



Legislative Fiscal Bureau

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February 14, 2006

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 447: Regulation of Elevators

Assembly Bill 447, related to the regulation of elevators, escalators, and other similar conveyances, was introduced on June 1, 2005, and referred to the Assembly Committee on State Affairs. On January 31, 2006, the Committee recommended adoption of Assembly Substitute Amendment 1 by a vote of 9 to 0, and recommended passage of the bill, as amended, by a vote of 8 to 1. The bill was referred to the Joint Committee on Finance on February 7, 2006.

CURRENT LAW

The Department of Commerce is required to establish standards or rules for the construction, repair, and maintenance of places of employment and public buildings so that the places of employment and public buildings are safe (s. 101.02 of the statutes). Commerce is required to approve the essential drawings, calculations, and specifications (building plans) for the construction of places of employment and public buildings, including building plans related to elevators, escalators, ski lift and towing devices, and power dumbwaiters (s. 101.12). Commerce is also required to ensure that all machines and mechanical devices installed in places of employment and public buildings are in conformance with the rules enacted for the safety of employees and frequenters in such places (s. 101.17). The Department is also authorized to promulgate rules that establish fees for the required inspection of elevators, escalators, ski lift and towing devices, and dumbwaiters (s. 101.19). The Department promulgated and administers rules governing, among other things, the installation, inspection, maintenance, and repair of elevators and other conveyances.

SUMMARY OF SUBSTITUTE AMENDMENT

Assembly Substitute Amendment 1 (the bill) would make several changes related to the regulation of elevators and other conveyances, including: (a) create a statutory section specifically governing elevators and other conveyances; (b) establish a Conveyance Safety Code Council attached to Commerce; (c) require a person to obtain a permit for the construction, installation, or alteration of a conveyance; (d) require a person to obtain a permit to operate a conveyance; (e) require a person to obtain an elevator contractor license, elevator mechanic license, or elevator inspector license from Commerce before engaging in those tasks; and (f) establish penalties for noncompliance.

Conveyance Safety Code

The bill would require Commerce to promulgate administrative rules establishing standards for the safe installation and operation of conveyances. The bill defines a conveyance to be an elevator, escalator, dumbwaiter, belt manlift, moving walkway, platform lift, personnel hoist, material hoist, stairway chair lift, or any other similar device used to elevate or move people or things, as provided in the Commerce rules. The definition excludes grain elevators, ski lifts or towing devices, and amusement or thrill rides. The bill would include definitions of various devices referenced in the term "conveyance," including amusement or thrill ride, belt manlift, dumbwaiter, elevator, escalator, material hoist, and personnel hoist. It would also require Commerce to promulgate rules establishing additional definitions to the extent deemed necessary for the proper administration and enforcement of the provisions in the bill.

The rules would do all of the following: (a) consider the recommendations of the Conveyance Safety Code Council, which would be established under the bill; (b) be consistent, to the extent practicable, with national, industry-wide safety standards applicable to conveyances; (c) require any testing of conveyances or related equipment required under the rules to be performed by an elevator mechanic licensed under the bill; (d) require any person who installs a new conveyance to give the owner of the building in which the conveyance is installed, before the conveyance is placed in operation, a written certification indicating that the installation complies with the rules; and (e) include an enforcement procedure and a procedure pursuant to which the Department could grant a variance from the rules if the variance would not jeopardize public safety.

Conveyance Permits

Under the bill, no person would be allowed to construct, install, or alter a conveyance in Wisconsin unless an elevator contractor licensed by Commerce received a permit for the construction, installation, or alteration from the Department. A person would have to submit a permit application to Commerce, with plans and specifications, that includes: (a) the location of the construction, installation or alteration in relation to the plans and elevation of the building; (b) the location of the applicable machinery room, if any, and the equipment to be constructed, installed, or altered; (c) all structural supporting members relevant to the construction, installation, or alteration,

including foundations; and (d) all details of design and construction, installation or alteration. The application would have to specify all materials to be used and all loads to be supported or conveyed.

Commerce would be authorized to revoke a permit if the Department finds that: (a) the application contains false statements or misrepresentations of material fact; (b) the permit was issued in error; or (c) the work performed under the permit is not consistent with information submitted with the application or is in violation of the conveyance permit requirements.

A permit would expire if: (a) the work does not begin within six months after the permit is issued, or within a shorter period of time if specified by Commerce at the time the permit is issued; or (b) the work is suspended or abandoned for 60 consecutive days at any time following the commencement of the work, or for a shorter period of time as specified by the Department at the time the permit is issued.

No person could allow a conveyance to be operated on property owned by the person unless the person has received a permit for the operation from the Department. Commerce could not issue a permit for the operation of a conveyance until: (a) the conveyance passes an inspection by an elevator inspector licensed by the Department; and (b) the Department receives an inspection report issued by a licensed elevator inspector indicating that the conveyance complies with the conveyance statutes and rules.

The owner of a private residence containing a newly-installed platform lift, stairway chair lift, or residential lift, or the new owner of a private residence containing a previously installed platform lift, stairway chair lift, or residential lift, could request Commerce to inspect the lift or equipment for compliance with the conveyance statute and rules. After Commerce performs the inspection, the Department would be required to give the owner notice of relevant conveyance safety requirements and to instruct the owner of the procedure for obtaining periodic inspections and renewing the permit under which the lift or equipment is operated. The inspection by the Department would not exempt the owner of the residence from the requirement to ensure that the Department receives an inspection report from a licensed elevator inspector.

The term of a conveyance operation permit would be one year, except that a permit applicable to a platform lift, stairway chair lift, or residential lift in a private residence would be valid until ownership of the private residence is transferred, at which time the new owner would have to apply for renewal of the permit. The owner of the building or residence would be required to display the permit for the conveyance on or in the conveyance, or in the machinery room for the conveyance.

The conveyance operation permit requirements would go into effect on the first day of the 12th month beginning after publication. The owner or lessee of any conveyance that is in operation on the effective date would be required to obtain the required operation permit no later than the first day of the sixth month beginning after that effective date (18 months after publication). This

provision would not apply to any person required to obtain a permit under Commerce rules that are in effect before the first day of the 12th month beginning after publication.

Licensing of Elevator Contractors, Mechanics, and Inspectors

Elevator Contractor. The bill would require any person engaging in the business of constructing, installing, altering, servicing, replacing, or maintaining conveyances to be licensed by Commerce as an elevator contractor. The Department could issue an elevator contractor's license only to a person who demonstrates they are adequately qualified and able to engage in business as an elevator contractor. However, in certain circumstances, the Department could summarily issue an elevator contractor's license to a person who is licensed as an elevator contractor under the laws of another state, if the Department determines that the other state's regulation of elevator contractors is substantially the same as Wisconsin's regulation.

Every person who applies for an elevator contractor's license would have to provide a certificate of insurance issued by one or more insurers authorized to do business in this state, indicating that the person is insured in the amount of at least \$1,000,000 per occurrence for bodily injury to or death of others, is insured in the amount of at least \$500,000 per occurrence for damage to the property of others, and is insured to the extent required under the workers compensation laws. A person who holds an elevator contractor license would be required to provide Commerce with written notice of any material changes in the insurance coverage at least 10 days before the change takes effect.

Elevator Mechanic. The bill would require any person who erects, constructs, alters, replaces, maintains, repairs, removes, or dismantles any conveyance, or who wires any conveyance from the mainline feeder terminals on the controller, to be licensed by the Department as an elevator mechanic. The bill also states that the person may not perform these activities unless the elevator mechanic is licensed "*and is or is*" under the direct supervision of a person licensed as an elevator contractor. This appears to be a contradictory statement. It would be appropriate to amend the bill to either specify "*and is*" under the direct supervision of a person licensed as an elevator contractor, or to specify "*or is*" under the direct supervision of a person licensed as an elevator contractor.

Commerce would be required to issue an elevator mechanic's license only to an individual who satisfies all of the following: (a) demonstrates to the satisfaction of the Department that the person is adequately qualified and able to perform the work of an elevator mechanic; (b) during the three years preceding the date of application, was continuously employed in a position requiring the individual to perform work at a journeyman level and that is relevant to the erection, construction, alteration, replacement, maintenance, repair, removal, or dismantling of conveyances, as verified by the individual's employers; (c) satisfactorily completes a written examination administered by the Department covering the provisions of the elevator statutes and rules relevant to the license applied for or satisfactorily completes an elevator mechanic's examination approved by the Department and administered by a nationally recognized training program established by the elevator industry; and

(d) satisfactorily completes an elevator mechanic's apprenticeship program that is approved by the U.S. Department of Labor.

Commerce would be required to promulgate administrative rules that establish requirements for issuing elevator mechanic's licenses to individuals who performed tasks to erect, construct, alter, replace, maintain, repair, remove, or dismantle any conveyance within the scope of their employment before the first day of the 12th month after the publication of the act. Commerce would be authorized to include a deadline in the rules before which an individual must apply for a license under this provision.

The bill contains three exceptions relating to an elevator mechanic's license. First, Commerce could issue an emergency elevator mechanic's license if an emergency exists in the state due to disaster or work stoppage and the number of licensed elevator mechanics working in the area of the emergency is insufficient to cope with the emergency. An emergency elevator mechanic's license could be issued only to an individual who is certified by a licensed elevator contractor as adequately qualified and able to perform the work of an elevator mechanic without direct and immediate supervision, who the Department determines is so qualified and able, and who applies for an emergency elevator mechanic's license on a form prescribed by the Department. An emergency elevator mechanic's license has a term of 30 days and may be renewed by the department in the case of a continuing emergency. Second, if there are no licensed elevator mechanics available to provide services contracted for by a licensed elevator contractor, the elevator contractor could notify Commerce and request the issuance of a temporary elevator mechanic's license to any individual who is certified by the elevator contractor as adequately qualified and able to perform the work of an elevator mechanic without direct and immediate supervision and who applies for a temporary elevator mechanic's license on a form prescribed by the Department. A temporary elevator contractor's license would have a term of 30 days and could be renewed by the Department in the case of a continuing shortage of licensed elevator mechanics. Third, Commerce could issue an elevator mechanic's license to an individual who is licensed as an elevator mechanic under the laws of another state, if, in the opinion of the Department, that state's regulation of elevator mechanics is substantially the same as this state's.

Elevator Contractor and Elevator Mechanic License Exceptions. A person would not have to be a licensed elevator contractor if the person removes or dismantles a conveyance that is destroyed as a result of a complete demolition of a building or where the hoistway or wellway is demolished back to the basic support structure in a way that the hoistway or wellway is inaccessible.

The elevator contractor and elevator mechanic license requirements would not apply to: (a) a person enrolled in and performing tasks within the scope of an elevator mechanic's apprenticeship program that is approved by the U.S. Department of Labor; (b) a person performing tasks under the direct supervision of and as a helper to a licensed elevator mechanic; or (c) a person who performs work to erect, construct, alter, replace, maintain, repair, remove, or dismantle any conveyance, or to wire any conveyance from the mainline feeder terminals on the controller during the five-day period

preceding the date on which the person is issued an emergency elevator mechanic's license under the bill.

Elevator Inspector. The bill would require any person who performs elevator inspections to be: (a) licensed by Commerce as an elevator inspector; and (b) to hold a certification as an elevator inspector issued by a person approved by the American Society of Mechanical Engineers. Commerce would be required to promulgate rules that establish the qualifications required for issuance of an elevator inspector license.

License Requirements. Commerce would be required to issue a license to anyone who meets the requirements for licensure as an elevator contractor, elevator mechanic or elevator inspector under the statutes created in the bill and any rules promulgated by the Department to implement the bill.

Commerce would be required to promulgate rules that establish fees which, as closely as possible, equal the cost of administering the new elevator and conveyance statutes. However, the Department would not be allowed to charge a fee for: (a) an emergency elevator mechanic's license; and (b) a conveyance operation permit for a platform lift, stairway chair lift, or any other lift in a private residence. (However, Commerce could charge a fee for a temporary elevator mechanic's license or for a license for an elevator mechanic who was licensed in another state.) Fee revenues would be deposited in the Commerce Safety and Buildings Division program revenue administrative appropriation.

The term of the licenses under the bill would be two years. However, emergency and temporary elevator mechanic licenses would generally have a term of 30 days.

License applications would have to contain at least the following information, on forms prescribed by the Department: (a) the applicant's name and address; (b) the number of years the applicant has performed work or engaged in the business to be authorized under the license; (c) for an elevator contractor, the approximate number of individuals the applicant will employ upon licensure; (d) for an elevator contractor, a certification that all work that the person will contract to perform under the license will be performed by licensed elevator mechanics; (e) satisfactory evidence that the applicant is or, upon licensure, will be insured as required by the elevator contractor statute or any rules promulgated by Commerce for elevator inspectors; and (f) a description of the applicant's criminal arrests and convictions, if any. An application for licensure as an elevator mechanic with prior experience would have to contain the relevant information necessary to issue the license, as determined by the Department.

Commerce would be authorized to revoke or suspend a license granted under the bill if the Department finds any of the following: (a) that the licensee made a false statement of fact in an application; (b) that the license was obtained by fraud, misrepresentation, or bribery; (c) that the licensee failed to notify Commerce and the owner or lessee of a conveyance that the conveyance

failed to meet any of the requirements of the elevator statutes or rules; or (d) that the licensee violated the elevator statutes or rules.

Continuing Education. An applicant for a renewal of a license for an elevator contractor, elevator mechanic, elevator mechanic who is licensed in another state, or elevator inspector, would be required to provide Commerce with a certificate indicating that, during the one-year period before the date of the applicant's license expiration, the applicant has satisfactorily met with continuing education requirements. The Department would be required to promulgate rules that establish the continuing education requirements. The rules would have to include all of the following: (a) standards for certification of specific programs; (b) the number of hours of education required annually; and (c) criteria for receiving a waiver from Commerce of the education requirements.

Criminal Background Check. The bill requires Commerce, with the assistance of the Department of Justice, to contract a background investigation of an applicant for a license for an elevator contractor, mechanic or inspector. The purpose of the background check would be to determine whether information provided by the applicant in the application for a license is true, and whether the applicant has any arrests or convictions indicating that the applicant is not adequately qualified and able to provide services authorized under the license applied for.

Enforcement and Penalties

Commerce would be authorized to perform investigations to aid in enforcement of the elevator and conveyance statute and rules. Any person could submit a written request that the Department investigate an alleged violation of the elevator and conveyance statute and rules. The request would have to state the specific grounds, and be signed by the person filing the notice. Commerce would be required to keep the person's name confidential and to withhold the name from public inspection. However, the Department would be authorized to disclose the name of the person to a law enforcement officer for official purposes. If Commerce determines that there are reasonable grounds to believe that the alleged violation or dangerous condition exists, the Department would be required to investigate to determine if the alleged violation or dangerous condition exists. If the Department determines that there are no reasonable grounds, it would have to notify the person who submitted the request for investigation.

Commerce would be authorized to issue orders to enforce the elevator and conveyance statute and rule. Any person who violates the statute or rule could be fined not more than \$1,500 or imprisoned for not more than 30 days, or both. However, the owner of a private residence in which a conveyance is located may not be fined or required to pay a forfeiture as the result of any violation involving that conveyance.

Conveyance Safety Code Council

The bill would create a Conveyance Safety Code Council attached to Commerce, which would have the following duties: (a) review the elevator and conveyance statute and any rules promulgated under the statute; (b) recommend a statewide conveyance safety code for promulgation by Commerce; (c) recommend rules for the enforcement of the statute, granting of variances, administrative appeal procedures, fees and any other issues under the elevator and conveyance statute.

The Council would consist of 10 members, appointed by the Governor, representing the following interests (nine of them voting members): (a) a manufacturer of elevators; (b) an elevator servicing business; (c) an architectural design or elevator consulting profession; (d) a labor organization whose members are involved in the installation, maintenance, and repair of elevators; (e) a city, village, town or county; (f) an owner or manager of a building containing an elevator; (g) the public; (h) a building contractor involved in commercial construction that includes the construction or installation of conveyances; (i) the Secretary of Commerce or designee; and (j) an employee of Commerce, designated by the Commerce Secretary, who is familiar with commercial building inspections. The member under "(j)" designated by the Commerce Secretary would serve as the nonvoting Secretary of the Council. The Council would be required to meet at least twice per year.

The members would be appointed for three-year terms. However, the initial length of terms of the members would expire as follows: (1) the initial term of the members under (a) through (c), would expire on July 1, 2007; (2) the initial term of the members under (d) and (e) would expire on July 1, 2008; and (3) the initial term of the members under (f) through (h) would expire on July 1, 2009.

Administrative Rules

Commerce would be required to submit proposed administrative rules related to implementation of the elevator and conveyance statutes, including license fees, to the Legislative Council staff for review no later than the first day of the ninth month beginning after the day after publication of the act. The Secretary of the Department of Administration would not be allowed to require Commerce to prepare an economic impact report for the rules. Section 227.137 (2) currently requires the DOA Secretary to direct an agency to develop an economic impact report under certain circumstances.

Commerce would also be required to promulgate emergency rules to implement the bill, without having to make a finding of emergency. The Department would be required to promulgate the emergency rules no later than the first day of the ninth month beginning after the day after publication of the act.

Effective Date and Technical Amendment

The bill would generally take effect on the first day of the 12th month beginning after publication. However, there would be an effective date of the day after publication for the requirements that: (a) Commerce submit proposed rules to the Legislative Council staff by the first day of the ninth month beginning after publication, for their review; and (b) Commerce promulgate emergency rules no later than the first day of the ninth month beginning after publication.

While the bill would require that the Conveyance Safety Code Council make recommendations to Commerce related to the rules, and would require that Commerce consider the recommendations of the Council, the effective date for creation of the Council would be the first day of the 12th month beginning after publication. This would be three months after Commerce would be required to submit proposed rules to the Legislative Council staff for review.

A technical amendment would be required to create the Conveyance Safety Code Council and to allow the appointment of the initial members beginning on the day after publication. This would allow the Council to begin meeting and give it up to nine months to make recommendations to Commerce about the rules to be promulgated by the Department.

Collective Bargaining Agreements

The bill would provide that if a person is affected by a collective bargaining agreement that is in effect on the first day of the 12th month after publication of the act, and if that agreement contains provisions that are inconsistent with the elevator and conveyance subchapter created by the bill, then the person may perform the person's obligations, and exercise the person's rights under the collective bargaining agreement until the agreement expires or is extended, modified, or renewed, whichever occurs first.

FISCAL EFFECT

The bill would create workload for Commerce staff supported from the Safety and Buildings Division program revenue administrative appropriation. The bill would also generate fee revenue from inspections and certification that would be deposited in the same appropriation. A fiscal estimate submitted by Commerce indicates annual costs would be approximately \$44,300 for 0.75 position, and annual program revenue would be approximately \$43,000. The bill does not increase expenditure authority. Thus, Commerce would have to reallocate resources from current plan review, inspection and certification activities to the activities required by the bill, or seek additional authority under a s. 16.505 passive review procedure or future budget legislation.

The Commerce fiscal estimate states that there would be no additional workload from activities related to promulgation of a conveyance safety code and the establishment of a

Conveyance Safety Council. This would be due to the current existence of administrative rules related to elevators (Chapter Comm 18) and the Elevator Code Council.

Commerce estimates that the Department would need 0.5 PR program assistant position at a cost of \$24,200 PR annually to accomplish the workload associated with the licensing of elevator contractors, mechanics, and inspectors. This would include processing applications, administering examinations, and processing criminal background check paperwork. Commerce estimates that approximately \$25,000 in annual program revenue would be generated from license fees. The Department estimates that approximately 500 elevator mechanic licenses and 40 elevator contractors will be licensed for two-year terms.

Commerce has estimated that the Department would need 0.25 PR inspection and consultation position, at a cost of \$20,100 PR annually, related to the provision that the owner of a private residence could request Commerce to inspect a newly installed platform lift, stairway chair lift, or residential lift, or the new owner of a private residence containing a previously installed platform lift, stairway chair lift, or residential lift. While the bill would prohibit Commerce from charging a fee for a conveyance operation permit for a platform lift, stairway chair lift, or residential lift in a private residence, Commerce would be authorized to charge for inspections requested by the owner of a private residence for these conveyances. The Department estimates that it would receive approximately \$18,000 in annual program revenue from making approximately 100 such inspections annually, at an average cost of \$180 per inspection. This reflects the Safety and Buildings general inspection fee of \$60 per hour for the inspection and travel time. However, it is not known how many homeowners would choose Commerce inspectors in addition to licensed private inspectors. In addition, 100 inspections at an average of three hours each would require the time of approximately 0.17 position.

The Commerce fiscal estimate for the original bill also included estimates of additional workload and revenue related to language that would have prohibited municipalities from regulating elevators. The substitute amendment deletes that provision. Thus, the estimated revenue and costs would no longer apply to the substitute amendment. Currently, the City of Milwaukee is the only local government that regulates elevators. Commerce had estimated that the original bill's requirement that the Department assume responsibility for elevator regulation in Milwaukee would have resulted in the following additional revenue and costs: (a) \$30,000 in additional annual program revenue resulting from plan review for approximately 150 new elevators in Milwaukee annually, with average revenue of \$150 per plan review; (b) \$210,000 in additional annual program revenue resulting from the annual inspection and permitting of approximately 6,000 elevators in Milwaukee, with average revenue of \$35 per permit; and (c) \$20,000 in additional annual program revenue costs, related to the annual inspection and permitting of elevators in Milwaukee.

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