

HB

71

HOUSE COMMITTEE REPORT

(5)

Date Referred: January 9, 1989

FURTHER REFERRALS:

Date of Committee Action: 1/31/89

The LABOR & COMMERCE Committee recommends that:

HOUSE BILL NO. 71 [ELEVATOR SAFETY STANDARDS]
"An Act relating to elevator safety standards; and providing for an effective date."

- be replaced with CS HB 71 (LTC) the ~~same~~ title
- have attached amendment(s) a ~~new~~ title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

Dave Douley
Maxine [unclear]
[unclear]
[unclear]
[unclear]
[unclear]
[unclear]

SIGNING OTHER THAN DO PASS:

(Do Not Pass, No Recommendation, Amend)

Dave Douley
 Chairman's signature

MR. SPEAKER, I'D LIKE TO RISE TO THE FLOOR TO SPEAK ABOUT ELEVATOR SAFETY STANDARDS.

IF YOU INSPECT THIS BILL CAREFULLY, YOU WILL SEE THAT IT IS AN OPEN AND SHUT MATTER.

IT WOULD BE UNFORTUNATE IF THE DEBATE ESCALATED INTO A CONTROVERSY.

THIS IS AN UP OR DOWN SITUATION. THERE IS NO IN BETWEEN.

WE SHOULD NOT KEEP THIS BILL DOWN.

THE BILL WAS STUCK BETWEEN FLOORS IN THE LABOR AND COMMERCE COMMITTEE BUT OUR MEMBERS ROSE TO THE OCCASION. WE ELEVATED THE DEBATE TO THE HIGHEST STANDARD AND GOT THE BILL MOVING AGAIN.

IT WOULD BE A SHAME IF HB 71 GOT THE SHAFT.

WE NEED TO MAKE SURE IT DOES'NT GET STUCK ON THE FLOOR.

IF WE ALL RISE TO THE OCCASION, WE CAN HEIGHTEN OUR AWARENESS, LIFT OUR SPIRITS, HOIST OURSELVES UP, AND ADVANCE TO THE RIGHT VOTE.

MR. SPEAKER. HB 71 DESERVES OUR SUPPORT. WE SHOULD RIDE IT ALL THE WAY TO TOP.

Alaska State Legislature



House of Representatives
House Judiciary Committee
February 2, 1989

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) ~~586-9900~~
465-4986

CS-
File in HB 71
STANDING FILE
G
FYI

MEMORANDUM

To: All House Judiciary Members
✓ All House Committee Chairs
Sen. Jan Faiks, Chair
Senate Judiciary
Bob Evans, Governor's Office

From: Rep. Max F. Gruenberg, Jr. *MFG*
Co-Chair, House Judiciary

Re: Delegation of Legislative Authority in Statute

Attached are Deborah Behr's January 25 memorandum on HB 71, elevator safety standards, and Dick Bradley's January 26 memorandum on HB 70, prescription drugs. Both deal with the same issue--the delegation of legislative authority in statute.

The draft of HB 71 delegated legislative authority to future editions of the elevator safety standards inspection manual. A draft of HB 70 delegated legislative authority to the Code of Federal Regulations.

Both memoranda indicate this practice is unconstitutional and unwise public policy. The reasons are explained fully.

Because this issue comes up regularly in draft legislation, I thought you might be interested in receiving these memoranda.

Attachments

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

January 26, 1989

SUBJECT: Delegation of legislative authority
(Work Order No. 6-0661)

TO: Representative Max Gruenberg
Co-Chairman, House Judiciary Committee

FROM: Richard A. Bradley *RB*
Legislative Counsel

Mark Handley has asked that we comment on the question presented by the adoption of federal law or regulations by reference in state statutes. An example of this is found in a Governor's bill: HB 70. Sec. 3 of the bill provides that the department "shall pay for prescribed drugs under AS 47.07.030(b) in accordance with 42 C.F.R. 447.331 -- 447.334.

Perhaps the best argument for not incorporating Federal references, particularly to regulations but also to laws, is that the Federal authorities may change the Federal laws. If they do, the references are either disregarded ("we know what was intended by the law") or they cripple the law.

A good case can be made that such an adoption is unconstitutional as a delegation of legislative authority. Whether it is, or not, may be unimportant because we believe that it is done frequently and necessarily in many areas where state officers operate under Federal regulations that have a habit of changing frequently.

But the solution to the problem presented in HB 70 can be easily addressed quite constitutionally by granting the commissioner of health and social services the authority to adopt by regulation whatever formula the state wants-- as, for example, by saying that the department "shall pay for prescribed drugs under AS 47.07.030(b) under regulations adopted by the commissioner in conformity with applicable federal regulations." The regulatory framework permits rapid amendment of the regulations and yet a state officer with

possibly unconstitutional

Solution

Representative Max Gruenberg
Page 2
January 26, 1989

expertise in the area is monitoring the developments and is able to keep the law current.

If federal laws or regulations are amended in a fashion unacceptable to state officers, the assistance of the legislature can be requested.

If I may be of further assistance, please advise.

RAB:kb:gc
wkk1/075

MEMORANDUM

State of Alaska
Department of Law

Comm	
Deputy	
So Asst	
Sp Asst	
Info Off	
Adm Asst	
Int Aud	
ASD	
ESD	
LS&S	
W/C	
cc:	
cc:	

TO: The Honorable Jim Sampson
Commissioner
Department of Labor

DATE: January 25, 1989

RECEIVED

FILE NO: 465-3603

JAN 23 1989

SUBJECT: HB 71 - "An Act relating to elevator safety standards; and provided for an effective date"

OFFICE OF THE COMMISSIONER

Deborah E. Behr

FROM: Deborah E. Behr
Assistant Attorney General
Human Services-Juneau

In response to a House Labor and Commerce Committee inquiry, you have asked whether the latest edition of elevator standards code or inspection manual should be enacted in the statute, instead of naming a particular edition by year. I understand that this information is needed for a committee meeting to be held Thursday, January 26, 1989.

It is our opinion, that the incorporation of all future editions of the code or manual by reference cannot be adopted in law by inclusion of the phrase "latest edition." We reach this conclusion for the following reasons.

Problem

First, under Article II, Section 14 of the Constitution of Alaska, the Alaska State Legislature has been assigned the function to enact bills into law. In this situation, the legislature would be delegating the development of the content of future legislation to a non-state agency, the American Society of Mechanical Engineers which presently develops the code in question. We believe this delegation to be impermissible under these circumstances, since the legislature would be unaware of the contents of ~~future~~ amendments at time of enactment of the bill into law. Second, contents of future editions of the code may be contrary to state law or violative of the state constitution. There would be no legislative review to avoid such law taking effect. Third, the adoption of a future code by reference may violate Article II, Section 15 of the Constitution of Alaska, since the Governor would have no meaningful way to exercise his veto power over future unknown amendments, which may be contrary to law or not in the best interest of Alaska. Finally, the adoption of the latest edition may cause confusion to the courts and the general public as to which standards apply. Under such a situation, the Department of Labor may find difficulty enforcing compliance with the standards under AS 18.60.820.

Reason

The Honorable Jim Sampson
Commissioner
HB 71 - elevator safety

January 25, 1989
Page 2

If the legislature wishes to avoid having frequently to amend the statute to keep pace with current editions of the code or manual, one approach might be to authorize the Department of Labor to adopt standards in regulation. By giving regulatory authority, the department could have the flexibility to adopt standards to changing conditions, without having to seek legislative modification. Since the legislature has the power to annul regulations, the legislature could still perform its oversight of these functions. See AS 44.62.320.

Solution.

If you have further questions, please do not hesitate to contact me.

DEB:jh

cc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Legislative Liason

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

January 27, 1989

The Honorable Max Gruenberg
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Attn: Andy Hemenway *AHWA*

Dear Representative Gruenberg:

This is in response to the questions your office has posed with respect to differences between 1984 and 1987 elevator code provisions dealing with communications.

The 1987 amendment to Rule 211.1(a)(2), which stipulates that the means to activate the two-way conversation system does not have to be provided in the car, is for clarification only. Activation of the system inside the elevator is not required under the 1984 code, either. Apparently, some confusion has resulted from the 1984 code's silence in this regard, and the 1987 amendment serves only to clarify it. The alarm required under 211.1(a)(1) is used to signal persons outside the elevator that it is "stuck" and the alarm must be able to be activated from inside the elevator. The communications system then permits persons inside and outside the elevator, who by virtue of the alarm already know there is a problem, to communicate.

It is important to note also that a communication or signaling system, which can be activated from within the elevator is required under both the 1984 and 1987 codes if the elevator is in a building which does not have persons available around the clock, Rule 211.1(b). The Capitol building, in

which your office is located, and our Department of Labor building here are examples of buildings which must have a system which can be activated from inside the elevator during periods when the building is closed. Hospitals, large hotels, and other such 24-hour facilities, on the other hand, need not have communication systems which can be activated from inside the elevator.

The 1987 amendment to Rule 211.1(b) is likewise no less stringent than the 1984 code. In fact, the 1987 code could be said to strengthen the emergency signaling/communications requirements in that it requires a system capable of making a positive contact with someone outside of the building, whereas one of the options of the 1984 code, under 211.1(b)(2), is simply to have an alarm outside the building to attract passersby. Under the 1987 code, the system would have to be capable of communicating with or signaling an answering service, fire/police department, or other place continuously staffed by someone who can render assistance or contact someone who can.

I appreciate the opportunity to clarify these requirements for you, and please do not hesitate to contact us if we may be of further help. We appreciate your interest.

Sincerely,



Eileen Plate
Legislative Liaison

EP/gd

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

January 26, 1989

The Honorable Dave Donley
Chairman
Labor and Commerce Committee
House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Donley:

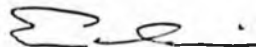
As you will recall, at the January 24, 1989, Labor and Commerce Committee meeting, Representative Gruenberg asked if the Department had any statistics on the incidence of people being stranded in elevators in the State.

In checking with the staff, I find that such incidents are not reported to the Department; and we, therefore, do not have the information.

We have also checked with representatives of the five major elevator companies in the State, and they do not keep a formal record of incidents either. However, these companies, which collectively have approximately 1300 elevators in the State, estimate that last year they received 150 reports of persons being stranded in elevators.

I am sorry we are not able to provide more definitive information to you.

Sincerely,



Eileen Plate
Legislative Liaison

EP/gd

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION : CSHB 71 (L&C)
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: " An Act relating to elevator
safety standards; ... " BRU: Labor Standards & Safety
Sponsor: Rules Committee Components: _____
Requestor: House Labor & Commerce Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart Phone: 254-2452
Division: Labor Standards & Safety Date: 1/25/89
Approved by Commissioner: Jim Sampson Date: 1/25/89
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION : HB 71
PUBLISH DATE : _____

FISCAL NOTE

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TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart Phone: 254-2452
Division: Labor Standards & Safety Date: 1/19/88
Approved by Commissioner: Jim Sampson Date: 1/19/88
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 71(L&C)

BY THE LABOR AND
COMMERCE COMMITTEE

Page 1, following line 24:

Insert a new bill section to read:

"* Sec. 3. AS 18.60.800 is amended by adding a new subsection to read:

(f) Notwithstanding (a) and (c) of this section, the Department of Labor may, whenever the department determines it to be necessary and appropriate, adopt by regulation under the Administrative Procedure Act (AS 44.62) all, part, or a modified version of all or part of the latest edition of

(1) the American National Standards Institute Safety Code for Elevators and Escalators (ANSI/ASME A17.1), published by the American Society of Mechanical Engineers, as the minimum elevator safety code in the state;

(2) the Inspector's Manual for Elevators and Escalators - ANSI/ASME A17.2, published by the American Society of Mechanical Engineers, as the manual governing the procedures under which elevator inspections by the department shall be performed."

Renumber the following bill section accordingly.

Page 2, following line 2:

Insert a new bill section to read:

"* Sec. 5. Section 3 of this Act takes effect July 1, 1989."

Renumber the following bill section accordingly.

Page 2, line 3, before "Act":

Delete "This"

Insert "Except for sec. 3, this"

go0729hE
Bannister
1/24/89

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 71 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to elevator safety standards; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 18.60.800(a) is amended to read:

10 (a) Except as provided in this subsection, the 1987 [1984] edi-
11 tion of the American National Standards Institute Safety Code for
12 Elevators and Escalators (ANSI/ASME A17.1) published by the American
13 Society of Mechanical Engineers is adopted as the minimum elevator
14 safety code in the state. Section [111.12, RESTRICTED OPENING OF
15 HOISTWAY DOORS AND/OR CAR DOORS ON PASSENGER ELEVATORS, AND SECTION]
16 1001.1, Inspection and Test Periods of the American National Standards
17 Institute Safety Code for Elevators and Escalators, is [ARE] not
18 adopted as a part of the minimum elevator safety code in the state.

19 * Sec. 2. AS 18.60.800(c) is amended to read:

20 (c) Inspections of elevators by the department shall [MUST] be
21 performed in accordance with the procedures set out in the [NATIONAL
22 SAFETY PRACTICE FOR THE INSPECTION OF ELEVATORS AND ESCALATORS()]
23 Inspector's Manual for Elevators and Escalators - ANSI/ASME A17.2 []]
24 as approved in 1988 [1982].

25 * Sec. 3. Under AS 18.60.800(a), as amended by sec. 1 of this Act,
26 Section 111.12, Restricted Opening of Hoistway Doors or Car Doors on Pas-
27 senger Elevators, which is found in the 1987 edition of the American
28 National Standards Institute Safety Code for Elevators and Escalators
29 (ANSI/ASME A17.1) published by the American Society of Mechanical

1 Engineers, applies to elevators installed on or after the effective date of
2 this Act.

3 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 71 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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16 1001.1, Inspection and Test Periods of the American National Standards
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25 * Sec. 3. AS 18.60.800 is amended by adding a new subsection to read:

26 (f) Notwithstanding (a) and (c) of this section, the Department
27 of Labor may, whenever the department determines it to be necessary
28 and appropriate, adopt by regulation under the Administrative Proce-
29 dure Act (AS 44.62) all, part, or a modified version of all or part of

1 the latest edition of

2 (1) the American National Standards Institute Safety Code
3 for Elevators and Escalators (ANSI/ASME A17.1), published by the
4 American Society of Mechanical Engineers, as the minimum elevator
5 safety code in the state;

6 (2) the Inspector's Manual for Elevators and Escalators -
7 ANSI/ASME A17.2, published by the American Society of Mechanical
8 Engineers, as the manual governing the procedures under which elevator
9 inspections by the department shall be performed.

10 * Sec. 4. Under AS 18.60.800(a), as amended by sec. 1 of this Act,
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13 National Standards Institute Safety Code for Elevators and Escalators
14 (ANSI/ASME A17.1) published by the American Society of Mechanical Engi-
15 neers, applies to elevators installed on or after the effective date of
16 sec. 1 of this Act.

17 * Sec. 5. Section 3 of this Act takes effect July 1, 1989.

18 * Sec. 6. Except for sec. 3, this Act takes effect immediately under
19 AS 01.10.070(c).