

MAR 4 2004
Place On Calendar

HOUSE FILE 2447
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 590)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to industry standards for boilers, directing the
2 labor commissioner to adopt emergency rules when the industry
3 standards are supplemented, providing for appeals of the
4 commissioner's orders, and providing an effective date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2447

1 Section 1. Section 10A.601, subsections 1 and 7, Code
2 Supplement 2003, are amended to read as follows:

3 1. A full-time employment appeal board is created within
4 the department of inspections and appeals to hear and decide
5 contested cases under chapter 8A, subchapter IV, and chapters
6 80, 88, 89, 89A, 91C, 96, and 97B.

7 7. An application for rehearing before the appeal board
8 shall be filed pursuant to section 17A.16, unless otherwise
9 provided in chapter 8A, subchapter IV, or chapter 80, 88, 89,
10 89A, 91C, 96, or 97B. A petition for judicial review of a
11 decision of the appeal board shall be filed pursuant to
12 section 17A.19. The appeal board may be represented in any
13 such judicial review by an attorney who is a regular salaried
14 employee of the appeal board or who has been designated by the
15 appeal board for that purpose, or at the appeal board's
16 request, by the attorney general. Notwithstanding the
17 petitioner's residency requirement in section 17A.19,
18 subsection 2, a petition for judicial review may be filed in
19 the district court of the county in which the petitioner was
20 last employed or resides, provided that if the petitioner does
21 not reside in this state, the action shall be brought in the
22 district court of Polk county, Iowa, and any other party to
23 the proceeding before the appeal board shall be named in the
24 petition. Notwithstanding the thirty-day requirement in
25 section 17A.19, subsection 6, the appeal board shall, within
26 sixty days after filing of the petition for judicial review or
27 within a longer period of time allowed by the court, transmit
28 to the reviewing court the original or a certified copy of the
29 entire records of a contested case. The appeal board may also
30 certify to the court, questions of law involved in any
31 decision by the appeal board. Petitions for judicial review
32 and the questions so certified shall be given precedence over
33 all other civil cases except cases arising under the workers'
34 compensation law of this state. No bond shall be required for
35 entering an appeal from any final order, judgment, or decree

1 of the district court to the supreme court.

2 Sec. 2. Section 89.2, Code 2003, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 0A. "ASME code" means the boiler and
5 pressure vessel code published by the American society of
6 mechanical engineers, including all addenda, interpretations,
7 and code cases.

8 Sec. 3. Section 89.3, Code 2003, is amended by adding the
9 following new subsections:

10 NEW SUBSECTION. 13. Notwithstanding section 89.5,
11 subsection 1, for purposes of inspections conducted pursuant
12 to this chapter, the commissioner shall accept nationally
13 recognized, published code interpretations by the American
14 society of mechanical engineers.

15 NEW SUBSECTION. 14. An inspection conducted pursuant to
16 this chapter that results in an order to modify, alter, or
17 change shall be in writing, unless agreed to by the owner and
18 the inspector, and such order shall cite the state law or rule
19 or the ASME code section allegedly violated.

20 Sec. 4. Section 89.4, subsection 1, paragraph g, Code
21 2003, is amended by striking the paragraph and inserting in
22 lieu thereof the following:

23 g. Hot water supply boilers or water heaters operating at
24 not more than a pressure of one hundred sixty pounds per
25 square inch or two hundred ten degrees Fahrenheit regardless
26 of ASME code construction.

27 Sec. 5. Section 89.5, subsection 1, Code 2003, is amended
28 to read as follows:

29 1. The commissioner may prescribe rules under the
30 provisions of chapter 17A, for the purpose of carrying out the
31 provisions of this chapter, including rules for the methods of
32 testing equipment and construction and installation of new
33 equipment covered by this chapter, and the rules shall, as
34 nearly as possible, conform to the rules formulated by the
35 boiler code committee of the American society of mechanical

1 engineers as set forth in the latest edition of the ASME code.
2 Not later than six months following the adoption of ASME code
3 cases by the American society of mechanical engineers relating
4 to equipment covered by this chapter, the commissioner shall
5 adopt emergency rules under section 17A.4, subsection 2, and
6 section 17A.5, subsection 2, paragraph "b", relating to the
7 ASME code cases, and the rules shall be effective immediately
8 upon filing unless a later date is specified in the rules.
9 Any such emergency rules shall also be published as a notice
10 of intended action as provided in section 17A.4. The
11 provisions of this section shall not be construed as
12 preventing the construction and use of boilers or pressure
13 vessels of special design, subject to the approval of the
14 commissioner, provided such special design provides a level of
15 safety equivalent to that contemplated by the ASME code.

16 Sec. 6. NEW SECTION. 89.14 APPEALS -- EMERGENCY
17 PROCEDURES.

18 1. An order issued by the commissioner pursuant to this
19 chapter may be appealed to an administrative law judge
20 employed by the department of inspections and appeals. An
21 administrative law judge's decision may be appealed by any
22 party to the employment appeal board created in section
23 10A.601. The decision of the appeal board is final agency
24 action and an appeal of the decision shall be made directly to
25 the district court.

26 2. The commissioner shall adopt rules providing for an
27 expedited hearing and appeal process that will govern
28 instances where the commissioner believes a defect or a
29 violation of the provisions of this chapter could result in
30 immediate personal injury or immediate property damage. The
31 expedited process shall provide for an initial appeal within
32 twenty-four hours of the order to modify, alter, or change the
33 equipment regulated under this chapter.

34 Sec. 7. EFFECTIVE DATE. This Act, being deemed of
35 immediate importance, takes effect upon enactment.

1 EXPLANATION

2 This bill exempts hot water heaters operating at not more
3 than 160 p.s.i., or 210 degrees Fahrenheit, from regulation
4 under the boilers and unfired steam pressure vessels Code
5 chapter, requires the labor commissioner to accept nationally
6 recognized, published code interpretations by the American
7 society of mechanical engineers (ASME) and adopt emergency
8 rules relating to equipment covered under that chapter within
9 six months of the adoption of ASME code cases by ASME, and
10 provides that an order issued by the commissioner in
11 accordance with the chapter may be appealed first to an
12 administrative law judge employed by the department of
13 inspections and appeals and subsequently to the employment
14 appeal board.

15 The bill defines "ASME code" to mean the boiler and
16 pressure vessel code published by ASME, including all addenda,
17 interpretations, and code cases.

18 Under the bill, an inspection that results in an order to
19 modify, alter, or change must be in writing, unless agreed to
20 by the owner and the inspector, and the state law or
21 regulation or the ASME code section allegedly violated must be
22 cited.

23 The bill provides that nothing within the Iowa Code section
24 that provides for the duties of the commissioner with respect
25 to the chapter shall be construed to prevent the construction
26 and use of boilers or pressure vessels of special design,
27 subject to the approval of the commissioner, provided the
28 design provides a level of safety equivalent to that
29 contemplated by the ASME code.

30 The bill directs the commissioner to adopt rules providing
31 for an expedited hearing and appeal process for instances
32 where the commissioner believes a defect or a violation could
33 result in immediate personal injury or immediate property
34 damage.

35 The bill takes effect upon enactment.

HOUSE FILE 2447

S-5240

1 Amend House File 2447, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. Section 89.2, Code 2003, is amended by
6 adding the following new subsections:

7 NEW SUBSECTION. 0A. "ASME code" means the boiler
8 and pressure vessel code published by the American
9 society of mechanical engineers.

10 NEW SUBSECTION. 0B. "Board" means the boiler and
11 pressure vessel board created in section 89.14.

12 Sec. 2. Section 89.3, Code 2003, is amended by
13 adding the following new subsection:

14 NEW SUBSECTION. 13. An inspection report created
15 pursuant to this chapter that requires modification,
16 alteration, or change shall be in writing and shall
17 cite the state law or rule or the ASME code section
18 allegedly violated.

19 Sec. 3. Section 89.5, subsection 1, Code 2003, is
20 amended by striking the subsection.

21 Sec. 4. Section 89.5, subsection 4, unnumbered
22 paragraph 1, Code 2003, is amended to read as follows:

23 A rule adopted pursuant to this ~~section~~ chapter
24 which adopts standards by reference to another
25 publication shall be exempt from the requirements of
26 section 17A.6, subsection 4, if the following
27 conditions exist:

28 Sec. 5. Section 89.7, subsection 3, Code 2003, is
29 amended to read as follows:

30 3. Upon such showing and the payment of a fee, the
31 commissioner shall issue a certificate of inspection
32 by the division of labor services, which shall be
33 valid only for the period specified in section 89.3.
34 ~~The commissioner shall establish the amount of the fee~~
35 ~~by rule.~~

36 Sec. 6. Section 89.8, Code 2003, is amended by
37 striking the section and inserting in lieu thereof the
38 following:

39 89.8 BOILER AND PRESSURE VESSEL SAFETY FUND --
40 FEES APPROPRIATED.

41 A boiler and pressure vessel safety revolving fund
42 is created within the state treasury under the control
43 of the commissioner and shall consist of moneys
44 collected by the commissioner as fees. Moneys in the
45 fund are appropriated and shall be used by the
46 commissioner to pay the actual costs and expenses
47 necessary to operate the board and administer the
48 provisions of this chapter. All salaries and expenses
49 properly chargeable to the fund shall be paid from the
50 fund. Section 8.33 does not apply to any moneys in

S-5240

S-5240

Page 2

1 the fund. Notwithstanding section 12C.7, subsection
2 2, interest or earnings on moneys deposited in the
3 fund shall be credited to the fund.

4 Sec. 7. Section 89.9, Code 2003, is amended to
5 read as follows:

6 89.9 DISPOSAL OF FEES.

7 All fees provided for in this chapter shall be
8 collected by the commissioner and remitted to the
9 treasurer of state, to be deposited in the boiler and
10 pressure vessel safety fund pursuant to section 89.8,
11 together with an itemized statement showing the source
12 of collection.

13 Sec. 8. Section 89.11, Code 2003, is amended to
14 read as follows:

15 89.11 INJUNCTION.

16 In addition to any and all other remedies, if any
17 owner, user, or person in charge of any equipment
18 covered by this chapter, shall continue to use any
19 equipment covered by this chapter, after receiving a
20 notice of defect and exhausting appeal rights as
21 provided by this chapter, without first correcting
22 ~~said~~ the defects or making replacements, the
23 commissioner ~~of labor~~ may apply to the district court
24 or any judge thereof by petition in equity, in an
25 action brought in the name of the state, for a writ of
26 injunction to restrain the use of ~~said~~ the alleged
27 defective equipment.

28 Sec. 9. NEW SECTION. 89.14 BOILER AND PRESSURE
29 VESSEL BOARD -- CREATED -- DUTIES.

30 1. A boiler and pressure vessel board is created
31 within the division of labor services of the
32 department of workforce development to formulate
33 definitions and rules requirements for the safe and
34 proper installation, repair, maintenance, alteration,
35 use, and operation of boilers and pressure vessels in
36 this state.

37 2. The boiler and pressure vessel board is
38 composed of nine members, one of whom shall be the
39 commissioner or the commissioner's designee. The
40 remaining eight members shall be appointed by the
41 governor, subject to confirmation by the senate, to
42 four-year staggered terms beginning and ending as
43 provided in section 69.19. One member shall be a
44 special inspector who is employed by an insurance
45 company that is licensed and actively writing boiler
46 and machinery insurance in this state and who is
47 commissioned to inspect boiler and pressure vessels in
48 this state, two members shall be appointed from
49 certified employee organizations, one of whom shall
50 represent steamfitters, two members shall be

S-5240

S-5240

Page 3

1 mechanical engineers who regularly practice in the
2 area of boilers and pressure vessels, one member shall
3 be a boiler and pressure vessel distributor in this
4 state, one member shall represent boiler and pressure
5 vessel manufacturers, and one member shall be a
6 mechanical contractor engaged in the business of
7 installation, renovation, and repair of boilers and
8 pressure vessels.

9 3. A vacancy in membership shall be filled in the
10 same manner as the original appointment. The members
11 shall serve without compensation, but shall be
12 reimbursed for actual and necessary expenses incurred
13 in the performance of official duties as a member.

14 4. The members of the board shall select a
15 chairperson, vice chairperson, and secretary from
16 their membership. However, neither the commissioner
17 nor the commissioner's designee shall serve as
18 chairperson. The board shall meet at least quarterly
19 but may meet as often as necessary. Meetings shall be
20 set by a majority of the board or upon the call of the
21 chairperson, or in the chairperson's absence, upon the
22 call of the vice chairperson. A majority of the board
23 members shall constitute a quorum.

24 5. The board shall adopt rules pursuant to chapter
25 17A necessary to administer the duties of the board.
26 Rules adopted by the board shall be in accordance with
27 accepted engineering standards and practices. The
28 board shall adopt rules relating to the equipment
29 covered by this chapter that are in accordance with
30 the ASME code, which may include addenda,
31 interpretations, and code cases, as soon as reasonably
32 practical following publication by ASME.

33 6. A notice of defect or inspection report issued
34 by the commissioner pursuant to this chapter may,
35 within thirty days after the making of the order, be
36 appealed to the board. Board action constitutes final
37 agency action for purposes of chapter 17A.

38 7. Not later than July 1, 2005, and every three
39 years thereafter, the board shall conduct a
40 comprehensive review of existing boiler rules,
41 regulations, and standards, including but not limited
42 to those relating to potable hot water supply boilers
43 and water heaters.

44 8. The board shall establish fees for
45 examinations, commissions, inspections, annual
46 statements, shop inspections, and other services. The
47 fees shall reflect the actual costs and expenses
48 necessary to operate the board and perform the duties
49 of the commissioner.

50 Sec. 10. NEW SECTION. 89.15 FUTURE REPEAL.

S-5240

S-5240

Page 4

1 This chapter is repealed effective July 1, 2012.

2 Sec. 11. Section 89A.1, subsection 2, Code 2003,
3 is amended by striking the subsection.

4 Sec. 12. Section 89A.1, subsection 19, Code 2003,
5 is amended by striking the subsection and inserting in
6 lieu thereof the following:

7 NEW SUBSECTION. 19. "Safety board" means the
8 elevator safety board created in section 89A.13.

9 Sec. 13. Section 89A.3, subsection 1, unnumbered
10 paragraphs 1 and 2, Code 2003, are amended to read as
11 follows:

12 The ~~commissioner~~ safety board may adopt rules
13 governing maintenance, construction, alteration, and
14 installation of facilities, and the inspection and
15 testing of new and existing installations as necessary
16 to provide for the public safety, and to protect the
17 public welfare.

18 The ~~commissioner~~ safety board shall adopt, amend,
19 or repeal rules pursuant to chapter 17A as ~~the~~
20 ~~commissioner~~ it deems necessary for the execution of
21 ~~the commissioner's duties under administration of this~~
22 chapter, which shall include, but not be limited to,
23 rules providing for:

24 Sec. 14. Section 89A.3, subsection 1, paragraphs h
25 and i, Code 2003, are amended by striking the
26 paragraphs.

27 Sec. 15. Section 89A.3, subsection 2, Code 2003,
28 is amended to read as follows:

29 2. The ~~commissioner~~ safety board shall adopt rules
30 for facilities according to the applicable provisions
31 of the American society of mechanical engineers safety
32 codes for elevators and escalators, A17.1 and A17.3,
33 as the ~~commissioner~~ safety board deems necessary. In
34 adopting rules the ~~commissioner~~ safety board may adopt
35 the American society of mechanical engineers safety
36 codes, or any part of the codes, by reference.

37 The ~~commissioner~~ safety board may adopt rules
38 permitting existing passenger and freight elevators to
39 be modified into material lift elevators.

40 Sec. 16. Section 89A.3, subsections 4 and 5, Code
41 2003, are amended to read as follows:

42 4. The commissioner shall furnish copies of the
43 rules adopted ~~by the commissioner~~ pursuant to this
44 chapter to any person who requests them, without
45 charge, or upon payment of a charge not to exceed the
46 actual cost of printing of the rules.

47 5. The ~~commissioner~~ safety board may adopt rules
48 permitting inclined or vertical wheelchair lifts in
49 churches and houses of worship to service more than
50 one floor.

S-5240

S-5240

Page 5

1 Sec. 17. Section 89A.3, Code 2003, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 6. The commissioner may adopt
4 rules pursuant to chapter 17A relating to the denial,
5 issuance, revocation, and suspension of special
6 inspector commissions.

7 Sec. 18. Section 89A.6, subsections 2, 3, and 6,
8 Code 2003, are amended to read as follows:

9 2. Every existing facility registered with the
10 commissioner shall be inspected within one year after
11 the effective date of the registration, except that
12 the ~~commissioner safety board~~ may, ~~at the~~
13 ~~commissioner's discretion,~~ extend by rule the time
14 specified for making inspections.

15 3. Every facility shall be inspected not less
16 frequently than annually, except that the ~~commissioner~~
17 safety board may adopt rules providing for inspections
18 of facilities at intervals other than annually.

19 6. In addition to the inspections required by
20 subsections 1 to 3, the ~~commissioner~~ safety board may
21 provide by rule for additional inspections as the
22 ~~commissioner~~ safety board deems necessary to enforce
23 the provisions of this chapter.

24 Sec. 19. Section 89A.9, unnumbered paragraph 1,
25 Code 2003, is amended to read as follows:

26 Operating permits shall be issued by the
27 commissioner to the owner of every facility when the
28 inspection report indicates compliance with the
29 applicable provisions of this chapter. However, ~~no~~
30 ~~permits~~ a permit shall not be issued if the fees
31 required by ~~section 89A.13~~ this chapter have not been
32 paid. Permits shall be issued within thirty days
33 after filing of the inspection report required by
34 section 89A.6, unless the time is extended for cause
35 by the division. ~~No~~ A facility shall not be operated
36 after the thirty days or after an extension granted by
37 the commissioner has expired, unless an operating
38 permit has been issued.

39 Sec. 20. Section 89A.10, subsection 2, unnumbered
40 paragraph 1, Code 2003, is amended to read as follows:

41 If the owner does not make the changes necessary
42 for compliance as required in subsection 1 within the
43 period specified by the commissioner, the
44 commissioner, upon notice, may suspend or revoke the
45 operating permit, or may refuse to issue the operating
46 permit for the facility. The commissioner shall
47 notify the owner of any action to suspend, revoke, or
48 refuse to issue an operating permit and the reason for
49 the action by service in the same manner as an
50 original notice or by certified mail. An owner may

S-5240

S-5240

Page 6

1 appeal the commissioner's initial decision to the
2 safety board. ~~The appeal shall be heard by an~~
3 ~~administrative law judge of the department of~~
4 ~~inspections and appeals. An owner who, after a~~
5 ~~hearing before an administrative law judge, is~~
6 ~~aggrieved by a suspension, revocation, or refusal to~~
7 ~~issue an operating permit may appeal to the employment~~
8 ~~appeal board created under section 10A.601. Notice of~~
9 ~~appeal shall be filed with the appeal board within~~
10 ~~thirty calendar days from receipt of the notice of the~~
11 ~~commissioner's action. The decision of the safety~~
12 ~~board shall be considered final agency action pursuant~~
13 ~~to chapter 17A.~~

14 Sec. 21. Section 89A.10, subsection 2, unnumbered
15 paragraphs 2 and 3, Code 2003, are amended by striking
16 the unnumbered paragraphs.

17 Sec. 22. Section 89A.11, Code 2003, is amended to
18 read as follows:

19 89A.11 NONCONFORMING FACILITIES.

20 The ~~commissioner~~ safety board, pursuant to rule,
21 may grant exceptions and variances from the
22 requirements of rules adopted for any facility.
23 Exceptions or variations shall be reasonably related
24 to the age of the facility, and may be conditioned
25 upon a repair or modification of the facility deemed
26 necessary by the ~~commissioner~~ safety board to assure
27 reasonable safety. However, ~~no~~ an exception or
28 variance ~~may~~ shall not be granted except to prevent
29 undue hardship. Such facilities shall be subject to
30 orders issued pursuant to section 89A.10.

31 Sec. 23. Section 89A.13, Code 2003, is amended by
32 striking the section and inserting in lieu thereof the
33 following:

34 89A.13 ELEVATOR SAFETY BOARD.

35 1. An elevator safety board is created within the
36 division of labor services in the department of
37 workforce development to formulate definitions and
38 rules for the safe and proper installation, repair,
39 maintenance, alteration, use, and operation of
40 facilities in this state.

41 2. The safety board is composed of nine members,
42 one of whom shall be the commissioner or the
43 commissioner's designee. The governor shall appoint
44 the remaining eight members of the board, subject to
45 senate confirmation, to staggered four-year terms
46 which shall begin and end as provided in section
47 69.19. The members shall be as follows: two
48 representatives from an elevator manufacturing company
49 or its authorized representative; two representatives
50 from elevator servicing companies; one building owner

S-5240

S-5240

Page 7

1 or manager; one representative employed by a local
2 government in this state who is knowledgeable about
3 building codes in this state; one representative of
4 workers actively involved in the installation,
5 maintenance, and repair of elevators; and one licensed
6 mechanical engineer.

7 3. A vacancy in membership shall be filled in the
8 same manner as the original appointment. The members
9 shall serve without salary, but shall be reimbursed
10 for actual and necessary expenses incurred in the
11 performance of official duties as a member.

12 4. The members of the safety board shall select a
13 chairperson, vice chairperson, and a secretary from
14 their membership. However, neither the commissioner nor
15 the commissioner's designee shall serve as
16 chairperson. The safety board shall meet at least
17 quarterly but may meet as often as necessary.
18 Meetings shall be set by a majority of the safety
19 board or upon the call of the chairperson, or in the
20 chairperson's absence, upon the call of the vice
21 chairperson. A majority of the safety board members
22 shall constitute a quorum.

23 5. The owner or user of equipment regulated under
24 this chapter may appeal a notice of defect or an
25 inspection report to the safety board within thirty
26 days after the issuance of the notice or report.
27 Safety board action constitutes final agency action
28 for purposes of chapter 17A.

29 6. The safety board shall adopt rules pursuant to
30 chapter 17A necessary to administer the duties of the
31 board.

32 7. Not later than July 1, 2005, and every three
33 years thereafter, the safety board shall conduct a
34 comprehensive review of existing elevator and facility
35 rules, regulations, and standards.

36 Sec. 24. Section 89A.14, Code 2003, is amended to
37 read as follows:

38 89A.14 CONTINUING DUTY OF OWNER.

39 Every facility shall be maintained by the owner in
40 a safe operating condition and in conformity with the
41 rules adopted by the ~~commissioner~~ safety board.

42 Sec. 25. Section 89A.15, Code 2003, is amended to
43 read as follows:

44 89A.15 INSPECTIONS BY LOCAL AUTHORITIES.

45 ~~No~~ A city or other governmental subdivision shall
46 not make or maintain any ordinance, bylaw, or
47 resolution providing for the licensing of special
48 inspectors. An ordinance or resolution relating to
49 the inspection, construction, installation,
50 alteration, maintenance, or operation of facilities

S-5240

S-5240

Page 8

1 within the limits of the city or governmental
2 subdivision, which conflicts with this chapter or with
3 rules adopted by the commissioner pursuant to this
4 chapter is void. The commissioner, in the
5 commissioner's discretion, may accept inspections by
6 local authorities in lieu of inspections required by
7 section 89A.6, but only upon a showing by the local
8 authority that applicable laws and rules will be
9 consistently and literally enforced, and that
10 inspections will be performed by special inspectors.

11 Sec. 26. Section 89A.18, Code 2003, is amended to
12 read as follows:

13 89A.18 CIVIL PENALTY.

14 If upon notice and hearing the commissioner
15 determines that an owner has operated a facility after
16 an order of the commissioner that suspends, revokes,
17 or refuses to issue an operating permit for the
18 facility has become final under section 89A.10,
19 subsection 2, the commissioner may assess a civil
20 penalty against the owner in an amount not exceeding
21 five hundred dollars, as determined by the
22 commissioner. An order assessing a civil penalty is
23 subject to appeal ~~and judicial review~~ under section
24 89A.10, subsection 2, in the same manner and to the
25 same extent as decisions referred to in that
26 subsection. The commissioner may commence an action
27 in the district court to enforce payment of the civil
28 penalty. No record of assessment against or payment
29 of a civil penalty by any person for a violation of
30 this section shall be admissible as evidence in any
31 court in any civil action. Revenue from the penalty
32 provided in this section shall be remitted to the
33 treasurer of state for deposit in the state general
34 fund.

35 Sec. 27. NEW SECTION. 89A.19 ELEVATOR SAFETY
36 FUND -- FEES APPROPRIATED.

37 A revolving elevator safety fund is created in the
38 state treasury under the control of the commissioner
39 and shall consist of moneys collected by the
40 commissioner as fees. Moneys in the fund are
41 appropriated to and shall be used by the commissioner
42 to pay the actual costs and expenses necessary to
43 operate the safety board and perform the duties of the
44 commissioner as described in this chapter. All fees
45 collected by the commissioner pursuant to this chapter
46 shall be remitted to the treasurer of state to be
47 deposited in the elevator safety fund. All salaries
48 and expenses properly chargeable to the fund shall be
49 paid from the fund. Section 8.33 does not apply to
50 any moneys in the fund. Notwithstanding section

S-5240

-8-

S-5240

Page 9

1 12C.7, subsection 2, interest or earnings on moneys
2 deposited in the fund shall be credited to the fund.
3 Sec. 28. NEW SECTION. 89A.20 FUTURE REPEAL.
4 This chapter is repealed effective July 1, 2012.
5 Sec. 29. Section 602.8102, subsection 25, Code
6 Supplement 2003, is amended to read as follows:
7 25. Carry out duties relating to the judicial
8 review of orders of the ~~employment appeal~~ elevator
9 safety board as provided in section 89A.10, subsection
10 2.
11 Sec. 30. FY 2004-2005 FEE DISPOSITION -- INTENT.
12 Notwithstanding sections 89.8 and 89A.19 or any other
13 provision of law to the contrary, revenues from fees
14 imposed or collected during the fiscal year beginning
15 July 1, 2004, and the amount of accruals of those
16 revenues collected from the fees imposed or collected
17 before June 30, 2005, but not remitted to the
18 commissioner until after June 30, 2005, shall be
19 deposited in the general fund of the state. It is the
20 intent of the general assembly that the moneys
21 appropriated from the general fund of the state to the
22 division of labor services of the department of
23 workforce development for the fiscal year beginning
24 July 1, 2005, and ending June 30, 2006, be reduced by
25 the total amount of revenues projected to be deposited
26 in the boiler and pressure vessel safety fund created
27 by section 89.8 and the elevator safety fund created
28 by section 89A.19 in the fiscal year beginning July 1,
29 2005.
30 Sec. 31. EFFECTIVE DATE. This Act, being deemed
31 of immediate importance, takes effect upon enactment."
32 2. Title page, by striking lines 1 through 4 and
33 inserting the following: "An Act relating to
34 equipment and installation safety programs
35 administered by the division of labor services of the
36 department of workforce development, and providing an
37 effective date."

By NEAL SCHUERER
WILLIAM A. DOTZLER
BOB BRUNKHORST

S-5240 FILED MARCH 31, 2004

HOUSE FILE 2447

S-5251

1 Amend the amendment, S-5240, to House File 2447 as
2 follows:

3 1. Page 1, by striking lines 1 and 2, and
4 inserting the following:

5 "Amend House File 2447, as passed by the House, as
6 follows:"

7 2. Page 1, by inserting after line 4 the
8 following:

9 "Sec. ____ . Section 10A.601, subsections 1 and 7,
10 Code Supplement 2003, are amended to read as follows:

11 1. A full-time employment appeal board is created
12 within the department of inspections and appeals to
13 hear and decide contested cases under chapter 8A,
14 subchapter IV, and chapters 80, 88, ~~89A~~, 91C, 96, and
15 97B.

16 7. An application for rehearing before the appeal
17 board shall be filed pursuant to section 17A.16,
18 unless otherwise provided in chapter 8A, subchapter
19 IV, or chapter 80, 88, ~~89A~~, 91C, 96, or 97B. A
20 petition for judicial review of a decision of the
21 appeal board shall be filed pursuant to section
22 17A.19. The appeal board may be represented in any
23 such judicial review by an attorney who is a regular
24 salaried employee of the appeal board or who has been
25 designated by the appeal board for that purpose, or at
26 the appeal board's request, by the attorney general.
27 Notwithstanding the petitioner's residency requirement
28 in section 17A.19, subsection 2, a petition for
29 judicial review may be filed in the district court of
30 the county in which the petitioner was last employed
31 or resides, provided that if the petitioner does not
32 reside in this state, the action shall be brought in
33 the district court of Polk county, Iowa, and any other
34 party to the proceeding before the appeal board shall
35 be named in the petition. Notwithstanding the thirty-
36 day requirement in section 17A.19, subsection 6, the
37 appeal board shall, within sixty days after filing of
38 the petition for judicial review or within a longer
39 period of time allowed by the court, transmit to the
40 reviewing court the original or a certified copy of
41 the entire records of a contested case. The appeal
42 board may also certify to the court, questions of law
43 involved in any decision by the appeal board.
44 Petitions for judicial review and the questions so
45 certified shall be given precedence over all other
46 civil cases except cases arising under the workers'
47 compensation law of this state. No bond shall be
48 required for entering an appeal from any final order,
49 judgment, or decree of the district court to the
50 supreme court."

S-5251

-1-

S-5251

Page 2

- 1 3. Page 1, line 41, by inserting before the word
- 2 "A" the following: "1."
- 3 4. Page 2, by inserting after line 3 the
- 4 following:
- 5 "2. This section is repealed effective July 1,
- 6 2012."
- 7 5. By striking page 3, line 50 through page 4,
- 8 line 1.
- 9 6. Page 8, line 37, by inserting before the word
- 10 "A" the following: "1."
- 11 7. Page 9, by inserting after line 2 the
- 12 following:
- 13 "2. This section is repealed effective July 1,
- 14 2012."
- 15 8. Page 9, by striking lines 3 and 4.
- 16 9. By renumbering as necessary.

By DICK L. DEARDEN
BOB BRUNKHORST

S-5251 FILED APRIL 1, 2004

HOUSE FILE 2447

S-5260

- 1 Amend the amendment, S-5240, to House File 2447, as
- 2 amended, passed, and reprinted by the House, as
- 3 follows:
- 4 1. Page 2, line 49, by striking the words
- 5 "certified employee" and inserting the following:
- 6 "labor".

By DICK L. DEARDEN

S-5260 FILED APRIL 5, 2004

SENATE AMENDMENT TO
HOUSE FILE 2447

H-8445

1 Amend House File 2447, as passed by the House, as
2 follows:
3 1. By striking everything after the enacting
4 clause and inserting the following:
5 "Section 1. Section 10A.601, subsections 1 and 7,
6 Code Supplement 2003, are amended to read as follows:
7 1. A full-time employment appeal board is created
8 within the department of inspections and appeals to
9 hear and decide contested cases under chapter 8A,
10 subchapter IV, and chapters 80, 88, ~~89A~~, 91C, 96, and
11 97B.
12 7. An application for rehearing before the appeal
13 board shall be filed pursuant to section 17A.16,
14 unless otherwise provided in chapter 8A, subchapter
15 IV, or chapter 80, 88, ~~89A~~, 91C, 96, or 97B. A
16 petition for judicial review of a decision of the
17 appeal board shall be filed pursuant to section
18 17A.19. The appeal board may be represented in any
19 such judicial review by an attorney who is a regular
20 salaried employee of the appeal board or who has been
21 designated by the appeal board for that purpose, or at
22 the appeal board's request, by the attorney general.
23 Notwithstanding the petitioner's residency requirement
24 in section 17A.19, subsection 2, a petition for
25 judicial review may be filed in the district court of
26 the county in which the petitioner was last employed
27 or resides, provided that if the petitioner does not
28 reside in this state, the action shall be brought in
29 the district court of Polk county, Iowa, and any other
30 party to the proceeding before the appeal board shall
31 be named in the petition. Notwithstanding the thirty-
32 day requirement in section 17A.19, subsection 6, the
33 appeal board shall, within sixty days after filing of
34 the petition for judicial review or within a longer
35 period of time allowed by the court, transmit to the
36 reviewing court the original or a certified copy of
37 the entire records of a contested case. The appeal
38 board may also certify to the court, questions of law
39 involved in any decision by the appeal board.
40 Petitions for judicial review and the questions so
41 certified shall be given precedence over all other
42 civil cases except cases arising under the workers'
43 compensation law of this state. No bond shall be
44 required for entering an appeal from any final order,
45 judgment, or decree of the district court to the
46 supreme court.
47 Sec. 2. Section 89.2, Code 2003, is amended by
48 adding the following new subsections:
49 NEW SUBSECTION. 0A. "ASME code" means the boiler
50 and pressure vessel code published by the American

H-8445

H-8445

Page 2

1 society of mechanical engineers.

2 NEW SUBSECTION. 0B. "Board" means the boiler and
3 pressure vessel board created in section 89.14.

4 Sec. 3. Section 89.3, Code 2003, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 13. An inspection report created
7 pursuant to this chapter that requires modification,
8 alteration, or change shall be in writing and shall
9 cite the state law or rule or the ASME code section
10 allegedly violated.

11 Sec. 4. Section 89.5, subsection 1, Code 2003, is
12 amended by striking the subsection.

13 Sec. 5. Section 89.5, subsection 4, unnumbered
14 paragraph 1, Code 2003, is amended to read as follows:

15 A rule adopted pursuant to this ~~section~~ chapter
16 which adopts standards by reference to another
17 publication shall be exempt from the requirements of
18 section 17A.6, subsection 4, if the following
19 conditions exist:

20 Sec. 6. Section 89.7, subsection 3, Code 2003, is
21 amended to read as follows:

22 3. Upon such showing and the payment of a fee, the
23 commissioner shall issue a certificate of inspection
24 by the division of labor services, which shall be
25 valid only for the period specified in section 89.3.
26 ~~The commissioner shall establish the amount of the fee~~
27 ~~by rule.~~

28 Sec. 7. Section 89.8, Code 2003, is amended by
29 striking the section and inserting in lieu thereof the
30 following:

31 89.8 BOILER AND PRESSURE VESSEL SAFETY FUND --
32 FEES APPROPRIATED.

33 1. A boiler and pressure vessel safety revolving
34 fund is created within the state treasury under the
35 control of the commissioner and shall consist of
36 moneys collected by the commissioner as fees. Moneys
37 in the fund are appropriated and shall be used by the
38 commissioner to pay the actual costs and expenses
39 necessary to operate the board and administer the
40 provisions of this chapter. All salaries and expenses
41 properly chargeable to the fund shall be paid from the
42 fund. Section 8.33 does not apply to any moneys in
43 the fund. Notwithstanding section 12C.7, subsection
44 2, interest or earnings on moneys deposited in the
45 fund shall be credited to the fund.

46 2. This section is repealed effective July 1,
47 2012.

48 Sec. 8. Section 89.9, Code 2003, is amended to
49 read as follows:

50 89.9 DISPOSAL OF FEES.

H-8445

H-8445

Page 3

1 All fees provided for in this chapter shall be
2 collected by the commissioner and remitted to the
3 treasurer of state, to be deposited in the boiler and
4 pressure vessel safety fund pursuant to section 89.8,
5 together with an itemized statement showing the source
6 of collection.

7 Sec. 9. Section 89.11, Code 2003, is amended to
8 read as follows:

9 89.11 INJUNCTION.

10 In addition to any and all other remedies, if any
11 owner, user, or person in charge of any equipment
12 covered by this chapter, shall continue to use any
13 equipment covered by this chapter, after receiving a
14 notice of defect and exhausting appeal rights as
15 provided by this chapter, without first correcting
16 ~~said~~ the defects or making replacements, the
17 commissioner of ~~labor~~ may apply to the district court
18 or any judge thereof by petition in equity, in an
19 action brought in the name of the state, for a writ of
20 injunction to restrain the use of ~~said~~ the alleged
21 defective equipment.

22 Sec. 10. NEW SECTION. 89.14 BOILER AND PRESSURE
23 VESSEL BOARD -- CREATED -- DUTIES.

24 1. A boiler and pressure vessel board is created
25 within the division of labor services of the
26 department of workforce development to formulate
27 definitions and rules requirements for the safe and
28 proper installation, repair, maintenance, alteration,
29 use, and operation of boilers and pressure vessels in
30 this state.

31 2. The boiler and pressure vessel board is
32 composed of nine members, one of whom shall be the
33 commissioner or the commissioner's designee. The
34 remaining eight members shall be appointed by the
35 governor, subject to confirmation by the senate, to
36 four-year staggered terms beginning and ending as
37 provided in section 69.19. One member shall be a
38 special inspector who is employed by an insurance
39 company that is licensed and actively writing boiler
40 and machinery insurance in this state and who is
41 commissioned to inspect boiler and pressure vessels in
42 this state, two members shall be appointed from
43 certified employee organizations, one of whom shall
44 represent steamfitters, two members shall be
45 mechanical engineers who regularly practice in the
46 area of boilers and pressure vessels, one member shall
47 be a boiler and pressure vessel distributor in this
48 state, one member shall represent boiler and pressure
49 vessel manufacturers, and one member shall be a
50 mechanical contractor engaged in the business of

H-8445

-3-

H-8445

Page 4

1 installation, renovation, and repair of boilers and
2 pressure vessels.

3 3. A vacancy in membership shall be filled in the
4 same manner as the original appointment. The members
5 shall serve without compensation, but shall be
6 reimbursed for actual and necessary expenses incurred
7 in the performance of official duties as a member.

8 4. The members of the board shall select a
9 chairperson, vice chairperson, and secretary from
10 their membership. However, neither the commissioner
11 nor the commissioner's designee shall serve as
12 chairperson. The board shall meet at least quarterly
13 but may meet as often as necessary. Meetings shall be
14 set by a majority of the board or upon the call of the
15 chairperson, or in the chairperson's absence, upon the
16 call of the vice chairperson. A majority of the board
17 members shall constitute a quorum.

18 5. The board shall adopt rules pursuant to chapter
19 17A necessary to administer the duties of the board.
20 Rules adopted by the board shall be in accordance with
21 accepted engineering standards and practices. The
22 board shall adopt rules relating to the equipment
23 covered by this chapter that are in accordance with
24 the ASME code, which may include addenda,
25 interpretations, and code cases, as soon as reasonably
26 practical following publication by ASME.

27 6. A notice of defect or inspection report issued
28 by the commissioner pursuant to this chapter may,
29 within thirty days after the making of the order, be
30 appealed to the board. Board action constitutes final
31 agency action for purposes of chapter 17A.

32 7. Not later than July 1, 2005, and every three
33 years thereafter, the board shall conduct a
34 comprehensive review of existing boiler rules,
35 regulations, and standards, including but not limited
36 to those relating to potable hot water supply boilers
37 and water heaters.

38 8. The board shall establish fees for
39 examinations, commissions, inspections, annual
40 statements, shop inspections, and other services. The
41 fees shall reflect the actual costs and expenses
42 necessary to operate the board and perform the duties
43 of the commissioner.

44 Sec. 11. Section 89A.1, subsection 2, Code 2003,
45 is amended by striking the subsection.

46 Sec. 12. Section 89A.1, subsection 19, Code 2003,
47 is amended by striking the subsection and inserting in
48 lieu thereof the following:

49 NEW SUBSECTION. 19. "Safety board" means the
50 elevator safety board created in section 89A.13.

H-8445

H-8445

Page 5

1 Sec. 13. Section 89A.3, subsection 1, unnumbered
2 paragraphs 1 and 2, Code 2003, are amended to read as
3 follows:

4 The ~~commissioner~~ safety board may adopt rules
5 governing maintenance, construction, alteration, and
6 installation of facilities, and the inspection and
7 testing of new and existing installations as necessary
8 to provide for the public safety, and to protect the
9 public welfare.

10 The ~~commissioner~~ safety board shall adopt, amend,
11 or repeal rules pursuant to chapter 17A as the
12 ~~commissioner~~ it deems necessary for the ~~execution of~~
13 ~~the commissioner's duties under administration of~~ this
14 chapter, which shall include, but not be limited to,
15 rules providing for:

16 Sec. 14. Section 89A.3, subsection 1, paragraphs h
17 and i, Code 2003, are amended by striking the
18 paragraphs.

19 Sec. 15. Section 89A.3, subsection 2, Code 2003,
20 is amended to read as follows:

21 2. The ~~commissioner~~ safety board shall adopt rules
22 for facilities according to the applicable provisions
23 of the American society of mechanical engineers safety
24 codes for elevators and escalators, A17.1 and A17.3,
25 as the ~~commissioner~~ safety board deems necessary. In
26 adopting rules the ~~commissioner~~ safety board may adopt
27 the American society of mechanical engineers safety
28 codes, or any part of the codes, by reference.

29 The ~~commissioner~~ safety board may adopt rules
30 permitting existing passenger and freight elevators to
31 be modified into material lift elevators.

32 Sec. 16. Section 89A.3, subsections 4 and 5; Code
33 2003, are amended to read as follows:

34 4. The commissioner shall furnish copies of the
35 rules adopted by ~~the commissioner~~ pursuant to this
36 chapter to any person who requests them, without
37 charge, or upon payment of a charge not to exceed the
38 actual cost of printing of the rules.

39 5. The ~~commissioner~~ safety board may adopt rules
40 permitting inclined or vertical wheelchair lifts in
41 churches and houses of worship to service more than
42 one floor.

43 Sec. 17. Section 89A.3, Code 2003, is amended by
44 adding the following new subsection:

45 NEW SUBSECTION. 6. The commissioner may adopt
46 rules pursuant to chapter 17A relating to the denial,
47 issuance, revocation, and suspension of special
48 inspector commissions.

49 Sec. 18. Section 89A.6, subsections 2, 3, and 6,
50 Code 2003, are amended to read as follows:

H-8445

H-8445

Page 6

1 2. Every existing facility registered with the
2 commissioner shall be inspected within one year after
3 the effective date of the registration, except that
4 the ~~commissioner~~ safety board may, ~~at the~~
5 ~~commissioner's discretion,~~ extend by rule the time
6 specified for making inspections.

7 3. Every facility shall be inspected not less
8 frequently than annually, except that the ~~commissioner~~
9 safety board may adopt rules providing for inspections
10 of facilities at intervals other than annually.

11 6. In addition to the inspections required by
12 subsections 1 to 3, the ~~commissioner~~ safety board may
13 provide by rule for additional inspections as the
14 ~~commissioner~~ safety board deems necessary to enforce
15 the provisions of this chapter.

16 Sec. 19. Section 89A.9, unnumbered paragraph 1,
17 Code 2003, is amended to read as follows:

18 Operating permits shall be issued by the
19 commissioner to the owner of every facility when the
20 inspection report indicates compliance with the
21 applicable provisions of this chapter. However, ~~no~~
22 ~~permits~~ a permit shall not be issued if the fees
23 ~~required by section 89A.13~~ this chapter have not been
24 paid. Permits shall be issued within thirty days
25 after filing of the inspection report required by
26 section 89A.6, unless the time is extended for cause
27 by the division. ~~No~~ A facility shall not be operated
28 after the thirty days or after an extension granted by
29 the commissioner has expired, unless an operating
30 permit has been issued.

31 Sec. 20. Section 89A.10, subsection 2, unnumbered
32 paragraph 1, Code 2003, is amended to read as follows:

33 If the owner does not make the changes necessary
34 for compliance as required in subsection 1 within the
35 period specified by the commissioner, the
36 commissioner, upon notice, may suspend or revoke the
37 operating permit, or may refuse to issue the operating
38 permit for the facility. The commissioner shall
39 notify the owner of any action to suspend, revoke, or
40 refuse to issue an operating permit and the reason for
41 the action by service in the same manner as an
42 original notice or by certified mail. An owner may
43 appeal the commissioner's initial decision to the
44 safety board. ~~The appeal shall be heard by an~~
45 ~~administrative law judge of the department of~~
46 ~~inspections and appeals. An owner who, after a~~
47 ~~hearing before an administrative law judge, is~~
48 ~~aggrieved by a suspension, revocation, or refusal to~~
49 ~~issue an operating permit may appeal to the employment~~
50 ~~appeal board created under section 10A.601. Notice of~~

H-8445

H-8445

Page 7

1 ~~appeal shall be filed with the appeal board within~~
2 ~~thirty calendar days from receipt of the notice of the~~
3 ~~commissioner's action. The decision of the safety~~
4 ~~board shall be considered final agency action pursuant~~
5 ~~to chapter 17A.~~

6 Sec. 21. Section 89A.10, subsection 2, unnumbered
7 paragraphs 2 and 3, Code 2003, are amended by striking
8 the unnumbered paragraphs.

9 Sec. 22. Section 89A.11, Code 2003, is amended to
10 read as follows:

11 89A.11 NONCONFORMING FACILITIES.

12 The ~~commissioner~~ safety board, pursuant to rule,
13 may grant exceptions and variances from the
14 requirements of rules adopted for any facility.
15 Exceptions or variations shall be reasonably related
16 to the age of the facility, and may be conditioned
17 upon a repair or modification of the facility deemed
18 necessary by the ~~commissioner~~ safety board to assure
19 reasonable safety. However, ~~no~~ an exception or
20 variance ~~may~~ shall not be granted except to prevent
21 undue hardship. Such facilities shall be subject to
22 orders issued pursuant to section 89A.10.

23 Sec. 23. Section 89A.13, Code 2003, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 89A.13 ELEVATOR SAFETY BOARD.

27 1. An elevator safety board is created within the
28 division of labor services in the department of
29 workforce development to formulate definitions and
30 rules for the safe and proper installation, repair,
31 maintenance, alteration, use, and operation of
32 facilities in this state.

33 2. The safety board is composed of nine members,
34 one of whom shall be the commissioner or the
35 commissioner's designee. The governor shall appoint
36 the remaining eight members of the board, subject to
37 senate confirmation, to staggered four-year terms
38 which shall begin and end as provided in section
39 69.19. The members shall be as follows: two
40 representatives from an elevator manufacturing company
41 or its authorized representative; two representatives
42 from elevator servicing companies; one building owner
43 or manager; one representative employed by a local
44 government in this state who is knowledgeable about
45 building codes in this state; one representative of
46 workers actively involved in the installation,
47 maintenance, and repair of elevators; and one licensed
48 mechanical engineer.

49 3. A vacancy in membership shall be filled in the
50 same manner as the original appointment. The members

H-8445

H-8445

Page 8

1 shall serve without salary, but shall be reimbursed
2 for actual and necessary expenses incurred in the
3 performance of official duties as a member.

4 4. The members of the safety board shall select a
5 chairperson, vice chairperson, and a secretary from
6 their membership. However, neither the commission nor
7 the commissioner's designee shall serve as
8 chairperson. The safety board shall meet at least
9 quarterly but may meet as often as necessary.

10 Meetings shall be set by a majority of the safety
11 board or upon the call of the chairperson, or in the
12 chairperson's absence, upon the call of the vice
13 chairperson. A majority of the safety board members
14 shall constitute a quorum.

15 5. The owner or user of equipment regulated under
16 this chapter may appeal a notice of defect or an
17 inspection report to the safety board within thirty
18 days after the issuance of the notice or report.
19 Safety board action constitutes final agency action
20 for purposes of chapter 17A.

21 6. The safety board shall adopt rules pursuant to
22 chapter 17A necessary to administer the duties of the
23 board.

24 7. Not later than July 1, 2005, and every three
25 years thereafter, the safety board shall conduct a
26 comprehensive review of existing elevator and facility
27 rules, regulations, and standards.

28 Sec. 24. Section 89A.14, Code 2003, is amended to
29 read as follows:

30 89A.14 CONTINUING DUTY OF OWNER.

31 Every facility shall be maintained by the owner in
32 a safe operating condition and in conformity with the
33 rules adopted by the ~~commissioner~~ safety board.

34 Sec. 25. Section 89A.15, Code 2003, is amended to
35 read as follows:

36 89A.15 INSPECTIONS BY LOCAL AUTHORITIES.

37 ~~No~~ A city or other governmental subdivision shall
38 not make or maintain any ordinance, bylaw, or
39 resolution providing for the licensing of special
40 inspectors. An ordinance or resolution relating to
41 the inspection, construction, installation,
42 alteration, maintenance, or operation of facilities
43 within the limits of the city or governmental
44 subdivision, which conflicts with this chapter or with
45 rules adopted by the ~~commissioner~~ pursuant to this
46 chapter is void. The commissioner, in the
47 commissioner's discretion, may accept inspections by
48 local authorities in lieu of inspections required by
49 section 89A.6, but only upon a showing by the local
50 authority that applicable laws and rules will be

H-8445

H-8445

Page 9

1 consistently and literally enforced, and that
2 inspections will be performed by special inspectors.
3 Sec. 26. Section 89A.18, Code 2003, is amended to
4 read as follows:

5 89A.18 CIVIL PENALTY.

6 If upon notice and hearing the commissioner
7 determines that an owner has operated a facility after
8 an order of the commissioner that suspends, revokes,
9 or refuses to issue an operating permit for the
10 facility has become final under section 89A.10,
11 subsection 2, the commissioner may assess a civil
12 penalty against the owner in an amount not exceeding
13 five hundred dollars, as determined by the
14 commissioner. An order assessing a civil penalty is
15 subject to appeal ~~and judicial review~~ under section
16 89A.10, subsection 2, in the same manner and to the
17 same extent as decisions referred to in that
18 subsection. The commissioner may commence an action
19 in the district court to enforce payment of the civil
20 penalty. No record of assessment against or payment
21 of a civil penalty by any person for a violation of
22 this section shall be admissible as evidence in any
23 court in any civil action. Revenue from the penalty
24 provided in this section shall be remitted to the
25 treasurer of state for deposit in the state general
26 fund.

27 Sec. 27. NEW SECTION. 89A.19 ELEVATOR SAFETY
28 FUND -- FEES APPROPRIATED.

29 1. A revolving elevator safety fund is created in
30 the state treasury under the control of the
31 commissioner and shall consist of moneys collected by
32 the commissioner as fees. Moneys in the fund are
33 appropriated to and shall be used by the commissioner
34 to pay the actual costs and expenses necessary to
35 operate the safety board and perform the duties of the
36 commissioner as described in this chapter. All fees
37 collected by the commissioner pursuant to this chapter
38 shall be remitted to the treasurer of state to be
39 deposited in the elevator safety fund. All salaries
40 and expenses properly chargeable to the fund shall be
41 paid from the fund. Section 8.33 does not apply to
42 any moneys in the fund. Notwithstanding section
43 12C.7, subsection 2, interest or earnings on moneys
44 deposited in the fund shall be credited to the fund.

45 2. This section is repealed effective July 1,
46 2012.

47 Sec. 28. Section 602.8102, subsection 25, Code
48 Supplement 2003, is amended to read as follows:

49 25. Carry out duties relating to the judicial
50 review of orders of the ~~employment appeal~~ elevator

H-8445

1 safety board as provided in section 89A.10, subsection

2 2.

3 Sec. 29. FY 2004-2005 FEE DISPOSITION -- INTENT.

4 Notwithstanding sections 89.8 and 89A.19 or any other
5 provision of law to the contrary, revenues from fees
6 imposed or collected during the fiscal year beginning
7 July 1, 2004, and the amount of accruals of those
8 revenues collected from the fees imposed or collected
9 before June 30, 2005, but not remitted to the
10 commissioner until after June 30, 2005, shall be
11 deposited in the general fund of the state. It is the
12 intent of the general assembly that the moneys
13 appropriated from the general fund of the state to the
14 division of labor services of the department of
15 workforce development for the fiscal year beginning
16 July 1, 2005, and ending June 30, 2006, be reduced by
17 the total amount of revenues projected to be deposited
18 in the boiler and pressure vessel safety fund created
19 by section 89.8 and the elevator safety fund created
20 by section 89A.19 in the fiscal year beginning July 1,
21 2005.

22 Sec. 30. EFFECTIVE DATE. This Act, being deemed
23 of immediate importance, takes effect upon enactment."

24 2. Title page, by striking lines 1 through 4 and
25 inserting the following: "An Act relating to
26 equipment and installation safety programs
27 administered by the division of labor services of the
28 department of workforce development, and providing an
29 effective date."

RECEIVED FROM THE SENATE

H-8445 FILED APRIL 7, 2004

HOUSE FILE 2447

AN ACT

RELATING TO EQUIPMENT AND INSTALLATION SAFETY PROGRAMS
ADMINISTERED BY THE DIVISION OF LABOR SERVICES OF THE
DEPARTMENT OF WORKFORCE DEVELOPMENT, AND PROVIDING AN
EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 10A.601, subsections 1 and 7, Code Supplement 2003, are amended to read as follows:

1. A full-time employment appeal board is created within the department of inspections and appeals to hear and decide contested cases under chapter 8A, subchapter IV, and chapters 80, 88, 89A, 91C, 96, and 97B.

7. An application for rehearing before the appeal board shall be filed pursuant to section 17A.16, unless otherwise provided in chapter 8A, subchapter IV, or chapter 80, 88, 89A, 91C, 96, or 97B. A petition for judicial review of a decision of the appeal board shall be filed pursuant to section 17A.19. The appeal board may be represented in any such judicial review by an attorney who is a regular salaried employee of the appeal board or who has been designated by the appeal board for that purpose, or at the appeal board's request, by the attorney general. Notwithstanding the petitioner's residency requirement in section 17A.19, subsection 2, a petition for judicial review may be filed in the district court of the county in which the petitioner was last employed or resides, provided that if the petitioner does not reside in this state, the action shall be brought in the district court of Polk county, Iowa, and any other party to the proceeding before the appeal board shall be named in the petition.

Notwithstanding the thirty-day requirement in section 17A.19, subsection 6, the appeal board shall, within sixty days after filing of the petition for judicial review or within a longer period of time allowed by the court, transmit to the reviewing court the original or a certified copy of the entire records of a contested case. The appeal board may also certify to the court, questions of law involved in any decision by the appeal board. Petitions for judicial review and the questions so certified shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state. No bond shall be required for entering an appeal from any final order, judgment, or decree of the district court to the supreme court.

Sec. 2. Section 89.2, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "ASME code" means the boiler and pressure vessel code published by the American society of mechanical engineers.

NEW SUBSECTION. 0B. "Board" means the boiler and pressure vessel board created in section 89.14.

Sec. 3. Section 89.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 13. An inspection report created pursuant to this chapter that requires modification, alteration, or change shall be in writing and shall cite the state law or rule or the ASME code section allegedly violated.

Sec. 4. Section 89.5, subsection 1, Code 2003, is amended by striking the subsection.

Sec. 5. Section 89.5, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A rule adopted pursuant to this section chapter which adopts standards by reference to another publication shall be exempt from the requirements of section 17A.6, subsection 4, if the following conditions exist:

Sec. 6. Section 89.7, subsection 3, Code 2003, is amended to read as follows:

3. Upon such showing and the payment of a fee, the commissioner shall issue a certificate of inspection by the division of labor services, which shall be valid only for the period specified in section 89.3. ~~The commissioner shall establish the amount of the fee by rule.~~

Sec. 7. Section 89.8, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

89.8 BOILER AND PRESSURE VESSEL SAFETY FUND -- FEES APPROPRIATED.

1. A boiler and pressure vessel safety revolving fund is created within the state treasury under the control of the commissioner and shall consist of moneys collected by the commissioner as fees. Moneys in the fund are appropriated and shall be used by the commissioner to pay the actual costs and expenses necessary to operate the board and administer the provisions of this chapter. All salaries and expenses properly chargeable to the fund shall be paid from the fund. Section 8.33 does not apply to any moneys in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. This section is repealed effective July 1, 2012.

Sec. 8. Section 89.9, Code 2003, is amended to read as follows:

89.9 DISPOSAL OF FEES.

All fees provided for in this chapter shall be collected by the commissioner and remitted to the treasurer of state, to be deposited in the boiler and pressure vessel safety fund pursuant to section 89.8, together with an itemized statement showing the source of collection.

Sec. 9. Section 89.11, Code 2003, is amended to read as follows:

89.11 INJUNCTION.

In addition to any and all other remedies, if any owner, user, or person in charge of any equipment covered by this chapter, shall continue to use any equipment covered by this chapter, after receiving a notice of defect and exhausting appeal rights as provided by this chapter, without first correcting ~~said the~~ defects or making replacements, the commissioner ~~of labor~~ may apply to the district court or any judge thereof by petition in equity, in an action brought in the name of the state, for a writ of injunction to restrain the use of ~~said the~~ alleged defective equipment.

Sec. 10. NEW SECTION. 89.14 BOILER AND PRESSURE VESSEL BOARD -- CREATED -- DUTIES.

1. A boiler and pressure vessel board is created within the division of labor services of the department of workforce development to formulate definitions and rules requirements for the safe and proper installation, repair, maintenance, alteration, use, and operation of boilers and pressure vessels in this state.

2. The boiler and pressure vessel board is composed of nine members, one of whom shall be the commissioner or the commissioner's designee. The remaining eight members shall be appointed by the governor, subject to confirmation by the senate, to four-year staggered terms beginning and ending as provided in section 69.19. One member shall be a special inspector who is employed by an insurance company that is licensed and actively writing boiler and machinery insurance in this state and who is commissioned to inspect boiler and pressure vessels in this state, two members shall be appointed from certified employee organizations, one of whom shall represent steamfitters, two members shall be mechanical engineers who regularly practice in the area of boilers and pressure vessels, one member shall be a boiler and pressure vessel distributor in this state, one member shall represent boiler and pressure vessel manufacturers, and one member shall be a mechanical contractor engaged in the business of

installation, renovation, and repair of boilers and pressure vessels.

3. A vacancy in membership shall be filled in the same manner as the original appointment. The members shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of official duties as a member.

4. The members of the board shall select a chairperson, vice chairperson, and secretary from their membership. However, neither the commissioner nor the commissioner's designee shall serve as chairperson. The board shall meet at least quarterly but may meet as often as necessary. Meetings shall be set by a majority of the board or upon the call of the chairperson, or in the chairperson's absence, upon the call of the vice chairperson. A majority of the board members shall constitute a quorum.

5. The board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board. Rules adopted by the board shall be in accordance with accepted engineering standards and practices. The board shall adopt rules relating to the equipment covered by this chapter that are in accordance with the ASME code, which may include addenda, interpretations, and code cases, as soon as reasonably practical following publication by ASME.

6. A notice of defect or inspection report issued by the commissioner pursuant to this chapter may, within thirty days after the making of the order, be appealed to the board. Board action constitutes final agency action for purposes of chapter 17A.

7. Not later than July 1, 2005, and every three years thereafter, the board shall conduct a comprehensive review of existing boiler rules, regulations, and standards, including but not limited to those relating to potable hot water supply boilers and water heaters.

8. The board shall establish fees for examinations, commissions, inspections, annual statements, shop inspections, and other services. The fees shall reflect the actual costs and expenses necessary to operate the board and perform the duties of the commissioner.

Sec. 11. Section 89A.1, subsection 2, Code 2003, is amended by striking the subsection.

Sec. 12. Section 89A.1, subsection 19, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

NEW SUBSECTION. 19. "Safety board" means the elevator safety board created in section 89A.13.

Sec. 13. Section 89A.3, subsection 1, unnumbered paragraphs 1 and 2, Code 2003, are amended to read as follows:

The commissioner safety board may adopt rules governing maintenance, construction, alteration, and installation of facilities, and the inspection and testing of new and existing installations as necessary to provide for the public safety, and to protect the public welfare.

The commissioner safety board shall adopt, amend, or repeal rules pursuant to chapter 17A as the commissioner it deems necessary for the ~~execution of the commissioner's duties under administration of~~ this chapter, which shall include, but not be limited to, rules providing for:

Sec. 14. Section 89A.3, subsection 1, paragraphs h and i, Code 2003, are amended by striking the paragraphs.

Sec. 15. Section 89A.3, subsection 2, Code 2003, is amended to read as follows:

2. The commissioner safety board shall adopt rules for facilities according to the applicable provisions of the American society of mechanical engineers safety codes for elevators and escalators, A17.1 and A17.3, as the commissioner safety board deems necessary. In adopting rules the commissioner safety board may adopt the American society of mechanical engineers safety codes, or any part of the codes, by reference.

The commissioner safety board may adopt rules permitting existing passenger and freight elevators to be modified into material lift elevators.

Sec. 16. Section 89A.3, subsections 4 and 5, Code 2003, are amended to read as follows:

4. The commissioner shall furnish copies of the rules adopted ~~by the commissioner pursuant to this chapter~~ to any person who requests them, without charge, or upon payment of a charge not to exceed the actual cost of printing of the rules.

5. The commissioner safety board may adopt rules permitting inclined or vertical wheelchair lifts in churches and houses of worship to service more than one floor.

Sec. 17. Section 89A.3, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. The commissioner may adopt rules pursuant to chapter 17A relating to the denial, issuance, revocation, and suspension of special inspector commissions.

Sec. 18. Section 89A.6, subsections 2, 3, and 6, Code 2003, are amended to read as follows:

2. Every existing facility registered with the commissioner shall be inspected within one year after the effective date of the registration, except that the commissioner safety board may, ~~at the commissioner's discretion,~~ extend by rule the time specified for making inspections.

3. Every facility shall be inspected not less frequently than annually, except that the commissioner safety board may adopt rules providing for inspections of facilities at intervals other than annually.

6. In addition to the inspections required by subsections 1 to 3, the commissioner safety board may provide by rule for additional inspections as the commissioner safety board deems necessary to enforce the provisions of this chapter.

Sec. 19. Section 89A.9, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Operating permits shall be issued by the commissioner to the owner of every facility when the inspection report indicates compliance with the applicable provisions of this chapter. However, ~~no permits~~ a permit shall not be issued if the fees required by ~~section 89A.13~~ this chapter have not been paid. Permits shall be issued within thirty days after filing of the inspection report required by section 89A.6, unless the time is extended for cause by the division. No A facility shall not be operated after the thirty days or after an extension granted by the commissioner has expired, unless an operating permit has been issued.

Sec. 20. Section 89A.10, subsection 2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

If the owner does not make the changes necessary for compliance as required in subsection 1 within the period specified by the commissioner, the commissioner, upon notice, may suspend or revoke the operating permit, or may refuse to issue the operating permit for the facility. The commissioner shall notify the owner of any action to suspend, revoke, or refuse to issue an operating permit and the reason for the action by service in the same manner as an original notice or by certified mail. An owner may appeal the commissioner's initial decision to the safety board. ~~The appeal shall be heard by an administrative law judge of the department of inspections and appeals. An owner who, after a hearing before an administrative law judge, is aggrieved by a suspension, revocation, or refusal to issue an operating permit may appeal to the employment appeal board created under section 10A.601. Notice of appeal shall be filed with the appeal board within thirty calendar days from receipt of the notice of the commissioner's action. The decision of the safety board shall be considered final agency action pursuant to chapter 17A.~~

Sec. 21. Section 89A.10, subsection 2, unnumbered paragraphs 2 and 3, Code 2003, are amended by striking the unnumbered paragraphs.

Sec. 22. Section 89A.11, Code 2003, is amended to read as follows:

89A.11 NONCONFORMING FACILITIES.

The commissioner safety board, pursuant to rule, may grant exceptions and variances from the requirements of rules adopted for any facility. Exceptions or variations shall be reasonably related to the age of the facility, and may be conditioned upon a repair or modification of the facility deemed necessary by the commissioner safety board to assure reasonable safety. However, no an exception or variance may shall not be granted except to prevent undue hardship. Such facilities shall be subject to orders issued pursuant to section 89A.10.

Sec. 23. Section 89A.13, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

89A.13 ELEVATOR SAFETY BOARD.

1. An elevator safety board is created within the division of labor services in the department of workforce development to formulate definitions and rules for the safe and proper installation, repair, maintenance, alteration, use, and operation of facilities in this state.

2. The safety board is composed of nine members, one of whom shall be the commissioner or the commissioner's designee. The governor shall appoint the remaining eight members of the board, subject to senate confirmation, to staggered four-year terms which shall begin and end as provided in section 69.19. The members shall be as follows: two representatives from an elevator manufacturing company or its authorized representative; two representatives from elevator servicing companies; one building owner or manager; one representative employed by a local government in this state who is knowledgeable about building codes in this state; one representative of workers actively involved in the installation, maintenance, and repair of elevators; and one licensed mechanical engineer.

3. A vacancy in membership shall be filled in the same manner as the original appointment. The members shall serve without salary, but shall be reimbursed for actual and necessary expenses incurred in the performance of official duties as a member.

4. The members of the safety board shall select a chairperson, vice chairperson, and a secretary from their membership. However, neither the commission nor the commissioner's designee shall serve as chairperson. The safety board shall meet at least quarterly but may meet as often as necessary. Meetings shall be set by a majority of the safety board or upon the call of the chairperson, or in the chairperson's absence, upon the call of the vice chairperson. A majority of the safety board members shall constitute a quorum.

5. The owner or user of equipment regulated under this chapter may appeal a notice of defect or an inspection report to the safety board within thirty days after the issuance of the notice or report. Safety board action constitutes final agency action for purposes of chapter 17A.

6. The safety board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board.

7. Not later than July 1, 2005, and every three years thereafter, the safety board shall conduct a comprehensive review of existing elevator and facility rules, regulations, and standards.

Sec. 24. Section 89A.14, Code 2003, is amended to read as follows:

89A.14 CONTINUING DUTY OF OWNER.

Every facility shall be maintained by the owner in a safe operating condition and in conformity with the rules adopted by the commissioner safety board.

Sec. 25. Section 89A.15, Code 2003, is amended to read as follows:

89A.15 INSPECTIONS BY LOCAL AUTHORITIES.

No A city or other governmental subdivision shall not make or maintain any ordinance, bylaw, or resolution providing for the licensing of special inspectors. An ordinance or resolution relating to the inspection, construction, installation, alteration, maintenance, or operation of facilities within the limits of the city or governmental subdivision, which conflicts with this chapter or with rules adopted ~~by the commissioner pursuant to this chapter~~ is void. The commissioner, in the commissioner's discretion, may accept inspections by local authorities in lieu of inspections required by section 89A.6, but only upon a showing by the local authority that applicable laws and rules will be consistently and literally enforced, and that inspections will be performed by special inspectors.

Sec. 26. Section 89A.18, Code 2003, is amended to read as follows:

89A.18 CIVIL PENALTY.

If upon notice and hearing the commissioner determines that an owner has operated a facility after an order of the commissioner that suspends, revokes, or refuses to issue an operating permit for the facility has become final under section 89A.10, subsection 2, the commissioner may assess a civil penalty against the owner in an amount not exceeding five hundred dollars, as determined by the commissioner. An order assessing a civil penalty is subject to appeal and ~~judicial review~~ under section 89A.10, subsection 2, in the same manner and to the same extent as decisions referred to in that subsection. The commissioner may commence an action in the district court to enforce payment of the civil penalty. No record of assessment against or payment of a civil penalty by any person for a violation of this section shall be admissible as evidence in any court in any civil action. Revenue from the penalty provided in this section shall be remitted to the treasurer of state for deposit in the state general fund.

Sec. 27. **NEW SECTION.** 89A.19 ELEVATOR SAFETY FUND -- FEES APPROPRIATED.

1. A revolving elevator safety fund is created in the state treasury under the control of the commissioner and shall consist of moneys collected by the commissioner as fees. Moneys in the fund are appropriated to and shall be used by the commissioner to pay the actual costs and expenses necessary to operate the safety board and perform the duties of the commissioner as described in this chapter. All fees collected by the commissioner pursuant to this chapter shall be remitted to the treasurer of state to be deposited in the elevator safety fund. All salaries and expenses properly chargeable to the fund shall be paid from the fund. Section 8.33 does not apply to any moneys in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. This section is repealed effective July 1, 2012.

Sec. 28. Section 602.8102, subsection 25, Code Supplement 2003, is amended to read as follows:

25. Carry out duties relating to the judicial review of orders of the ~~employment-appeal~~ elevator safety board as provided in section 89A.10, subsection 2.

Sec. 29. FY 2004-2005 FEE DISPOSITION -- INTENT. Notwithstanding sections 89.8 and 89A.19 or any other provision of law to the contrary, revenues from fees imposed or collected during the fiscal year beginning July 1, 2004, and the amount of accruals of those revenues collected from the fees imposed or collected before June 30, 2005, but not remitted to the commissioner until after June 30, 2005, shall be deposited in the general fund of the state. It is the intent of the general assembly that the moneys appropriated from the general fund of the state to the division of labor services of the department of workforce development for the fiscal year beginning July 1, 2005, and ending June 30, 2006,

be reduced by the total amount of revenues projected to be deposited in the boiler and pressure vessel safety fund created by section 89.8 and the elevator safety fund created by section 89A.19 in the fiscal year beginning July 1, 2005.

Sec. 30. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

CHRISTOPHER C. RANTS
Speaker of the House

JEFFREY M. LAMBERTI
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2447, Eightieth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved _____, 2004

THOMAS J. VILSACK
Governor