

## **Boiler and Elevator Safety; HB 2005**

**HB 2005** amends the Boiler Safety Act (Boiler Act) and creates the Elevator Safety Act (Elevator Act).

### ***Boiler Safety Act***

The bill amends provisions of the Boiler Safety Act (Boiler Act) to increase the maximum nominal water capacity of an exempt hot water supply boiler to 120 gallons from the previous maximum of 85 gallons. The bill removes the stipulation that a 120-gallon boiler is exempt from the Boiler Act only if it is part of an electrical utility generating plant.

[*Note:* The Office of the State Fire Marshal oversees the inspection, installation, and repairs of all boilers and pressure vessels that are subject to the Boiler Act. Certain hot water supply boilers and water heaters are not subject to the Boiler Act.]

### ***Elevator Safety Act***

The bill creates the Elevator Safety Act (Elevator Act). The Elevator Act establishes requirements for licensure of elevator contractors, mechanics, and inspectors; requires elevators to be certified as having been annually inspected; establishes the Elevator Safety Advisory Board (Board); assigns duties of implementation and administration of the Elevator Act to the State Fire Marshal; establishes fees for licensure; establishes penalties for violation of the Elevator Act; and establishes the Elevator Safety Fee Fund.

### ***Definitions***

The bill defines 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” does 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;
- 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 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 also defines “Board,” “elevator apprentice,” “elevator contractor,” “elevator inspector,” “elevator mechanic,” and “licensee.”

### *Scope of the Elevator Act*

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

The provisions of the Elevator Act do 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 or the property of 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 requires the owners of elevators that are subject to the provisions of the Elevator Act to request and receive inspection by a licensed elevator inspector upon payment of the inspection fee.

The bill states nothing in the Elevator Act shall 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*

The bill requires 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 does 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 requires an individual to be a licensed elevator inspector in order to inspect any elevator within a building or other structure, including a private residence. This requirement does 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 prohibits any entity from erecting, altering, repairing, maintaining, removing, dismantling, or operating any elevator in violation of the Elevator Act or the rules and regulations adopted pursuant to the Elevator Act.

The bill requires all elevators to conform to the rules and regulations adopted pursuant to the Elevator Act. The bill requires elevators, if any material alteration was made, to conform to applicable requirements of the code. The bill specifies the Elevator Act could not be construed to prevent the use, sale, or reinstallation of 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 Elevator Act or rules and regulations upon inspection.

#### *Elevator Safety Advisory Board*

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

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

Vacancies on the Board are filled using the appointment procedures described above.

The members of the Board will elect one member to serve as chairperson.

### *Licensure of Elevator Contractors, Inspectors, and Mechanics*

The bill authorizes 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 exempts elevator apprentices from licensure requirements.

**Elevator contractors.** The bill requires an elevator contractor to apply for a license, which requires 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 Elevator Act. The bill also requires 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 requires any material alteration or cancellation of such insurance policies to be reported to the State Fire Marshal within ten days.

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

**Elevator inspectors.** The bill requires an individual engaged in the business of inspecting elevators to apply for an elevator inspector's license, which requires the payment of an application or renewal fee not to exceed \$250. The bill also requires 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 is required to be reported to the State Fire Marshal within ten days.

**Elevator mechanics.** The bill requires an individual wishing to engage 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 cannot exceed \$150 and does not include an insurance coverage requirement.

The bill requires issuance of an elevator mechanic license to an applicant:

- Holding a certificate of completion from:
  - The National Association of Elevator Contractors Certified Elevator Technician Certification Program;
  - The National Elevator Industry Education Apprenticeship Program; or
  - Another equivalent nationally approved apprenticeship program; or
- Holding a valid out-of-state elevator mechanic license from a state having standards substantially equal to those of the Elevator Act; or

- Demonstrating within the first year following enactment of the Elevator Act that the applicant has worked as an elevator mechanic without supervision for at least 8,000 hours within the prior 6 years.

The bill authorizes 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 licensees exists to cope with the emergency. Applicants for emergency licensure must furnish proof of competency, as required by rules and regulations adopted pursuant to the Elevator Act.

The bill requires elevator contractors to notify the State Fire Marshal when there are no licensed elevator mechanics available and allows 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 allows any individual so certified by an elevator contractor to apply for a temporary license. The State Fire Marshal can issue a temporary license upon finding the requirements for such temporary licenses have been met and upon payment of a fee not to exceed \$50.

#### *License Denial and Penalties*

The bill authorizes 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 Elevator 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 Elevator Act.

The State Fire Marshal is authorized 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 can 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 establishes that suspension or revocation of a license is effective upon receipt of notice by the licensee or their employer.

The State Fire Marshal can 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 states, except as otherwise provided in the Elevator Act or in emergency situations, 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 must state the violation, penalty to be imposed, and the right of the person to request a hearing under KAPA.

The State Fire Marshal is authorized 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 Elevator 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 can 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 Elevator Act. The penalty would be in addition to any other penalty provided by law.

To impose a civil penalty, the bill requires 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 requires 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 allows any party aggrieved by an order issued by the State Fire Marshal pursuant to the Elevator Act to request a hearing on such order within 15 days by filing a written request with the State Fire Marshal, but such request does 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 states 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*

The bill requires 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 can be issued only to a licensed elevator contractor who applies for a permit in a form and manner prescribed by the State Fire Marshal and pays a permit fee not to exceed \$400. The bill requires a copy of the permit to be kept at the construction site at all times while

work is in progress. The bill states work cannot 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 can 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 states a permit would expire if the authorized work is not commenced within 6 months, or if work is suspended or abandoned for a period of 60 days after commencement; however, the State Fire Marshal is authorized to allow an extension for good cause.

The bill states 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 must 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 is authorized to grant additional 30-day extensions if there is good cause and the safety of the public will not be endangered. The bill states 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 Elevator Act, and all tests must be conducted by a licensed elevator mechanic.

### *Certificate of Operation*

The bill requires the owner of any elevator installed prior to July 1, 2022, to apply for a certificate of operation on or before July 1, 2023, 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 Elevator Act, and paying an application fee not to exceed \$100.

The bill requires the owner of any elevator installed on or after July 1, 2021, and before January 1, 2023, 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 includes submitting a licensed elevator contractor's certification that the elevator was installed in compliance with the Elevator Act, and paying an application fee not to exceed \$100.

The bill requires, on or after January 1, 2023, 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 requires certifying the installation was performed in compliance with the Elevator Act and paying an application fee not to exceed \$100.

The bill requires 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 Elevator Act have been met, the elevator will be operated in accordance with the Elevator Act, and the operation of the elevator will not present a danger to the public.

The bill states certificates of operation are valid for one year and can 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 requires 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 requires 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 Elevator Act.

Any elevator placed into service after July 1, 2022, will be registered when a certificate of operation is issued for the elevator.

### *Investigation of Violations*

The bill authorizes any person to request, in writing, an investigation into an alleged violation of the Elevator Act. The request must 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 will be confidential and will not be disclosed by the State Fire Marshal unless so ordered by a court. The confidentiality provision will expire on July 1, 2027, unless the Legislature reviews and reenacts the provisions prior to expiration.

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

The bill states if the State Fire Marshal determines there are no reasonable grounds to believe a violation or danger exists, the State Fire Marshal must 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 must 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 Elevator Act to address the violation or danger.

### *Rules and Regulations, Exceptions, Funds*

The bill requires the State Fire Marshal to adopt rules and regulations by January 1, 2023, for implementation and enforcement of the Elevator 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 requires 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 Elevator Act and municipal ordinances.

The State Fire Marshal is required to establish a fee schedule for licenses, permits, certificates of operation, inspections, and variance requests under the Elevator Act, and such fees must reasonably reflect actual costs and expenses to operate and conduct the duties and obligations of the Elevator Act. The State Fire Marshal has the authority to grant or deny exceptions and variance requests from the Elevator 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 establishes the Elevator Safety Fee Fund, which is administered by the State Fire Marshal. The State Fire Marshal must remit all moneys received from fees, charges, or penalties assessed under the Elevator Act to the State Treasurer, who must deposit the entire amount into the Elevator Safety Fee Fund. All expenditures from the fund must 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*

The bill states the Elevator Act does not preempt or otherwise restrict a city or county from adopting standards that meet or exceed what is required by the Elevator Act. Any city or county with standards meeting or exceeding the requirements of the Elevator Act must notify the State Fire Marshal of adoption of such standards on or before June 30, 2023, and on each June 30 thereafter.

The licensing requirements described in the bill do 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 authorizes a city or county that has adopted standards that meet or exceed those of the Elevator Act to issue an elevator contractor's license or elevator mechanic's license in accordance with those standards, and such license must specify it is issued by such city or county. The bill specifies no license can 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 states the elevator permitting, inspection, certificate of operation, and registry provisions described in the bill do not apply to any elevator in a city or county that has adopted standards that meet or exceed the standards of the Elevator Act. The city or county must establish and maintain a registry of elevators in such city or county that are in operation and include in the registry the information required for the registry of the Fire Marshal of elevators that have certificates of operation.