

tional or vocational training outside the state correctional institutions and away from the work centers or public or charitable facilities used under a program.

However, ~~an~~ 2. An inmate shall not work in a public service project if the work of that inmate would replace a person employed by the state agency or political subdivision, which employee is performing the work of the public service project at the time the inmate is being considered for work in the project.

3. An inmate labor fund is established under the control of the department. All fees, grants, appropriations, or reimbursed costs received by the department and related to inmate labor shall be deposited into the fund and the moneys shall be used by the department to offset staff and transportation costs related to providing inmate labor, to public entities. Notwithstanding section 8.33, moneys remaining in the fund at the end of a fiscal year shall not revert to the general fund of the state. Notwithstanding section 12C.7, interest and earnings deposited in the fund shall be credited to the fund.

Approved April 26, 2004

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## CHAPTER 1107

### ELEVATORS, BOILERS, AND PRESSURE VESSELS — REGULATION AND SAFETY

H.F. 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 de-

fect 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, by-law, 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~~ 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.

Approved April 26, 2004

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## CHAPTER 1108

### IOWACCESS ADVISORY COUNCIL — QUORUM

*H.F. 2467*

**AN ACT** relating to the quorum requirement for the IowAccess advisory council.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 8A.221, subsection 3, paragraph b, Code Supplement 2003, is amended to read as follows:

b. Members appointed by the governor are subject to confirmation by the senate and shall serve four-year staggered terms as designated by the governor. The advisory council shall annually elect its own chairperson from among the voting members of the ~~board~~ council. A majority of the voting members of the council constitutes a quorum. Members appointed by the governor are subject to the requirements of sections 69.16, 69.16A, and 69.19. Members appointed by the governor shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Such members may also be eligible to receive compensation as provided in section 7E.6.

Approved April 26, 2004