

# 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/CS/SB's 672 and 680

SPONSOR: Comprehensive Planning Committee, Banking and Insurance Committee, Regulated Industries Committee, and Senators Constantine and Smith

SUBJECT: Emergency Elevator Access

DATE: March 2, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
3.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Committee Substitute for Committee Substitute (CS) for Senate Bills 672 and 680 mandates that elevators in buildings in the state that are six or more stories in height, including hotels and condominiums, be keyed or retrofitted with a master key to allow firefighters emergency access. It applies to all elevators that allow public access, including service and freight elevators, and requires that elevators be keyed so as to allow elevators within each of the Department of Law Enforcement’s seven emergency response regions to operate in fire emergency situations with one master elevator key. Buildings with six or more stories that have undergone substantial improvement must also comply with the elevator key requirement. The CS provides deadlines to meet this mandate for new and existing buildings.

The master elevator key would be issued to the fire department as well as elevator owners, owners’ agents, elevator contractors, state certified inspectors, and state agency representatives. If it is “technically, financially, or physically impossible” to bring a building into compliance with the elevator key requirements, the local fire marshal may allow substitute emergency measures that will provide reasonable emergency elevator access. The fire marshal’s decision can be appealed to the State Fire Marshal. The Division of State Fire Marshal within the Department of Financial Services (DFS) is authorized to enforce the requirements contained in this legislation. Persons who fail to comply with the elevator key mandate are subject to administrative penalties. The DFS is given rule making authority.

According to estimates received from the Department of Business and Professional Regulation (DBPR), there are 15,724 elevators in the state, located in buildings six or more stories in height, which would have to be retrofitted with a master key. The minimum cost to retrofit an existing elevator is estimated to be approximately \$200 to \$300.

The CS creates the Elevator Safety Technical Advisory Council within the DBPR, Division of Hotels and Restaurants. The bill repeals s. 399.106, F.S., which initially created the Elevator Safety Technical Advisory Committee, but which terminated it effective December 31, 2003. The recreated council's membership would be increased from that of the previous committee from seven to eight members by adding one member who is a certified elevator inspector from a private inspection service.

The CS creates unnumbered sections of the Florida Statutes. The bill amends s. 399.03 and 399.13, and creates section 399.1061 of the Florida Statutes. The bill repeals section 399.106, Florida Statutes.

## **II. Present Situation:**

### **Elevators**

According to the Department of Business and Professional Regulation (DBPR), uniformity of elevator key switches is not currently prescribed or regulated by state law. The DBPR is the enforcement authority for ch. 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.

In 2001,<sup>1</sup> the Legislature directed the Florida Building Commission (commission) to research the issue of requiring all primary elevators in buildings with more than five levels to operate with a universal key, which would allow access and operation of elevators by emergency personnel. In its 2002 report, the commission recommended providing universal emergency access to all primary elevators with firefighters' service in buildings above three levels or with twenty-five 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.<sup>2</sup>

According to representatives with the Florida Professional Firefighters and the Orlando Professional Firefighters Local 1365, many municipalities in Florida currently require multi-story buildings to have "lock boxes" attached to the buildings which contain elevator keys. However, accessing these lock boxes, which are about 11 feet off of the ground and require a ladder, in emergency situations is inefficient and time consuming. Firefighters responding to an emergency in a multi-story building will not even bother with the lock-box, but use the stairs. These representatives state that in a multi-story building, elevator use is important to firefighters because climbing the stairs in full gear is difficult and delays arrival at the scene of the emergency. Having one master key to use within each of the Department of Law Enforcement's 7 emergency response regions would be critically helpful in gaining access in an emergency situation. A master/universal elevator key will allow firefighters to override the automatic operation function of an elevator and place it under manual control, thereby guaranteeing to firefighters access to the proper floor(s) in an emergency.

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<sup>1</sup> Section 33 of ch. 2001-186, L.O.F.

<sup>2</sup> The recommendations further stated the Division of State Fire Marshal should be granted authority to adopt any rule necessary to interpret, implement, and make specific the provision of this section.

According to the Orlando 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.

Currently, the DBPR may collect a \$200 fee from building owners for the issuance of a permit to alter an elevator.

Section 943.0312, F.S. provides that 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 department, 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 Department of Law Enforcement's seven operational regions.

### **Elevator Safety Technical Advisory Committee**

The seven member Elevator Safety Technical Advisory Committee was created under s. 399.106, F.S., within the DBPR, Division of Hotels and Restaurants. The purpose of this committee was to provide technical assistance to the Division. Effective December 31, 2003, the committee was terminated by operation of s. 399.106(4), F.S.

### **Elevator Inspections by Counties and Municipalities**

Section 399.13, F.S., authorizes DBPR to enter into contracts with municipalities or counties to allow them to issue construction permits and certificates of operation, and to inspect elevators. These inspections may be done by employees of the municipality or county, or by private certified elevator inspectors.

## **III. Effect of Proposed Changes:**

**Section 1** creates an unnumbered section of the Florida Statutes to provide that each building in the state which is six or more stories in height, including, but not limited to, hotels and condominiums, on which construction is begun after June 30, 2004, and buildings six or more stories that have undergone "substantial improvement" as defined under s. 161.54(12), F.S.<sup>3</sup> after June 30, 2004, must be keyed with one master key to allow emergency elevator access for each of the seven state emergency response regions in fire emergency situations. The FDLE's seven emergency response regions are currently established under s. 943.0312, F.S.

The master key would only be issued to the fire department and would 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.

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<sup>3</sup> Substantial improvement means any repair or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either before the improvement is started; or if the structure has been damaged and is being restored, before the damage occurred (s. 161.54(12), F.S.)

The CS gives the local fire marshal authority to allow substitute emergency measures for buildings for which it is technologically, financially, or physically impossible to bring the building into compliance with the provisions of the section. The local fire marshal's decision may be appealed to the State Fire Marshal. The Division of the State Fire Marshal is authorized to enforce the provisions of the section. Persons who fail to comply with the elevator key mandate are subject to administrative penalties. The Department of Financial Services is given rule making authority to implement these provisions, including rules to determine the master elevator key to be used within each of the emergency response regions.

**Section 2** amends s. 399.03, F.S., to exempt elevator owners from the DBPR permitting requirements when keying or retrofitting elevators with master keys. Instead, elevator owners will be required to notify the department that compliance measures are either not required, or are being implemented. DBPR is required to maintain an emergency elevator access registry that is available to the State Fire Marshall for enforcement purposes. DBPR is required to adopt rules to implement this section.

**Section 3** creates s. 399.1061, F.S., to create the Elevator Safety Technical Advisory Council within the Department of Business and Professional Regulation, Division of Hotels and Restaurants. This provision generally duplicates the provisions of s. 199.106, F.S. (2003), which were terminated on December 31, 2003, but also increases the membership of the council. The council's membership would be increased from seven to eight members by adding one member who is a certified elevator inspector from a private inspection service. The CS does not provide for the termination of the council on a fixed date.

**Section 4** amends s. 399.13(1), F.S., to clarify that cities or counties may assess a reasonable fee when their inspectors perform elevator inspections. In addition, it clarifies the counties' authority to impose fees and fines in the enforcement of the Florida Building Code as it relates to elevators; clarifies that such counties or municipalities may not discipline certified elevator contractors, and clarifies that DBPR may initiate such disciplinary actions at the request of a county or municipality.

**Section 5** repeals s. 399.106, F.S., which initially created the Elevator Safety Technical Advisory Committee, but which terminated it effective December 31, 2003.

**Section 6** includes a statement of "important state interest" in the CS, to ensure compliance with the constitutional mandates restriction.

**Section 7** provides that this act shall take effect upon becoming law, except for section 1 of the bill, which would take effect on October 1, 2004.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met. Subsection (a) provides that all "mandates" must fulfill an

important state interest, and must additionally meet one of five specified conditions in order to effectively bind local governments to the general law. One of those conditions is that the expenditure is required to comply with a law that applies to all persons “similarly situated,” including state and local governments. “Similarly situated” refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities.

Subsection (d) exempts certain categories of laws from the enacting conditions contained in the constitutional provision, to include laws having “insignificant fiscal impact”, which means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. For FY 2004/5, this is \$1.7 million. The average fiscal impact, including any offsetting effects over the long term, is also considered.

The requirement of a master key emergency access to elevators program to be implemented by fire departments could require cities and counties to use resources in order to implement the provisions of this bill, whether retrofitting of elevator keys in existing buildings or in the construction of new buildings.

However, because the bill affects all persons “similarly situated,” including the private sector, state and local governments, and it includes a statement of “important state interest”, it is excepted from the mandates restriction.

In addition, if the fiscal impact on cities and counties is determined to be insignificant, it would be exempted from the mandate restriction. At this time, the fiscal impact on counties and municipalities is indeterminate.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

Section 4 amends s. 399.13(1), F.S., to clarify that cities or counties may assess a reasonable fee when their inspectors perform elevator inspections.

**B. Private Sector Impact:**

The CS would require that owners and builders of existing buildings six or more stories in height key their building elevators to comply with master key provisions of this bill. According to estimates received from the Department of Business and Professional Regulation (DBPR), there are 15,724 elevators in the state which would have to be retrofitted with a master key. Officials with the Building Owners and Managers

Association estimated that the minimum cost to retrofit an existing elevator would be approximately \$200-\$300. It is not anticipated that there would be any extra cost to owners and builders of new buildings six or more stories in height.

This CS will increase the security and safety of individuals because untrained personnel will not have access to the master key.

**C. Government Sector Impact:**

This CS will aid firefighters in responding to emergency situations in high rise buildings by standardizing the fire service elevator key in each of the state's seven emergency response regions.

Local governments and the state may incur additional expenses due to retrofitting elevator keys to conform to the requirement of this legislation. The cost of retrofitting the elevators in government-owned buildings is indeterminate.

Section 399.03, F.S., is amended to exempt elevator owners from the DBPR permitting requirements when keying or retrofitting elevators with master keys. Instead, elevator owners will be required to notify the department that compliance measures are either not required, or are being implemented. DBPR is required to maintain an emergency elevator access registry that is available to the State Fire Marshall for enforcement purposes. DBPR reports that the costs associated with implementing this provision are minimal.

This CS recreates the Elevator Safety Technical Advisory Council and increases the council's size from seven to eight members. According to the DBPR, the cost for per diem and travel expenses associated with the committee is minimal and can be absorbed by DBPR's existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.