

BILL ANALYSIS

Senate Research Center
78R9287 DLF-F

C.S.S.B. 1090
By: Carona
Business & Commerce
3/26/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, the state's authority, through the Texas Department of Licensing and Regulation (TDLR), to regulate and enforce elevator safety and inspection requirements is limited. As proposed, C.S.S.B. 1090 creates a mechanism to regulate the registration of professionals who work on elevators, sets forth inspection requirements, and authorizes the commissioner of licensing and regulation to shut down equipment operation through an emergency order.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of licensing and regulation in SECTION 1 (Sections 745.0141 and 754.015, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the commissioner of licensing and regulation is modified in SECTION 1 (Section 754.015) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 754B, Health and Safety Code, is amended as follows:

SUBCHAPTER B. New heading: INSPECTION, CERTIFICATION, AND REGISTRATION

Sec. 754.011. DEFINITIONS. Defines "acceptance inspection," "accident," "alteration," "annual inspection," "ASCE Code 21," "ASME Code A18.1," "contractor," "equipment," "industrial facility," "serious bodily injury," and "unit of equipment." Redefines "ASME Code A17.3" and "related equipment." Redesignates Subsection (2) as Subsection (7), Subsections (3) - (5) as Subsections (9) - (11), Subsection (6) as Subsection (13), and Subsections (7) - (8) as Subsections (16) - (17).

Sec. 754.0111. EXEMPTION. (a) Creates this subsection from existing text and deletes text exempting an elevator, escalator, or related equipment from this subchapter. Provides that this subchapter does not apply to equipment in a private building owned by, rather than for, certain organizations.

(b) Exempts an elevator in a single-family dwelling from this subchapter, except as provided by Section 754.0141 (Standards For Equipment In Single-family Dwellings; Required Information).

Sec. 754.012. ELEVATOR ADVISORY BOARD. (a) Increases the number of members on the elevator advisory board from nine to 13, and provides that the members be appointed by the governor rather than commissioner of licensing and regulation (commissioner). Provides in the prerequisites for board membership, that a person need only own or manage one rather than multiple buildings. Requires the board to include a licensed or registered engineer or architect, rather than a representative of professional engineers or architects, and increases the number of public members from one to five. Makes conforming changes.

(b) Provides that each board member serves at the will of the governor and, unless removed thereby, until the member's successor is appointed by the governor. Makes a conforming change.

(c) Makes a conforming change.

(d) No change to this subsection.

(e) Provides that a board member is entitled to reimbursement for travel as provided for in the General Appropriations Act. Deletes texts referring to additional expenses that qualify for reimbursement.

Sec. 754.013. BOARD DUTIES. Requires the advisory board to advise the commissioner on certain issues. Makes conforming and nonsubstantive changes.

Sec. 754.014. STANDARDS ADOPTED BY COMMISSIONER. (a) Makes conforming changes.

(b) Prohibits commissioner-adopted standards from containing requirements additional to ASME Code A18.1 and ASCE Code 21, in addition to certain other codes. Requires the standards to allow alteration of existing equipment if it does not diminish the safety level below this subchapter's requirements, at the time of alteration.

(c) Deletes text providing that equipment comply with the least restrictive of certain codes. Includes ASME Code A18.1 and ASCE Code 21 in the list of codes with which the commissioner-adopted standards, which are applicable as well as in effect, must comply in governing equipment installation. Makes a conforming and nonsubstantive change. Deletes existing Subdivision (2).

(d) Deletes the specification that the ASME Code A17.3 referenced is the 1994 code. Makes conforming changes.

(e) Deletes the requirement of a written request for a delay. Makes a conforming change. Prohibits the accumulated delay from exceeding three years, except as provided by Subsection (f) or as allowed by the commissioner's discretion.

(f) Makes conforming and nonsubstantive changes.

(g) Authorizes the commissioner to grant a waiver of compliance from an applicable code requirement, rather than citing specific codes, if the commissioner finds that noncompliance, with adequate alternative safeguards, will not constitute a significant threat to worker safety, in addition to certain other findings. Makes conforming and nonsubstantive changes.

(h) Requires the commissioner to grant a waiver of compliance if the noncompliance resulted from compliance with a municipal equipment construction code at the time of the original installation, and does not pose imminent and significant danger. Makes a conforming change.

(i) Exempts from this subchapter equipment in certain locations to which access is limited primarily, rather than principally, to employees of or working in that facility or structure. Makes a conforming change.

(j) Deletes text authorizing the commissioner to charge a certain fee. Authorizes one application for a waiver or delay to contain all requests related to a unit of equipment, rather than a particular building. Requires a delay be granted for a specified time not to exceed three years.

(k) Provides that for the purposes of this section, the date of installation or alteration of equipment, rather than just installation, is the date that the owner of the real property entered into a contract for the installation or alteration of the equipment, rather than the date of purchase. Makes conforming changes.

Sec. 745.0141. STANDARDS FOR EQUIPMENT IN SINGLE-FAMILY

DWELLINGS; REQUIRED INFORMATION. (a) Requires elevators, chairlifts, or platform lifts installed in a single-family dwelling on or after January 1, 2004, to comply with ASME Code A17.1 or A18.1, as applicable, and to be inspected by a QEI-1 certified inspector after installation. Requires the inspector to provide the owner a copy of the inspection report.

(b) Requires the commissioner to adopt rules, before January 1, 2004, with required minimum safety standards to be used by QEI-1 certified inspectors when inspecting certain equipment in single-family dwellings.

(c) Authorizes a municipality to withhold a certificate of occupancy for a dwelling or the installation of certain equipment until the owner provides a copy of the QEI-1 inspection report to the municipality.

(d) Provides that a contractor is not required to report to the Texas Department of Licensing and Regulation (TDLR) any information concerning equipment in a single-family dwelling or the contractor's work on the equipment.

(e) Requires a contractor to provide the dwelling owner with certain information, upon completing installation of equipment in a single-family dwelling.

(f) Authorizes an inspection by a QEI-1 certified inspector of equipment in a single-family dwelling only at the owner's request and consent. Provides that the owner of a single-family dwelling is not subject to Sections 754.022 (Notice of Noncompliance), 754.023 (Investigation; Registration and License Proceedings; Injunction; Emergency Orders) or 754.024 (Criminal Penalty).

Sec. 754.015. RULES. (a) Authorizes the commissioner to provide for, by rule, certain activities.

(b) Prohibits the commissioner, by rule, from requiring or prohibiting certain activities.

(c) Authorizes the commissioner, by rule, to require a reinspection or recertification of equipment if it has been altered and poses a significant threat to passenger or worker safety, or if an annual inspection report indicates an existing violation has continued longer than permitted in a delay granted by the commissioner.

(d) Authorizes the commissioner, by rule, to charge certain fees.

Sec. 754.016. New heading: INSPECTION DOCUMENTS AND CERTIFICATE OF COMPLIANCE. (a) Requires an inspection report and a certificate of compliance required under this subchapter to cover each unit of equipment. Deletes text referring to specific items. Makes a conforming change. Requires separate inspection reports, rather than only one inspection report, and certificates of compliance for each unit of equipment. Makes nonsubstantive changes.

(b) Requires an inspector to issue an inspection report to the building owner not later than the 10th calendar day after the date of inspection. Deletes text referring to commissioner-designated forms.

(c) Requires the commissioner to issue, not date and sign, a certificate of compliance to the building owner if an application is submitted by the building owner with applicable fees and the application reflects certain information.

Sec. 754.017. CERTIFIED INSPECTORS. (a) Requires certain prerequisites to be met in order for an individual to inspect equipment.

(b) Provides that a person assisting a certified inspector and working under the direct, on-site supervision of the inspector is not required to be certified, rather than ASME-QEI-1 certified. Deletes text prohibiting the commissioner from prohibiting an ASME-QEI-1 certified inspector from inspecting certain equipment.

(c) Provides that a registration expires on the first anniversary of the date of issuance.

(d) Prohibits a certified inspector from being required to attend more than seven hours of continuing education during each licensing period. Deletes text referring to a \$15 fee.

Sec. 754.0171. **CONTRACTOR REGISTRATION.** (a) Prohibits a person from installing, repairing, or maintaining equipment without registering as a contractor with TDLR as required by this chapter.

(b) Requires a contractor to submit an application for registration and pay appropriate fees to TDLR. Authorizes the registration application form to require certain information of the applicant.

(c) Provides that a registration expires on the first anniversary of the date of issuance.

(d) Requires a person registering as a contractor under this subchapter to submit an initial report to TDLR, not later than the 60th day following the application date, containing certain information.

(e) Requires a contractor registered as required by this subchapter to submit to TDLR, after the initial report required by Subsection (d), quarterly reports containing certain information.

(f) Requires installation, repair, alteration, and maintenance standards for contractors to be consistent with certain codes.

Sec. 754.0174. **INSPECTION FEE.** Prohibits the amount charged for an inspection or the performance of an inspection of equipment under this subchapter from being contingent on the existence of a maintenance contract between the person performing the inspection and any other person. Makes conforming and nonsubstantive changes.

Sec. 754.018. **POWERS OF MUNICIPALITIES.** Exempts from this subchapter, subject to Section 751.014(h) (Standards Adopted By The Commissioner), equipment in a municipality that operates a program for the installation, maintenance, and alteration, in addition to inspection, or certification of equipment; provided that the standards of installation, maintenance, alteration, inspection, and certification are at least equivalent to, rather than no less stringent than, those contained in this subchapter.

Sec. 754.019. **DUTIES OF REAL PROPERTY OWNERS.** (a) Requires the owner of real property on which equipment is located to fulfill certain duties.

(b) Requires the owner to submit, as applicable, to TDLR, rather than the commissioner, certain information upon filing an inspection report.

(c) Deletes text referring to an inspection timeline. Provides that for the purpose of determining timely filing under Subsection (a)(3) and Section 754.016(b) (Inspection Documents and Certificate of Compliance), an inspection report and filing fees are considered filed on the earlier of certain dates. Makes conforming and nonsubstantive changes.

(d) Deletes text referring to late fees and posting certificates of compliance. Makes nonsubstantive changes.

(e) Requires an owner to report to TDLR each accident involving equipment, not later than 72 hours following the accident.

Sec. 754.020. New heading: CHIEF ELEVATOR INSPECTOR. Authorizes the commissioner to appoint a chief elevator inspector, subject to certain prerequisites, to administer the equipment inspection and registration program.

Sec. 754.021. New heading: LIST OF REGISTERED INSPECTORS AND CONTRACTORS. Requires the commissioner to perform certain duties.

Sec. 754.022. NOTICE OF NONCOMPLIANCE. Redesignates the duties related to noncompliance by real property owners from the commissioner to TDLR.

Sec. 754.023. New heading: INVESTIGATION; REGISTRATION PROCEEDINGS; INJUNCTION; EMERGENCY ORDERS. (a) Authorizes a TDLR employee to enter real property during regular business hours after notice to certain people to inspect equipment or investigate the danger or accident at no cost to the owner, if there is good cause to believe that equipment on real property poses an imminent threat, rather than is dangerous. Makes conforming changes.

(b) Makes a conforming change.

(c) Authorizes the commissioner to deny, suspend, or revoke a registration, under this subchapter and assess an administrative penalty for certain activities. Deletes text referring to an ASME-QEI-1 certified inspector. Makes conforming changes.

(d) Provides that proceedings for certain registration issues are governed by Chapter 2001, Government Code (Administrative Procedure Act).

(e) Creates this subsection from existing text.

(f) Requires the attorney general to represent TDLR and its personnel, rather than the commissioner. Makes a nonsubstantive change.

(g) Authorizes the commissioner to issue an emergency order, as necessary, to enforce this subchapter if the commissioner determines that an emergency exists requiring immediate action to protect the public health and safety.

(h) Authorizes the commissioner to issue an emergency order with simultaneous notice and without hearing or with the notice and opportunity for hearing as practicable.

(i) Requires the commissioner to set the time and place for a hearing to take certain actions on the emergency order, if an emergency order is issued under this section, not later than the 10th day after the order was issued.

(j) Authorizes an emergency order to direct a building owner or manager to disconnect power to or lock out equipment under certain circumstances.

(k) Authorizes the building owner or manager to have the power reconnected or the equipment unlocked only under certain circumstances, if an emergency order to disconnect power to or lock out equipment is issued.

(l) Authorizes the commissioner, or the designee thereof, to allow delayed payment if the building owner or manager commits, in writing, to pay TDLR for the expenses required by Subsection (k) not later than the 10th day after the date

power is reconnected or equipment is unlocked.

(m) Requires the commissioner, or the designee thereof, if an emergency order to disconnect power to or lock out equipment is issued and the building owner later notifies TDLR that the imminent and significant danger no longer exists, to promptly issue written permission to reconnect power or unlock the equipment and notify the owner, after the requirements of Subsection (k) are satisfied.

Sec. 754.024. CRIMINAL PENALTY. No changes in this section

Sec. 754.025. APPLICATION OF CERTAIN LAW. Provides that Chapter 53, Occupations Code (Consequences of Criminal Conviction), applies to a registration under this subchapter.

SECTION 2. (a) Effective date: September 1, 2003

(1) Make application of this Act prospective to January 1, 2004.

(2) Makes application of this Act prospective to September 1, 2009, for an escalator constructed before September 1, 2003.

(b) Makes application of this Act prospective to a member of the elevator advisory board's removal by the governor or until the member's successor is appointed by the governor.

SUMMARY OF COMMITTEE CHANGES

Differs from the original in SECTION 1 by deleting references to licensing or licensed elevator mechanics and licensed elevator cab renovators, including proposed Sections 754.0172 (Elevator Mechanic License) and 754.0173 (Elevator Cab Renovator License), and redesignating subsections and subdivisions to conform to the removal of licensing provisions.

Differs from the original in SECTION 1 by removing proposed language in Section 754.0111 (Exemption) exempting equipment in a private building owned by certain entities with two or fewer floors, thus returning the section to the original wording.