

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	18 Y, 0 N w/CS	Mitchell	Cutchins
3)			
4)			
5)			

SUMMARY ANALYSIS

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 have undergone "substantial improvement" are also required to be keyed with one master key. Compliance for existing buildings six or more stories is required by July 1, 2007.

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.

The bill waives permit requirements and fees for compliance with the master key requirements. The bill also requires elevator owners to report on their compliance.

The bill creates the Elevator Safety Technical Advisory Council in order to replace the Elevator Safety Technical Advisory Committee which was terminated by operation of statute on December 31, 2003. The bill sets forth the membership, appointment, terms, purpose, reimbursement, and consulting powers. The bill repeals the provisions related to the Elevator Safety Technical Advisory Committee.

The bill permits fees for inspections by municipalities and counties, but limits disciplinary actions by counties and municipalities. The bill allows for enforcement, fees, and fines by counties.

The bill sets forth a legislative finding that its provisions fulfill an important state interest.

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. 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: h0129d.lgv.doc

DATE: March 15, 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 bill may not reduce government based on its provisions: (1) requiring certain elevators allowing public access to be keyed with one master key to allow emergency elevator access in fire emergencies, (2) providing for the Division of the State Fire Marshal to enforce this requirement, (3) allowing for an administrative fine for non-compliance, (4) permitting agency rule adoption, (5) requiring submissions from affected elevator owners, and (6) creating the Elevator Safety Technical Advisory Council.

Lower taxes: The bill may not lower taxes since it permits reasonable fees for county and municipality inspections, and provides for county enforcement, fee imposition, and fine collection.

B. EFFECT OF PROPOSED CHANGES:

Background on Elevator Emergency Access

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, or 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.

Emergency Master Elevator Key

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 have undergone "substantial improvement," as defined in section 161.54(12), Florida Statutes, 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 State Fire Marshal of the DFS⁴ enforcement authority and permits the DFS to adopt rules to

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.

implement the emergency master elevator key requirement. It is anticipated the local fire departments will inspect and enforce the master key requirements as part of their annual inspection of buildings required under chapter 633, Florida Statutes.⁵

Builders should make every effort to use new technology and developments in keying systems which make it possible to convert existing equipment so as to provide efficient regional emergency elevator access.

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.

A permit is not required for construction or repair of elevators in seeking to attain compliance with emergency elevator access requirements.

The bill does, however, require elevator owners to forward to the DBPR, in an electronic format approved by the DPBR, an emergency access notification that compliance measures are either not required or are being implemented. The emergency access notification is required to contain specific compliance information, including the current compliance status, specific measures required to attain compliance, and certification by a state-certified inspector. Fees may not be assessed for the filing of the emergency access notification.

DBPR must maintain an emergency elevator access registry that is available to the State Fire Marshal of the DFS for enforcement purposes.

The DBPR is permitted to adopt rules related to the permitting waiver, fee waiver, and emergency access notification requirement.

Elevator Safety Technical Advisory Council

The bill recreates the Elevator Safety Technical Advisory Council (Council) within the DBPR, Division of Hotels and Restaurants (Division). The Council was previously the Elevator Safety Technical Advisory Committee (Committee) which was terminated by operation of statute on December 31, 2003. The membership of the Council includes eight members, an increase from the seven members that served on the Committee. The additional member is for a representative from a certified elevator inspector from a private inspection service since private inspection service companies were not represented on the Committee prior to its termination on December 31, 2003.

The Council provides technical assistance to the Division in support of protecting the health, safety, and welfare of the public and gives the Division the benefit of the council members' knowledge and experience concerning the industries and individual businesses affected by the laws and rules administered by the Division.

Council members are appointed by the Secretary of the DBPR for 4-year terms, except that to provide for staggered terms four of the initial appointees will serve 2-year terms. All subsequent appointments will be for 4-year terms. One of the members will be appointed by the Council to serve as chair.

Council members serve without compensation, except that the members may be reimbursed for per diem and travel expenses as provided in section 112.061, Florida Statutes.

⁴ Fla. Stat. § 20.121 (2003) (providing that the head of the DFS is the Chief Financial Officer and placing the Division of the State Fire Marshal in the Department of Financial Services).

⁵ Telephone discussion between staff for the House Committee on Insurance and Randall Napoli, Division of State Fire Marshal, on February 13, 2004.

The Council is permitted to consult with engineering authorities and organizations concerned with standard safety codes for recommendations to the department regarding rules for the operation, maintenance, servicing, construction, alteration, installation, or inspection of vertical conveyances. The provisions related to the Committee are repealed.

Delegation of Authority

The DBPR is currently authorized to enter into contracts with municipalities or counties which permit municipalities or counties to: (1) issue construction permits and certificates of operation, (2) provide for inspection of elevators, including temporary operation inspections; and (3) enforce the applicable provisions of the Florida Building Code.⁶

This bill provides municipalities and counties with the authority to assess a reasonable fee for inspections performed by its inspectors. The bill also permits counties to enforce applicable provisions of the Florida Building Code and to impose fees and assess and collect fines as part of its enforcement activities.

The bill prohibits municipalities and counties from issuing or taking disciplinary action against a certificate of competency, an elevator inspector certification, an elevator technician certification, or an elevator company registration. DBPR is permitted initiate disciplinary action against a registration or certification at the request of a county or municipality.

State Interest

The bill sets forth a legislative finding that its provisions fulfill an important state interest.

C. SECTION DIRECTORY:

- Section 1: Establishes requirements for implementation of master key requirements for emergency elevator access.
- Section 2: Amends subsection (1) of section 399.03, Florida Statutes, to waive permit requirements, waive fees, and require an emergency access notification for compliance with the master key requirements.
- Section 3: Creates section 399.1061, Florida Statutes, providing for the Elevator Safety Technical Advisory Council, the precursor of which was the Elevator Safety Technical Advisory Committee, which terminated on December 31, 2003.
- Section 4: Amends section 399.13, Florida Statutes, to provide fees for inspections by municipalities and counties; to permit enforcement, fees, and fines by counties; and to limit disciplinary actions by counties and municipalities.
- Section 5 : Repeals section 399.106, Florida Statutes, relating to the Elevator Safety Technical Advisory Committee, which terminated on December 31, 2003.
- Section 6: Provides that the Legislature finds that the provisions of this act fulfill an important state interest.
- Section 7: 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.

⁶ Fla. Stat. § 399.13(1) (2003).

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.

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.⁷

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.⁸ DBPR indicated the specifics of workload increase is indeterminate.⁹

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.¹⁰

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.¹¹ A representative from the Building Owners and Managers Association estimated retrofitting will cost \$300/elevator.¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

⁷ 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.

⁸ Telephone discussion between staff of the House Committee on Insurance and Candace Jones-Wright, DBPR, on February 13, 2004.

⁹ Telephone discussion between staff of the House Committee on Insurance and Candace Jones-Wright, DBPR, on February 13, 2004.

¹⁰ Telephone discussion between staff of the House Committee on Insurance and Randall Napoli, State Fire Marshal's Office, on February 13, 2004.

¹¹ Telephone discussion with staff of the House Committee on Insurance on February 9, 2004.

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

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 \$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.¹³

According to DBPR, there are 15,724 elevators in buildings six stories and higher.¹⁴ 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."

¹³ Information received by staff for the House Committee on Insurance.

¹⁴ E-mail received by staff of the Committee on Insurance from Candace Jones, DBPR, on February 13, 2004.

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.

2. Other:

Elevator Safety Technical Advisory Council

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 vested¹⁵, 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.”¹⁶ By authorizing the “Secretary of Business and Professional Regulation” to appoint the eight members, this bill may limit the “supreme executive power” of the Governor. While there are councils with similar appointment provisions¹⁷, most are appointed by the Governor.¹⁸

B. RULE-MAKING AUTHORITY:

The DFS is permitted to adopt rules to implement the emergency master elevator key requirement, including rules to determine the master elevator key to be used within each of the emergency response regions.

The DBPR is permitted to adopt rules related to the permitting waiver, fee waiver, and emergency access notification requirement.

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.¹⁹ 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

¹⁵ Fla. Const. art. IV, § 1.

¹⁶ *Jones v. Chiles*, 638 So.2d 48, 50 (Fla. 1994).

¹⁷ See, e.g., Fla. Stat. § 257.02 (2003) (appointed by the Secretary of State).

¹⁸ See, e.g., Fla. Stat. §§ 400.0067, 402.165, 430.05, and 943.031 (2003) (appointed by Governor with some members designated ex-officio).

¹⁹ Telephone discussion on February 9, 2004.

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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Committee on Insurance

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:

- Provides a penalty for noncompliance with the elevator master key requirements;
- Provides rulemaking authority to DFS, the agency given authority to enforce the elevator master key requirements;
- Waives the permitting fees charged by the DBPR for changes to elevators required for them to comply with the master key requirements;
- Recreates the Elevator Safety Technical Advisory Committee, which was terminated on December 31, 2003; and
- Reappoints members of the advisory committee who were on the committee when it was terminated and had not served out their term.

Committee on Local Government & Veterans' Affairs

On March 10, 2004, the Committee on Local Government & Veterans' Affairs adopted a strike-everything amendment which resolves drafting issues and conforms the bill to the Senate companions, CS for CS for CS for SB's 672 & 680:

- Removes the exemption for any building operated by an independent special district or airport that has 24-hour emergency response services;
- Corrects 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;
- Amends section 399.13(1), Florida Statutes, to clarify that cities or counties may assess a reasonable fee when their inspectors perform elevator inspections;
- Includes a statement of "important state interest" to ensure compliance with the constitutional mandates restriction.

The bill, as amended, was favorably reported with committee substitute.