

**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 Community Affairs Committee

BILL: CS/SB 1172

INTRODUCER: Regulated Industries Committee and Senator Bennett

SUBJECT: Elevator Safety

DATE: April 7, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/CS</b>
2.	Gizzi	Yeatman	CA	<b>Favorable</b>
3.			MS	<b>Withdrawn</b>
4.			WPSC	
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:**

This committee substitute (CS) exempts elevators in condominiums or multi-family dwellings, including those in licensed continuing care facilities or retirement communities with apartments, that are issued certificates of operation before July 1, 2008, from any updates to the Elevator Safety Code concerning modifications for Phase II Firefighter Services until July 1, 2015, or until the elevator is replaced or modified.

The CS also grants the Division of Hotels and Restaurants under the Department of Business and Professional Regulation (DBPR or department) with additional rulemaking authority, right of access, and the ability to approve variances and issue citations for unlicensed activities.

The CS expands the permitted time period for elevator owners to correct violations from 30 to 90 days and provides additional procedures and violations with respect to elevator inspector certification.

This CS substantially amends the following sections of the Florida Statutes: 399.01, 399.02, 399.035, 399.049, 399.061 and 399.105.

This CS creates the following sections of the Florida Statutes: 399.16 and 399.17.

## II. Present Situation:

### Elevator Regulation

The Elevator Safety Act, located in ch. 399, F.S., establishes the minimum standards for elevator personnel in order “to provide for the safety of life and limb and to promote public safety awareness”.<sup>1</sup> Subsection (6) of s. 399.01, F.S., broadly defines the term “elevator” to include:

- Hoisting Mechanical Devices;
- Escalators;
- Dumbwaiters;
- Moving Walks;
- Inclined Stairway Chairlifts; and
- Inclined or Vertical Wheelchair Lifts.<sup>2</sup>

The Division of Hotels and Restaurants (Division) within the DBPR has both rulemaking and enforcement authority under ch. 399, F.S. The Division is also responsible for issuing elevator permits and certificates of operation<sup>3</sup> for companies or individuals to install, service or inspect elevators.<sup>4</sup> The Elevator Safety and Technical Advisory Council<sup>5</sup> within the Division, is responsible for providing recommendations to the DBPR on rules pertaining to the “operation, maintenance, servicing, construction, alteration, installation, and inspection for vertical conveyances” and is also required to develop and submit proposed revisions to the elevator safety code to ensure compliance with the latest code editions by American Society of Mechanical Engineers (ASME).<sup>6</sup>

Pursuant to s. 399.13, F.S., the DBPR may also enter into contracts for individual municipalities or counties to issue construction permits and certificates of operation, provide inspections, and enforce the applicable provisions of the Florida Building Code.<sup>7</sup>

According to the Division, there were over 50,000 licensed conveyances and over 2,900 issued registrations, certificates and credentials in the state of Florida as of August 1, 2009.<sup>8</sup>

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<sup>1</sup> Section 399.001, F.S.

<sup>2</sup> See s. 399.01(6)(a)-(f), F.S., for the specific definitions of these individual terms.

<sup>3</sup> Section 399.01(2), F.S., defines a certificate of operation to mean “a document issued by the department which indicates that the conveyance has had the required safety inspection and tests, and that fees have been paid as provided in [ch. 399, F.S.]”.

<sup>4</sup> See s. 399.10, F.S. See also Department of Business and Professional Regulation, *Senate Bill Analysis 1172, 2* (March 22, 2010) (on file with the Senate Committee on Community Affairs).

<sup>5</sup> See s. 399.1061, F.S. The Elevator Safety and Technical Advisory Council consists of the following eight members appointed by the secretary of the DBPR: 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 from a local government of this state, one representative of a building owner or manager, one labor representative involved in the installation, maintenance, and repair of elevators; and one representative that is a certified elevator inspector from a private inspection service.

<sup>6</sup> See *id.* See also s. 399.02(1) and (7), F.S.

<sup>7</sup> See s. 399.13(1), F.S.

<sup>8</sup> Department of Business and Professional Regulation, *Senate Bill Analysis 1172, 2* (March 22, 2010) (on file with the Senate Committee on Community Affairs).

### **Permits and Certificate of Operation**

Section 399.03, F.S., prohibits an elevator from being “erected, constructed, installed or altered” until a permit is issued from the DBPR. Only registered elevator companies can apply for conveyance permits for elevators, by submitting an application prescribed by the department along with applicable fees, and a sworn statement of compliance with elevator safety, building code, and emergency access notification requirements.<sup>9</sup> Any permit that is not commenced within 6 months, or for which work is suspended or abandoned for 60 days shall be expired.<sup>10</sup> The DBPR may also revoke a permit for any of the following reasons:

- The application, plan, or specifications on which the permit was issued contained false statements or misrepresentations of material facts;
- The permit was issued in error and was not in accordance to the code or rules;
- The work performed under the permit is not in compliance with the provisions of the application, plans or specifications, or with the code or permit conditions; or
- The permit-holder fails or refuses to comply with a stop-work order.<sup>11</sup>

Section 399.03, F.S., further requires each elevator to have a certificate of operation from the DBPR before being operated.<sup>12</sup> Prior to issuing the certificate of operation, a certified elevator inspector must inspect the conveyance and the construction supervisor must sign an affidavit attesting the direct supervision of the construction or installation of the elevator. A certificate of operation must be framed with a transparent cover in a conspicuous location within the elevator and must be renewed every two years upon a satisfactory inspection.<sup>13</sup> Certificate renewal fees are adopted pursuant to department rule and must be deposited into the Hotel and Restaurant Trust Fund.<sup>14</sup>

The owner of each elevator is responsible for the safe operation, proper maintenance, inspection and correction of code deficiencies after a certificate of operation has been issued by the department, and must continue to operate in accordance to the edition of the Florida Building Code or Elevator Safety Code that was in effect at that time of application for the construction permit.<sup>15</sup> The department is authorized to suspend a certificate of operation if it determines that an elevator is not in compliance with ch. 399, F.S., or the rules adopted therein.<sup>16</sup>

### **Elevator Inspections**

Section 399.061, F.S., requires the annual inspection of all elevators by a certified elevator inspector.<sup>17</sup> 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

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<sup>9</sup> Section 399.03(1), F.S.

<sup>10</sup> Section 399.03(4), F.S.

<sup>11</sup> Section 399.03(3), F.S.

<sup>12</sup> Section 399.03(5), F.S.

<sup>13</sup> Section 399.07, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *See* ss. 399.02(5)(b) and 399.03(7), F.S.

<sup>16</sup> Section 399.07(6), F.S.

<sup>17</sup> 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.

department.<sup>18</sup> According to the department, there are 12 inspectors employed by the Division and 272 registered private inspectors. The Legislature's amendment to s. 399.061, F.S., in 2000 to provide for the use of private elevator inspectors, has increased the number of licensed inspectors and helped the Bureau of Elevator Safety within the Division increase the number of inspections conducted each year to meet the statutory annual inspection requirements.<sup>19</sup>

To be a certified elevator inspector, a person must acquire the qualified elevator inspector credentials prescribed by the ASME. The certified elevator inspector must also register annually 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.<sup>20</sup>

Certified elevator inspectors are not required to pay a registration fee in order to register with the Division.

An elevator inspection is not required if: the elevator is not an escalator or a dumbwaiter, it only serves two adjacent floors, and it is covered by a service maintenance contract that remains in effect.<sup>21</sup> A statement verifying the existence and performance of each service maintenance contract must be filed at least annually with the division, and any cancellation thereof must also be reported to the division.<sup>22</sup>

Municipalities and counties under contract with the department may choose to require that inspections be performed by their own inspectors or by private certified elevator inspectors.<sup>23</sup> The department may inspect elevators in the municipality and county to determine whether municipal or county inspection are in compliance with the provisions of ch. 399, F.S., and may cancel its contract with any municipality or county that fails to comply with the contract or ch. 399, F.S.<sup>24</sup> Although counties and municipalities may not issue or take disciplinary action against an elevator inspector's certification, the department may initiate disciplinary action against a private inspector's certification at the request of a county or municipality.<sup>25</sup>

Chapter 399, F.S., currently does not provide an explicit right-of-entry for inspectors under the Bureau of Elevator Safety to perform their inspection duties. The DBPR states that this has caused some of its employees to occasionally be refused entry to perform their duties.<sup>26</sup>

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<sup>18</sup> 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.

<sup>19</sup> Ch. 2000-356, s. 4, L.O.F. See also OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENTAL ACCOUNTABILITY, FLORIDA LEGISLATURE, *Privatization Has Helped Improve Elevator Safety: Additional State Oversight is Needed*, REPORT NO. 08-18 (April 2008) (on file with the Senate Committee on Community Affairs).

<sup>20</sup> Section 399.01(14), F.S.

<sup>21</sup> Section 399.061(1), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 399.13(1), F.S.

<sup>24</sup> Section 399.13 (2), F.S.

<sup>25</sup> Section 399.13(1), F.S.

<sup>26</sup> Department of Business and Professional Regulation, *Senate Bill Analysis 1172*, at 2 (March 22, 2010) (on file with the Senate Committee on Community Affairs).

**Disciplinary Action, Administrative Fines and Penalties**

Section 399.049, F.S., allows the department to impose an administrative penalty of up to \$1,000 and revoke or suspend elevator inspector certification, company registration, and/or certificates of competency and operation in compliance with the provision of ch. 120, F.S., if a registered elevator company or certificate holder commits one of the following violations:

- The application for registration, certification, permit or certificate contains a false statement of material fact;
- Instances of fraud, misrepresentation, or bribery while engaging in professional activities;
- The certified elevator inspector did not transmit a copy of the inspection report to the department and the certificate operation holder within 5 days after the inspection was performed; or
- A violation of any provision in ch. 399, F.S.<sup>27</sup>

Section 399.105, F.S., further authorizes administrative fines of not more than \$1,000 which shall be deposited into the Hotel and Restaurant Fund, for any person who:

- Fails to respond to the department's reasonable requests to determine whether the provisions of the service maintenance contract and its implementation ensure safe elevator operation;
- Operates, installs, relocates, or alters an elevator without obtaining a permit or certificate from the department when required;
- Continues to operate an elevator after the department has sealed or provided notice to discontinue to its use (fined for each day of improper use);
- Fails to comply with an order to correct violations within 30 days.<sup>28</sup>

Section 399.125, also provides an administrative fine not to exceed \$1,000 if a certificate of operation holder fails to timely report an accident occurring in or upon an elevator within 5 days of the accident.

A person who violates the provisions under ch. 399, F.S., or falsely represents him or herself to be a certified elevator safety professional commits a misdemeanor of the second degree.<sup>29</sup>

**Retrofitting Elevators to Meet Current Code Requirements**

Section 399.02(1), F.S., requires the Elevator Safety and Technical Advisory Council within the Division to develop and submit proposed revisions to the elevator safety code to ensure compliance with the following latest code editions of the ASME, which serves as the minimum model standards for the Florida Safety Act and the Florida Elevator Safety Code.<sup>30</sup>

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<sup>27</sup> Section 399.049(1) (a)-(d), F.S.

<sup>28</sup> Section 399.105(1) –(5), F.S.

<sup>29</sup> Section 399.11, F.S. *See also* s. 775.083, F.S., providing a fine of up to \$500 for a conviction of a misdemeanor in the second degree.

<sup>30</sup> *See* ss. 399.02(1) and (7), F.S. Specifying the following ASME standards: ASME A17.1, ASME A17.3, and ASME A18.1.

The enforcement and regulation of these ASME elevator codes is delegated to the Bureau of Elevator Safety.<sup>31</sup> On April 2, 2008, the Bureau of Elevator Safety adopted ch. 30 of the 2004 Florida Building Code, which included the following ASME A17 standards:

- ASME A17.1 (2004), which provides requirements related to the installation, alteration, maintenance, repair, inspections, and testing to endure the minimum safety requirements for *new and existing elevators*.
- ASME A17.2 (2004), which provides guidelines for the inspection of elevators, escalators, and moving walks.<sup>32</sup>
- ASME A17.3 (1996), as a code for existing elevators to ensure rider safety. This code specifically states the intention to guide *retroactive requirements for existing elevators*.

In general, the Elevator Safety Code requires any alteration, relocation or reclassification of an existing elevator to be in compliance with the edition of the Florida Building Code that is in effect at the time of receipt of the construction permit application.<sup>33</sup> ASME A17.3-1996, specifically requires existing elevator owners to retrofit elevators in order to comply with revisions or updates to the code.

The adoption of ASME A17.3-1996 further requires all existing elevator owners to provide Firefighters' Service, which includes both Phase I Emergency Recall Operations and Phase II Emergency In-Car Operations.<sup>34</sup>

- Phase I Emergency Recall Operations automatically or manually recalls an elevator and keeps the elevator doors open when smoke or heat is detected in the elevator lobby or machine room. When Phase I is activated the elevator controls become inoperable until they are reset by authorized personnel.
- Phase II Emergency In-Car Operations allows firefighters and trained emergency personnel to control the elevator when Phase I is operated through a designated master key in order to assist with evacuation procedures and move applicable equipment.<sup>35</sup>

Section 399.15, F.S., provides the statutory guidelines regarding Phase II Emergency In-Car Operations. The statute requires elevators in buildings that are six or more stories high and which have been issued a permit after September 30, 2006, to be accessible with the use of one master elevator key providing regional emergency elevator access. An interim study by the professional staff of the Regulated Industries Committee, reported an increase in the number of requests filed by elevator owners for a variance or waiver from the firefighters' service requirements.<sup>36</sup> Subsection (4) of s. 399.15, F.S., allows local fire marshals to establish substitute emergency elevator access requirements "if it is technically, financially, or physically impossible to bring a

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<sup>31</sup> Chapter 30, ss. 3001.1 and 3001.2, Florida Building Code.

<sup>32</sup> The Bureau of Elevator Safety adopted and incorporated this provision by reference into Rule 61C-5.001(1)(b), F.A.C.

<sup>33</sup> Rule 9B-3.047, F.A.C., which incorporates the Florida Building Code, including ASME A 17.1 and A17.3, into the Elevator Safety Code.

<sup>34</sup> Department of Business and Professional Regulation, *Senate Bill Analysis 1172*, at 2 (March 22, 2010) (on file with the Senate Committee on Community Affairs). See also Rule 3.11.3, A.S.M.E. A17.3 (1996 edition).

<sup>35</sup> *Id.*

<sup>36</sup> Fla. S. Comm. on Reg'd Indus., Review of Elevator Safety and Regulation, Interim Report 2009-128 (Oct. 2010) (on file with the Senate Committee on Regulated Industries).

building into compliance” with the regional access requirements. According to the State Fire Marshal, some counties and municipalities have adopted local ordinances to establish a uniform lock box that may be unlocked by regional access keys, as an alternative to the master key requirement.<sup>37</sup>

### **Variations and Waivers**

The Florida Administrative Procedures Act, located in ch. 120, F.S., provides statutory procedures that allow affected persons to petition for variances or waivers from state agency rules.<sup>38</sup> Section 120.52, F.S., defines variance to mean “a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule” to an affected person. Whereas a waiver is an agency decision *not to apply* all or part of the literal requirements of an agency rule to an affected person.<sup>39</sup>

State agencies may grant exemptions or modifications to their rules if the enforcement of which would lead to unreasonable, unfair, or unintended results.<sup>40</sup> Pursuant to s. 120.542(2), F.S., in order to qualify for a variance or waiver, a person must demonstrate that:

- He or she will or has achieved the underlying purpose of the statute by other means; and
- The application of the rule would generate a substantial hardship or violate the principals of fairness.<sup>41</sup>

The subsection defines substantial hardship to mean “a demonstrated economic, technological, legal, or other type of hardship” to the person requesting the waiver. Principals of fairness are determined to be violated if “the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule”.<sup>42</sup>

### **OPPAGA Report: Elevator Regulation**

In 2000, the Legislature amended s. 399.061, F.S., to allow elevator owners to hire private elevator inspectors.<sup>43</sup> A recent report by the Office of Program Policy Analysis & Governmental Accountability (OPPAGA) in 2008 monitored the DBPR’s Bureau of Elevator Safety’s (Bureau) implementation of these new statutory provisions in order to study the effect of privatizing elevator inspections. OPPAGA determined that the legislation resulted in an increase in the frequency of inspections.<sup>44</sup> However, OPPAGA also reported that private elevator inspectors

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<sup>37</sup> Department of Financial Services, *Senate Bill Analysis 648* (Jan. 26, 2010) (on file with the Senate Committee on Community Affairs). **Note** the 2010 Legislature is currently proposing an amendment to s. 399.15, F.S., in CS/SB 648 that would provide for a uniform lock box for regional emergency access).

<sup>38</sup> Section 120.542, F.S., Section (1) prohibits an agency from granting a variance or waiver from federal statutes or rules.

<sup>39</sup> Section 120.52(21)-(22), F.S.

<sup>40</sup> Section 120.542(1), F.S.

<sup>41</sup> Section 120.542(2), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> Ch. 2000-356, s. 4, L.O.F., stating that “all elevators subject to this chapter must be inspected pursuant to s. 399.13 by a third-party inspection service certified as a Qualified Elevator Inspector or maintained pursuant to a service maintenance contract continuously in force”.

<sup>44</sup> *See supra* note 19 at 2.

were not responding to the Bureau's request to clarify instances where private inspection results were differed from the Bureau's re-inspection results.<sup>45</sup>

A 2009 updated study by OPPAGA reported that Bureau still lacked the necessary authority to compel private elevator inspectors to explain inspection result discrepancies. In response to this conclusion, OPPAGA recommended that the Legislature amend current law to require private inspectors and elevator companies to respond to clarification requests by the Bureau.<sup>46</sup>

### **Senate Interim Report: Review of Elevator Safety and Regulation**

The professional staff of the Senate Regulated Industries Committee conducted an interim study in September 2009 in response to OPPAGA's recommendations, to review current elevator safety regulations under ch. 399, F.S.<sup>47</sup> The interim report concluded that s. 399.049, F.S., should be amended to allow an elevator inspector's certification or an elevator company's registration to be suspended, revoked or subject to financial penalties for failure to respond to a written request by the Bureau to clarify elevator inspection results. Additionally the professional staff recommended that the Bureau be required to analyze elevator incident data annually and report its findings to the Legislature and on the Bureau's website.<sup>48</sup>

In regards to elevator retrofit requirements, the interim report set forth recommended statutory guidelines for the Bureau to consider when issuing variances and waivers from elevator standards. Staff further suggested that:

- The Bureau be required to determine if any updates or modifications to the Elevator Safety Code would provide immediate application that would mandate existing elevator owners to retrofit their conveyances to bring them into compliance.
- Authorization be granted to the Bureau which would allow it to delay the application of revisions to the Elevator Safety Code for a period of up to three years, in order to give elevator owners additional time to anticipate the costs.<sup>49</sup>

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

**Section 1** amends s. 399.01, F.S., to repeal an obsolete definition for "temporary dormant conveyance" in subsection (11), and remove the registration and qualification requirements in the definition of "certified elevator inspector" in subsection (13). The deleted language in subsection (13) is moved to a newly created s. 399.17, F.S., under section eight of the CS.

**Section 2** amends s. 399.02, F.S., to update cross-references to the Elevator Safety Code and provide the Division with the authorization to adopt rules relating to the administration of ch. 399, F.S. This section also grants the Division with a right of entry into all buildings, rooms

<sup>45</sup> *Id.*

<sup>46</sup> OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENTAL ACCOUNTABILITY, FLORIDA LEGISLATURE, *Elevator Safety Inspections are Improving, but DBPR Still Lacks Authority to Require Private Inspectors to Explain Inspection Result Discrepancies*, REPORT NO. 09-37 (Oct. 2009) (on file with the Senate Committee on Community Affairs).

<sup>47</sup> *See supra* note 36. *See also* AUDITOR GENERAL'S REPORT NO. 2006-075, WILLIAM O. MONROE, CPA, *Department of Business and Professional Regulation Elevator Safety Inspections* (Nov. 2005) (on file with the Senate Committee on Community Affairs).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*



or spaces to perform its duties and responsibilities, and the power to grant variances for undue hardship pursuant to rules adopted in accordance to s. 120.542, F.S.<sup>50</sup>

The CS creates subsection (9) in s. 399.02, F.S., to provide a 5-year exemption for elevators in condominiums or multi-family dwellings, including those that are a part of a licensed continuing care facility or a retirement community with apartments, from compliance with the Phase II Firefighters' Service as amended into ASME A17.1 and A17.3. This provision would prevent the application of any future updates to the elevator safety code that relate to the Phase II firefighters' service to any elevator in a condominium issued a certificate of operation after July 1, 2008. The exemption does not apply if the elevator is replaced or requires major modification before the end of the 5-year exemption. This subsection requires the division to adopt rules to administer the exemption.

**Section 3** amends s. 399.035, F.S., to correct an outdated cross reference to the Elevator Safety Code to read 2.27 of the American Society of Mechanical Engineers Standard ASME A17.1.

**Section 4** amends s. 399.049, F.S., to add additional violations that may result in the suspension or revocation of elevator inspection certification. These new violations include:

- A certified elevator inspector's failure to maintain his/her qualified elevator inspector credential in good standing;
- Having a license to install, inspect, maintain, or repair any vertical conveyance revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or county; and
- Engaging in fraud or deceit, negligence, incompetency, or misconduct in the practice of the profession.

**Section 5** creates subsection (5) in s. 399.061, F.S., to require certified elevator inspectors and certified elevator companies to respond to written requests by the DBPR as pertains to inspection procedures and applications that were used in reports containing errors or omissions of code violations and tests.<sup>51</sup>

**Section 6** amends s. 399.105(4), F.S., to extend the period of time that an elevator owner is required to correct code violations from 30 to 90 days after the Division issues an order to correct.

**Section 7** creates s. 399.16, F.S., to provide statutory procedures for the Division to issue citations for unlicensed activity upon a finding of probable cause that certain actions were performed without a required valid permit certificate or license. The CS allows the Division to enforce the citation as a stop work order.

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<sup>50</sup> Section 120.542(1), F.S., authorizes agencies to adopt rules for granting variances and waivers to the requirements of their rules. The agency rules must be consistent with s. 120.542, F.S.

<sup>51</sup> This provision is in line with the recommendations from the Auditor General Report 2006-075, OPPAGA reports 2008-18 and 09-37, and the 2009 Interim Report by the Senate Committee on Regulated Industries. *See supra* notes 19, 46, and 47.

This section also provides the Division with rule-making authority to prescribe the citation form and additional procedures to administer these provisions which shall include a schedule or penalties. A citation for unlicensed activity is required to be submitted to:

- The owner of an unlicensed elevator,
- Unlicensed elevator personnel, or
- The owner of the unregistered elevator company.

The CS provides that each day a violation continues shall constitute as a separate violation which shall result in a civil penalty not to exceed \$1,000 per violation or an administrative hearing pursuant to ch. 120, F.S., upon the individual's request.

**Section 8** creates s. 399.17, F.S., to provide registration requirements for certified elevator inspectors. These requirements mirror the current language in the current definition of a "certified elevator inspector" in s. 399.01(14), F.S.

**Section 9** provides that this act shall take effect on July 1, 2010.

#### **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 CS increases from 30 days to 90 days the period of time that elevator owners have to correct violations after the issuance of an order to correct by the division. The additional time to correct violations may provide elevator owners with additional time to collect the money required for needed elevator repairs.<sup>52</sup>

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<sup>52</sup> Department of Business and Professional Regulation, *Senate Bill Analysis 1172, 5* (March 22, 2010) (on file with the Senate Committee on Community Affairs).

The Division anticipates that the increase in compliance cases will cause an increase in administrative fines.<sup>53</sup> The provisions in section four of the CS also establish additional violations that may result in disciplinary actions by the department.

**C. Government Sector Impact:**

The DBPR anticipates that the increased enforcement authority for elevator violations, including citations for unlicensed activities, would increase revenue deposited into the Hotels and Restaurants Trust Fund.

The DBPR estimates the additional revenue from administrative fines to amount to \$313,750 for each of the next three fiscal years. The DBPR estimates that the additional revenue from administrative fines would exceed the cost of the two positions needed to manage the increased workload created by this CS.<sup>54</sup>

**VI. Technical Deficiencies:**

The CS does define what classifies as a “major modification”, in section two of the CS pertaining to exemptions from Phase II updates to the Elevator Safety Code. This section also fails to define “multi-family residential building”. According to the Division, this may cause complications when enforcing this exemption.<sup>55</sup>

**VII. Related Issues:**

None.

**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 March 17, 2010:**

The committee substitute (CS) amends subsection (9) of s. 399.02, F.S., to add multi-family dwellings, including those that are a part of a continuing care facility licensed under ch. 651, F.S., or a retirement community with apartments, for purposes of the five-year exemption in section two of the CS.

The CS also amends paragraph (c) of s. 399.035(1), F.S., to provide the updated cross reference to s. 2.27 of the American Society of Mechanical Engineers Standard (ASME).

The CS does not repeal s. 553.509(2), F.S., which requires emergency generated power for elevators in high-rise multifamily dwellings that are over 75 feet in height.

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 4 and 7.

<sup>55</sup> *Id.* at 7.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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