

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 w/CS Elevator Safety
SPONSOR(S): Kallinger
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 672; SB 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance		Callaway	Cooper
2) Local Government & Veteran's Affairs			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 129 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. Currently, firefighters arriving at an emergency scene in a multi-story building allegedly are not guaranteed they will be able to use the elevator to reach the emergency scene. In a multi-story building, elevator use is important to firefighters because climbing the stairs in full gear is difficult and time consuming. Because elevators are typically not operational in an emergency, the firefighters must use an elevator key to make the elevators operational. Because there is no universal elevator key, the firefighters must locate the building superintendent, building owner, or property manager to obtain the elevator key so the elevator can be used. However, there is no guarantee a building superintendent, building owner, or property manager will be readily available to give the firefighters the elevator key. If no key is available, firefighters must use the stairs, which delays their arrival at the scene. A master/universal 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.

Elevators in "independent special districts" and "airports" with 24-hour emergency response services are exempt from the master key requirements. The master key may be different in 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, and 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 \$200-300, and there are 15,724 elevators that would fall under the auspices of this bill.

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

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DATE: February 26, 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, L.O.F., 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).

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, F.S., 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, F.S., 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, F.S. 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 bill 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.

Although DBPR inspects and licenses elevators per chapter 399, F.S., 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 their annual inspection of buildings required under chapter 633, F.S.³ Rulemaking authority is given to DFS. For non-compliance with the master key requirements, the bill provides for an administrative fine no greater

¹ Letters received by House Insurance Committee Staff 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 Rule 61C-5.0052(2), F.A.C.

³ Telephone discussion with Randall Napoli, Division of State Fire Marshal, on February 13, 2004.

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 s. 399.106(3), F.S. 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 s. 399.025, F. S. establishing requirements for implementation of master key requirements for emergency elevator access by fire fighter personnel.

Section 2: Amends subsection (1) of s. 399.03, F.S. 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 s. 399.1061, F.S. 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 s. 399.106, F.S.

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:

None.

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.⁴

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.⁵ DBPR indicated the specifics of workload increase is indeterminate.⁶

The State Fire Marshal's Office 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.⁷

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.⁸ A representative from the Building Owners and Managers Association estimated retrofitting will cost \$300/elevator.⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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.

⁴ Senate Staff Analysis and Economic Impact Statement, January 28, 2004 for CS/SBs 672 and SB 680; telephone discussion with Lee Corman, Division of Hotels & Restaurants, on February 9, 2004.

⁵ Telephone discussion with Candace Jones-Wright, DBPR, on February 13, 2004.

⁶ Telephone discussion with Candace Jones-Wright, DBPR, on February 13, 2004.

⁷ Telephone discussion with Randall Napoli, State Fire Marshal's Office, on February 13, 2004.

⁸ Telephone discussion on February 9, 2004.

⁹ Telephone discussion with Bert Locke on February 12, 2004.

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.

According to DBPR, there are 15,724 elevators in buildings six stories and higher.¹⁰ 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 use some resources to implement the provisions of this bill due to the retrofitting of elevator keys in city or county buildings. As a result, the bill could constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution:

No county or municipality shall be bound by any general law requiring such County to municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 . . . the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature . . .

Article VII, Section 18(d) of the Florida Constitution, exempts laws having insignificant fiscal impacts from the requirements of the section. For purposes of legislative application of Article VII, Section 18 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.

The bill does not provide an additional revenue source or an appropriation to fund compliance with its terms. Under the bill, the overall fiscal impact on counties and municipalities should be insignificant, but the exact fiscal impact is currently uncertain. If the fiscal impact is insignificant, the bill is exempt from the provisions of Article VII, Section 19 of the Florida Constitution.

¹⁰ E-mail from Candace Jones, DBPR, on February 13, 2004.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is granted to the State Fire Marshal's office.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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.¹¹ The bill does not specify who has authority to choose the master key and how the choice will be made.

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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2004, the Committee on Insurance adopted a "strike-all" amendment, and reported the bill favorably with a CS. The "strike-all" 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.

¹¹ Telephone discussion on February 9, 2004.