

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 181

As Amended by Senate Committee of the Whole

Brief*

SB 181, as amended, would create the Elevator Safety Act (Act) (Section 1). The Act would establish requirements for licensure of elevator contractors, mechanics, and inspectors; require elevators to be certified as having been annually inspected; establish the Elevator Safety Advisory Board (Board); assign duties of implementation and administration of the Act to the State Fire Marshal; establish fees for licensure; establish penalties for violation of the Act; and establish the Elevator Safety Fee Fund.

Definitions (Section 2)

The bill would define an “elevator” to mean any device for lifting or moving people, cargo, or freight within, or adjacent and connected to, a structure or excavation, including, but not limited to, an escalator, power-driven stairway, moving walkway, or stairway chair lift.

The term “elevator” would not mean any:

- Amusement ride or other device subject to the Kansas Amusement Ride Act;
- Mining equipment;
- Aircraft, railroad car, boat, barge, ship, truck, or other self-propelled vehicle or component thereof;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Dumbwaiter, conveyor, chain or bucket hoist, or construction hoist or similar device used for the primary purpose of elevating or lowering materials;
- Boiler grate stoker or other similar firing mechanism subject to the Boiler Safety Act; or
- Lift, manlift, belt manlift, chain hoists, climb assists, special purpose personnel elevator, automated people mover or similar device in wind turbine towers, grain elevators, grain warehouses, seed processing facilities, grain processing facilities, biofuel processing facilities, feed mills, flour mills, or any similar pet food, feed, or agricultural commodity processing facilities.

The bill would also define “Board,” “elevator apprentice,” “elevator contractor,” “elevator inspector,” “elevator mechanic,” and “licensee.”

Scope of the Act (Section 3)

The provisions of the Act would apply to the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators.

The provisions of the Act would not apply to elevators that are:

- In or adjacent to a building or excavation owned by or under the operational control of any federal agency;
- Located on federal property;
- Located on any federally recognized native American Indian tribe;
- In a single family residence; or

- In or adjacent to a building or structure within a manufacturing, utility or other industrial facility.

The bill would require the owners of elevators that would be subject to the provisions of the Act to request and receive inspection by a licensed elevator inspector upon payment of the inspection fee.

The bill would state nothing in the Act would be construed to relieve or lessen the responsibility or liability, or assumption of responsibility or liability, of any individual, firm, or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering, inspecting, testing, or repairing any elevator for damages to a person or property caused by any defect in the elevator.

Licensure Required (Section 5)

The bill would require an individual to be a licensed elevator mechanic working under the direct supervision of a licensed elevator contractor in order to erect, construct, alter, replace, maintain, remove or dismantle any elevator contained within a building or other structure, or to wire any elevator from the mainline feeder terminals on the controller.

The bill would not require an elevator mechanic's license or elevator contractor's license to remove or dismantle an elevator destroyed in a complete demolition of a secured building or structure, or where the hoistway or wellway is demolished back to the basic support structure, thereby preventing access that could endanger the safety of a person.

The bill would require an individual to be a licensed elevator inspector in order to inspect any elevator within a building or other structure, including private residences. This requirement would not apply to any individual employed as an elevator inspector by a city or county who performs inspections only while engaged in the performance of the individual's duties as an employee of a city or county.

The bill would prohibit any entity from erecting, altering, repairing, maintaining, removing, dismantling, or operating any elevator in violation of the Act or the rules and regulations adopted pursuant to the Act.

The bill would require all elevators to conform to the rules and regulations adopted pursuant to the Act. The bill would require elevators, if any material alteration was made, to conform to applicable requirements of the code. The bill would specify the Act could not be construed to prevent the use, sale, or reinstallation elevators installed prior to the effective date of the bill if they have been made to conform to any applicable rules and regulations and have not been found to be in an unsafe condition or in violation of the Act or rules and regulations upon inspection.

Elevator Safety Advisory Board (Section 6)

The bill would establish the Board, consisting of 11 members for the purpose of advising the State Fire Marshal and making recommendations regarding rules and regulations necessary for the Act.

The Board would consist of one member appointed by the President of the Senate, one member appointed by the Speaker of the House of Representatives, the State Fire Marshal or designee (ex officio), the Secretary of Administration or designee (ex officio), and the following seven members as appointed by the governor:

- One representative from a major elevator manufacturing company;
- One representative from an elevator servicing company;
- One representative of the architectural design or elevator-consulting profession;

- One representative of a city or county in Kansas;
- One representative of a building owner or building manager;
- One representative of labor involved in the installation, maintenance, and repair of elevators; and
- One representative from the general public.

Board members would be required to be Kansas residents, serve three-year terms, and meet at least six times each year at a time and place fixed by the State Fire Marshal to review rules and regulations adopted pursuant to the Act and conduct other business. Members would generally serve without compensation, although members who are not state officers or employees attending meetings of such committee or authorized subcommittee would be paid subsistence and mileage allowances as provided in continuing law.

Vacancies on the Board would be filled using the appointment procedures described above.

The members of the Board would be required to elect one member to serve as chairperson.

***Licensure of Contractors, Inspectors, and Mechanics
(Sections 7-9)***

The bill would authorize the State Fire Marshal to prescribe the form and manner of license applications and to issue licenses, valid for a period of two years, to elevator contractors, elevator mechanics, and elevator inspectors. The bill would exempt elevator apprentices from licensure requirements.

Elevator Contractors

The bill would require an elevator contractor to apply for a license, which would require the payment of an application or renewal fee not to exceed \$500, and demonstrate employment of a licensed elevator mechanic to perform work covered by the provisions of the Act. The bill would also require elevator contractors provide proof of general liability insurance coverage of at least \$1.0 million for injury or death of persons, at least \$500,000 for property damage, and workers' compensation coverage required by state law. The bill would require any material alteration or cancellation of such insurance policies to be reported to the State Fire Marshal within 10 days.

An elevator contractor's license would be issued to applicants holding a valid license from a state with standards substantial equal to those of the Act and applicable rules and regulations.

Elevator Inspectors

The bill would require an individual engaged in the business of inspecting elevators to apply for an elevator inspector's license, which would require the payment of an application or renewal fee not to exceed \$250. The bill would also require proof of general liability insurance coverage of at least \$1.0 million for injury or death of persons, at least \$500,000 for property damage, and workers' compensation coverage required by state law. Any material alteration or cancellation of such insurance policies would be required to be reported to the State Fire Marshal within 10 days.

Elevator Mechanics

The bill would require an individual engaging in installing, altering, repairing, or servicing of elevators to apply for an elevator mechanic's license. The application or renewal

fee for an elevator mechanic license could not exceed \$150 and would not include an insurance coverage requirement.

The bill would authorize the State Fire Marshal to issue emergency elevator mechanic's licenses as necessary when an emergency exists due to a disaster, an act of God, or work stoppage, and the State Fire Marshal determines an insufficient number of licenses exists to cope with the emergency. Applicants for emergency licensure would be required to furnish proof of competency, as required by rules and regulations adopted pursuant to the Act.

The bill would require elevator contractors to notify the State Fire Marshal when there are no licensed elevator mechanics available and would allow the contractors to request the State Fire Marshal issue temporary licenses to individuals certified by the contractor to have an acceptable combination of experience and education to perform such work without the direct and immediate supervision of a licensed elevator mechanic. The bill would allow any individual so certified by an elevator contractor to apply for a temporary license. The State Fire Marshal would be able to issue a temporary license upon a finding of the requirements for such temporary licenses have been met and upon payment of a fee not to exceed \$50.

License Denial and Penalties (Sections 10-13)

The bill would authorize the State Fire Marshal to deny an application or suspend or revoke a license upon a finding that one or more of the following has been committed by the applicant or licensee:

- A willfully false statement or willful omission has been made to a material matter (relevant fact that if known could constitute a basis for denial of the application) in the licensure process;

- Fraud, misrepresentation, or bribery in securing a license;
- Failure to notify the State Fire Marshal when the applicant or licensee knows or reasonably should have known of an elevator being operated in the state that is not in compliance with the Act;
- Failure to maintain any requirement or failure to notify the State Fire Marshal of any alteration or change to a requirement that is necessary to obtain or renew a license, such as insurance requirements; or
- Any violation of the Act.

The State Fire Marshal would be able to suspend or revoke a license upon finding of facts and circumstances making revocation necessary to protect the safety of the public, including but not limited to, competence, ability, or fitness of the applicant, and would be able to suspend an elevator inspector license upon finding the licensed elevator inspector has performed duties incompetently, demonstrated untrustworthiness, falsified information in an application or report, or failed to properly report the findings of an inspection. The bill would establish that suspension or revocation of a license would be effective upon receipt of notice by the licensee or their employer.

The State Fire Marshal would be able to issue emergency orders, including, but not limited to, immediate suspensions or revocations of licenses, as provided by the Kansas Administrative Procedure Act (KAPA).

The bill would, except as otherwise provided in the Act or in emergency situations, state no license shall be suspended or revoked until after a written order issued by the State Fire Marshal has been served to the licensee. The written order would state the violation, penalty to be imposed, and the right of the person to request a hearing under KAPA.

The State Fire Marshal would be able to impose a civil penalty of up to \$1,000 per day on owners, lessees, or operators of elevators or structures where elevators are located that are in violation of the Act, with regard to the unlawful construction, installation, maintenance, inspection, or operation of an elevator. The penalty would be in addition to any other penalty provided by law.

The State Fire Marshal would be able to impose a civil penalty of up to \$1,000 per violation upon finding a licensee has violated the Act, knowingly permitted a violation, or negligently failed to detect, report, or correct a violation of any provision of the Act. The penalty would be in addition to any other penalty provided by law.

To impose a civil penalty, the bill would require the State Fire Marshal to provide a person with a written order stating the violation, the penalty to be imposed, and the right of the person to request a hearing.

The bill would require all fines assessed and collected through civil penalties to be remitted to the State Treasurer and deposited in the Elevator Safety Fee Fund, as created by the bill.

The bill would allow any party aggrieved by an order issued by the State Fire Marshal pursuant to the Act to request a hearing on such order within 15 days by filing a written request with the State Fire Marshal, but such request would not abate or stay any emergency order to cease and desist or stop work, unless so stated by the order. The KAPA would govern such administrative proceeding and judicial review and civil enforcement would be in accordance with the Kansas Judicial Review Act.

The bill would state licensees are responsible for ensuring the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of an elevator is in compliance with the State Safety and Fire Prevention Act.

Elevator Permitting and Compliance (Sections 14-15)

The bill would require a valid permit to be issued by the State Fire Marshal prior to the commencement of any work on any elevator erected, constructed, installed, or altered.

The permit would be issued only to a licensed elevator contractor, who would apply for a permit in a form and manner prescribed by the State Fire Marshal and pay a permit fee not to exceed \$400. The bill would require a copy of the permit to be kept at the construction site at all times while work is in progress. The bill would state work could not be performed on an elevator if the Fire Marshal has issued a stop work order, notwithstanding the issuance of a permit.

The State Fire Marshal would be able to revoke a permit for the following reasons:

- Any false information in the permit application or related plans or specifications;
- The permit was issued in error under the provisions of the Act;
- The permitted work is not being performed in accordance with the provisions of the application, related plans or specifications, or code; or
- The licensed elevator contractor fails or refuses to comply with a stop work order issued by the State Fire Marshal.

The bill would state a permit would expire if the authorized work is not commenced within six months, or if work is suspended or abandoned for a period of 60 days after commencement; however, the State Fire Marshal would be able to allow an extension for good cause.

The bill would state it would be the responsibility of the owner of any new or existing elevator or the owner's agent to

have the elevator inspected annually by a licensed elevator inspector. The licensed elevator inspector would provide the owner or owner's agent, the owner or lessee of the property, and the State Fire Marshal with a written inspection report describing any code violations. The owner of the elevator or the owner's agent would have 30 days to correct all violations, although the State Fire Marshal would be able to grant additional 30-day extensions if there is good cause and the safety of the public will not be endangered. The bill would state it would be the responsibility of the owner or owner's agent to have a licensed elevator contractor conduct all required tests pursuant to the Act, and all tests must be conducted by a licensed elevator mechanic.

Certificate of Operation (Sections 16-17)

The bill would require the owner of any elevator installed prior to July 1, 2021, to apply for a certificate of operation on or before July 1, 2022, by filling out an application in the form and manner prescribed by the State Fire Marshal, submitting the most recent inspection report as required in the Act, and paying an application fee not to exceed \$100.

The bill would require the owner of any elevator installed on or after July 1, 2021, and before January 1, 2022, to apply for a certificate of operation within six months after the elevator is placed into operation by filling out an application in the form and manner prescribed by the State Fire Marshal, which would include submitting a licensed elevator contractor's certification that the elevator was installed in compliance with the Act, and paying an application fee not to exceed \$100.

The bill would require, on or after January 1, 2022, before putting a newly installed elevator in operation, the licensed elevator contractor performing the installation to apply for a certificate of operation for the elevator by filling out an application in the form and manner prescribed by the State Fire Marshal, which would require certifying the installation

was performed in compliance with the Act and pay an application fee not to exceed \$100.

The bill would require the State Fire Marshal to grant applications and renewals for certificates of operation upon finding the applicant has demonstrated, to the State Fire Marshal's satisfaction, the provisions of the Act have been met, the elevator will be operated in accordance with the Act, and the operation of the elevator will not present a danger to the public.

The bill would state certificates of operation would be valid for one year and could be renewed upon application, which would include an inspection report performed in the preceding 12 months and payment of the renewal fee, which could not exceed the application fee. The bill would require the certificate of operation to state the elevator has been inspected, tested, and found to be in compliance with all applicable standards of operation and be displayed on or in each elevator or elevator machine room.

The bill would require the State Fire Marshal to establish a registry of elevators having a certificate of operation, to include:

- The name of the owner or owner's agent and elevator operator;
- The type of elevator;
- The rated load and speed;
- The name of the manufacturer;
- The location and purpose for the elevator's use; and
- Any additional information as required by the Act.

Any elevator placed into service after July 1, 2021, would be registered at the time a certificate of operation is issued for the elevator.

Investigation of Violations (Section 18)

The bill would authorize any person to request, in writing, an investigation into an alleged violation of the Act. The request would be required to set forth, in reasonable particularity, the grounds for the request and be signed by the person making the request. The request, notice, and any records relating to the request would be confidential and would not be disclosed by the State Fire Marshal unless so ordered by a court. The confidentiality provision would expire on July 1, 2026, unless the Legislature reviews and reenacts the provisions prior to expiration.

The bill would authorize the State Fire Marshal, upon receipt of such notification, to investigate the alleged violation as soon as practicable, determine if such violation or danger exists, and issue orders during the investigation deemed necessary to avoid danger to the public.

The bill would state if the State Fire Marshal determines there are no reasonable grounds to believe a violation or danger exists, the State Fire Marshal would be required to notify the person submitting the request and the owner of the elevator or their agent of the finding in writing. If the State Fire Marshal determined a violation or danger does exist, the State Fire Marshal would be required to revoke the certificate of operation for the elevator, issue orders as deemed necessary to address the violation or danger, or take other actions as provided by the Act to address the violation or danger.

Rules and Regulations, Exceptions, Funds (Sections 19-20)

The bill would require the State Fire Marshal to adopt rules and regulations by January 1, 2022, for implementation and enforcement of the Act based on generally accepted national engineering standards, including, at a minimum, the American Society of Mechanical Engineers safety code for elevators and escalators and the safety standards for wind turbine tower elevators.

The bill would require the rules and regulations to include the following:

- Operation, maintenance, servicing, construction, alteration, and installation of elevators;
- Requirements and qualifications for licensure as provided in the bill, including initial and renewal requirements;
- Requirements and qualifications for emergency and temporary license issuance;
- Requirements for permit and certificate of operation issuance;
- Requirements for registration of elevators; and
- Standards for granting exceptions and variances from the rules and regulations of the Act and municipal ordinances.

The State Fire Marshal would be required to establish a fee schedule for licenses, permits, certificates of operation, inspections, and variance requests under the Act, and such fees would be required to reasonably reflect actual costs and expenses to operate and conduct the duties and obligations of the Act. The State Fire Marshal would have the authority to grant or deny exceptions and variance requests from the Act

or from municipal ordinances where such exception or variance is found not to jeopardize the public safety and welfare and is found to meet applicable standards adopted by the State Fire Marshal for granting such exceptions or variances.

The bill would establish the Elevator Safety Fee Fund which would be administered by the State Fire Marshal. The State Fire Marshal would be required to remit all moneys received from fees, charges, or penalties assessed under the Act to the State Treasurer, who would be required to deposit the entire amount into the Elevator Safety Fee Fund. All expenditures from the fund would be in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the State Fire Marshal or designee.

City and County Exemptions (Sections 4-5, 7, 14-17)

The bill would state the Act would not preempt or otherwise restrict a city or county from adopting standards that meet or exceed what is required by the Act. Any city or county with standards meeting or exceeding the requirements of the Act would be required to notify the State Fire Marshal of adoption of such standards on or before June 30, 2022, and on each June 30 thereafter.

The licensing requirements described in the bill would not apply to any individual employed as an elevator inspector by a city or county who performs inspections only while engaged in performance of the individual's duties as an employee of such city or county.

The bill would authorize a city or county that has adopted standards that meet or exceed those of the Act to issue an elevator contractor's license or elevator mechanic's license in accordance with those standards, and such license would be required to specify it is issued by such city or county. The bill would specify no license would be issued in

lieu of a license issued by the State Fire Marshal or authorize the licensee to perform work outside the jurisdiction of the issuing city or county.

The bill would state the elevator permitting, inspection, certificate of operation, and registry provisions described in the bill would not apply to any elevator in a city or county that has adopted standards that meet or exceed the standards of the Act. The city or county would be required to establish and maintain a registry of elevators location in such city or county that are in operation and include in the registry the information required for registration under the Act.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of a representative of Federico Duerst Consulting Group.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, two representatives of the Elevator Industry Work Preservation Fund and the Director of Government Affairs for the National Elevator Industry, Inc., provided **proponent** testimony. The proponents stated Kansas is 1 of 2 states that have not adopted a statewide safety code for elevators and escalators, and is 1 of 14 states that does not require industry licensure. The conferees indicated the lack of statewide standards has resulted in inconsistent codes, licensing requirements, and inspection protocols in Kansas. The conferees further indicated a similar bill came before the Kansas Legislature in 2016, but the current bill is different from that bill as a result of stakeholder groups working together to address concerns and find compromise.

The State Fire Marshal provided neutral testimony, indicating the Office of the State Fire Marshal would need

State General Fund (SGF) moneys to support the program initially, but the program would be self-sustaining after six months. The conferee further recommended the amount the industry can charge for an inspection be set in the rules and regulations, with the assistance of the Board, so that fees charged are consistent statewide.

Representatives of the Kansas Advanced Power Alliance, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association also provided neutral testimony, indicating their organizations would oppose the bill due to the inclusion of wind towers in the original language of the bill. The representatives requested exempting systems of conveyance used by grain elevators and the biofuel processing industry.

Written-only neutral testimony was provided by representatives of the Kansas Cooperative Council and the League of Kansas Municipalities (LKM).

Representatives of Country Home Elevator and Stair Lift and the Wichita-Sedgwick Metropolitan Area Building and Construction Department (MABCD) provided **opponent** testimony, generally stating concerns about allowing an undefined code to be developed and implemented by an unelected regulatory body; a lack of existing hazards to justify the new legislation; fiscal concerns for businesses, churches, and nonprofits; and duplicating services already provided in larger Kansas cities.

The Senate Committee amended the bill by:

- Modifying the definition of “elevator” to exclude any dumbwaiter, conveyor, chain or bucket hoist, construction hoist, or similar device used for the primary purpose of elevating or lowering materials;
- Modifying the definition of “elevator” to exclude chain hoists, climb assists, or wind turbine tower elevators;

- Increasing the required number of Board meetings each year from one to six; and
- Allowing any city or county that meets or exceeds the standards in the Act to regulate their own elevator permitting, licensing, certificate of operation, and registry requirements:
 - Any city or county that has adopted such standards would have to notify the State Fire Marshal on or before June 30, 2022, and on each June 30 thereafter.

Senate Committee of the Whole

The Senate Committee of the Whole adopted an amendment to exempt cities or counties with standards meeting or exceeding those of the Act from the elevator inspection and testing requirements in the bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of the State Fire Marshal (Office) indicates enactment of the bill would increase expenditures by \$230,630 in FY 2022 for 1.0 Program Administrator FTE position and 2.0 Administrative Assistant FTE positions. Of this amount, \$89,572 would be for salaries and wages and \$141,058 would be for equipment, supplies, training, and other startup costs. The Office also indicates the bill would allow for license fees of approximately \$13,175 to be collected from contractors, inspectors, and mechanics; construction fees of approximately \$11,250; and certification fees of \$326,250 in FY 2022. This would generate annual revenue totaling \$350,675 to the Elevator Safety Fee Fund. However, the Office states it would not have sufficient resources in its existing fee funds or the newly created Elevator Safety Fee Fund to cover the expenditures associated with the bill in the first year. Therefore, the Office

indicates it would require an appropriation from the SGF or would have to reduce expenditures elsewhere in its budget to fund the first year of expenditures. After six months of FY 2022, the Office states the Elevator Safety Fee Fund would have sufficient funding to sustain operations.

Legislative Administrative Services (LAS) indicates it is required under current law to reimburse individuals who are not state employees for lodging, mileage, and tolls if they serve as a member of a board. Assuming nine members would be non-state employees, enactment of the bill could increase LAS expenditures by \$1,890 from the SGF beginning in FY 2022. The estimate assumes one meeting and lodging for six of the nine non-state employee board members as well as mileage and tolls for all nine non-state employee board members in FY 2022.

The Department of Administration indicates enactment of the bill would have no fiscal effect on the agency.

The Kansas Association of Counties indicates enactment of the bill could have a fiscal effect if counties opt to have additional requirements or to employ their own elevator inspectors; however, a fiscal effect cannot be estimated. The League Kansas Municipalities indicates enactment of the bill may increase compliance costs for cities, but a fiscal effect cannot be estimated.

Elevators; Elevator Safety Act; Elevator Safety Advisory Board; Elevator Safety Fee Fund; State Fire Marshal; licensure; inspection; mechanics