

BILL ANALYSIS

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By: Carona
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In accordance with Chapter 754 (Elevators, Escalators, and Related Equipment), Health and Safety Code, the Texas Department of Licensing and Regulation (TDLR) regulates nearly all of the elevators, escalators, and related equipment in the state. Recent events have prompted TDLR to review this regulatory program and suggest legislative changes. First, a deadly elevator accident in a San Antonio hotel prompted TDLR to evaluate the ways in which it could prevent similar accidents from occurring in the future. Second, the American Society of Mechanical Engineers (ASME) announced that it is discontinuing its Qualified Elevator Inspector (QEI) Accreditation Program, on which the state currently relies to certify elevator inspectors.

In light of these circumstances, TDLR requires enhanced abilities to regulate elevators, escalators, and related equipment in the state. S.B. 673 gives TDLR these abilities and clarifies the applicable chapter of the code to ensure that its overall intent is clear.

Specifically, S.B. 673 eliminates the requirement that the executive director of TDLR grant certain delays in compliance and clarifies under what conditions the executive director may grant a delay; changes the registration requirements of elevator inspectors so that instead of being certified under ASME's QEI Accreditation Program, elevator inspectors must be certified in accordance with rules adopted by the Texas Commission of Licensing and Regulation (TCLR); grants TCLR enhanced rulemaking authority with regard to the availability of maintenance control manuals and other product-specific documents and the manner in which individuals report accidents to TDLR; provides that registered elevator inspectors must comply with annual continuing education requirements; and enhances TDLR's ability to respond to safety risks by performing inspections and investigations, seeking injunctive relief or civil penalties, and issuing emergency orders.

As proposed, S.B. 673 amends current law relating to the requirements for elevators, escalators, and related equipment and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 5 (Section 754.014, Health and Safety Code), SECTION 7 (Section 754.015, Health and Safety Code), SECTION 10 (Section 754.017, Health and Safety Code), SECTION 14 (Section 754.0174, Health and Safety Code), SECTION 17 (Section 754.019, Health and Safety Code), and SECTION 23 of this bill.

Rulemaking authority previously granted to the Texas Commission of Licensing and Regulation is modified in SECTION 6 (Section 754.0141, Health and Safety Code), SECTION 7 (Section 754.015, Health and Safety Code), SECTION 8 (Section 754.016, Health and Safety Code), and SECTION 14 (Section 754.0141, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 754.011, Health and Safety Code, as follows:

Sec. 754.011. DEFINITIONS. Redefines "alteration" and "contractor," and defines "ASCE," "ASME," "executive director," "inspector," and "owner," in this chapter, rather than in this subchapter. Deletes existing definition of "executive director."

SECTION 2. Amends Section 754.0111, Health and Safety Code, as follows:

Sec. 754.0111. New heading: EXEMPTIONS. (a) Provides that this chapter, rather than subchapter does not apply to equipment in a private building for a labor union, trade association, private club, or charitable organization that has two or fewer floors.

(b) Makes a conforming change.

(c) Provides that this chapter does not apply to equipment located in a building owned and operated by the federal government.

(d) Provides that this chapter does not apply to equipment in an industrial facility, or in a grain silo, radio antenna, bridge tower, underground facility, or dam, to which access is limited primarily to employees of or working in that facility or structure.

SECTION 3. Amends Sections 754.012(a) and (d), Health and Safety Code, as follows:

(a) Provides that the elevator advisory board (board) is composed of nine certain members appointed by the presiding officer of the Texas Commission of Licensing and Regulation (TCLR), with TCLR's approval, including a representative of the insurance industry or a registered, rather than certified, elevator inspector.

(d) Requires the board to meet as determined by the executive director of the Texas Department of Licensing and Regulation (TDLR) (executive director) or by the presiding officer of TCLR, rather than requiring the board to meet at least twice each calendar year.

SECTION 4. Amends Section 754.013, Health and Safety Code, requiring the board, to protect public safety and to identify and correct potential hazards, to advise TCLR on certain matters, including on the adoption of appropriate standards for the installation, maintenance, alteration, operation, testing, and inspection of equipment.

SECTION 5. Amends Section 754.014, Health and Safety Code, by amending Subsections (a), (b), (c), (d), (e), (h), (j), (k), (l), and (m) and adding Subsection (h-1), as follows:

(a) Requires TCLR by rule to adopt standards for the installation, maintenance, alteration, operation, testing, and inspection of equipment used by the public in certain buildings.

(b) Prohibits standards adopted under TCLR rules, rather than by TCLR, from containing requirements in addition to the requirements in the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. Makes a conforming change.

(c) Requires that standards adopted under TCLR rules, rather than by TCLR, require equipment to comply with the installation requirements of the ASME Code A17.1, ASME Code A18.1, or ASCE Code 21 that was in effect and applicable on the date of installation of the equipment. Makes conforming changes.

(d) Requires that standards adopted under TCLR rules, rather than by TCLR, require equipment to comply with the installation requirements of the ASME Code A17.3 that contains minimum safety standards for all equipment, regardless of the date of installation. Makes conforming changes.

(e) Authorizes the executive director to grant a delay for compliance with the codes and adopted standards until a specified time if the executive director determines that the noncompliance does not constitute a significant threat to passenger or worker safety. Prohibits the accumulated total time of all delays for a specific noncompliant condition

from exceeding three years, except as determined by the executive director. Deletes existing text requiring the executive director to grant a delay for compliance with the applicable ASME Code A17.1, ASME Code A17.3, or ASME Code A18.1 until a specified time if compliance is not readily achievable, as that phrase is defined in the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.), or regulations adopted under that Act. Deletes existing text prohibiting the accumulated total time of all delays from exceeding three years, except as provided by Subsection (f) (expired) or as allowed in the discretion of the executive director.

(h) Makes no changes to this subsection.

(h-1) Creates this subsection from existing text. Makes no further changes to this subsection.

(j) Deletes existing text prohibiting a delay from being granted indefinitely but requiring that it be granted for a specified time not to exceed three years.

(k) Provides that, for purposes of determining the applicable standards and codes under this chapter, rather than this section, the date of installation or alteration of equipment is the date that the owner of the real property entered into a contract for the installation or alteration of the equipment.

(l) Authorizes standards adopted under TCLR rules, rather than by TCLR, to include and be guided by revised versions of ASME Code A17.1, ASME Code A18.1, and ASCE Code 21, as appropriate. Makes conforming changes.

(m) Authorizes the executive director on application of a person and in accordance with procedures adopted under TCLR rules, rather than by TCLR, to grant a variance to allow the installation of new technology if the new component, system, subsystem, function, or device is equivalent or superior to the standards adopted under TCLR rules. Makes conforming changes.

SECTION 6. Sections 754.0141(a), (b), (c), (e), and (f), Health and Safety Code, as follows:

(a) Change a reference to a QEI-1 certified inspector to a registered elevator inspector.

(b) Requires TCLR to adopt rules containing minimum safety standards that are required to be used by registered elevator inspectors when inspecting elevators, chairlifts, and platform lifts installed in single-family dwellings. Deletes existing text requiring TCLR to adopt rules before January 1, 2004. Makes a conforming change.

(c) Authorizes a municipality to withhold a certificate of occupancy for a dwelling or for the installation of the elevator or chairlift until the owner provides a copy of the inspection report, rather than the QEI-1 inspection report, to the municipality.

(e) Makes a conforming change.

(f) Provides that the owner of a single-family dwelling is not subject to Section 754.0231, 754.0232, 754.0233, 754.0234, or 754.0235, rather than Section 754.022 (Notice of Noncompliance), 754.023 (Investigation; Registration Proceedings; Injunction; Emergency Orders), or 754.024 (Criminal Penalty). Makes a conforming change.

SECTION 7. Amends Section 754.015, Health and Safety Code, as follows:

Sec. 754.015. RULES. (a) Requires TCLR, by rule, to provide for certain actions, including an annual inspection and certification of the equipment covered by standards adopted under this chapter; registration, including certification, of elevator inspectors; registration of contractors; the procedures by which a certificate of compliance is issued and displayed; approval of continuing education programs for registered elevator inspectors; maintenance control programs, maintenance, repair, and parts manuals, and

product-specific inspection, testing, and maintenance procedures; the method and manner of reporting accidents and reportable conditions to the TDLR, and an owner's designation of an agent for purposes of this chapter. Deletes existing text requiring TCLR to provide for registration of qualified inspectors and contractors and the form of inspection documents, contractor reports, and certificates of compliance; and approval of continuing education programs for registered QEI-1 certified inspectors. Makes conforming and nonsubstantive changes.

(b) Deletes existing text prohibiting TCLR to prohibit a QEI-1 certified inspector who is registered with TDLR from inspecting equipment.

(c) Authorizes TCLR by rule to require a reinspection or recertification of equipment under certain conditions, including if the equipment poses a significant threat to passenger or worker safety. Makes nonsubstantive changes.

(d) Authorizes the executive director to charge a reasonable fee as set by TCLR for certain actions, including registering or renewing registration of an elevator inspector; reviewing and approving continuing education providers and courses for renewal of elevator inspector and contractor registrations, rather than registration; applying for a waiver, new technology variance, or delay; and attending a continuing education program sponsored by TDLR for registered elevator inspectors. Makes a conforming change.

(e) Authorizes TCLR by rule to require inspection reports, other documents, and fees to be filed in a manner prescribed by TDLR, including electronically.

SECTION 8. Amends Section 754.016, Health and Safety Code, as follows:

Sec. 754.016. INSPECTION REPORTS AND CERTIFICATES OF COMPLIANCE.

(a) Makes conforming changes.

(b) Requires a registered elevator inspector to issue an inspection report to the owner not later than the fifth calendar day after the date of inspection in accordance with the procedures established by TCLR rule. Deletes existing text requiring an inspector to date and sign an inspection report and requiring an inspector to issue the report to the building owner not later than the 10th calendar day after the date of inspection.

(c) Requires the executive director to issue a certificate of compliance to the owner. Deletes existing text requiring the executive director to date and sign a certificate of compliance and requiring the executive director to issue the certificate to the building owner. Deletes existing text requiring the certificate of compliance to state certain provisions.

(d) Requires TCLR by rule to:

(1) require that a certificate of compliance for any equipment, rather than a certificate of compliance related to an elevator, be posted in a publicly visible area of the building; and

(2) determine what constitutes a "publicly visible area" under Subdivision (1).

Deletes existing text requiring TCLR by rule to specify what information must be contained in a certificate of compliance and requiring TCLR describe the procedure by which a certificate of compliance is issued.

(e) Requires TDLR to prescribe the format and the required information contained in the inspection reports, the certificates of compliance, and other documents.

SECTION 9. Amends the heading to Section 754.017, Health and Safety Code, to read as follows:

Sec. 754.017. REGISTERED ELEVATOR INSPECTORS.

SECTION 10. Amends Sections 754.017(a), (b), and (d), Health and Safety Code, as follows:

(a) Requires an individual, in order to inspect equipment, to meet certain requirements, including to be certified as an inspector in accordance with the rules adopted by TCLR, rather than by an organization accredited by the American Society of Mechanical Engineers and to comply with the continuing education requirements established by TCLR rule for registration renewal. Makes a conforming change.

(b) Provides that a person assisting a registered elevator inspector and working under the direct, on-site supervision of the inspector is not required to be registered. Makes conforming changes.

(d) Prohibits a registered elevator inspector from inspecting equipment if the inspector or the inspector's employer has a financial or personal conflict of interest or the appearance of impropriety related to the inspection of that equipment. Makes a conforming change. Deletes existing text prohibiting a certified inspector from being required to attend more than seven hours of continuing education during each licensing period.

SECTION 11. Amends Sections 754.0171(a) and (f), Health and Safety Code, as follows:

(a) Prohibits a person from installing, repairing, altering, testing, or maintaining equipment without registering as a contractor with TDLR as required by this chapter, rather than this subchapter.

(f) Requires that installation, repair, alteration, testing, and maintenance standards for contractors be consistent with ASME Code A17.1, ASME Code 17.3, ASME Code A18.1, and ASCE Code 21.

SECTION 12. Amends Section 754.0172, Health and Safety Code, to make conforming changes.

SECTION 13. Amends the heading to Section 754.0174, Health and Safety Code, to read as follows:

Sec. 754.0174. New heading: CONTINUING EDUCATION FOR RENEWAL OF ELEVATOR INSPECTOR AND CONTRACTOR REGISTRATIONS.

SECTION 14. Amends Section 754.0174, Health and Safety Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires each registered elevator inspector to complete continuing education requirements set by TCLR rule before the inspector is authorized to renew the inspector's registration.

(b) Requires a provider of continuing education under this section to comply with the rules adopted by TCLR relating to continuing education for a registered elevator inspector or designated responsible party, as applicable, in addition to requiring the provider of continuing education to register with TDLR.

SECTION 15. Amends Section 754.018, Health and Safety Code, to provide that subject to Section 754.014(h), if a municipality operates a program for the installation, maintenance, alteration, inspection, testing, or certification of equipment, this chapter is not required to apply to the equipment in that municipality, provided that the standards of installation, maintenance, alteration, inspection, testing, and certification are at least equivalent to those contained in this chapter. Makes conforming changes.

SECTION 16. Amends the heading to Section 754.019, Health and Safety Code, to read as follows:

Sec. 754.019. DUTIES OF OWNERS.

SECTION 17. Amends Sections 754.019(a), (b), and (e), Health and Safety Code, as follows:

(a) Requires the owner to:

(1)-(2) Makes conforming changes;

(3) file with the executive director each inspection report, and all applicable fees, not later than the 15th calendar, rather than the 60th, day after the date on which an inspection is made under this chapter;

(4) display the certificate of compliance for the equipment in a publicly visible area as defined by TCLR rule; and

(5) maintain the equipment in compliance with the standards and codes adopted under TCLR rules.

Deletes existing text requiring the owner of real property on which equipment covered by this subchapter is located to display the certificate of compliance in a publicly visible area of the building, as determined by TCLR rules under Section 754.016, if the certificate relates to an elevator in the escalator box if the certificate relates to an escalator, or in a place designated by the executive director if the certificate relates to equipment other than an elevator or escalator, and display the inspection report at the locations designated until a certificate of compliance is issued.

(b) Requires the owner, when an inspection report is filed, to submit to the executive director, as applicable, verification that any deficiencies in the registered elevator inspector's report have been remedied or that a bona fide contract to remedy the deficiencies has been entered into, in addition to submitting any application for application for delay or waiver of an applicable standard.

(e) Requires an owner to report to TDLR each accident involving equipment not later than 24, rather than 72, hours following the accident.

SECTION 18. Amends Section 754.020, Health and Safety Code, to require the chief elevator inspector, appointed by the executive director to administer the equipment inspection and registration program, to possess the certification, rather than a QEI-1 certification, or obtain the certification required under Section 754.017 within six months after becoming chief elevator inspector.

SECTION 19. Amends Section 754.021, Health and Safety Code, as follows:

Sec. 754.021. New heading: LIST OF REGISTERED ELEVATOR INSPECTORS AND CONTRACTORS; PERSONNEL. Requires the executive director to compile a list of elevator inspectors and contractors who are registered with TDLR and to employ personnel who are necessary to enforce this chapter. Makes conforming changes.

SECTION 20. Amends Chapter 754, Health and Safety Code, by adding Sections 754.0231, 754.0232, 754.0233, 754.0234, and 754.0235, as follows:

Sec. 754.0231. INSPECTIONS AND INVESTIGATIONS. (a) Authorizes TDLR, except as provided by Subsection (b), to conduct an inspection or investigation of equipment regulated under this chapter in accordance with Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code. Requires TDLR to be

granted access to any location in the building that is inaccessible to the public in order to conduct a full inspection or investigation of the equipment.

(b) Authorizes the executive director or the executive director's designee, if there is good cause for the executive director to believe that equipment on the property poses an imminent and significant danger or that an accident involving equipment occurred on the property, at any time to enter the property to inspect the equipment or investigate the danger or accident. Requires the executive director or the executive director's designee to be granted access to any location in the building that is inaccessible to the public in order to conduct a full inspection or investigation.

Sec. 754.0232. **REGISTRATION PROCEEDINGS.** (a) Authorizes TCLR or the executive director to deny, suspend, or revoke a registration under this chapter and to assess an administrative penalty for obtaining registration by fraud or false representation, falsifying a report submitted to the executive director, or violating this chapter or a rule adopted under this chapter.

(b) Provides that proceedings for the denial, suspension, or revocation of a registration and appeals from these proceedings are governed by Chapter 2001 (Administrative Procedure), Government Code.

Sec. 754.0233. **INJUNCTIVE RELIEF; CIVIL PENALTY.** (a) Authorizes the attorney general or the executive director to institute an action for injunctive relief to prevent or restrain a violation or threatened violation of this chapter or a rule adopted under this chapter.

(b) Authorizes the attorney general or the executive director to institute an action to collect a civil penalty from a person that appears to be violating or threatening to violate this chapter or a rule adopted under this chapter. Prohibits a civil penalty assessed under this subsection from exceeding \$5,000 per day for each violation.

(c) Requires that an action filed under this section be filed in a district court in Travis County.

(d) Authorizes the attorney general and TDLR to recover reasonable expenses incurred in obtaining injunctive relief or civil penalties under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Sec. 754.0234. **EMERGENCY ORDERS.** (a) Authorizes the executive director to issue an emergency order as necessary to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) Requires the executive director to issue an emergency order in accordance with Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code.

Sec. 754.0235. **ORDERS TO DISCONNECT POWER TO OR LOCK OUT EQUIPMENT.** (a) Authorizes an emergency order issued in accordance with Section 754.0234 to also direct an owner to disconnect power to or lock out equipment if TDLR determines imminent and significant danger to passenger or worker safety exists if action is not taken immediately or an annual inspection has not been performed in more than two years.

(b) Authorizes an owner, if an emergency order to disconnect power or lock out equipment is issued, to have the power reconnected or the equipment unlocked only if a registered elevator inspector or contractor or a TDLR representative

verifies in writing to TDLR that the imminent and significant danger has been removed by repair, replacement, or other means.

(c) Requires the executive director or the executive director's designee, if an emergency order to disconnect power or lock out equipment is issued and the owner later notifies TDLR that the imminent and significant danger no longer exists, to, after the requirements of Subsection (b) are satisfied, issue written permission to reconnect power or unlock the equipment and notify the owner.

SECTION 21. Amends Section 754.025, Health and Safety Code, as follows:

Sec. 754.025. APPLICATION OF CERTAIN LAW. Provides that Sections 51.401 (License Expiration and Renewal) and 51.404 (Endorsement; Reciprocity), Occupations Code, do not apply to this chapter, except those sections do apply to Sections 754.017 (Certified Inspectors) and 754.0171 (Contractor Registration). Deletes existing Subsection (a) providing that Chapter 53 (Consequences of Criminal Conviction), Occupations Code, applies to a registration under this subchapter. Deletes existing designation of Subsection (b) and makes a conforming change.

SECTION 22. Repealer: Subchapter A (Safety Devices), Chapter 754 (Elevators, Escalators, and Related Equipment), Health and Safety Code.

Repealer: heading to Subchapter B (Inspection, Certification, and Registration), Chapter 754, Health and Safety Code.

Repealer: Section 754.014(i) (relating to equipment in an industrial facility), Health and Safety Code.

Repealers: Sections 754.0171(d) (relating to a person registering as a contractor requiring to submit an initial report) and (e) (relating to submission of quarterly report by a contractor), Health and Safety Code.

Repealers: Sections 754.022 (Notice of Noncompliance), 754.023 (Investigation; Registration Proceedings; Injunction; Emergency Orders), and 754.024 (Criminal Penalty), Health and Safety Code.

SECTION 23. (a) Requires TDLR to adopt rules implementing Chapter 754, Health and Safety Code, as amended by this Act, not later than January 1, 2014.

(b) Provides that Sections 754.016(b) and 754.019(a)(3), Health and Safety Code, as amended by this Act, are prospective to January 1, 2014.

(c) Provides that the repeal by this Act of Subchapter A, Chapter 754, Health and Safety Code, and Section 754.024, Health and Safety Code, does not apply to an offense committed under Section 754.003 or 754.024, Health and Safety Code, before the effective date of the repeal. Provides that an offense committed before the effective date of the repeal is governed by Section 754.003 or 754.024, Health and Safety Code, as it existed on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense was committed before the effective date of the repeal if any element of the offense occurred before that date.

SECTION 24. Effective date: September 1, 2013.