular and inconsistent. He noted that the bureau's enforcement of the firefighter recall provisions in A 17.3 did not begin in earnest until that time and that the bureau's statewide enforcement of these provisions did not become apparent until 2008.

The City of Miami Beach representative expressed the concern that the bureau does not consistently enforce the fire recall provisions in A 17.3 (1996). He expressed the concern that enforcement may be subject to a PCA that may extend compliance from 31 days to 5 years and concluded that this "strongly suggests" that compliance with fire recall provision is not a critical life-safety issue. He advised that legislation or additional rulemaking was needed to improve the guidance to elevator owners regarding the results they should expect from the variance and waiver process.

The Department of Business and Professional Regulation and the City of Miami Beach have indicated to Senate professional staff that they could support a five-year moratorium, as of July 1, 2008, for the enforcement of updates to the Phase II firefighters service under ASME A17.1 and A17.3. The agency and city further indicated that they could support the continued enforcement of Phase II standards for elevators that must be replaced or that require "major modification." The agency and city have not recommended a definition for the term "major modification."

Universal Key Requirement

One additional elevator safety standard has been added since the adoption of ASME A17.3. In 2004, s. 399.15, F.S., was enacted to require that elevators in buildings that are six or more stories in height must be equipped with a universal key that allows all elevators with each of the seven state emergency response regions to operate in fire emergencies with one master key. This provision was enacted in 2000 and originally required compliance by June 30, 2004, for buildings in which construction had begun or had been substantially improved, and July 1, 2007, for

⁴¹ Rule 2.7.4, A.S.M.E. A17.3 (1996 edition).

⁴² Bukowski, Richard, et al., *Elevator Controls*, National Fire Protection Association Journal, March/April 2006.

⁴³ Rule 3.11.3, A.S.M.E. A17.3 (1996 edition).

all other existing buildings of six or more stories.⁴⁴ In 2006, the deadlines were extended to September 30, 2006 for buildings in which construction had begun or had been substantially improved, and October 1, 2007, for all other existing buildings of six or more stories.⁴⁵

According to an elevator inspection official, the cost of compliance with this requirement is estimated at \$700 per switch. There is one switch in each elevator and one outside switch for all elevators. Therefore, a building with one elevator must have two switches, a building with two elevators, must have three switches, etc.

Committee Substitute for Committee Substitute for Senate Bill 2100

None of the variance requests that were reviewed specifically referenced violations related to heat sensors or electronic controls. These elevator components were referenced in CS/CS/SB 2100 during the 2009 Regular Session, and would have amended s. 399.02(6), F.S., to prohibit the bureau from enforcing any updates to the elevator safety code that require modifications related to ANSI/ASME A17.1 and A17.3 provisions for heat sensors and electronic controls on existing elevators. As noted previously, the bill did not pass the Legislature. According to the bureau, the provisions referenced in that legislation did not reflect or use terminology used in the codes. According to the bureau, it is not clear how it would have applied the provision had it been enacted.

Options and/or Recommendations

Senate professional staff recommends that ch. 399 F.S., should be amended to provide the Bureau of Elevator Safety with guidelines in addition to those provided in s. 120.542(2), F.S., for the issuance of variances and waivers related to the application of elevator standards. Senate professional staff also recommends that the bureau should be required to determine whether any updates or modifications of the Elevator Safety Code require immediate application to existing elevators which would require elevator owners to retrofit elevators to bring them into compliance.

Senate professional staff recommends that the bureau should be authorized to delay the application of revisions of the elevator safety code for a period of up to three years in order to give elevator owners additional time to anticipate the costs of compliance. The delayed application of revised standards also may save affected owners the expense and uncertainty associated with requesting a variance or waiver.

Senate professional staff further recommends that the bureau should be required to consider the following guidelines for the issuance of variances and waivers and when determining whether revisions to the elevator safety code should be applied immediately:

- Whether the risk of harm or injury to the public associated with the proposed code revision outweigh the costs associated with compliance with the proposed code revision;
- Whether there have been incidences of harm or injury to the public related to the risk that the proposed code revision is intended to address;
- Whether a delay in the implementation of the proposed code revision would pose a danger to life or safety; and
- Whether the risks associated with the proposed code revision may be avoided or whether the benefits associated with the proposed code revision may be achieved through alternative means.

Alternatively, the Legislature could consider a five-year moratorium for the enforcement of ASME standards related to the Phase II firefighter service, which permits the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment, as recommended by the Department of Business and Professional Regulation and the City of Miami Beach.

⁴⁴ Section 1, ch. 2004-1, L.O.F.

⁴⁵ Section. 2, ch. 2006-65, L.O.F.