

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1035 Elevator Safety
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Frishe
TIED BILLS: IDEN./SIM. BILLS: SB 1172

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Insurance, Business & Financial Affairs Policy Committee, 13 Y, 1 N, As CS, Livingston, Cooper. Row 2: General Government Policy Council, 14 Y, 0 N, Livingston, Hamby. Rows 3-5 are empty.

SUMMARY ANALYSIS

The bill revises various provisions relating to the regulation of elevators by the Division of Hotels and Restaurants (division), Bureau of Elevator Safety (bureau), within the Department of Business and Professional Regulation (department).

The bill creates a 5-year exemption for updates to the elevator safety code for existing elevators in condominiums and other multi-family residential buildings that relate to Phase II Firefighters' Service, which is a building code and elevator safety code requirement that permits firefighters to operate and control an elevator for evacuating the physically disabled and for moving firefighters and equipment.

The bill also:

- corrects citations to the most current edition of the elevator installation and maintenance standards;
• grants the division additional rulemaking authority and the right of access to regulated equipment;
• provides standards for the approval of requests for variances from the rules of the division;
• provides additional violations that may result in the suspension or revocation of an elevator inspector certification;
• requires that certified elevator inspectors and certified elevator companies respond to written requests by the division for an explanation of their inspection procedures and applications;
• increases from 30 days to 90 days the period of time that elevator owners have to correct violations after the issuance of an order to correct by the division; and
• authorizes the division to issue citations for unlicensed activity, and gives the division the authority to enforce the citation as a stop work order.

The department anticipates that the increased enforcement authority for elevator violations, including citations for unlicensed activities, would require two additional FTEs to process the increase in administrative compliance cases and unlicensed activity citations.

The department estimates additional annual revenue from administrative fines in the amount of \$313,750. The department estimates that the additional revenue from administrative fines would exceed the cost of two FTE positions in an amount exceeding \$178,244.

The bill provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation - general

The Auditor General's Report No. 2006-075; OPPAGA Report No. 08-18, released April 2008; the Senate Committee on Regulated Industries Interim Report 2009-125, released September 2008; and OPPAGA Report No. 09-37, released October 2009, recommend amendments to chapter 399, F.S., to increase the division's regulatory authority.

Chapter 399, F.S., cited as the "Elevator Safety Act," establishes minimum standards for elevator safety. The Bureau of Elevator Safety (bureau) of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the agency charged with enforcing the provisions of chapter 399, F.S. and to enforce the applicable provisions of the Florida Building Code (FBC).¹ The department has rulemaking authority to enforce the provisions of chapter 399, F.S.

The term "elevator" includes a wide variety of mechanical devices, including escalators, dumbwaiters, moving walks, inclined stairway lifts, and inclined or vertical wheelchair lifts. The term "conveyance" means an elevator, dumbwaiter, escalator, moving sidewalk, platform lift, or stairway chairlift.

The owner of an elevator is responsible for the safe operation, proper maintenance, inspection, and correction of code deficiencies of the elevator. A certificate of operation must be issued by the department before the elevator can be operated. Certificates of operation are valid for two years and expire at the end of the period unless revoked. The certificates can only be renewed for elevators that have a current satisfactory inspection.

Section 399.061, F.S., requires annual inspection of elevators by a certified elevator inspector. The certified elevator inspector may be a private elevator inspector, a state-employed elevator inspector, or an inspector responsible to a municipality or county under contract with the department.²

An elevator inspection is not required if the elevator is not an escalator or a dumbwaiter, serves only two adjacent floors, and is covered by a service maintenance contract. A statement verifying the existence and performance of a service maintenance contract must be filed at least annually with the

¹ Section 399.02(6), F.S.

² The following five local governments are under contract with the department to provide elevator inspection services: the cities of Miami and Miami Beach, Broward and Miami-Dade counties, and Reedy Creek Improvement District.

department, and, if the service maintenance contract is cancelled, the cancellation must be reported to the department.

Municipalities and counties under contract with the department may choose to require that the inspections be performed by their own inspectors or by private certified elevator inspectors. The department may inspect elevators in the municipality and county to determine whether the provisions of chapter 399, F.S., are being met. The department may cancel its contract with a municipality or county that it finds has failed to comply with the contract or chapter 399, F.S. Counties and municipalities are not authorized to take disciplinary action against an elevator inspector's certification, but at the request of a county or municipality the department may initiate disciplinary action against a private inspector's certification.

A certified elevator inspector must annually register with the division and provide proof that:

- eight hours of continuing education has been completed;
- the elevator inspector credential remains in good standing, and
- general liability insurance coverage in the amounts set by the division remains in effect.

Section 399.02(1), F.S., requires the Elevator Safety Code to be the same as or similar to the American Society of Mechanical Engineers (ASME), which provides minimum model standards for the installation, operation, and maintenance of elevators. The ASME codes are meant to be adopted by the state and local agencies with jurisdiction over elevator safety. Standard ASME A17 serves as the basis for the Florida Elevator Safety Act and Florida Elevator Safety Code.

Chapter 30, Elevators and Conveying Systems, of the FBC, adopts by reference, the standards from the ASME as the minimum standards for design, construction, installation, alteration, repair and maintenance of elevators and conveying systems and their components. The department's rules indirectly adopt the ASME standards. Instead of specifically referencing the ASME standards, the department has adopted chapter 30 of the FBC pursuant to the rules of the department.

Present situation – firefighter standard

The ASME firefighters' service requirement has two primary components: Phase I emergency recall operation and Phase II emergency in-car operation.

When smoke or heat is detected, the Phase I emergency recall operation requirement recalls an elevator to a specific landing and removes the elevator from normal service. This prevents riders from using the elevator and becoming trapped.

The Phase II emergency operation requirement permits the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled and for moving firefighters and equipment.

The elevator safety code requires that any alteration, relocation or reclassification of an existing elevator, also be in compliance with the edition of the Florida Building Code that is in effect at the time of receipt of the construction permit application.³ Specifically ASME A17.3, requires owners of existing elevators to retrofit elevators to comply with revisions or updates to the code.

Effect of proposed changes

The bill creates subsection (9) of s. 399.02, F.S., to provide a 5-year exemption for elevators in condominium buildings and other multi-family residential buildings from compliance with the Phase II Firefighters' Service requirements. The exemption is limited to buildings issued a certificate of occupancy as of July 1, 2008. The exemption does not apply if the elevator is replaced or requires

³ Rule 9B-3.047, F.A.C., which incorporates the Florida Building Code, including ASME A17.1 and A17.3, into the Elevator Safety Code, and requires that existing elevators be maintained according to the current safety standards in the Florida Building Code and the Florida Elevator Safety Code.

major modification before the end of the 5-year exemption. This subsection specifies that the exemption does not restrict an elevator owner's ability to apply for a variance from the Phase II Firefighters' Service or the department's ability to issue variances. The bill requires the department to adopt rules to administer the exemption.

Present situation - variances

State agencies may grant exemptions or modifications to their rules in cases that may lead to unreasonable, unfair, or unintended results. The Florida Administrative Procedures Act provides a process by which affected persons may petition state agencies for a variance or waiver from a rule. Variances or waivers relate to state agency rules.

A variance is an agency decision to grant a modification to all or part of the literal requirements of an agency rule to an affected person.⁴ A waiver is an agency decision not to apply all or part of the literal requirements of an agency rule to an affected person.⁵

Section 120.542(2), F.S., provides the conditions for the granting of a variance or waiver. To qualify for a variance or a waiver, a person must demonstrate that the purpose of the underlying statute will be or has been achieved by other means by the person and the application of a rule would create a substantial hardship or would violate principles of fairness, as defined by statute.

Effect of proposed changes

The bill creates subsection (8) of s. 399.02, F.S., to state that the department may grant variances for undue hardship under s. 120.542, F.S. The bill states that the department may not grant a variance from a rule that adversely affects public safety.

Present situation

Currently, chapter 399, F.S., does not provide an explicit right-of-entry for the inspectors to perform their inspection duties. According to the department, its employees have occasionally been refused entry to perform their duties.

Effect of proposed changes

The bill specifies that inspectors may enter and have reasonable access to buildings and rooms in which an existing or newly installed elevator and equipment are located.

Present situation

Currently, section 339.105(4), F.S., requires that elevator owners must correct violations within 30 days of issuance of an order to correct. According to the department, 30 days is often not enough time to correct violations and to obtain a follow-up inspection.

Effect of proposed changes

The bill increases from 30 days to 90 days the period of time that elevator owners are required to correct violations after the issuance of an order to correct by the department.

Present situation

Currently, section 399.07(6), F.S., authorizes the department to suspend a certificate of operation if it finds that the elevator is not in compliance with chapter 399, F.S., or the rules adopted pursuant to its authority. Section 399.049, F.S., provides grounds for suspending or revoking the license of an elevator inspector, or imposing a monetary penalty against an elevator inspector or a certificateholder.

⁴ Section 120.52(21), F.S.

⁵ Section 120.52(22), F.S.

Effect of proposed changes

The bill creates additional violations that may result in suspension or revocation:

- failing to maintain an elevator inspector credential in good standing;
- having a license revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state; and
- engaging in fraud or deceit, negligence, incompetency, or misconduct in providing elevator services.

Present situation – unlicensed activity

The department often has difficulty enforcing unlicensed activity. Currently, the department follows the administrative complaint process for unlicensed elevators. The department indicates that this process can become costly and time consuming, and is difficult to enforce, resulting in elevators that are operating without a license for extended periods of time.

Effect of proposed changes

The bill creates a process for the issuance of citations for unlicensed activity. The bill authorizes the division to issue a citation for unlicensed activity upon a finding of probable cause that activity requiring a permit, certificate, or license is being performed without a valid permit, certificate, or license. The department may enforce the citation as a stop work order.

The bill requires that the form of the citation must be prescribed by rule, and that the division may adopt rules to administer this section. The rules must include a schedule of penalties.

The bill specifies that a citation for unlicensed activity be issued to:

- the owner of an unlicensed elevator;
- unlicensed elevator personnel; or
- the owner of an unregistered elevator company.

The person receiving the citation must respond by paying the civil penalty, which may not exceed \$1,000 per violation, or by requesting an administrative hearing pursuant to chapter 120, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 399.01(13) F.S., to delete the provision which sets forth the registration requirements for a certified elevator inspector and relocates the language to another section of the chapter.

Section 2. Amends s., 399.02(3), F.S., to: provide that the division may enter and have reasonable access to buildings in which an existing or newly installed elevator and equipment is located; authorize the department to grant variances from rules relating to the application of elevator standards to effected persons for undue hardship; and create a 5-year exemption for elevators in condominium and other multi-family residential buildings from compliance with the Phase II Firefighters' Service standards.

Section 3. Amends s. 399.035(1), F.S., to correct a cross reference.

Section 4. Amends s. 399.049(1), F.S., to provide additional violations that may result in the suspension or revocation of an elevator inspector certification.

Section 5. Amends s. 399.061 F.S., to require that certified elevator inspectors and certified elevator companies respond to written requests by the department for an explanation of their inspection procedures and applications.

Section 6. Amends s. 399.105(4), F.S., to increase from 30 days to 90 days the period of time that elevator owners must correct violations after the issuance of an order to correct by the department.

Section 7. Creates s. 399.16, F.S., to provide a process for the issuance of citations for unlicensed activity.

Section 8. Creates s. 399.17, F.S., to amend the registration requirements for certified elevator inspectors.

Section 9. Effective date – July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The department estimates additional annual revenue from administrative fines in the amount of \$313,750. The department estimates that the revenue would exceed the cost of the increased workload created by this bill in an amount exceeding \$178,244.⁶

2. Expenditures:

The department anticipates that the increased enforcement authority for elevator violations, including citations for unlicensed activities, would require two additional FTEs to process the increase in administrative compliance cases and unlicensed activity citations.⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not anticipated to be significant.

2. Expenditures:

Not anticipated to be significant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases from 30 days to 90 days the period of time that elevator owners have to correct violations after the issuance of an order to correct by the department. The additional time to correct violations may provide elevator owners additional time for needed elevator repairs.

D. FISCAL COMMENTS:

The department states that the “overall increase of enforcement authority, including citations, would increase the number of administrative complaints issued and processed by the division. The division does not currently have adequate compliance staff to handle an increase in administrative cases.”⁸

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to

⁶ Fiscal impact estimates were provided by the DBPR, Office of Legislative Affairs, 2010 Legislative Analysis Form, dated November 23, 2009.

⁷ Id.

⁸ Id.

raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

Line 61: The bill creates paragraph (a) of s. 399.02(6), F.S., to authorize the division to adopt rules relating to the administration of chapter 399, F.S., This provision may be duplicative of current law, which in s. 399.10, F.S., grants the department the authority to adopt rules to administer chapter 399, F.S.

Lines 67–69: “The division may grant variances for undue hardship pursuant to s. 120.542 and the rules adopted under this section (399.02, F.S.). Such rules must include a process for requests for variances.”

Lines 86-87: “The division shall adopt rules to administer this subsection (399.02(9), F.S.)”

Lines 160-162: “The citation shall be in a form prescribed by rule. The division may adopt rules to administer this section (399.16, F.S.), including a schedule of penalties.”

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business, & Financial Affairs Policy Committee took up the bill, adopted two amendments, and passed the bill as a Committee Substitute by a vote of 13-1.

The CS differs from the bill as filed in the following areas:

- adds “multi-family residential buildings” and specifically cites “continuing care facilities” and “retirement communities” to the 5-year exemption for updates to the elevator safety code created in the bill for existing elevators in condominiums and
- removes language in the bill that deletes the current requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height. Current law would be retained.