

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 990

SPONSOR: Appropriations Subcommittee on General Government, Regulated Industries Committee and Senator Campbell

SUBJECT: Elevator Inspections/Funds Collected

DATE: March 11, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	Hendon	Hayes	AGG	Favorable/CS
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill:

- Requires only one annual inspection of apartments.
- Revises licenses for temporary food service events and provides caps on fees.
- Allows private entity to administer the food safety test for food service managers and removes the \$50 cap on the fee to be charged. Allows the department to charge an administrative fee of \$5 on each test.
- Excludes the initial fee and delinquent renewal fees from the annual fee cap for public lodging establishments and public food service establishments.
- Increases the annual fee for the Hospitality Education Program from \$6 to \$10.
- Authorizes private sector to conduct inspections required for temporary operation permits for elevators.
- Allows for two-year certificates for operation of elevators.

The bill substantially amends the following sections of the Florida Statutes: 509.032, 509.039, 509.251, 509.291, 509.302, 399.01, 399.02, 399.03, 399.049, 399.061, 399.07, 399.105, 399.106, 399.125, and 399.13.

II. Present Situation:

Chapter 509, Part I, provides for regulation of lodging and food service establishments. “Public lodging establishment” is defined as “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which

is advertised or held out to the public as a place regularly rented to guests. License classifications of public lodging establishments, and the definitions therefore, are set out in s. 509.242.”
s. 509.013(4), F.S.

“Public food service establishment” is defined as “any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.”
s. 509.013(5), F.S.

Section 509.032, F.S., provides that the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (the division) has the duty to inspect each licensed establishment at least twice a year and at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division is to establish a system to determine inspection frequency.

Section 509.039, F.S., provides that food service managers be certified in the safe handling of foods. The department establishes such standards and develops a test that food managers must pass. The test can be administered by the department or a private entity and a fee of up to \$50 may be charged for the test.

Chapter 399, F.S., provides for the regulation of the construction and operation of elevators and other mechanical devices used to raising and lowering people and goods. The Department of Business and Professional Regulation is responsible for the regulation of elevators and such regulation has been recently revised with the enactment of chapter 2001-186, Laws of Florida. Some regulatory functions, such as annual inspections, have been assumed by the private sector. Companies that construct and install elevators as well as those individuals that inspect elevators must be licensed by the department. A newly installed elevator may be used by construction personnel in the construction of the building or structure, but must first obtain a temporary operation permit from the department. Prior to granting such a permit, the department conducts an inspection and charges a fee of \$100.

The Hotel and Restaurant Trust Fund receives the fees associated with the regulation of numerous private enterprises such as hotels, restaurants, and elevators. The trust fund is experiencing a deficit and according to the Governor's Office of Policy and Budget, ended fiscal year 2000-01 with a deficit of \$3.8 million. To eliminate this deficit, the department chose not to assess the trust fund for administrative costs and the costs for the on-line licensing and reengineering project. The trust fund deficit is expected to be \$3.3 million for the current year. The department has proposed addressing this deficit through a combination of reducing operational costs and an increase in revenues from fees. The department has authority to set such fees within respective statutory caps through its administrative rules. The statutory cap for the annual fee for lodging establishments is \$1,000 while the cap for public food service establishments is \$400. Current law requires that application fees, delinquent fees, and fines be counted towards the statutory cap. The current rules do not meet the statutory caps.

III. Effect of Proposed Changes:

Section 1. amends s. 509.032, F.S., to require only one annual inspection of transient and non-transient apartments. The section also changes the licensing and reporting requirements for temporary food service events, requiring that a food service vendor obtain either an individual license, for a fee of no more than \$105, for each temporary food event, or an annual license, for a fee of no more than \$1,000. These changes are expected to improve administration of the program for both the department and the regulated entities.

Section 2. amends s. 509.039, F.S., to clarify that the division standards for food service manager certification must be consistent with those adopted by the Conference on Food Protection. In addition, this section removes the cap of \$50 that may be charged to administer the test required for all food service managers and establishes that the department can assess a fee of \$5 to cover the administrative costs associated with the manager training and certification program.

Section 3. amends s. 509.251, F.S., to clarify that late fees and fees to pay costs associated with initiating regulation of the establishment are not subject to the aggregate cap on license fees.

Section 4. amends s. 509.291, F.S., to require that the secretary and the division periodically review the division's budget and financial status with the advisory council for the purpose of maintaining the financial stability of the division. The council is to make recommendations on adequate funding levels.

Section 5. amends s. 509.302, F.S., to increase the annual fee to fund the Hospitality Education Program from \$6 to \$10.

Section 6. Amends s. 399.01, F.S., the definitions for the Elevator Safety Act. It deletes the definition of "certificate of competency" as this term is being replaced by "elevator certificate of competency." It deletes the definition of "escalator" at subsection (8) as subsection (7)(b) also defines this term. A "temporary operation inspection" is defined as the inspection that permits the temporary use of the elevator. This reflects the transfer of authority for such inspections from the department to the private sector. It amends the definition of "certified elevator inspector" to use the credentials of the American Society of Mechanical Engineers as opposed to the National Association of Elevator Safety Authorities. It amends the definition of "elevator certificate of competency" to provide further qualifications to obtain an elevator certificate of competency.

Section 7. Amends s. 399.02, F.S., to delete a requirement that the department review service maintenance contracts and determine whether they ensure safe operation of the elevator. The section also makes each elevator owner responsible for inspections after a certificate of operation has been issued.

Section 8. Amends s. 399.03, F.S., to transfer modified provisions for temporary operation inspections to this section from s. 399.07(2), F.S. The new language requires that registered elevator companies apply for a temporary permit. Registered elevator companies use application forms developed by the department and submit proper fees. Under current practices, the department inspects the elevators as part of the temporary permit application. This would complete the privatization of elevator inspections. Under the bill, a certified elevator inspector

would conduct the inspection. The section also requires that an original inspection report be filed with the department within 5 days of the inspection and provides additional requirements for application for elevator permits.

Section 9. Amends s. 399.049, F.S., to revise the grounds for suspension or revocation of certification or registration. New grounds include failure of a certified elevator inspector to file a copy of an elevator inspection report within 5 days of the inspection and fraud, misrepresentation, or bribery in the practice of the profession. The ground of a failure to notify the department and the certificate of operation holder of an elevator that is out of compliance with the elevator safety code is deleted.

Section 10. Amends s. 399.061, F.S., to delete the current exception to the requirement for annual inspections that allow inspections every two years for elevators that are subject to service maintenance contracts, thereby requiring an annual inspection for all elevators. This section also requires that a report on service maintenance contracts be filed at least annually. This section provides that the department may inspect elevators and charge a fee when needed to ensure their safe operation.

Section 11. Amends s. 399.07, F.S., to extend the period of validity of a certificate of operation from one to two years. The provisions on certificates of operation in paragraph (1)(d) are reorganized and moved to newly designated subsection (1). The section also deletes the provisions on temporary use permits, which are modified and transferred to s. 399.03, F.S. among the modifications is requiring inspection by a private inspector, not a state elevator inspector. As the state is no longer conducting these inspections, an inspection fee provided in current paragraph (2)(d) is not contained in the new provisions in s. 399.03.

Section 12. Amends s. 399.105, F.S., to delete a restriction on issuance of a fine for commencing installation of an elevator without a construction permit, to shorten the time for correction of a violation from 60 days to 30 days, with discretion to extend the time for good cause shown, and to subject an elevator owner who continues to operate an elevator after it has been sealed by the Department to civil fine.

Section 13. Amends s. 300.106, F.S., to make a technical correction.

Section 14. Amends s. 399.125, F.S., to delete a requirement that an “incident” occurring in or upon any elevator be reported to the division, with “accidents” still to be reported.

Section 15. Amends s. 399.13, F.S., to allow a local government that assumes elevator inspection duties to hire private inspector to conduct inspections.

Section 16. Provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Under the bill, fees for initial licensure and delinquent renewals for public lodging and public food service establishments would not count towards the annual license fee caps. The bill raises the amount the department may charge for the Hospitality Education Program from \$6 to \$10. With these changes, the department proposes to revise its rules to increase the fees for apartments by \$40, for hotels by \$45, and for restaurants by \$45. This change would generate an additional \$3.5 million annually. The department expects that the rule would go into effect in January 2003 so that the first year revenues would be \$1.8 million.

B. Private Sector Impact:

Costs to owners of hotels and restaurants would increase if the department raised its licensing fees as allowed under the bill.

The department with a fee of up to \$100 currently performs inspections required to ensure the safety of new or altered elevators. Under the bill, the inspection would be obtained from private elevator inspectors. The cost of such inspections could be greater or lesser than the current fee paid to the department.

C. Government Sector Impact:

According to the Governor's Office of Policy and Budget, the trust fund ended fiscal year 2000-01 with a deficit of \$3.8 million. To eliminate this deficit, the department chose not to assess the trust fund for administrative costs and the costs for the on-line licensing and reengineering project. The trust fund deficit is expected to be \$3.3 million at the end of the current year. To address this deficit, the department has proposed reducing the number of inspections of apartments, reducing cost through its on-line licensing project and reducing the number of inspections of apartments, and increasing fees. The changes to the fee structure would result in a increase in revenues available to the department of approximately \$3.5 million annually. The first year would see an increase of \$1.4 million.

Removing the requirement that the department conduct temporary safety inspections for newly constructed elevators will result in a loss of approximately \$75,000 in revenue. The department would have to reduce their expenses accordingly in this area.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
