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H.B. 107
134th General Assembly

Bill Analysis

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Version: As Reported by Senate General Government Budget

Primary Sponsor: Rep. Baldrige

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SUMMARY

- Requires, beginning one year after the bill's effective date, elevator mechanics and elevator contractors to obtain a license from the Division of Industrial Compliance.
- Grants the Division rule-making authority with regard to the elevator mechanic and contractor licensing process.
- Requires elevator contractors to maintain minimum levels of insurance coverage.
- Requires elevator mechanics to meet initial licensure requirements and to complete continuing education.
- Creates the Elevator Safety Review Board (ESRB) within the Division.
- Grants the ESRB disciplinary authority over elevator mechanics and elevator contractors.
- Eliminates, ten years from the bill's effective date, the bill's elevator contractor and mechanic licensure provisions.
- Exempts elevators in private residences from the law's inspection requirements.

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DETAILED ANALYSIS

Regulation of conveyance services

The bill enacts a new chapter of Ohio law, Chapter 4785 of the Revised Code. The new chapter regulates individuals and entities performing construction, testing, maintenance, alteration, and repair of the following equipment, associated parts, and hoistways, which the bill defines as “**conveyances**”:

- Hoisting and lowering mechanisms equipped with a car or platform that moves between two or more landings, including elevators and platform lifts;
- Power-driven stairways and walkways for carrying individuals between landings, including escalators and moving walks;
- Hoisting and lowering mechanisms equipped with a car that serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car, including dumbwaiters, material lifts, and dumbwaiters with automatic transfer devices;

- Automatic guided transit vehicles on guideways with an exclusive right-of-way, including automated people movers.¹

The bill also specifically excludes a range of equipment from the new chapter's requirements as described below under "**Excluded equipment.**"

Conveyance services requiring a license

With two exceptions, beginning one year after the bill's effective date no individual can provide conveyance services, or wiring any conveyance from the mainline feeder terminals on the controller, in buildings or structures unless the individual is a licensed elevator mechanic who is either working for, or the owner or a member of, a business entity that holds an elevator contractor's license. "**Conveyance services**" means erecting, constructing, installing, altering, servicing, repairing, dismantling, removing, or maintaining a conveyance.

An "**elevator contractor**" is any *business entity*, though that entity may be a sole proprietorship, that has been issued an elevator contractor's license under the bill and that is engaged in the business of providing conveyance services. An "**elevator mechanic**" is an *individual* who has been issued an elevator mechanic's license, authorizing the individual to provide conveyance services and perform electrical work on conveyances, by the Division of Industrial Compliance in the Department of Commerce. If an individual obtains an elevator mechanic's license, no other license is required to wire a conveyance.²

As noted above, there are two exceptions to the licensing requirement for conveyance services. The first is that an individual or entity providing conveyance services, including the wiring of a conveyance, exclusively in private residences is not required to obtain a license under the bill.³

The second exception applies to the dismantling of a conveyance. Dismantling is included in the definition of "**conveyance services**," so that process typically requires a license. But, under the bill, the licensing requirement does not apply to a conveyance that is to be destroyed as the result of a complete demolition of a secured building or structure or where the hoistway or wellway is demolished back to the basic support structure and where no access is permitted.⁴

The licensing process

The bill requires entities and individuals wishing to provide conveyance services to apply for an elevator contractor's or elevator mechanic's license. An applicant applies with the Division on a form provided by the Division. An application must contain all of the following:

¹ R.C. 4785.01(A) and 4785.02(A).

² R.C. 4785.01 and 4785.03(A) and (B); Section 3.

³ R.C. 4785.03(C).

⁴ R.C. 4785.01(A) and 4785.03(D).

- Contact information:
 - If the applicant is an individual or sole proprietor, the applicant's name, residence address, and business address;
 - If the applicant is a partnership, each partner's name, residence address, and business address;
 - If the applicant is a domestic corporation, the corporation's name and business address and the principal officer's name and residence address;
 - If the applicant is a corporation other than a domestic corporation, the name and address of an agent located in Ohio who is authorized to accept service of process and official notices;
- The number of years the applicant has engaged in the conveyance services business;
- If the applicant is applying for an elevator contractor's license, both of the following:
 - The approximate number of individuals, if any, to be employed by the applicant, and if applicable, satisfactory evidence that the employees are or will be covered by workers' compensation insurance;
 - Satisfactory evidence that the applicant and all employees are, or will be, covered by general liability, personal injury, and property damage insurance;
- A description of the criminal convictions and guilty pleas of the applicants and each employee, if any, as verified by a criminal records check;
- Any other information that the Division considers appropriate.⁵

Licensing qualifications

Elevator mechanics

The Division may issue an elevator mechanic's license only if the applicant demonstrates one of the following:

- An acceptable combination of documented experience and education credits (see **COMMENT**), as follows:
 - At least three years of work experience in the elevator industry (construction, maintenance, service, repair, or any combination of these) as verified by current and previous employers licensed to do business in Ohio;
 - Satisfactory completion of a written examination administered by the Division, or by a testing agency approved by the Division, on the most recent referenced codes and standards;

⁵ R.C. 4785.04(A) through (C).

- Acceptable proof that the applicant has worked as an elevator construction, maintenance, or repair person, without direct and immediate supervision, for an elevator contractor authorized to do business in Ohio for a period of not less than three years immediately before the bill's effective date, provided that the applicant applies for a license within one year after the bill's effective date;
- A certificate of completion or other evidence of having successfully passed the mechanic's examination of a nationally recognized training program for the elevator industry, such as the National Elevator Industry Educational Program or the Certified Elevator Technician Program of the National Association of Elevator Contractors;
- A certificate of completion of an apprenticeship program for elevator mechanics that has standards substantially equal to the bill's and that is registered with the U.S. Department of Labor's Bureau of Apprenticeship and Training or a state apprenticeship council;
- A valid license from a state having standards substantially equal to those of the bill, on application and without examination.⁶

In addition to those requirements, the bill establishes several disqualifying factors that require the Division to deny an elevator mechanic's license. Those are:

- Conviction of or plea of guilty or no contest to a disqualifying offense designated by the Superintendent of Industrial Compliance, provided the Division has applied the multi-factored process that continuing law requires other licensing authorities to apply before disqualifying an applicant based on a criminal offense;
- Violation of any provision in the bill's new licensing law or any rule adopted pursuant to it;
- Demonstrated incompetence or untrustworthiness;
- Fraud, misrepresentation, or deception in the conduct of business;
- Fraud, deception, or misrepresentation in efforts to obtain or renew a license;
- Fraud or misrepresentation by an applicant in obtaining or attempting to obtain an order, ruling, or authorization from the Division.⁷

Elevator contractors

With respect to an elevator contractor's license, as opposed to an elevator mechanic's license, the Division may issue a license to a business entity if the applicant employs a licensed elevator mechanic and presents proof of compliance with the bill's insurance requirements. An applicant must submit proof of insurance coverage that, at the least, provides \$1 million for

⁶ R.C. 4785.04(D) and (G).

⁷ R.C. 4785.04(E) and 4785.08(A)(2), and R.C. 9.79, not in the bill.

injury or death of any number or people involved in any one occurrence, \$500,000 for property damage in any one occurrence, and workers' compensation insurance coverage. Proof of insurance must be provided at the time of the license's issuance or renewal, and if any required policy is materially altered or canceled, the bill requires notice to the Division ten days before the change.⁸

Because an elevator contractor license applicant is required to employ a licensed elevator mechanic, elevator mechanic's licenses likely will be issued before contractor licenses. But, the bill allows the Division to issue an elevator contractor's license to an applicant that holds a valid license from a state with standards that are substantially equal to those in the bill.

License term

Licenses issued pursuant to the bill are valid for two years and may be renewed.⁹

License renewals

The Division may renew a license if the licensee applies for renewal on a form prescribed by the Division and pays the license renewal fee established by the Division. An applicant who is an elevator mechanic also must submit evidence that the applicant has completed the required continuing education coursework. For a contractor's license, proof that the applicant maintains the necessary insurance is required.¹⁰

If a licensee demonstrates incompetence or untrustworthiness or commits an offense or violation described above under "**Licensing qualifications**," the Division cannot renew the license.¹¹

Continuing education

The bill requires elevator mechanics to complete continuing education. The continuing education must instruct mechanics on Division rules and standards, consist of not less than eight hours of instruction, and be taught by instructors approved by the Division. An elevator mechanic must attend and complete the courses within one year immediately preceding the scheduled date for license renewal.¹²

A continuing education instructor who is a licensee is exempt from the continuing education requirement if the licensee was qualified as an instructor at any time during the year immediately preceding the scheduled date for the license renewal.¹³

⁸ R.C. 4785.04(F) and 4785.07.

⁹ R.C. 4785.04(H).

¹⁰ R.C. 4785.041(A).

¹¹ R.C. 4785.041(F).

¹² R.C. 4785.041(A)(3) and (B).

¹³ R.C. 4785.041(C).

Temporary continuing education waiver

An elevator mechanic who, due to a temporary disability, is unable to complete the required continuing education coursework before the elevator mechanic's license expires may apply for a temporary continuing education waiver.

The elevator mechanic must apply for the waiver in a form prescribed by the Division. The form is to be signed by the applicant and be accompanied by a certified statement from a competent physician attesting to the temporary disability. Any falsification of the application is considered perjury. If the Division grants the waiver, the elevator mechanic's license does not expire but is placed on inactive status.

On the termination of the temporary disability, the elevator mechanic must submit to the Division a certified statement from the same physician, if practicable, attesting to the termination. The Division must then take the mechanic's license off inactive status and issue the mechanic a 90-day waiver sticker, to be affixed to the license. The elevator mechanic may work under the license but must meet the continuing education requirement during the 90-day period. If the elevator mechanic fails to meet the requirement in this time, the license is deemed expired.¹⁴

Continuing education providers

The bill requires approved continuing education providers to keep uniform attendance records for a period of ten years. The records must be available for inspection by the Division on request.

Approved training providers are responsible for the security of all attendance records and certificates of completion. Falsifying or knowingly allowing another to falsify these documents is grounds for suspension or revocation of Division approval.¹⁵

Emergency licenses

If the Division determines that an emergency exists due to a disaster, an act of God, or a work stoppage, and that there are not enough Ohio elevator mechanic licensees to cope with the emergency, the Division must declare a state of emergency and respond by issuing temporary emergency licenses. During the state of emergency, any individual found by a licensed elevator contractor to have an acceptable combination of documented experience and education to perform conveyance services without direct and immediate supervision may perform conveyance services without an elevator mechanic's license.

The individual must seek an emergency elevator mechanic's license from the Division within five business days after commencing work that would otherwise require an elevator mechanic's license. The elevator contractor associated with the individual must furnish proof of

¹⁴ R.C. 4785.041(D).

¹⁵ R.C. 4785.041(E).

competency as the Division may require. The Division cannot charge a fee for issuing or renewing an emergency license.

An emergency elevator mechanic's license is valid for 45 days and may be renewed for the duration of the state of emergency. The Division may restrict the validity of an emergency license to a particular conveyance or geographical area. Otherwise, the licensee has the rights and privileges of an elevator mechanic's license.¹⁶

Licensee shortage

The bill requires an elevator contractor to notify the Division when there are no licensed elevator mechanics available to provide conveyance services. The contractor may request the Division issue temporary elevator mechanic's licenses to individuals certified by the contractor to have an acceptable combination of documented experience and education to provide conveyance services without direct and immediate supervision.

Any individual certified by a contractor must immediately seek a temporary elevator mechanic's license from, and pay an application fee set by, the Division. If the Division is satisfied with the individual's qualifications, it must issue a temporary elevator mechanic's license to the individual. A temporary license is valid only for a specified term set by the Division, and that term must be noted on the license. A temporary license is only valid while the licensee is employed by the elevator contractor that certified the individual as being qualified. A temporary elevator mechanic's license is renewable in accordance with rules adopted by the Division.¹⁷

Authority and responsibility of the Superintendent of Industrial Compliance

The bill requires the Superintendent of Industrial Compliance, in accordance with the Administrative Procedure Act,¹⁸ to adopt rules regarding issuance and renewal of elevator mechanic's licenses and elevator contractor's licenses, and a list of offenses for which a conviction, guilty plea, or plea of no contest may disqualify a person from obtaining, renewing, or retaining a license. The bill also allows the Superintendent to adopt rules pertaining to:

- Development of public awareness programs;
- Classifications or subclassifications of licenses for elevator mechanics and elevator contractors;
- Monitoring inspections and testing in order to ensure satisfactory performance by licensees;

¹⁶ R.C. 4785.05.

¹⁷ R.C. 4785.051.

¹⁸ R.C. Chapter 119.

- Fee schedules for elevator mechanic and elevator contractor licenses that reflect the actual costs and expenses necessary to administer the bill's new licensing law;
- Standards for the approval of license testing agencies;
- Standards for the approval of continuing education and training providers;
- Any other rules necessary to administer and carry out the bill's new licensing law.

The bill prohibits the Superintendent from adopting rules relating to the construction, maintenance, and repair of elevators, except as they pertain to licensing individuals under the bill. Outside of that prohibition, and the mandatory and permissive rule-making authority discussed above, the bill provides the Superintendent with a broad grant of authority. Specifically, the authority to exercise such other powers and duties as are necessary to carry out the intent of the new licensing chapter.

Under current law, the Superintendent must remove two or more rules that contain regulatory restrictions, including rules that contain the words "shall," "must," "require," "shall not," "may not," or "prohibit" for each rule the Superintendent adopts that also contains a regulatory restriction (known as the "two for one requirement"). With respect to rules pertaining to the issuance and renewal of elevator mechanic's licenses and elevator contractor's licenses, the Superintendent is exempt from the two for one requirement.¹⁹

Fees

The bill requires all moneys collected by the Division in administering the bill's licensing provisions to be credited to the Industrial Compliance Operating Fund in the state treasury. Under continuing law, the Department of Commerce uses the Fund to pay for the Division's operating and administrative expenses.²⁰

Standard of care for licensees

The bill states that licensees must ensure that installation, service, and maintenance of a conveyance is performed in accordance with state and local law and with generally accepted standards referenced in those laws or related rules.

When any material alteration (an alteration as defined in the standards related to the item altered) is made to a conveyance, the licensees involved must ensure that the conveyance adheres to the appropriate conveyance standard for the alteration.²¹

Excluded equipment

The bill also specifically excludes a range of equipment from the bill. Those are:

- Material hoists;

¹⁹ R.C. 4785.08, by reference to R.C. 121.95, not in the bill.

²⁰ R.C. 4785.10, by reference to R.C. 121.084, not in the bill.

²¹ R.C. 4785.01(A) and 4785.06.

- Manlifts;
- Mobile scaffolds, towers, and platforms;
- Powered platforms and equipment for exterior and interior maintenance;
- Conveyors and related equipment;
- Cranes, derricks, hoists, hooks, jacks, and slings;
- Industrial trucks;
- Portable equipment, except for portable escalators;
- Tiering or piling machines used to move materials to and from storage located and operating entirely within one story;
- Equipment for feeding or positioning materials at machine tools, printing presses, and similar machines;
- Skip or furnace hoists;
- Wharf ramps;
- Railroad car lifts or dumpers;
- Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing an elevator by a contractor licensed in Ohio;
- Chairlifts;
- Any conveyance installed in a showroom that is for demonstration purposes only.²²

The Elevator Safety Review Board

The bill creates the Elevator Safety Review Board (ESRB) for the purpose of investigating violations of the new licensing chapter, holding disciplinary administrative hearings, and assessing penalties. The ESRB is created within the Division.²³

Disciplinary actions

The bill authorizes the ESRB to suspend or revoke a license or subject the licensee to a civil penalty if the ESRB determines that the licensee has:

- Been convicted of a crime of moral turpitude or a disqualifying offense;
- Violated any provision of the new licensing law or any rule adopted pursuant to it;
- Demonstrated incompetence or untrustworthiness;

²² R.C. 4785.02(B).

²³ R.C. 4785.09(A) and (B).

- Engaged in fraud, misrepresentation, or deception in the conduct of business;
- Obtained or attempted to obtain an elevator mechanic's or contractor's license, or renewal of such a license, by means of fraud, deception or misrepresentation;
- Obtained or attempted to obtain an order, ruling, or authorization from the Division by means of fraud or misrepresentation.²⁴

This is the same list that requires the Division to deny an elevator mechanic's license.

Any administrative action taken is to be made only after the ESRB holds a hearing in accordance with the Administrative Procedure Act. Notice of the hearing must be provided to the licensee in question at least ten days before the hearing at the last known address appearing on the license, served personally or by registered mail. The notice must state the date, hour, and place of the hearing and set forth a statement of facts constituting the grounds for the charges.

If the ESRB subjects the licensee to a civil penalty, the licensee may appeal the determination to the Franklin County Court of Common Pleas.²⁵

Any individual may request an investigation into an alleged violation of the bill by giving notice to the ESRB of a potential violation or danger. The notice must be in writing, set forth with reasonable particularity the grounds for the notice, and be signed by the individual making the request. On request, the signer's name must be omitted from any copy of the notice or any record published, released, or made available.²⁶

If, on receipt of a request, the ESRB determines that there are reasonable grounds to believe that a violation or danger exists, the bill requires the ESRB to investigate. If the ESRB determines that there are no reasonable grounds to believe that a violation or danger exists, it must notify the party in writing of that determination.²⁷

Penalties

A person who recklessly violates any of the provisions of the new licensing law is subject to a fine of not more than \$1,500, sentenced to a jail term not exceeding 30 days, or both.²⁸

ESRB – membership and structure

The ESRB consists of nine members, including the Director of Commerce or the Director's designee, a Board of Building Standards representative, and the following individuals, appointed by the Governor:

²⁴ R.C. 4785.091(A).

²⁵ R.C. 4785.091(B) and (C).

²⁶ R.C. 4785.092(A).

²⁷ R.C. 4785.092(B).

²⁸ R.C. 4785.99.

- One representative of a major elevator manufacturing company;
- One representative of an elevator servicing company;
- One representative of the architectural design or elevator consulting profession;
- One representative of the general public;
- One representative of Ohio municipalities;
- One representative of building owners or managers;
- One representative of the building trade who is an individual providing conveyance services.

The bill does not establish a specific date by which the Governor must appoint the initial members. The term of those members appointed to the ESRB is three years. Vacancies are filled in the same manner as the original appointments. If any appointed board member is absent from three consecutive meetings, the member's seat is deemed vacant. All ESRB members serve without salary but are reimbursed for necessary expenses.

The ESRB must meet and organize within ten days after the appointment of its members and elect a secretary from its members. The Governor appoints one ESRB member to serve as the chair. A majority constitutes a quorum, and the chair will be the deciding vote in the event of a tie vote.

The ESRB must meet not less than once a month and as often as it considers necessary for the consideration of code regulations, appeals, variances, and for the transaction of other business as properly may come before it. Special meetings are to be called as prescribed in rules adopted by the ESRB.²⁹

Elevator inspections

New exemption for private residences

Current law contains an inspection regime for elevators. It requires passenger elevators, escalators, moving walks, and freight elevators to be inspected twice a year (though the Board of Building Standards can reduce the frequency for certain low-capacity passenger elevators). Permanently installed power dumb-waiters, hoists, and other lifting or lowering apparatus that are not designed to carry people must be inspected once a year. The bill exempts elevators installed in private residences from the law's inspection requirements. Under the bill, a private residence is a distinct building or a unit in a multiple dwelling building that is occupied by members of a single-family unit.³⁰

The bill makes related changes to the definition of "**elevator.**" Current law states that the term means a hoisting and lowering apparatus equipped with a car, cage, or platform which

²⁹ R.C. 4785.09(C) through (H).

³⁰ R.C. 4105.10 and 4105.01(H).

moves on or between permanent rails or guides and serves two or more fixed landings in a building or structure to which the Ohio law requiring buildings to be safe and sanitary applies. Residential buildings appear to be covered by that law, but the bill amends the definition of “elevator” to specifically include hoisting and lowering apparatus in private residences. The bill also specifically excludes from the definition chairlifts in private residences, as well as lifting devices installed in showrooms for demonstration purposes.³¹

New generally applicable testing requirement

The bill adds a requirement that the owners of all conveyances, not just elevators, have an elevator contractor licensed under the bill ensure that required tests are conducted at intervals in compliance with certain engineering standards referenced in the bill (ASME A17.1, ASME A18.1, and ASCE 21). All tests must be performed by a licensed elevator mechanic.³²

Standards referenced in the bill

The bill’s terms reference the definitions in the applicable engineering standards from the American Society of Civil Engineers (ASCE), the American Society of Mechanical Engineers (ASME), and the American National Standard Code. As those definitions are very technical and often are used to describe what the bill does not cover, they are omitted from this analysis.

General Assembly’s intent

The bill includes an intent clause; it states that the General Assembly’s intent in enacting the bill’s new licensing law is to provide for the safety of installers, maintainers, and users of elevators and other conveyances, as well as to promote public safety awareness regarding the same. According to the intent clause, elevator personnel performing work covered by the bill must, by documented training, experience, or both, be familiar with the operation and safety functions of the components and equipment. The intent clause also provides that, under the bill, training and experience must guarantee the ability to recognize the safety hazards and perform the procedures to which they are assigned in conformance with the bill’s requirements and that the bill is to be considered the minimum standard for elevator and conveyance personnel.³³

Sunset of elevator contractor and mechanic licensure

The bill eliminates, ten years from the bill’s effective date, the bill’s elevator contractor and mechanic licensure provisions.³⁴

³¹ R.C. 4105.01(A) and R.C. 3781.06, not in the bill.

³² R.C. 4105.30.

³³ R.C. 4785.021.

³⁴ Sections 4 and 5.

COMMENT

It is unclear to what “education credits,” as used in the phrase “an acceptable combination of documented experience and education credits,” refers. The bill specifically addresses the work experience requirement, setting it at three years. It also requires a written examination, but it is unclear if the written examination is meant to fulfill the “education credits” requirement.³⁵ Another section of the bill requires the Superintendent to adopt rules pertaining to the issuance and renewal of elevator mechanic’s licenses and elevator contractor’s licenses, but that requirement is stated generally. It does not specifically require any elaboration on the requirement that sufficient education credits be obtained.³⁶

HISTORY

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³⁵ R.C. 4785.04(D).

³⁶ R.C. 4785.08.