

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 w/CS Elevator Safety

SPONSOR(S): Kallinger

TIED BILLS: None

IDEN./SIM. BILLS: CS/CS/CS/SB 672 and 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance	18 Y, 0 N w/CS	Callaway	Cooper
2) Local Government & Veteran's Affairs		Mitchell	Cutchins
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill, as a committee substitute, requires elevators in buildings in the state that are six or more stories to be keyed or retrofitted with a master key to allow firefighters emergency elevator access. Elevators in "independent special districts" and "airports" with 24-hour emergency response services are exempt from the master key requirements.

There may be a different master key for each of the seven state emergency response regions.

The bill provides deadlines to meet the master key requirement for new and existing buildings.

The master key would be issued to the fire department as well as elevator owners, owners' agents, elevator contractors, state certified inspectors, and state agency representatives. The master key may not be duplicated. The local fire marshal may allow substitute emergency measures providing emergency elevator access for those buildings where it is technologically or physically impossible to comply with the master key requirements. The Division of State Fire Marshal, Department of Financial Services, is given authority to enforce the master key provisions and rulemaking authority.

The bill recreates the Elevator Safety Technical Advisory Committee (the committee) within the Department of Business and Professional Regulation, Division of Hotels and Restaurants, and adds a member to the committee.

The fiscal impact on state government, local government, and the private sector is uncertain, as the number of elevators impacted by this bill is unknown.

The cost of retrofitting each elevator is unknown and may vary depending on the model and age of the elevator. In addition, the necessity of requiring a permit to alter elevator keys is unknown. According to estimates received, the minimum cost to retrofit an existing elevator is approximately \$200 to \$300, and there are 15,724 elevators that fall under the auspices of this bill.

Section 1 of the bill, requiring regional emergency elevator access, becomes effective date on July 1, 2004. The remaining sections are effective upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0129c.lgv.doc

DATE: March 5, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Reduce government: The Department of Business and Professional Regulation (DBPR) currently regulates elevators, and DBPR requires a permit to alter elevators. Uniformity of elevator keys is not currently required or regulated in state law or pursuant to the Florida Building Code. The bill creates additional responsibilities for the State Fire Marshal's office to monitor, investigate, and penalize fire department and/or building personnel for violations of the provisions of the bill.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 33 of chapter 2001-186, Laws of Florida, required the Florida Building Commission (the commission) to research the issue of requiring all primary elevators in buildings with more than five levels to operate with a universal key, which allows access and operation of elevators by emergency personnel.

The commission established an Elevator Emergency Access Ad Hoc committee to identify and research issues related to the universal key concept for primary elevators and to draft recommendations. The issues researched included security, implementation costs, standardized key, and lock box issues. Statewide, regional, and local jurisdiction level universal access were also evaluated.

The commission recommended providing universal emergency access to all primary elevators with fire fighters' service in buildings above three levels or with 25 feet in travel distance above the designated level by requiring lock boxes dedicated to each elevator containing the elevator key as the method of universal emergency access. The commission further recommended lock boxes to be required for new construction as well as in existing buildings. Additionally, the commission recommended new buildings should be in compliance within 6 months of implementation of a system with the costs of lock box installation paid by the property owner. The commission recommended that removal of the key(s) located in the lock box by any unauthorized person should be subject to a misdemeanor of the second degree.

The recommendations further stated the Department of Insurance, Division of State Fire Marshal (now the Department of Financial Services [DFS]), should be granted authority to adopt any rule necessary to interpret, implement, and make specific the provision of this section. The commission recommended enforcement of elevator emergency access requirements should be referenced in chapters 633, Fire Prevention and Control, and chapter 553, Building Construction Standards (Florida Building Code), Florida Statutes.

Uniformity of elevator keys is not currently prescribed or regulated in state law. The key(s) required by this bill are not the type of elevator equipment currently regulated by DBPR.

According to firefighters in the Orlando Professional Firefighters Local 1365, there are numerous elevator manufacturers and each manufacturer may have numerous elevator keys. Currently, there is no guarantee an elevator key will be readily accessible to firefighters arriving at an emergency scene. If no key is available, firefighters must use the stairs, which delays their arrival at the scene. A master elevator key will allow firefighters to take elevators out of automatic operation and place them in manual control, guaranteeing the firefighters the option to use the fire service feature in elevators. According to the firefighters, New York City, the City of Yonkers (New York), and the State of Massachusetts have used a standardized/universal/master elevator key for years with no documented mishaps or security issues.¹

The DBPR is the enforcement authority for chapter 399, Florida Statutes, the Florida Elevator Safety Act, and rules related to elevator construction, installation, permitting, inspection, and maintenance adopted in concert with the Florida Building Commission. Section 399.003, Florida Statutes., requires a permit to be issued by the DBPR before an elevator can be altered and allows the DBPR to set permit fees by rule. The permit fee for elevator alteration is \$200.²

Section 943.0312, Florida Statutes, provides there is a need to develop and implement a statewide strategy to address preparation and response efforts by federal, state, and local law enforcement agencies, emergency management agencies, fire and rescue departments, first responder personnel, and others in dealing with potential or actual terrorist acts within or affecting the state. Accordingly, regional domestic security task forces were established in each of the seven operational regions of the Department of Law Enforcement.

Proposed Changes

The committee substitute requires all elevators allowing public access in each building in Florida that is six or more stories, including, but not limited to, hotels and condominiums, on which construction is begun after June 30, 2004, to be keyed with one master key to allow emergency elevator access in fire emergencies. Buildings six or more stories that are "substantially renovated" (as defined in the Americans with Disabilities Act), after June 30, 2004, are also required to be keyed with one master key.

The master key may be different in each of the seven state emergency response regions. The master key will only be issued to the fire department and will not be issued to any other emergency response agency. The key cannot be duplicated for anyone other than authorized fire department personnel. However, elevator owners, owner's agents, elevator contractors, state certified inspectors and state agency representatives may be issued a master key. Compliance for existing buildings six or more stories is required by July 1, 2007.

According to the Division of Fire Marshal, this bill is consistent with the many inter-agency agreements that exist throughout the state and will resolve problems of gaining access whenever first responders support a neighboring county.³

Although DBPR inspects and licenses elevators per chapter 399, Florida Statutes, the bill gives the Division of the State Fire Marshal authority to enforce the provisions of the master key requirements. It is anticipated the local fire departments will inspect and enforce the master key requirements as part of

¹ Letters received by staff for the House Committee on Insurance: from Gerald Barbara, Chief of Fire Prevention, City of New York Fire Department; from John O'Donoghue, The Commonwealth of Massachusetts, Executive Office of Public Safety, Department of Fire Services; from John O'Donoghue, Assistant Chief of Fire Operations, City of Cambridge Fire Department.

² Fla. Admin. Code R. 61C-5.0052(2) (2003).

³ Information received by staff for the House Committee on Insurance.

their annual inspection of buildings required under chapter 633, Florida Statutes.⁴ Rulemaking authority is given to the Division of State Fire Marshal.

For non-compliance with the master key requirements, the bill provides for an administrative fine no greater than \$1,000 in addition to any other penalty provided by law. Any administrative fine collected is to be deposited in the Insurance Regulatory Trust Fund.

Any building operated by an independent special district or airport that has 24-hour emergency response services is exempt from the master key requirements required by the bill. Additionally, the bill gives the local fire marshal authority to allow substitute emergency measures for buildings that technologically or physically cannot comply with the master key requirements.

The bill waives the permitting fee charged by DBPR for altering elevators to comply with the master key requirements.

The bill recreates the Elevator Safety Technical Advisory Committee (the committee) within the DBPR, Division of Hotels and Restaurants. Effective December 31, 2003, the committee was terminated by pursuant to section 399.106(3), Florida Statutes. The membership of the committee is increased from seven to eight members. The new member must be a certified elevator inspector from a private inspection service. Private inspection service companies were not represented on the committee prior to its termination on December 31, 2003. Members of the committee who had not served out their 4-year term at the time of the committee's termination on December 31, 2003, are reappointed for the remainder of their term. The bill eliminates the committee's termination on a fixed future date.

C. SECTION DIRECTORY:

- Section 1: Creates section 399.025, Florida Statutes, establishing requirements for implementation of master key requirements for emergency elevator access by fire fighter personnel.
- Section 2: Amends subsection (1) of section 399.03, Florida Statutes, to waive a fee for a permit to alter an elevator if the permit is required by DBPR for the elevator to comply with the master key requirements.
- Section 3: Creates section 399.1061, Florida Statutes, recreating the Elevator Safety Technical Advisory Committee, which terminated on December 31, 2003, and providing for membership in the committee.
- Section 4: Provides for reappointment of members of the committee who did not serve out their terms as of the committee's termination on December 31, 2003.
- Section 5 : Repeals section 399.106, Florida Statutes
- Section 6: Provides for an effective date of July 1, 2004, for section 1 of the bill and provides sections 2-5 are effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There are no known or expected fiscal impacts on state government revenues.

⁴ Telephone discussion between staff for the House Committee on Insurance and Randall Napoli, Division of State Fire Marshal, on February 13, 2004.

2. Expenditures:

DBPR may incur additional expenses of per diem and travel for the recreated Elevator Safety Technical Advisory Committee and the addition of a new committee member. According to the Division of Hotels and Restaurants, however, the cost of the per diem and travel would be minimal and absorbed in the existing budget.⁵

Even though the fee for a permit to alter is waived by the legislation, DBPR must still issue the necessary permit for the elevator alteration and may incur additional expenses due to increased workload for the issuance of permits to alter elevators. The number of permits to be issued is uncertain and would be based on the number of existing elevators in buildings six stories or higher requiring retrofitting. According to DBPR, no permit to alter is needed if the retrofitting only requires changing out the elevator's key cylinders. However, if retrofitting is necessary to change out the elevator controller, a permit is required.⁶ DBPR indicated the specifics of workload increase is indeterminate.⁷

The Office of the State Fire Marshal does not anticipate incurring any additional expenses due to added regulation of elevator keys required by this bill, as the inspection of elevator keys will be included in the local fire department's annual inspection of buildings.⁸

State government may incur additional expenses due to the retrofitting of elevator keys and/or installation of elevator keys in new elevators in buildings owned by the state. The number of elevators in state-owned buildings that would have to be retrofitted and the cost of retrofitting are uncertain. However, a representative of Otis Elevator, an elevator manufacturer, estimated the minimum amount of labor involved in changing out elevator keys would be 30 minutes per elevator key at a minimum cost of \$149/hour, although the hourly labor rate varies throughout the state. The representative estimated the cost of a new key would be a minimum of \$70/key. The cost will vary depending on whether the new key fits the faceplate on the elevator panel. If it does not, a new faceplate would be required or the one in use modified, creating additional expenses.⁹ A representative from the Building Owners and Managers Association estimated retrofitting will cost \$300/elevator.¹⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

Local governments may incur additional expenses due to retrofitting elevator keys and/or installation of elevator keys on new elevators conforming to the bill's requirements. The number of elevators in local government-owned buildings that would have to be retrofitted and the cost of retrofitting are uncertain. However, a representative of Otis Elevator, an elevator manufacturer, estimated the minimum amount of labor involved in changing out elevator keys would be 30 minutes per elevator key at a minimum cost of \$149/hour, although the hourly labor rate varies throughout the state. The representative estimated the cost of a new key would be a minimum of

⁵ Senate Staff Analysis and Economic Impact Statement, January 28, 2004 for CS/SBs 672 and SB 680; telephone discussion between staff of the House Committee on Insurance and Lee Corman, Division of Hotels & Restaurants, on February 9, 2004.

⁶ Telephone discussion between staff of the House Committee on Insurance and Candace Jones-Wright, DBPR, on February 13, 2004.

⁷ Telephone discussion between staff of the House Committee on Insurance and Candace Jones-Wright, DBPR, on February 13, 2004.

⁸ Telephone discussion between staff of the House Committee on Insurance and Randall Napoli, State Fire Marshal's Office, on February 13, 2004.

⁹ Telephone discussion with staff of the House Committee on Insurance on February 9, 2004.

¹⁰ Telephone discussion between staff of the House Committee on Insurance and Bert Locke on February 12, 2004.

\$70/key. The cost will vary depending on whether the new key fits the faceplate on the elevator panel. If it does not, a new faceplate would be required or the one in use modified, creating additional expenses. A representative from the Building Owners and Managers Association estimated retrofitting will cost \$300/elevator.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector (building owners and building contractors of buildings six or more stories in height) may incur additional expenses due to retrofitting elevator keys and/or installation of elevator keys on new elevators to comply with the master key provisions of this bill. The number of elevators in privately owned buildings that would have to be retrofitted and the cost of retrofitting are uncertain. However, a representative of Otis Elevator, an elevator manufacturer, estimated the minimum amount of labor involved in changing out elevator keys would be 30 minutes per elevator key at a minimum cost of \$149/hour, although the hourly labor rate varies throughout the state. The representative estimated the cost of a new key would be a minimum of \$70/key. The cost will vary depending on whether the new key fits the faceplate on the elevator panel. If it does not, a new faceplate would be required or the one in use modified, creating additional expenses. Some building owners may pass the additional expense(s) to the public or lessee. A representative from the Building Owners and Managers Association estimated retrofitting will cost \$300/elevator.

Elevator manufacturers may also be affected by this bill in regards to design and, possibly, retrofitting.

D. FISCAL COMMENTS:

DFS estimates a non-recurring expenditure of \$2,500 in FY 2004-2005 for the cost of rulemaking.¹¹

According to DBPR, there are 15,724 elevators in buildings six stories and higher.¹² Thus, this bill will likely affect all of these elevators.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The requirement of a master key, emergency-access-to-elevators program to be implemented by fire departments could require cities and counties to spend funds or take action requiring the expenditure of funds in order to retrofit elevator keys in city or county buildings. As a result, the bill could constitute a "mandate" as defined in subsection (a) of section 18 of article VII of the Florida Constitution. This subsection, however, permits counties and municipalities to be bound by such a law if it "fulfills an important state interest" and if it meets one other condition from a list of criteria set forth in the subsection. One of the additional conditions that this bill satisfies is that it "applies to all persons similarly situated, including state and local governments." As such, the provisions of the bill may be permitted if the bill contains a statement that it "fulfills an important state interest."

The provisions of the bill may also be permitted if the fiscal impact of the bill is insignificant as provided in article VII, section 18(d) of the Florida Constitution. For purposes of legislative application of article VII, section 18(d) of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times 10 cents. For fiscal year 2004-2005, this is \$1.7 million. The bill does not provide an additional revenue source or an appropriation to fund compliance with its terms but, under the bill, the overall fiscal impact on counties and municipalities could be insignificant. The exact fiscal impact is currently uncertain.

¹¹ Information received by staff for the House Committee on Insurance.

¹² E-mail received by staff of the Committee on Insurance from Candace Jones, DBPR, on February 13, 2004.

2. Other:

Elevator Safety Technical Advisory Committee

Section 3 of the bill recreates the Elevator Safety Technical Advisory Committee as part of the DBPR. The DBPR is one of the twenty-five executive departments provided for in article IV, section 6, of the Florida Constitution and section 20.165, Florida Statutes. "As the chief executive officer in whom the supreme executive power is vested"¹³, the Governor has direct supervision over all executive departments unless the legislature places that supervision in the hands of one of the following other executive officers...Inherent in that direct supervisory authority is the power to appoint executive officers to public office."¹⁴ By authorizing the "Secretary of Business and Professional Regulation" to appoint the eight members, this bill limit the "supreme executive power" of the Governor.

Section 4 of the bill may also limit the "supreme executive power" of the Governor by requiring reappointment for any member of the Elevator Safety Technical Advisory Committee whose term of office was terminated on December 31, 2003, but who had held the appointment for less than four years. The Governor is not permitted to make the appointment and the statutes may not require the Governor to reappoint.¹⁵

B. RULE-MAKING AUTHORITY:

Rulemaking authority is granted to the Division of State Fire Marshal.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments from the Committee on Insurance – Authority to Choose the Master Key

According to a representative from Otis Elevator, an elevator manufacturer, enactment of a master key requirement may allow one elevator manufacturer to dominate the manufacture and, possibly, installation of the master key. Elevator keys are allegedly specific to the manufacturer; thus, one manufacturer's keys are allegedly not interchangeable with the keys of another manufacturer. Accordingly, whichever manufacturer's key(s) is determined to be the master key for use in Florida may have to be used in all elevators in Florida with public access in buildings over six stories, thus possibly allowing that manufacturer to dominate the market in regards to elevator key manufacturing.¹⁶ The bill does not specify who has authority to choose the master key and how the choice will be made.

Other Comments from the Committee on Insurance – Dissimilar Application

The bill provides that buildings in which it is "technically or physically impossible" to bring into compliance with the master key requirements may get approval from the local fire marshal for alternative emergency elevator access. The bill, however, does not define "technically or physically impossible." Without a definition, the local fire marshals have discretion to determine in each locality what is "technically or physically impossible" for a building to comply with the master key requirements. This may result in dissimilar application throughout all fire localities.

Drafting Issues from the Committee on Local Government & Veterans' Affairs – "Committee"

Section 20.03(8), Florida Statutes, defines "committee":

¹³ See Fla. Const. art. IV, § 1.

¹⁴ See *Jones v. Chiles*, 638 So.2d 48, 50 (Fla. 1994)

¹⁵ See *id.*

¹⁶ Telephone discussion on February 9, 2004.

an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.

Section 3 of the bill, however, recreates the Elevator Safety and Technical Advisory Committee and sets forth its responsibilities:

the committee shall provide technical assistance to the division in support of protecting the health, safety, and welfare of the public and shall give the benefit of the committee members' knowledge and experience concerning the industries and individual businesses affected by the laws and rules administered by the Division.

These responsibilities are neither for a set time nor for a specific problem as required by section 20.03(8), Florida Statutes. Therefore, the sponsor of the bill may wish to designate this entity a "council" as defined in section 20.03(7), Florida Statutes:

an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Drafting Issues from the Committee on Local Government & Veterans' Affairs – Staggered Terms

Subsection 2 of section 3 of the bill provides that all committee members are to serve staggered terms to be set by rule. It appears, however, that this staggering is impossible to achieve unless four of the initial appointments are only for two-year terms. If this is the result the sponsor wishes to achieve, this section may need to be amended.

Drafting Issues from the Committee on Local Government & Veterans' Affairs – Conforming Changes

The Senate Committee on Comprehensive Planning adopted amendments to the Senate companions of the bill, SB 672 and SB 680, and reported the bill favorably as a committee substitute. The sponsor may wish to amend the bill to make the following conforming changes:

- Correct technical deficiencies in the provision reinstating the Elevator Safety Technical Advisory Committee, re-designating the committee as a council and authorizing the governor to re-appoint council members;
- Amend section 399.13(1), Florida Statutes, to clarify that cities or counties may assess a reasonable fee when their inspectors perform elevator inspections;
- Include a statement of "important state interest" to ensure compliance with the constitutional mandates restriction.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2004, the Committee on Insurance adopted a strike-everything amendment, and reported the bill favorably as a committee substitute. The strike everything amendment made the following changes to the originally filed version of the bill:

- Provided a penalty for noncompliance with the elevator master key requirements,
- Provided rulemaking authority to DFS, the agency given authority to enforce the elevator master key requirements,

- Waived the permitting fees charged by the DBPR for changes to elevators required for them to comply with the master key requirements,
- Recreated the Elevator Safety Technical Advisory Committee, which was terminated on December 31, 2003.
- Reappointed members of the advisory committee who were on the committee when it was terminated and had not served out their term.