

Preliminary Evaluation of the Elevator Safety Review Board

Recommendations: Require a Follow-up Report by October 1, 2012

Defer Decision on Whether to Waive from Full Evaluation Until Submission of the Required Report

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the entities subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The Elevator Safety Review Board is among the approximately 70 entities currently subject to evaluation. This is the first time that the board has undergone an evaluation.

In conducting this preliminary evaluation, DLS staff reviewed applicable State law and regulations; recent legislative and regulatory actions; board minutes; and other information provided by the board regarding revenues and expenditures. In addition, DLS staff either interviewed in-person or communicated by phone and email with the chairman of the board, the executive director, board administrative staff, and the Deputy Commissioner of Labor, Licensing, and Regulation.

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

The Elevator Safety Review Board

The Elevator Safety Review Board was established by Chapter 703 of 2001, as a nine-member board within the Department of Labor, Licensing, and Regulation (DLLR) to license elevator contractors and elevator mechanics. Prior to this, although registration and inspection provisions governed the use of elevators, there were no specific statutory provisions governing the field of elevator installation and maintenance.

Chapter 703 of 2001 took effect October 1, 2001. **Exhibit 1** shows the legislative history of the board since then.

Exhibit 1 Legislative Changes Related to Elevator Safety Review Board

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2001	703	Establishes the Elevator Safety Review Board within the Department of Labor, Licensing, and Regulation and requires licensing of elevator contractors and elevator mechanics.
2003	5	Moves provisions related to the Elevator Safety Review Board from former Art. 89 of the Code to the new Title 12, Subtitle 8 of the Public Safety Article, through nonsubstantive code revision.
	254	Creates elevator renovator contractor and elevator renovator mechanic licensure categories and requires the board to adopt regulations governing the qualifications and scope of practice of an applicant for these licenses.
2007	408	Authorizes third-party qualified elevator inspectors to perform specified elevator inspections to alleviate backlog of overdue elevator inspections.
2008	484	Establishes the Elevator Safety Review Board Fund to retain fee revenues generated from the licensing of elevator mechanics and contractors, the registration of third-party elevator inspectors, fees charged for follow-up elevator inspections, and fees charged for elevator inspections in which pre-inspection criteria have not been met. At the end of each fiscal year, revenues in excess of 10% of the board's direct and indirect costs revert to the general fund.

Source: Laws of Maryland

No Funding for Board Operations

Beginning in fiscal 2002, it was estimated that DLLR would require \$320,500 of general fund expenditures for the start-up costs of implementing the licensing and regulatory functions of the Elevator Safety Review Board, with annual ongoing expenditures of approximately \$150,000. At that time, DLLR estimated that there were 1,250 elevator mechanics and 150 elevator contractors in the State.

The original board was fully appointed by January 2003. At that time, the board collected and considered applications for licenses under the grandfathering provisions of Chapter 703 of 2001. Those provisions allowed applicants to receive licenses without taking an examination if they applied for licenses on or before September 30, 2002, and provided the board with acceptable proof of a minimum of three years of work experience as an elevator contractor or maintenance or repair person.

The original board, however, did not actually receive any funding or issue any licenses. Beginning in fiscal 2002 and extending through fiscal 2008, the Governor's annual operating budget did not include any funds for the board. As a result, with no money to operate, the board ceased operations.

Backlog of Elevator Inspections Leads to Legislative Changes

The Commissioner of Labor and Industry, who is the head of the Division of Labor and Industry (DLI) in DLLR, regulates elevator units, which include elevators, dumbwaiters, escalators, and moving walks, through the Safety Inspection Program. In general, elevators and escalators are inspected annually, with other classes of elevator units inspected every two or three years.

An April 2006 audit of DLI by the Office of Legislative Audits disclosed that inspections of approximately 3,800 of 19,000 elevators were significantly overdue, with more than 443 inspections overdue by one year or more. To help alleviate this problem, Chapter 408 of 2007 authorized third-party qualified elevator inspectors to perform periodic annual no-load test inspections if the inspector meets qualifications, insurance requirements, and procedures established by the Commissioner of Labor and Industry. These third-party qualified elevator inspectors pay annual registration fees of \$250.

Under Chapter 408, State inspectors are required to continue to inspect all elevator installations, modifications, and alterations. State inspections are generally conducted at no charge to the building owner; however, follow-up inspections or inspections for which pre-inspection criteria have not been met may be charged at a rate of up to \$250 per half day.

New Funding Source for Board

To provide a funding source for the dormant board, Chapter 484 of 2008 established the Elevator Safety Review Board Fund, which is a special fund that may be used only to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board. The fund includes fee revenues generated from the licensing of elevator mechanics and contractors, the registration of third-party qualified elevator inspectors, fees charged for follow-up elevator inspections, and fees charged for elevator inspections in which pre-inspection criteria have not been met. At the end of each fiscal year, revenues in excess of 10% of the board's direct and indirect costs revert to the general fund. The board is required to report annually on the implementation of the fund.

As a result of Chapter 484, special funds were available to the board for its administration and operations beginning in fiscal 2009. The sources of these special funds were the fees from the registration of third-party qualified elevator inspectors and the fees charged for follow-up elevator inspections. According to DLLR, in fiscal 2009 total revenue to support the board was \$56,157. However, none of that revenue was generated from licensing fees for elevator contractors and elevator mechanics because the board had not yet issued any licenses.

Board Members Appointed Again

After money was appropriated to the board beginning with the fiscal 2009 budget, the original board members from 2003 were contacted to see if they were still interested in serving on the board. Four original board members were still interested. On October 1, 2010, those four original board members were appointed to the board for three-year terms. The board now has eight members, and DLLR is actively working to fill the remaining consumer member vacancy.

Board Membership

The board consists of nine members: the Commissioner of Labor and Industry as an *ex officio* member; two members of the public; and six other members, one representing a major elevator manufacturing company, one representing an elevator servicing company, one representing the architectural design profession, one representing a municipal corporation in the State, one representing a building owner or manager, and one representing labor involved in the installation, maintenance, and repair of elevators.

With the exception of the *ex officio* member, the members of the board are appointed by the Governor with the advice of the Secretary of Labor, Licensing, and Regulation and with the advice and consent of the Senate. The members serve three-year staggered terms that begin on October 1. Board members continue to serve after their term has ended until their successor is appointed. Although board members do not receive compensation, they are eligible for reimbursement of expenses.

Other Powers and Duties of the Board

By statute, the board is required to meet at least once each calendar quarter. Although the original board was fully appointed in January 2003, due to a lack of funding the board did not meet between January 7, 2003, and February 10, 2011. Since then, it has met four times and is now scheduled to meet regularly approximately every two months.

The board has the authority to (1) consult with engineering authorities and organizations concerned with standard safety codes about regulations governing the operation, maintenance, servicing, construction, alteration, installation, and inspection of elevator units and qualifications that are adequate, reasonable, and necessary for elevator mechanics and elevator contractors; (2) recommend applicable legislation; (3) adopt bylaws for the conduct of its proceedings; and (4) adopt regulations to carry out the elevator contractor and mechanic licensing law.

Licensure of Elevator Contractors and Mechanics

Chapter 703 of 2001 required elevator contractors and elevator mechanics to be licensed by the board before conducting business in Maryland. An “elevator contractor” is a person who is engaged in the business of erecting, constructing, wiring, altering, replacing, maintaining, dismantling, or servicing elevators, dumbwaiters, escalators, and moving walks. An elevator contractor is required to have at least five years of work experience in the elevator industry in construction, maintenance, service, or repair. An applicant for an elevator contractor license must provide proof of a minimum of \$1 million in general liability insurance coverage and \$500,000 in property damage insurance coverage.

An “elevator mechanic” is a person who physically works on erecting, constructing, wiring, altering, replacing, maintaining, dismantling, or servicing elevators, dumbwaiters, escalators, and moving walks. An applicant for an elevator mechanic license can follow any one of three pathways to obtain licensure. In the first option, an applicant must have an acceptable combination of documented experience and education credits, with at least three years of recent and active work experience in the elevator industry, in construction, maintenance, and service or repair, as verified by current and previous employers, and pass a written examination administered by the board. In the second option, an applicant must have completed at least three years of recent and active work experience in the elevator industry, in construction, maintenance, and service or repair, as verified by current and previous employers, and have a certificate of completion of the mechanic examination of a nationally recognized training program for the elevator industry such as the National Elevator Industry Educational Program or its equivalent. In the final option, an applicant must have a certificate of completion of an apprenticeship program for elevator mechanics that has specified standards and is registered with the Bureau of Apprenticeship and Training of the U.S. Department of Labor or a state apprenticeship council.

According to DLLR, most applicants for elevator mechanic licenses have either completed a nationally recognized training program or an apprenticeship program and will be licensed without having to take an examination. The department anticipates that only about 10% of applicants will be required to take and pass an examination administered by the board.

By statute, a person convicted of working as an elevator mechanic or contractor without a license is guilty of a misdemeanor, and is subject to maximum penalties of (1) a fine of \$100 for each day the violation continues and/or six months imprisonment; or (2) for a knowing and willful violation, a fine of \$5,000 and/or six months imprisonment.

Licensure of Elevator Renovators Delayed

Chapter 254 of 2003 created elevator renovator contractor and elevator renovator mechanic licensure categories. An “elevator renovator contractor” is a person who is engaged in the business of performing work on the interior of an elevator involving the removal or installation of the nonstructural surface of the elevator’s wall, ceiling, floor, rail, or handle, and the work does not affect the elevator’s moving operation. An “elevator renovator mechanic” is the individual who actually performs this type of work on an elevator. Chapter 254 of 2003 required the board to adopt regulations governing the qualifications and scope of practice of applicants for these licenses.

When the law licensing elevator renovator contractors and elevator renovator mechanics was enacted, DLLR estimated that there would be 10 applicants for licensure in fiscal 2004. The board, however, has not yet adopted regulations for elevator renovator contractors and elevator renovator mechanics.

Board Now Issuing Licenses

The main function of the board is to license those engaged in the field of elevator installation and maintenance as elevator contractors and elevator mechanics. To this end, in 2003 the board approved approximately 900 licensing applications for elevator contractor and elevator mechanic licenses under the statutory grandfathering provisions. Those provisions allowed applicants to obtain licenses without taking an examination if they met specified criteria. However, the board never issued any licenses due to budgetary constraints.

Recently, the board sent letters to those applicants who had met the requirements of the grandfathering provisions in 2003 to see if they were still interested in licensure. Many were still interested and submitted applications again. The board has been reviewing those applications. At its August 31, 2011 meeting, the board extended the grace period for licensing applications for elevator contractors and elevator mechanics to January 1, 2013.

As of November 1, 2011, the board had issued 72 elevator mechanic licenses and 8 elevator contractor licenses. The board expects to issue between 1,000 and 1,400 licenses in these categories; most of these licenses should be issued in fiscal 2012, and all licenses are expected to be issued by December 2012.

Licensing Fees for Elevator Contractors and Mechanics

The board is required to establish fees for the application, issuance, and renewal of licenses that it issues. However, because the fees are subject to a statutory cap, they may not exceed, for the two-year term of the license, \$100 per year for an elevator mechanic or elevator renovator mechanic and \$150 per year for an elevator contractor or elevator renovator contractor. The current licensing fees have been set below the cap for initial licenses and are already at the cap for renewal licenses: \$175 for a two-year initial license for an elevator mechanic and \$200 for a two-year renewal license and \$275 for a two-year initial license for an elevator contractor and \$300 for a two-year renewal license. The board has not established fees for the elevator renovator mechanic or elevator renovator contractor licenses.

The licensing fees collected by the board are to be paid into the Elevator Safety Review Board Fund. DLLR expects that the primary source of revenue for the board will become the licensing fees collected by the board, rather than the fees from the registration of third-party qualified elevator inspectors and the fees charged for follow-up elevator inspections, which currently support operations.

Fiscal History of the Elevator Safety Review Board

Although the board was created by Chapter 703 of 2001, the board first received an appropriation in fiscal 2009. Chapter 484 of 2008 established the Elevator Safety Review Board Fund, which includes fee revenues generated from licensing of elevator mechanics and contractors, registration of third-party qualified elevator inspectors, follow-up elevator inspections, and elevator inspections in which pre-inspection criteria have not been met.

From fiscal 2009 through 2011, the board did not generate any licensing fee revenue because it was not issuing licenses during that time period. Therefore, revenues were generated only from the remaining three activities, which are administered by DLI within DLLR. DLLR advises that, due to coding errors in accounting for the revenues generated for the board from the three nonlicensure-related sources, revenues for the Elevator Safety Review Board were accidentally commingled with other revenues generated by DLI through its Safety Inspection Program and other related activities. As a result, DLLR cannot readily provide an accurate portrait of revenues generated for the fund for fiscal 2009 (the fund's first year of existence) through fiscal 2011. Based on consultation with DLLR, **Exhibit 2** represents DLS's best effort at depicting the fiscal history of the fund since its inception in fiscal 2009. The revenue figures for each year represent DLS's best estimates based on available data but should not be regarded as definitive; expenditure data represent actual spending by the board.

Exhibit 2
Fiscal History of the Elevator Safety Review Board Fund
Fiscal 2009-2012

	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Projected FY 2012</u>
Opening Balance	\$0	\$	\$4,790	\$5,000
Total Revenues	56,157	23,001	130,645	225,000
Total Costs	13,354	47,904	49,984	--
Direct Costs	13,354	47,904	49,984	--
Legal Costs	0	0	0	15,000
DLLR Indirect Costs	0	0	0	15,000
BRFA Transfer to GF	0	0	5,000	0
Surplus/(Deficit)	42,803	17,900	80,451	--
Reversion	0	13,110	75,451	--
Closing Fund Balance	\$42,803	\$4,790	\$5,000	--

Notes: This chart represents a DLS reconstruction of the fund's fiscal history based on available data provided by DLLR. Annual revenue figures represent best estimates developed for illustrative purposes only; expenditure figures are actual. Total costs for fiscal 2012 have not yet been determined; thus the projected surplus, any reversion, and closing balance cannot be projected.

Source: Department of Labor, Licensing, and Regulation; Department of Legislative Services

The direct costs that have been attributed to the board so far have been for an administrative specialist for part of fiscal 2009 and for all of fiscal 2010 and 2011. To date, there have been no DLLR indirect costs or legal services charged to the board because it had not been issuing licenses. However, with the issuance of licenses beginning in fiscal 2012, DLLR anticipates \$15,000 in indirect costs and \$15,000 in legal services for fiscal 2012.

In accordance with Chapter 484 of 2008, revenues in excess of 10% of the board's direct and indirect costs revert to the general fund at the end of each fiscal year. DLLR records show no reversion occurring at the end of fiscal 2009 in order to maintain an operating balance for fiscal 2010, a reversion of \$13,110 at the end of fiscal 2010, and a reversion of \$75,451 at the end of fiscal 2011. DLLR believes that any excess revenues deposited erroneously into the fund due to the commingling of revenues from other sources were ultimately reverted to the general fund under this provision. DLLR bases this conclusion on the fact that, based on available data, the amount of the reversion in fiscal 2011 closely approximates the amount of additional revenue that was inadvertently commingled with revenue designated for the fund. In addition, for fiscal 2011 there was a \$5,000 transfer to the general fund imposed pursuant to the Budget Reconciliation and Financing Act (BRFA).

Recommendations

Although the Elevator Safety Review Board was required to issue licenses to elevator mechanics and contractors effective October 1, 2001, due to budgetary constraints, the board has only recently begun issuing licenses. The board has been meeting regularly since February 2011 and expects to issue most initial licenses by the end of fiscal 2012. Thus, it is beginning to meet its statutory responsibilities for the first time. Due to the absence of licensees, the board has not yet received or had to process any consumer complaints regarding licensees.

DLS cannot fully assess the financial stability of the board or the Elevator Safety Review Board Fund due to the unreliable revenue data provided by DLLR. From fiscal 2009 through 2011, revenues for the board were generated exclusively from nonlicensure activities, namely registration fees for third-party elevator inspectors and inspection fees for two types of elevator safety inspections. These revenues were generated by DLI and transferred to the fund. However, due to coding errors in accounting for that revenue, additional revenues generated by DLI that should have been deposited in the State's general fund were inadvertently commingled with monies transferred to the Elevator Safety Review Board Fund. Therefore, DLLR cannot readily provide a reliable estimate or projection of the revenue generated exclusively from those three activities for the benefit of the board.

While the revenue generated by DLI has enabled the board to cover its start-up costs, the board advises that, going forward, it does not intend to rely on those sources of revenue to maintain its operation. Instead, it has set licensing fees to fully support the board's licensing activity as if it is not receiving additional revenue. To the extent that the DLI revenue provides excess revenue, the bulk of it will revert to the general fund under the statutory reversion provision described earlier. It is possible, however, that the board will need the DLI revenue to cover its expenditures during its "off-cycle" year, given the biennial license renewal cycle. In the absence of reliable revenue data, however, DLS cannot accurately assess the fund's stability and viability.

Therefore, DLS defers its recommendation regarding further evaluation of the board for one year, pending the submission by DLLR of a report to DLS by October 1, 2012, that provides:

- **a thorough and detailed explanation of the accounting errors that led to the commingling of other DLI revenues with revenues designated for the Elevator Safety Review Board Fund;**
- **to the extent feasible, an accurate accounting for fiscal 2009 through 2012 of the revenue generated from registration fees for third-party elevator inspectors, fees charged for follow-up elevator inspections, and fees charged for elevator inspections in which pre-inspection criteria have not been met;**
- **projections for fiscal 2013 of the revenues to be generated from those same sources;**

- the number and type of licenses issued during fiscal 2012 and a projection of the number of new and renewal licenses expected to be issued in fiscal 2013;
- the number of consumer complaints, if any, received by the board during fiscal 2012 and the status of those complaints; and
- an update on the sufficiency of the fund balance to maintain board licensure activity on a biennial cycle, including fiscal 2012 revenue generated by the issuance of elevator mechanic and elevator contractor licenses.

The report should specifically address whether the funding sources will produce a stable stream of revenue and whether revenue from these sources will be sufficient to support the board's operations. It should also address whether the statutory fee caps are appropriate given the actual number of licensees. In addition, the report should address whether keeping only 10% of the board's direct and indirect costs is sufficient to support the board's operations.

Based on this report, DLS will recommend to LPC in 2012 whether to waive the board from full evaluation and, if waived, recommend a new termination date for the board. If the report is not submitted, DLS will automatically conduct a full evaluation of the board during the 2013 interim. If a full evaluation is required, it should examine, at a minimum:

- the stability and reliability of the board's revenue stream to support its operations; and
- the adequacy of the board's procedures for processing consumer complaints.

Appendix 1. Written Comments of the Elevator Safety Review Board



December 2, 2011

Michael Rubenstein
Principal Policy Analyst
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401-1991

Dear Mr. Rubenstein,

The Department of Labor, Licensing and Regulation (DLLR) and the Elevator Safety Review (Board) have received the draft of the preliminary evaluation of the Board conducted by the Department of Legislative Services pursuant to the Maryland Program Evaluation Act. We appreciate the time and attention that was spent reviewing the Board's operations.

The evaluation defers a decision as to whether the Board will receive a full evaluation pending the receipt of a report from DLLR and the Board addressing several questions outlined in the preliminary evaluation. DLLR recognizes the weakness identified regarding the accounting of funds transferred to the Board's Fund from revenues collected by the Division of Labor and Industry. Steps have been taken to correct these deficiencies. The Department further notes that the issue is not one directly involving the conduct of the Board itself or its staff. We will report as requested, providing the necessary explanation/accounting regarding previously collected fees. We will further report on FY 2013 revenue projections, updated license issuance data, complaint data and fund balance and carryover sufficiency.

As requested, we have reviewed the report for any factual corrections and advise that no such corrections are required. We would like to express our appreciation for the thoroughness and professionalism of Marie Razulis in her conduct of the evaluation. We look forward to working with the General Assembly and legislative staff in addressing issues that were raised in the preliminary evaluation as well as future issues which may arise. If your office should require additional information, please do not hesitate to contact me (410-230-6226) or Board Administrative Specialist Raquel Meyers (410-230-6379).

Sincerely,

Harry Ldeas
Deputy Commissioner

Cc: Alexander M. Sanchez, Secretary
Stanley J. Botts, Commissioner
Chairman and Members, Elevator Safety Review Board
Jill Porter, Legislative Director
Raquel Meyers, Administrative Specialist
Karl S. Aro

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