

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: CS/SB 1332

INTRODUCER: Regulated Industries Committee and Senator Jones

SUBJECT: Elevator Safety

DATE: April 1, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Rhea	RI	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	GO	_____
4.	_____	_____	GA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill reorganizes ch. 399, F.S., which provides for the regulation of elevators and other vertical conveyances by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation. It reorganizes ch. 399, F.S., by transferring similar provisions into related sections of the Florida Statutes. The bill also provides uniform terms for professionals and business that are licensed under ch. 399, F.S. For example, it provides the term “certified elevator professional” to include certified elevator technicians and certified elevator inspectors. It also replaces the terms “registered elevator company” and “construction permitholder” with the term “certified elevator company.”

The bill requires a \$50 license and annual renewal fee for certified elevator inspectors, certified elevator companies, and certified elevator technicians.

The bill provides standards for the approval of requests for variances from the rules of the division. It prohibits the division from granting a variance unless the variance will not adversely affect the safety of the public, a reasonable alternative to the required construction does not exist, and the owner did not intentionally cause the hardship. The bill authorizes fees of not more than

\$150 for a routine variance request or \$300 for an emergency variance request. The division must expedite emergency requests for variances within 30 days after receiving the request.

The bill permits elevator owners three years to retrofit elevator to comply with noncritical revisions of the elevator safety code. It requires that the division conduct a cost-benefit analysis to determine if a revision of the code is critical or noncritical.

The bill requires that any building constructed after June 30, 2009, that is more than three stories high, or that is higher than 25 feet from the bottom terminal landing to the top terminal landing, must be constructed to accommodate an ambulance stretcher. The bill also:

- Requires private elevator inspectors to respond to written requests from the division to explain inspection procedures and applications that were used for preparing an inspection report in which the department found errors and omissions;
- Shortens from 2 years to 12 months the term for a certificate of operation;
- Extends from 5 working days to 15 working days the period of time after an accident during which an elevator accident must be reported to the division;
- Specifies the types of accidents that must be reported to the division by the certificate of operation holder, and requires the division to analyze accident report data and submit an annual report to the Governor, the President of the Senate, the Speaker of the House, and the chairs of the appropriations committee by September 30 of each year; and
- Prohibits unlicensed activity and provides a second degree misdemeanor for unlicensed activity.

The bill deletes the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height.

The bill provides an effective date of July 1, 2009.

This bill substantially amends the following sections of the Florida Statutes: 399.01, 399.02, 399.03, 399.035, 399.049, 399.061, 399.07, 399.10, 399.105, 399.1061, 399.11, 399.125, 399.13, 399.15, and 553.509. This bill creates the following sections of the Florida Statutes: 399.015, 399.032, 399.033, 399.16, 399.17, 399.18, 399.19, and 399.20.

II. Present Situation:

Elevator Regulation

Chapter 399, F.S., which may be 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 ch. 399, F.S., including rulemaking authority.¹ The Elevator Safety and Technical Advisory Council (advisory council)

¹ See s. 399.10, F.S.

within the department provides technical assistance to the division.² It makes recommendations regarding the rules for the operation, maintenance, servicing, construction, alteration, installation, or inspection of vertical conveyances.

The term “elevator” includes a wide variety of mechanical devices, including escalators, dumbwaiters, moving walks, inclined stairway lifts, and inclined or vertical wheelchair lifts.³ According to the division, there were approximately 73,280 elevators in Florida as of August 2008 for which it has inspection responsibilities. This number includes approximately 25,000 elevators in the five contracted jurisdictions for which it has secondary oversight responsibility.⁴

Section 399.125, F.S., requires certificate of operation holders to report any accident occurring in or upon any elevator within 5 days. It provides an administrative fine not to exceed \$1,000 for failing to timely report the accident.

Elevator Inspections

The owner of the elevator is responsible for the safe operation, proper maintenance, inspection, and correction of code deficiencies of the elevator.⁵ Elevators must have a certificate of operation before they 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 vertical conveyances that have had a current satisfactory inspection.⁶

Section 399.061, F.S., requires the annual inspection of elevators by a certified elevator inspector.⁷ The certified elevator inspector may be a private elevator inspector, a state-employed elevator inspector, or an inspector for a municipality or county under contract with the department.⁸ The privatization of elevator inspections has helped to increase the number of licensed inspectors and has helped the bureau increase the number of inspections conducted each year, as mandated by the annual inspection requirement.⁹

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 that remains in

² See s. 399.1061, F.S. The Elevator Safety and Technical Advisory Council consists of eight members appointed by the secretary of the department who meet the following criteria: one representative from a major elevator manufacturing company or its authorized representative; one representative from an elevator servicing company; one representative from a building design profession; one representative of the general public; one representative of a local government in this state; one representative of a building owner or manager; one representative of labor involved in the installation, maintenance, and repair of elevators; and one representative who is a certified elevator inspector from a private inspection service.

³ Section 399.01(6), F.S.

⁴ 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.

⁵ Section 399.02(5)(b), F.S.

⁶ Section 399.07(1), F.S.

⁷ In 2001, the Legislature amended s. 399.061, F.S., to increase the frequency of elevator inspections from once every two years to annual inspections. See s. 10, ch. 2001-186, L.O.F.

⁸ See s. 399.061, F.S. In 2000, the Legislature amended s. 399.061, F.S., (s. 4, ch. 2000-356, L.O.F.) to provide for the use of private elevator inspectors.

⁹ *Privatization Has Helped Improve Elevator Safety: Additional State Oversight is Needed*, Report No. 08-18, Office of Program Policy Analysis & Governmental Accountability, Florida Legislature, April 2008.

effect.¹⁰ A statement verifying the existence and performance of each service maintenance contract must be filed at least annually with the division, and, if the service maintenance contract is cancelled, the cancellation must be reported to the division.

Municipalities and counties 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 ch. 399, F.S., are being met. The department may cancel its contract with any municipality or county that it finds has failed to comply with the contract or ch. 399, F.S.¹¹ Counties and municipalities may not issue or take disciplinary action against an elevator inspector's certification, but the department may initiate disciplinary action against a private inspector's certification at the request of a county or municipality.

To be a certified elevator inspector, a person must acquire the qualified elevator inspector credential prescribed by the American Society of Mechanical Engineers (ASME). A certified elevator inspector must annually register with the division and provide proof that he or she:

- Has completed eight hours of continuing education;
- Remains in good standing with the ASME qualified elevator inspector credential, and
- Has general liability insurance coverage in the minimum amounts set by the division.¹²

A fee is not required to be paid for registration with the division as an elevator inspector. According to the department, there are 12 inspectors employed by the division, and 272 registered private inspectors.

Disciplinary Action, Administrative Fines, and Penalties

Section 399.07(6), F.S., authorizes the bureau to suspend a certificate of operation if it finds that the elevator is not in compliance with ch. 399, F.S., or the rules adopted pursuant to its authority. Section 399.049, F.S., provides the following limited grounds for suspending, revoking, or imposing a monetary penalty on an elevator inspector or a certificateholder:

- (1) The department may suspend or revoke an elevator inspector certification, an elevator company registration, an elevator certificate of competency, or an elevator certificate of operation issued under this chapter or impose an administrative penalty of up to \$1,000 per violation upon any registered elevator company or certificateholder who commits any one or more of the following violations:
 - (a) Any false statement as to a material matter in an application for registration, certification, or any permit or certificate issued under this chapter.
 - (b) Fraud, misrepresentation, or bribery in the practice of the profession.
 - (c) Failure by a certified elevator inspector to provide the department and the certificate of operation holder with a copy of the inspection report within 5 days

¹⁰ Section 399.061(1), F.S.

¹¹ Section 399.13, F.S.

¹² Section 399.01(14), F.S.

after the date of any inspection performed after the initial certificate of operation is issued.

(d) Violation of any provision of this chapter.

(2) Any disciplinary action taken under this chapter must comply with chapter 120 and any rules adopted thereunder.

Section 399.105(1), F.S., authorizes an administrative fine of not more than \$1,000 against any person who fails to respond to reasonable requests by the department to determine whether the provisions of a service maintenance contract and its implementation ensure safe elevator operation. According to the bureau, the bureau also does not automatically proceed to suspend the certification after a failed re-inspection because it must permit the elevator owner 30 days to correct any violations found during a re-inspection.¹³ The bureau asserts that 30 days is often not enough time to correct violations and obtain a follow-up inspection.

Section 399.11, F.S., provides second degree misdemeanors for violations of ch. 399, F.S., and rules adopted under this chapter. It provides a first degree misdemeanor for falsely representing oneself as credentialed under ch. 399, F.S.

Interim Report-Elevator Regulation

A recent report by the Office of Program Policy Analysis & Government Accountability (OPPAGA) studied the implementation of elevator safety provisions by the Bureau of Elevator Safety (bureau) within the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. The report included a study of the implementation of s. 399.061, F.S., which permits elevator owners to hire private elevator inspectors. The report found that some private elevator inspectors are not responding to written requests from the bureau for clarification of their inspection methods. The purpose of these requests is to reconcile the results of the private inspections that did not find elevator safety violations with the re-inspections by the bureau that did find safety violations. The OPPAGA report recommended that private inspectors and elevator companies should be required by law to respond to the bureau's requests for clarification.

The OPPAGA report studied other practices of the bureau and made recommendations to improve those practices, including the bureau's analysis and reporting of elevator accidents, and its public posting of information regarding the safety of elevators.

The Regulated Industries Committee conducted an interim study of the extent to which the bureau has adopted the OPPAGA recommendations and analyzed the need for legislative action to implement the recommendations. The interim report concluded that s. 399.049, F.S., should be amended to provide that an elevator inspector's certification or an elevator company's registration may be suspended, revoked or fined for failing to respond to a written request from the Bureau of Elevator Safety (bureau) for information relating to the results of elevator inspections. Senate Professional Staff concluded that the information provided by the private inspectors and elevator companies could assist the bureau to improve the reliability of elevator inspections.

¹³ Section 399.105(4), F.S.

Professional staff also recommended that the bureau should be required to annually analyze elevator incident data, report its findings to the Legislature, and make its report available on the Internet in its entirety. The report concluded that information could help the Legislature and the public to assess the effectiveness of current elevator safety regulation.

Alternate Power Generators for Elevators

During the 2006 Regular Session, s. 553.509(2)(a), F.S.,¹⁴ was enacted to require that any person, firm, or corporation that owns, manages, or operates a residential multi-family dwelling, including a condominium, which is at least 75 feet high (high-rise residential buildings) and contains a public elevator, have at least one elevator capable of operating on alternate generated power. In the event of a general power outage, this elevator must ensure that residents have building access for an unspecified number of hours each day over a five-day period following a natural or manmade disaster, emergency, or other civil disturbance. The alternate generated power source must be capable of powering any connected fire alarm system in the building.

The alternate generated power requirements of s. 553.509(2), F.S., do not apply to high-rise buildings that were in existence on October 1, 1997, or which were either under construction or under contract for construction on October 1, 1997.¹⁵ Newly constructed residential multi-family dwellings meeting the criteria of this section must meet the engineering, installation, and verification requirements of s. 553.509(2), F.S., before occupancy.¹⁶

Section 553.509(2)(b), F.S., provides that, at a minimum, the elevator must be appropriately pre-wired and prepared to accept alternate generated power. The power source must be capable of powering the elevator, a connected building fire alarm system, and emergency lighting in the internal lobbies, hallways, and other internal public portions of the building. The dwellings must either have a generator and fuel source on the property or proof of a current guaranteed service contract providing such equipment and fuel source within 24 hours of a request. Proof of a current service contract for such equipment and fuel must be posted in the elevator machine room or other place conspicuous to the elevator inspector.

Verification Requirements

Section 553.509(2)(b), F.S., requires that the person, firm, or corporation that owns, manages, or operates a building affected by this requirement must provide to the local building inspection agency verification of engineering plans for alternate generated power capability by December 31, 2006.

The local building inspectors must verify the installation and operational capability of the alternate generated power source and report to the county emergency management director by December 31, 2007.

¹⁴ Section 12, ch. 2006-71, L.O.F.

¹⁵ Section 553.507, F.S., exempts such buildings, structures, and facilities from the provisions of ss. 553.501-553.513, F.S., the "Florida Americans with Disabilities Implementation Act."

¹⁶ Section 553.509(2)(c), F.S.

Posting Requirements

The owner, manager, or operator of the high-rise residential building must keep written records of any contracts for alternative power generation equipment and fuel source.¹⁷ Quarterly inspection records of lifesafety equipment and alternate power generation equipment must also be posted in the elevator machine room or other place conspicuous to the elevator inspector.¹⁸

Emergency Operations Plan Requirements

Section 553.509(2)(d), F.S., requires that each person, firm, or corporation that is required to maintain an alternate power source must also maintain a written emergency operations plan that details the sequence of operations before, during, and after a natural or manmade disaster or other emergency situation. The plan must include, at a minimum, a lifesafety plan for evacuation, maintenance of the electrical and lighting supply, and provisions for the health, safety, and welfare of the residents.

The written emergency operations plan and inspection records must be open for periodic inspection by local and state government agencies.¹⁹ The owner or operator must keep a generator key in a lockbox posted at or near any installed generator unit.²⁰

Residential Dwellings for Persons Age 62 and Older

Section 553.509(2)(e), F.S., requires that multi-story affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development must make every effort to obtain grant funding from the Federal Government or the Florida Housing Finance Corporation to comply with the requirements of s. 553.509(2), F.S. It provides that, if an owner of such a residential dwelling cannot comply with the requirements of this subsection, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a natural or manmade disaster or other emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.

Inspections

Section 553.509(2)(f), F.S., requires that certified elevator inspectors confirm that all installed generators are in working order, the elevators have current inspection records posted, and a generator key located near the generator. If there is no installed generator, the inspector is required to confirm that the appropriate pre-wiring and switching capabilities are present and that the guaranteed contingent service contract is posted.

¹⁷ Section 553.509(2)(b), F.S.

¹⁸ Section 553.509(2)(d), F.S.

¹⁹ *Id.*

²⁰ *Id.*

Interim Report-Alternate Power Generators for Elevators

The October 2008 interim report by the Regulated Industries Committee also studied the extent of compliance with s. 553.509(2), F.S., and reviewed the problems citizens and governmental agencies have had in implementing these requirements. Senate Professional staff recommended that the Legislature consider the repeal of s. 553.509(2), F.S. The repeal recommendation was based upon the following findings and conclusions:

- The requirement may pose a threat to public safety, i.e., the availability of emergency power for elevators during the five days after a declared state of emergency may encourage persons to stay in high-rise buildings and areas that are not safe and do not have the necessary infrastructure for safe habitation;
- The requirement does not have a clearly defined state or local agency that is responsible for its on-going enforcement;
- Enforcement of the requirement by a state agency would carry a fiscal burden without a clearly defined benefit that may out-weigh the public safety concerns;
- The requirement does not appear to have any clearly defined impact on elevator safety;
- It is not clear what penalty, if any, should be imposed on building owners who cannot comply with the requirement because they cannot afford the expense; and
- To the extent that an alternate emergency power for elevators provides a public benefit, the Florida Building Code currently requires emergency power for elevators in new high-rise residential construction.

Alternatively, the professional staff recommended that the Legislature could continue to require emergency generated power pursuant to s. 553.509(2), F.S., but, to ensure uniform compliance, provide funding for the bureau for the enforcement of this provision.

Florida Elevator Safety Code

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). Standard ASME A17 serves as the basis for the Florida Elevator Safety Act and Florida Elevator Safety Code. It establishes minimum requirements that provide a reasonable degree of safety for the general public and the safe operation of conveyances. For example:

- ASME A17.1 (2004), Part 8, provides requirements related to the installation, alteration, maintenance, repair, inspections, and testing to ensure the minimum safety requirements for new *and existing elevators*.
- ASME A17.3 (1996) is a code for existing elevators to ensure rider safety. The code provision specifically states that it is intended to guide *retroactive requirements for existing elevators*.

In *City of Miami Beach v. Division of Hotels and Restaurants*, the City of Miami Beach challenged as an unadopted rule the division's technical bulletins that advised elevator owners that they had to keep current with the elevator safety requirements, i.e., that elevator owners must retrofit elevators to meet current safety standards. The Administrative Law Judge's

Recommended Order held that the technical bulletins were supported by law and by existing rules of the division. Specifically, Rule 9B-3.047, F.A.C., which incorporates the Florida Building Code, including ASME A17.1 and A17.3,²¹ and require that existing elevators be maintained according to the current safety standards is in the Florida Building Code and the Florida Elevator Safety Code.

III. Effect of Proposed Changes:

In addition to providing new requirements related to elevators and other vertical conveyances, the bill reorganizes ch. 399, F.S., by transferring similar substantive law provision into related sections of the Florida Statutes. The bill also corrects cross references throughout ch. 399, F.S., to conform to the changes in the bill.

Definitions

The bill amends s. 399.01, F.S., to clarify existing definitions and provide new definitions. It also conforms existing terms to other provisions in this bill.

The bill defines the following terms, which are not currently defined in the chapter. The bill defines the terms:

- “Certified elevator professional” means a natural person qualified to perform the duties of a certified elevator technician and certified elevator inspector.
- “Direct supervision” means a certified elevator professional who is within the physical proximity of and personally supervising an elevator helper. This person observes and evaluates the work being performed, and ensures that the work is completed in accordance with the Florida Building Code, this chapter, and the rules adopted by the division.
- “Elevator helper” means a natural person who is not licensed or certified by the division. This person performs work to construct, install, maintain, or repair any conveyance under the direct supervision of a certified elevator professional.
- “Existing installation” means the installation of a conveyance that has completed all construction permit requirements, is not in temporary use, and has been issued a certificate of operation.
- “Inspection” means the physical examination of a conveyance for compliance with the Elevator Safety Code. The inspection is performed by a certified elevator inspector in accordance with ch. 399, F.S., and the rules adopted by the division.
- “Inspection report” means a record containing the results of an inspection and completed on a form prescribed by rule.
- “New installation” means a conveyance that is under construction. It has not satisfactory inspection and been turned over to the owner for public use.
- “Owner” means the person legally and financially responsible for the installation, alteration, repair, replacement, or maintenance of a certificate of operation and the safe operation of the conveyance.

²¹ Chapter 30, Florida Building Code, . preempts the enforcement of the elevator safety requirement in the code to the division.

- “Private elevator inspector” means a certified elevator inspector. This person may be self-employed, employed by a certified elevator company, or employed by a private business entity.
- “Sealed conveyance” means a conveyance that has been removed from public use by a state elevator inspector.
- “State elevator inspector” means a certified elevator inspector who is employed by the department or other governmental entity.

The bill deletes the definition for the term “temporarily dormant conveyance.”

The bill clarifies the following definitions in current law:

- The term “certificate of operation” is amended to clarify that the certificate indicates that the conveyance is licensed to operate and that the appropriate fees have been paid.
- The term “temporary operation inspection” is amended to clarify that the successful passage of the inspection permits the use of the conveyance for construction purposes.

The bill provides new terms for the following terms in current law in order to conform the definitions to other provisions in this bill:

- The bill redefines the term “registered elevator company” to the term “certified elevator company.” The term “certified elevator company” also replaces the term “construction permitholder” throughout the bill.
- The bill changes the name of the “Elevator Safety Technical Advisory Committee” to the “Elevator Safety Technical Advisory Council (council).” This provisions conforms the definition with s. 399.1061, F.S., which creates the council and currently uses the term “Elevator Safety Technical Advisory Council.”
- The bill redefines the term “conveyance” to have the same meaning as the current definition for the term “elevator.”
- It also deletes the definition for the term “elevator.”

Some of the current definitions include substantive requirements, e.g., license qualifications and the amount of any required fees. The bill rewrites the following definitions and transfers the substantive requirements to other sections:

- The definition for “certified elevator technician” is amended to move the substantive requirements for the license to s. 399.16, F.S.
- The “certified elevator technician” is redefined to delete the reference to the annual registration and general liability insurance requirements.” These requirements are moved to s. 399.16(2), F.S., which is created by the bill to provide the licensure requirements for a certified elevator technician.
- The definition for “certificate of competency” is currently termed “elevator certificate of competency” in s. 399.01(17), F.S. The substantive provisions in this definition relating to the \$50 certificate fee and renewal fee, and one year term of the certificate are moved to s. 399.16, F.S., which is created by this bill.

- The definition of “maintenance contract” is amended to transfer to s. 399.061(1), F.S., the requirement that a copy of the contract must be made available upon the request of the department.

Application

The bill creates s. 399.015, F.S. This provision specifies the types of conveyances regulated and exempted under ch. 399, F.S. These provisions are currently included in s. 399.02, F.S., and are stricken from that section.

General Requirements

The bill amends section 399.02, F.S., to specify the department’s duties. The bill deletes from this section the following provisions that are moved to other sections of the bill:

- The duties of the Elevator Safety Technical Advisory Committee (renamed the Elevator Safety Technical Advisory Council) to propose revisions to, and to annually review, the Elevator Safety Code are moved to s. 399.1061, F.S.
- The conveyances that are exempted from regulation under ch. 399, F.S., are moved to s. 399.015, F.S.
- The requirement that each elevator must have a serial number that is assigned by the department painted or attached on the elevator car that is moved to s. 399.032(1), F.S., and rephrased to require a painted assigned license number on the frame of the conveyance car.
- The responsibilities of a construction permitholder, i.e., a “certified elevator company,” for correction of violations and testing are transferred to s. 399.032, F.S.
- The elevator owner’s responsibilities in this section, including the responsibility for safe operation, proper maintenance, and inspection and correction of code deficiencies, are transferred to s. 399.19, F.S., which is created by the bill to specify the owner’s duties.

The bill amends s. 399.02, F.S., to permit the department to employ certified elevator inspectors to monitor and oversee any license holder or certificate of operation holder. The bill also retains the current authority of the division to employ state elevator inspectors in s. 399.061(3), F.S.

Section 399.02, F.S., also provides requirements for variance approval. It prohibits the division from granting a variance approval unless:

- The variance will not adversely affect the safety of the public;
- A reasonable alternative to the required construction does not exist; and
- The owner did not intentionally cause the hardship.

The bill requires that the council review requests for variances. It permits the division to grant requests for variances that are for the type of hardship for which precedent exists based upon previous reviews by the council. The division must expedite emergency requests for variances within 30 days after receiving the request. The division is authorized to adopt rules for variance

requests and fees. Variance fees adopted by the division may not exceed \$150 for a routine variance request or \$300 for an emergency variance request.

The bill amends s. 399.02, F.S., to permit elevator owners three years to retrofit elevator to comply with noncritical revisions of the elevator safety code. It also provides standards for determining whether a revision of the elevator safety code is critical or noncritical. In determining whether a code revision is critical or noncritical, the division must:

- Determine the nature of the risk of harm or injury to the public;
- Review the incidences of harm or injury to the public related to the risk;
- Evaluate the risk to life or safety in delaying the code revision;
- Consider the expense to elevator owners; and
- Determine if the aims of the proposed code revision may be achieved through alternative means.

Permits

The bill amends s. 399.03, F.S., to provide the requirements for permits to erect, construct, install, or alter a conveyance. The bill deletes provisions in this section that are transferred to other sections, and includes provisions that are also transferred from other sections. It transfers the following provisions:

- The requirement that any material alteration must conform to the Florida Building Code is transferred to s. 399.032(5), F.S.
- The requirement related to the owner's responsibility to provide the department with emergency access information is transferred to s. 399.019(3), F.S.
- The department shall maintain a regional emergency elevator access registry that is available to the State Fire Marshal of the Department of Financial Services for enforcement purposes.
- The provisions related to new conveyance installations are transferred to s. 399.032, F.S.
- The provisions related to the temporary use of an elevator during installation or alteration are transferred to s. 399.033, F.S.

The bill adds the new requirement that permits the department to revoke the permit of a certified elevator company for failure to supervise the worksite or the work being performed.

Installation or Alteration of Conveyances

The bill creates s. 399.032, F.S., to include provisions that are transferred from s. 399.03, F.S., related to the installation and alteration of elevators.

Temporary Operation

The bill creates s. 399.033, F.S., to include provisions that are transferred from s. 399.03, F.S., related to the temporary operation of conveyances during installation. However, the bill increases from 30 days to 90 days the period of time that a conveyance may operate temporarily. The bill

provides that the period of time may not be extended beyond 180 days unless a full-load test is performed. It also requires that the inspector post a notice in a conspicuous place that the conveyance is being temporarily used is not meet the requirement of parts I and II of ASME A17.1.

Elevator Accessibility Requirements

The bill amends s. 399.035, F.S., to update the referenced national standards regarding elevator accessibility. The bill references s. 2.27.3 of the American Society of Engineers standard in place of the current s. 211 standard of the American National Standards Institute.

The bill adds the requirement that any building constructed after June 30, 2009, and that is more than three stories high, or that is higher than 25 feet from the bottom terminal landing to the top terminal landing must be constructed to contain at least one passenger elevator that can accommodate an ambulance stretcher 84 inches long and 24 inches wide in the horizontal position.

Disciplinary Action

The bill amends s. 399.049, F.S., to include certified elevator inspectors and certified elevator technicians within the disciplinary provisions in this section. It provides new violations for :

- Committing negligence and fraud;
- Failure to obtain a permit before altering or installing a conveyance or commencing any work on the installation of any equipment;
- Failure to obtain annual inspections in a timely manner;
- Failure by a certified elevator inspector or certified elevator company to perform a complete inspection;
- Failure to provide agents of the department with access needed to discharge their duties;
- Failure to comply with orders of the division;
- Failure by an owner to renew a certificate of operation, to comply with a notice to discontinue use for operating without a valid certificate, or continuing to operate a conveyance after it has been sealed by the department;
- Failure by a certified elevator company to have a certified elevator inspector perform an inspection and post the inspection certificate; and
- Failure by a certified elevator inspector to comply with a request for information concerning a regulatory monitoring inspection by a state elevator inspector or the department.

The bill also provides a violation for failure by a certified elevator inspector or certified elevator company to respond to the division written request for an explanation of the inspection procedures and applications that were used for preparing an inspection report in which the department found errors and omissions of code violations and tests.

Inspections

The bill amends s. 399.061, F.S., to include the requirement that a copy of the contract must be made available upon the request of the department. This provision is currently in the definition of the term “maintenance contract” in s. 399.01(10), F.S.

The bill amends s. 399.061, F.S., to require the division to perform industry regulatory inspections and provide the owner with a copy of the inspection report. The bill also provides the division with the authority to employ state elevator inspectors on a probationary status, provide the inspector meets the specified qualifications and obtains the required certifications within one year. The probationary period may not exceed 1 year.

Certificates of Operation

The bill amends s. 399.07, F.S., to shorten from 2 years to 12 months the length of time during which a certificate of operation can be issued. The bill permits the department to revoke a certificate of operation if the inspection report contains omissions or errors.

Enforcement of Law

The bill amends s. 399.10, F.S., to provide a second degree misdemeanor for hindering an agent of the division in the performance of his or her duties, failing, neglecting, or refusing to obtain a license or pay license fees required by law. The bill also authorizes the division to impose administrative sanctions for these violations.

Elevator Safety Technical Advisory Council

The bill amends s. 399.1061, F.S., which relates to the membership of the council, to require the appointment of a member to serve as a vice-chair. It requires the council to meet at least once annually, and upon the request of the division or a majority of the members.

The bill also transfers from s. 399.02, F.S., to s. 399.1061, F.S., the responsibility of the council to review and recommend changes to the elevator safety code and Florida Building Code. It also adds ASME standard A17.2 to the list of standards that the division must conform its rules. Standard A17.2 is the ASME guide for inspections of elevators.

Reporting of Conveyance Accidents

The bill amends s. 399.125, F.S., to require that conveyance accidents be reported to the division within 15 working days after an accident. Current law requires that elevator accidents must be reported to the division with 5 working days after an accident. The bill also specifies the types of accidents that must be reported to the division by the certificate of operation holder. The bill requires that accidents which result in bodily injury requiring medical attention or resulting in death must be reported. However, the accidents need only be reported if they were also presumably caused by the malfunction of the equipment or by misuse by a passenger of the equipment.

The bill requires the division to inspect a conveyance within 72 hours of receiving an accident report meeting the reporting requirements. The division is also required to analyze accident report data and submit an annual report to the Governor, the President of the Senate, the Speaker of the House, and the chairs of the appropriations committee by September 30 of each year.

Delegation of Authority to Municipalities and Counties

The bill amends s. 399.13, F.S., to provide the contract jurisdiction with additional duties and responsibilities that are consistent with the division's responsibilities. For example, it provides contracted jurisdictions the authority to charge fees for variances; requires that license fees charged by the contracted jurisdiction must be the same as license fees charged by the division; and requires the contracted jurisdiction's to enforce the Florida Elevator Safety Code.

The bill also deletes an exemption that limits the affects of amendments to ch. 399, F.S., to installations, relocations, or alterations of elevators for which a permit was issued after October 1, 1990. The deletion of this section would permit the division to require that elevators meet current code requirements if they were installed, relocated, or altered after October 1, 1990.

Regional Emergency Elevator Access

The bill amends s. 399.15, F.S., to transfer for s. 399.03, F.S., the requirement for the division to maintain a regional emergency elevator access registry for the State Fire Marshal. The bill also provides that this section does not affect the application of the uniform firesafety standards, the Life Safety Code, or the Elevator Safety Code.

Certificate of Competency

The bill creates s. 399.16, F.S., to transfer the current license requirements for certified elevator professionals and certified elevator companies that are currently referenced for these licensed in the definitions section in s. 399.01, F.S.

The bill also transfers from s. 399.01, F.S., the authority of the division to charge a \$50 fee for issuance and renewal of a certificate of competency.

The bill requires a new \$50 license and annual renewal fee for certified elevator inspectors, certified elevator companies, and certified elevator technicians.

The bill also permits elevator helpers and mechanics to perform work if directly supervised by a certified elevator technician. The elevator helper must be a listed employee of the certified elevator.

The bill requires that elevator mechanics must first serve a 4-year apprenticeship and pass a mechanic's examination before they can be licensed.

Citations for Unlicensed Activity

The bill creates s. 399.17, F.S., to prohibit unlicensed activity and specifies the activities that are prohibited if unlicensed. The referenced activities relate to the type of work that can only be performed by a certified elevator professional, a certified elevator company, or a certified elevator inspector. The bill creates a misdemeanor for violations of this section. The bill provides that the misdemeanor is punishable as provided in s. 399.11, F.S., which provides second degree misdemeanors for violations of ch. 399, F.S., and the rules of the department, and for falsely representing oneself as credentialed under ch. 399, F.S.

The bill provides the procedure for the issuance of a stop-work order for unlicensed activity; and provides the division with citation authority. The bill specifies the process and requirements for issuing a citation. It provides for hearing rights under the Administrative Procedures Act in ch. 120, F.S.

Certified Elevator Professionals

The bill creates s. 399.18, F.S., to specify the duties and requirements of certified elevator professionals, including inspectors employed by the state and private entities. This provisions includes the qualification for this license that are currently included in the definitions in s. 399.01, F.S.

The bill requires that private elevator inspectors respond to the department upon any finding of omissions or errors on the elevator inspection report. The private inspector also must submit a corrected report. The bill also specifies the duties of the state elevator inspector. It prohibits certified elevator inspectors from having a conflict of interest with the elevator owner, or with the certified elevator company that constructed, installed, maintained, or repaired the conveyance.

Duties and Requirements for Owners

The bill creates s. 399.19, F.S., to specify the duties and requirements of conveyance owners, including the duty to safely operation and maintaining the conveyance. The bill requires that owners permit the department or its agents to have access to the conveyance. It transfers from s. 399.03, F.S., the requirement that elevator owners file with the division a regional emergency access notification. The bill requires that the owner sign the inspection report after inspection by a certified elevator inspector is completed.

Alternate Power Generators for Elevators

The bill amends s. 553.509, F.S., to delete the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height.

Effective Date

The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill requires certified elevator inspectors, certified elevator companies, and certified elevator technicians to pay a \$50 license and annual renewal fee.

The bill repeals the alternate emergency generated power requirement for elevator in high-rise residential dwelling in s. 553.509, F.S. The repeal of this provision may save the owners of such buildings the costs of compliance with the requirement. It is estimated by industry representatives that to engineer and install the appropriate generator wiring, coupling, and transfer switch would cost approximately \$4,000 to \$6,000 per location.

Options to power an elevator by portable generator include purchase and guarantee services contracts in which a second party provides the generator, maintenance, and servicing for a fee. Costs for purchasing a generator are dependent on each individual application. As an approximate general rule, standby generators cost \$300 to \$500 per kilo-watt. Thus, a 20 KW standby generator would cost between \$6,000 and \$10,000. A 100 KW generator would cost between \$30,000 and \$50,000.

The cost of a guaranteed services contract would be subject to many variables and is unknown. However, it is likely to be considerably less than the cost of a purchased generator.

C. Government Sector Impact:

The bill amends s. 399.02, F.S., to authorize fees for variance requests that may exceed \$150 for a routine variance request or \$300 for an emergency variance request. The department estimates an increase of \$293,200 in revenue, including \$141,700 for licensing, certification, and variance request fees, and an additional \$151,500 in administrative fines.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill amends ss. 399.02(6) and 399.15, F.S. These provisions are also amended by CS/SB 2100 by the Community Affairs Committee and Senator Bennett. Although the substantive affects of these provisions, as amended by these bills, do not appear to conflict, the provisions do not conform.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on April 1, 2009:

The committee substitute (CS) amends s. 399.125, F.S., to extend from 5 working days to 15 working days the period of time after an accident during which an elevator accident must be reported to the division.

The CS amends s. 399.02, F.S., to permit elevator owners three years to retrofit elevators to comply with noncritical revisions of the elevator safety code. It also provides standards for determining whether a revision of the elevator safety code is critical or noncritical.

The CS amends s. 399.17, F.S., to reference waiver of the right to request and administrative hearing instead of the right to an administrative hearing. The CS also clarifies that failure to file a written request for a hearing which complies with s. 120.569, F.S., constitutes waiver of the right to an administrative hearing. The CS also changes the term “department” to “division,” use the term “final order” in place of “order.”

B. Amendments:

None.