

- SUBJECT:** Regulations on elevators, escalators, and related equipment
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 6 ayes — Smith, Kuempel, Geren, Guillen, Miles, S. Thompson
0 nays
3 absent — Gooden, Gutierrez, Price
- SENATE VOTE:** On final passage, March 21 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** (*On House companion bill, HB 2188:*)
For — (*Registered, but did not testify:* David Mintz, Texas Apartment Association; Neftali Partida, Texas Building Owners and Managers Association)

Against — Micheal Lord; (*Registered, but did not testify:* Neal Sorrels)

On — William Kuntz, Texas Department of Licensing and Regulation
- BACKGROUND:** Health and Safety Code, ch. 754 regulates elevators, escalators, and related equipment, including their installation, operation and inspection. “Equipment” refers to elevators, escalators, chairlifts, platform lifts, or other automated machines used to move people.
- The Commission of Licensing and Regulation by rule provides for the registration of elevator inspectors and contractors in Texas. ASME, formerly known as the American Society of Mechanical Engineers, currently oversees the certification process for elevator inspectors, designated as QEI-1 certified inspectors.
- Under sec. 754.023, the executive director of the Texas Department of Licensing and Regulation (TDLR) by emergency order can act to shut down an elevator or related equipment if:
- the department determines that an emergency exists requiring

- immediate action to protect the public safety; or
- the equipment has not had an annual inspection in more than two years and the building owner receives notice that the equipment must be inspected.

Sixty days following the issuance of notice, TDLR can give notice of the department's intent to disconnect power or lock down the elevator equipment by emergency order within seven days. If an emergency order to disconnect power or lock out equipment is issued, the building owner or manager may have the power reconnected or the equipment unlocked only if:

- a registered inspector, contractor or department representative verifies that the threat has been mitigated; and
- the building owner reimburses the department for all expenses related to the disconnection of power or lockout.

DIGEST:

CSSB 673 would authorize the Commission of Licensing and Regulation to adopt rules for:

- the certification of elevator inspectors;
- the registration of elevator contractors;
- the procedures for issuing and displaying a certificate of compliance;
- liability insurance, which would have to be written by a state-authorized insurer or an eligible surplus lines insurer;
- maintenance control programs, maintenance, repair, parts manuals, and product-specific inspection, testing, and maintenance procedures;
- reporting accidents and related conditions to TDLR; and
- testing elevator-related equipment.

The bill would repeal the following sections of Health and Safety Code, cha. 754:

- subchapter A, which governs elevator safety device requirements;
- sec. 754.0171 (d) and (e), which currently requires contractors to submit initial and subsequent quarterly reports on elevator repair and maintenance work to TDLR;
- sec. 754.022, which currently requires TDLR to send notices to

building owners who have not complied with elevator inspection requirements;

- sec. 754.024, which currently makes a building owner's failure to remedy a notice of noncompliance within 61 days a class C misdemeanor; and
- sec. 754.023, which currently governs investigation, registration proceedings, injunction, and emergency orders, all of which would be replaced by new provisions in CSSB 673.

The commission could require inspection reports, other documents, and fees to be filed according to TDLR specifications, including electronically.

New requirements for inspectors. The bill would add the term "inspector," meaning someone who inspects equipment and witnesses tests specified in standards issued by ASME and the American Society of Civil Engineers. The term "registered elevator inspector" would replace a reference to ASME code, "QEI-1 certified inspector," throughout ch. 754.

Inspectors would be certified according to the rules of the commission rather than ASME and would have to comply with any commission-established continuing education requirements. The executive director could set a fee for reviewing and approving continuing education providers and courses for elevator inspectors.

Inspectors would not be able to inspect equipment if the inspector or the inspector's employer had a financial or personal conflict of interest or if there was an appearance of impropriety with regard to the inspection.

TDLR's standard guidelines for license expiration and renewal, as well as license reciprocity, also would apply for licensed inspectors under ch. 754.

Exemptions. The bill would exempt from the requirements of ch. 754 equipment located in a federally owned and operated building or equipment located in an industrial facility, grain silo, radio antenna, bridge tower, underground facility, or dam, to which access was limited primarily to employees.

Certificates of compliance and noncompliance delays. The bill would eliminate language specifying the information that the certificate of compliance would contain. TDLR, instead of the commission, would stipulate the format and information that would be required to appear in

inspection reports, certificates of compliance, and other documents.

The executive director of TDLR would be able to grant a delay for compliance with the commission's codes and adopted standards regarding an elevator or related equipment if the executive director determined that passenger or worker safety were not seriously threatened, rather than if compliance was not readily achievable under the Americans with Disabilities Act. The period of noncompliance could not exceed three years, except as otherwise determined by the executive director.

Equipment inspection. TDLR would be able to conduct an inspection or investigation of equipment if the executive director believed the equipment on the property posed an imminent and significant danger or that an accident involving equipment had occurred. TDLR would be granted access to any area otherwise shut off to the general public to conduct its investigation or inspection.

A registered elevator inspector would issue an inspection report no later than five days after days after the date of inspection, rather than the 10 days under current law.

The commission would be able to require a re-inspection or recertification if the equipment had been altered, if the equipment posed a significant threat to passenger and work safety, or if an annual inspection report indicated that an existing violation had continued longer than permitted in a delay granted by the executive director.

Duties of owners. The bill would define "owner" as a person, company, corporation, authority, commission or other entity that held title to a building with elevators, escalators, or other equipment located within.

The owner of a property containing elevator equipment would have to file the required inspection report and all fees within 30 days of the inspection, rather than within the 60 days allowed under current law.

The bill would eliminate language specifying the manner and place in which owners must display the equipment inspection certificate, requiring instead that they display it in a publicly visible area as defined by commission rule.

Owners would be required to ensure that their equipment was maintained

in compliance with the commission's adopted standards and codes. Owners would report each accident to TDLR within one day rather than within the 72 hours allowed under current law.

Elevator advisory board. The nine-member elevator advisory board would meet when TDLR's executive director or the presiding officer of the Commission of Licensing and Regulation called a meeting, rather than twice a calendar year. The board would be charged with additional duties relating to recommendations for the maintenance and testing of equipment.

Removing a registration. The commission or executive director of TDLR could deny, suspend, or revoke a registration and assess an administrative penalty against a person who:

- obtained a registration by fraud;
- falsified a report to the executive director; or
- violated statute or rules relating to elevators and related equipment.

A person whose registration was denied, suspended or revoked could appeal under the Administrative Procedure Act.

Civil actions. In addition to administrative penalties, the attorney general or the executive director of TDLR could take preemptive action to prevent or restrain a violation by filing for injunctive relief. Additionally, the attorney general or executive director could file an action to collect a civil penalty of up to \$5,000 per day for each violation. These actions would have to be filed in a Travis County district court, and the attorney general and TDLR could recover reasonable expenses incurred in filing these actions.

Emergency orders. The executive director of TDLR could issue an emergency order if the director determined that immediate action to protect the public health and safety was necessary. An emergency order could require a building owner to lock out or disconnect power to the equipment if the department decided passengers and workers were in imminent and significant danger or an annual inspection had not been performed in more than two years. The equipment would only be reconnected after a registered elevator inspector, contractor, or department representative verified in writing that the threat had been mitigated, at which point the executive director or designee would issue written

permission to reconnect or unlock the equipment and notify the owner.

The Commission of Licensing and Regulation would adopt rules to implement CSSB 673 by January 1, 2014.

The bill would take effect September 1, 2013, and would apply only to offenses committed on or after that date or inspections initiated on or after January 1, 2014.

**SUPPORTERS
SAY:**

CSSB 673 would strengthen TDLR's oversight of elevator safety. The bill represents the culmination of a wide-ranging review of the regulatory statute governing elevators and related equipment. This review was spurred by two events — the recent death of a woman who fell from an elevator that had been negligently maintained in San Antonio's Crockett Hotel and the phasing out of ASME's elevator inspector program.

CSSB 673 would enable the department to request important documentation, including parts manuals and other product-specific information, while streamlining the access of such documentation by allowing the department to request that it be submitted electronically.

The bill also would tighten a number of safety-related deadlines, requiring inspectors to issue inspection reports five days after the inspection date and owners to submit incident reports to TDLR within one day of the incident.

CSSB 673 would add teeth to the enforcement actions the state could take against violators of elevator-related regulations, which would help ensure that elevators were properly maintained in light of the recent tragedy at the Crockett Hotel. The executive director of TDLR could still issue emergency orders to shut off an elevator after two years without an inspection, but the director no longer would be required to issue multiple notices to the owner that the equipment would be shut down. In addition, the attorney general or executive director would have the power to sue for injunctive relief and the assessment of a stiff monetary penalty, which further would deter negligent owners from failing to maintain their equipment.

Many of the changes proposed in CSSB 673 reflect the discontinuation of the ASME elevator inspector certification program, which granted inspectors the QEI-1 certification. The bill therefore would remove

references to QEI-1 elevator inspectors and authorize the commission to develop a new elevator inspector certification program to ensure that elevators in Texas still would be subject to regular inspection. The commission would receive rulemaking authority to provide for the certification of elevator inspectors, and TDLR's standard licensing guidelines would apply to these certifications.

CSSB 673 would make a number of changes to statute that more accurately reflect the status quo. It would add an exemption for federal buildings to ch. 754. The bill also would repeal subchapter A, which currently requires the installation of certain safety devices because the safety devices in question (door restrictors) were required to have been installed on all elevators by December 1, 2011.

OPPONENTS
SAY:

The bill is too vague and would give the commission too much power to issue administrative rules without sufficient guidance in statute. A better version of this bill would have allowed the Legislature to decide on the specifics of the elevator inspector certification program, rather than granting the commission so much rulemaking authority.

Current statute requires building owners to defray the costs of a disconnection of power or a lockout of the equipment should the executive director of TDLR take such action via emergency order. The bill no longer would require the building owners to reimburse the department, which would be unfair considering that the lack of elevator maintenance by building owners creates situations that give rise to the need for a power disconnection or lockout.

NOTES:

CSSB 673 differs from the Senate-engrossed version in that the committee substitute would:

- lengthen from 15 days to 30 days after the inspection the date by which the owner would be required to submit the inspection report to the executive director of TDLR; and
- add specifications to the general liability insurance which contractors would be required to carry, and require that the policy be written by an insurer authorized in this state or an eligible surplus lines insurer.

The companion bill, HB 2188 by Smith, was left pending in the House Licensing and Administrative Procedures Committee on March 26.