

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0339/P1dn
RJM:cjs:rs

November 15, 2002

Representative Huebsch:

Attached is the draft you requested regarding elevator and conveyance safety. Please feel free to call if you have any questions. The draft has been a lot of work to produce and, rather than cause you to wait any longer, I thought it would be best to provide you with a preliminary draft. Once the draft has your approval, I will be able to provide you with an introducible version. I apologize for the long drafter's note, but there were many items in the "model elevator law" submitted to me that either required changing or were able to be significantly improved, from a drafting standpoint. Many of those changes and improvements are highlighted below, so that all interested parties can review them.

I wanted to mention, as a general matter, that the Department of Commerce currently has an entire chapter of rules regulating the installation and operation of elevators and other conveyances in commercial buildings and buildings open to the public. These rules are part of what is commonly referred to as the "commercial building code." It is unclear what the department would need to do to bring those rules into compliance with this draft, although it is clear that the draft covers more than commercial buildings and buildings that are open to the public. You may want to obtain the department's comments regarding this draft. If you choose to contact the department, you may want to use Bob DuPont as your contact person. He is the head of the safety and buildings division.

As you review the draft, please note the following:

1. Please review the definitions in proposed s. 101.981 to ensure that they are consistent with your intent. The definitions, in large part, govern the scope of the draft. I did not include any references to the ASME, ASCE, or ANSI standards. By avoiding any reference to ASME, ASCE, and ANSI, the draft avoids the argument that the legislature is unconstitutionally delegating legislative authority to the ASME, ASCE, or ANSI. Also, the department may impose a specific version of the ASME, ASCE, and ANSI standards as its standard when it promulgates the rules to implement the draft. Also, I did not include the two sections from the "model elevator law" entitled "equipment covered by this chapter" and "equipment not covered by this chapter." These provisions rely on references to ASME, ASCE, or ANSI almost entirely for their meaning. It may be more appropriate for the department to further clarify the scope of the chapter when it promulgates rules implementing the chapter and further defining "conveyance."

2. Unlike most of the buildings and safety statutes, this draft is not limited only to commercial and public buildings. The draft applies to any building or structure containing an elevator or other covered conveyance, although the penalties don't apply to owners of private residences. Please let me know if you would like to narrow the scope of the draft to more resemble the other buildings and safety statutes.

3. I did not include the purpose statement from the "model elevator law." Parts of the suggested statement are promotional and other parts seem to state requirements that are included elsewhere in the draft. There did not seem to be any legal reason to include the statement. Please let me know if you have any questions.

4. The "model elevator law" submitted to me indicated that "no other license shall be required" for a person licensed as an elevator mechanic. I interpreted this language to be a limitation of municipal authority (see proposed s. 101.987) and an exemption from the electrical code (see proposed ss. 101.82 (1) and 101.86 (1) (a)).

5. This draft provides rule-making authority to the department of commerce, rather than a separate board, as suggested in the "model elevator law." See proposed s. 101.982. The department of commerce is the agency generally responsible for regulating buildings and safety. Also, the draft creates a conveyance safety code council to advise the department. See proposed ss. 15.157 (13) and 101.986. This structure is similar to the manner in which other building codes are developed and administered by the department. Please review proposed s. 15.157 (13) to ensure that the council membership is described correctly. The default provisions of ch. 15 concerning election of chairperson, appointment of members, operation of board meetings, etc. apply under the draft to this council, except that this council must meet at least twice per year. Also, I provided for staggered terms of the council members. Please review the nonstatutory provision at the back of the bill and let me know if you desire any adjustments.

6. The "model elevator law" would require a person both to register an elevator and obtain a permit. That seemed duplicative. This draft does not require registration. It does require a permit for construction, installation, or alteration (see proposed s. 101.983 (1) (a)) and a permit for operation (see proposed s. 101.983 (2) (a)). Also, the six-month grace period for registering existing elevators is changed to a six-month grace period for obtaining a permit to operate an existing elevator (unless person currently is required to have permit under the rules). Do you still want this additional six-month grace period, given the fact that the draft also has a 12-month delayed effective date?

7. Please review the provisions concerning the permit for construction, installation, or alteration under proposed s. 101.983 (1). An elevator contractor or mechanic may do other work concerning elevators, such as service and repair work, for which a permit is not required under the draft. Please let me know if this treatment is not consistent with your intent. Also, please note that I tried to reconcile the requirements of proposed s. 101.983 (1) (b) with the requirement in s. 101.12 for plan submission under the commercial building code.

8. I did not include the failure to honor a “stop work order” as a basis for revocation of an elevator construction permit, as suggested in the “model elevator law.” It is unclear what the phrase “stop work order” means.

9. Unlike the “model elevator law,” this bill requires an inspection before issuance of an operation permit for any conveyance. Although it was probably not intended, the “model elevator law” seems to require an inspection only for platform lifts and stairway chair lifts in private residences and then only at the request of the owner.

The draft also requires an owner to provide a copy of an inspection report indicating that the elevator is in compliance as precondition to renewing an operation permit. See proposed s. 101.983 (2) (c). An operation permit has a one-year term. Thus, the draft requires annual inspections, with a copy of the inspection report being delivered to the department.

10. Please review the exception under proposed s. 101.984 (2) (c) 1. to ensure that I correctly described the type of demolition intended to qualify for an exemption from the elevator mechanic licensing requirement.

11. A sole proprietor may be both an elevator contractor and an elevator mechanic. As a result, I specified that an individual does not need an elevator mechanic’s license if he or she *is* or is under the supervision of licensed elevator contractor.

12. Under the “model elevator law,” it appeared as though an applicant for an elevator mechanic’s license had to work for three years in this state before applying for a license. The language was ambiguous, though. I drafted proposed s. 101.985 (2) (a) 2. so that the applicant could work for three years *in any state*, provided the information is verified by the person’s employers. By drafting the provision in this way, you avoid any argument that the draft improperly regulates interstate commerce in violation of the Commerce Clause of the U.S. Constitution.

Also, I drafted this provision so that the work experience required must be *relevant to* the erection, construction, alteration, replacement, maintenance, removal, or dismantling of conveyances. The “model elevator law” didn’t contain this qualifying language. I added this language in order to ensure that this provision is in synch with the requirement under proposed s. 101.985 (2) (a) 5. that an applicant must complete an elevator mechanic apprenticeship program. The tasks of an apprentice might not always qualify as the erection, construction, alteration, replacement, maintenance, removal, or dismantling of conveyances.

13. The grandfather provision for experienced elevator mechanics in the “model elevator law” didn’t make sense because it required the applicant to have worked for three years for a licensed elevator contractor. There are no licensed elevator contractors. Also, the provision seemed to boil down to only an exemption from the competency examination requirement for anyone who applies within one year after the bill takes effect and who meets the other licensing qualifications. I assume you want the grandfather provision to provide an exemption from these other requirements, as well. For example, I assume you want the grandfather provision to say that the apprenticeship requirement does not apply to these applicants. Otherwise, it would generally be impossible to license anyone as an elevator mechanic until the first crop of apprentices completes their program approximately three years after the bill takes

effect. I drafted the grandfather provision as a nonstatutory provision at the back of the bill. I have drafted it consistent with my assumptions regarding your intent. Please let me know if I misunderstood your intent.

14. With regard to the apprenticeship requirement in proposed s. 101.985 (2) (a) 5., I drafted the requirement so that the apprenticeship program must be approved by both the department of workforce development and the department of commerce. The department of workforce development generally administers apprenticeship programs. I eliminated any reference to the U.S. Dept. of Labor's Bureau of Apprenticeship and Training because the approval of these two state agencies should suffice to ensure that the apprenticeship program is valid. Also, I provided an exception from the licensing requirement for a person working as an apprentice. See proposed s. 101.984 (2) (c) 2. a.

15. Rather than require an applicant for an elevator contractor's license or an elevator inspector's license to provide a copy of each required insurance policy, this draft permits the applicant to provide a certificate of insurance indicating the applicant has the required amount of coverage. See proposed s. 101.985 (1) and (3).

16. Rather than require an applicant for an elevator inspector license to meet ASME QEI-1, this draft requires the applicant to demonstrate to the satisfaction of the department that the he or she is adequately qualified and able to provide elevator inspection services. By avoiding any reference to the ASME standards, the draft avoids the argument that the legislature is unconstitutionally delegating legislative authority to the ASME. Also, the department may impose a specific version of ASME QEI-1 as its standard when it promulgates the rules to implement the draft.

17. The "model elevator law" contains a reference to "education credits" as a requirement for initial licensure. There is nothing in the "model elevator law," though, specifying educational requirements, except for renewal of a license. I eliminated the reference to "education credits" for initial licensure, but the department may still require some sort of educational certificate as part of the applicant's demonstrating that he or she is adequately qualified and able to do the work.

18. The "model elevator law" says licenses are renewable "biannually." That means the licenses have only a six-month term. I assume what was intended was "biennially," which means the licenses have a two-year term. See proposed s. 101.985 (5). Please let me know if I am mistaken.

19. The continuing education requirements in the "model elevator law" assume that licenses are issued only to individuals. However, business entities may be licensed as elevator contractors. I drafted proposed s. 101.985 (5) (b) 1. to require an individual who is a agent for such a licensee to obtain the continuing education. Please let me know if you desire any changes. For example, you may want to ensure that the individual receiving the continuing education is a manager of the business.

20. Like the "model elevator law," this draft gives a person who provides continuing education instruction an exemption from the continuing education requirements. See proposed s. 101.985 (5) (b) 1. and 2. As currently drafted, any amount of instruction satisfies all of the continuing education requirements. Do you want to specify a specific number of hours of instruction, instead? For example, lawyers must have 30 hours of

continuing education but those who teach get double the credit. In effect, 15 hours of teaching satisfies the full 30 hour requirement. Please let me know if you would like to include a similar procedure in this draft.

21. The continuing education requirements may be temporarily waived by the department under proposed s. 101.985 (5) (b) 3. I drafted this provision so that the department may revoke a waiver if the licensee fails to provide the department with notice that the disability has terminated. Otherwise, the waiver would be of indefinite duration.

22. I did not include any of the suggested language regarding revocation and suspension hearings and appeals. Persons adversely affected by these actions are entitled to a hearing under s. 227.42, stats., if requested.

23. With regard to the license application under proposed s. 101.985 (7), I added language in par. (a) applicable to LLC's. Also, rather than specifying different information for domestic and foreign corporations and LLC's, par. (a) requires the application to include the name and address of the corporation's or LLC's registered agent.

24. The requirements that an applicant list his or her criminal arrest and conviction history (see proposed s. 101.985 (7) (e)) and that the department perform a criminal background check (see proposed s. 101.985 (4)) are unique in the buildings and safety statutes. Please let me know if you would like to eliminate these provisions.

25. Because it is possible that an elevator contractor may use independent contractors rather than employees, or may itself be an elevator mechanic, I worded the licensing qualification in proposed s. 101.985 (7) (d) more broadly than the provision in the "model elevator law." I also drafted this requirement as a certification in the application process rather than as a separate statutory duty. Please review the provision and let me know if you desire any changes.

26. The "model elevator law" permits a member of the public to trigger an investigation by filing a notice of a dangerous elevator with the department. The person filing the notice may request that his or her name not be disclosed under open records laws. I included these provisions in proposed s. 101.988 (1) (b), but permitted the department to disclose a person's name to a law enforcement officer acting in his or her official capacity. Also, I included a provision permitting the department to perform investigations without first receiving a notice from a member of the public. See proposed s. 101.988 (1) (a). Please let me know if I have misunderstood your intent.

27. The penalties in proposed s. 101.988 (3) apply to any violation (except by a residential owner), rather than just to violations by owners and lessees, and apply to violations of the relevant rules or statutes, rather than just the statutes. Also, please note that, even though the "model elevator law" calls these "civil penalties," they are a criminal misdemeanor because they call for a fine and imprisonment. Please let me know if you would rather have a civil forfeiture with no imprisonment.

28. I did not include the language from the "model elevator law" entitled "liability" because it is unnecessary. As is usually the case, there is no need to say what bill doesn't do.

29. I did not include the nonretroactivity language because nonretroactivity is the default rule in Wisconsin.

30. In several places, the "model elevator law" requires an owner or lessee to do something. This draft places these duties on the owner, who can then require a lessee to perform the required task under the terms of his or her lease.

31. It is possible that an employee or business in the elevator industry currently has the right, under a collective bargaining agreement, to engage in a practice that is prohibited by this bill. The bill may impair this contract right. If the impairment is substantial, enforcement of the prohibition may be in violation of article I, section 12, of the Wisconsin Constitution and article I, section 10, of the U.S. Constitution. See *Chappy v. LIRC*, 136 Wis. 2d 172 (1987); *Chrysler Corp. v. Kolosso Auto Sales, Inc.*, 148 F. 3d 892 (7th Cir. 1998). In order to avoid this issue, this draft includes a nonstatutory provision that permits such a collective bargaining agreement to continue in force until it expires or is extended, modified, or renewed.

Please feel free to call if you have any questions. I look forward to hearing from you.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us