

## **BILL ANALYSIS**

C.S.S.B. 673

By: Carona

Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Department of Licensing and Regulation regulates nearly all of the elevators, escalators, and related equipment in the state. Recent events, including an elevator accident and the announcement that the American Society of Mechanical Engineers is discontinuing its Qualified Elevator Inspector Accreditation Program, have prompted the review of this regulatory program, which has resulted in a variety of suggested changes from interested parties. C.S.S.B. 673 seeks to amend the applicable law relating to the regulation of elevators, escalators, and related equipment.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 5, 6, 7, 8 10, 14, 17, and 23 of this bill.

### **ANALYSIS**

C.S.S.B. 673 amends the Health and Safety Code, in a provision requiring the Texas Commission of Licensing and Regulation to adopt standards for the installation, maintenance, alteration, operation, and inspection of equipment used by the public in certain buildings, to specify that the standards must be adopted by rule and to add to the requirements the adoption of standards for the testing of such equipment, which includes an elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

C.S.S.B. 673 removes the requirement that the executive director of the Texas Department of Licensing and Regulation (TDLR) grant a delay for compliance with an applicable ASME Code under certain conditions and instead authorizes the executive director to grant a delay for compliance with the codes and the adopted standards. The bill revises the conditions under which the delay may be granted. The bill removes a provision that prohibits a delay from being granted indefinitely and that requires it to be granted for a specified time not to exceed three years.

C.S.S.B. 673 removes the requirement that a registered inspector be certified as a QEI-1 inspector by an organization accredited by the American Society of Mechanical Engineers and instead requires that a registered inspector be certified as an inspector in accordance with the rules adopted by the commission. The bill requires the commission by rule to provide for the registration, including certification, of elevator inspectors, rather than registration of qualified inspectors, and revises statutory provisions applicable to qualified QEI-1 inspectors to reflect these changes. The bill requires a registered inspector to comply with the continuing education requirements established by commission rule for registration renewal. The bill prohibits a registered inspector from inspecting equipment if the inspector or inspector's employer has a financial or personal conflict of interest or the appearance of impropriety related to the inspection of that equipment.

C.S.S.B. 673 removes the requirement that the commission by rule provide for the form of inspection documents, contractor reports, and certificates of compliance and instead requires the commission by rule to provide for the procedures by which a certificate of compliance is issued and displayed. The bill clarifies that the general liability insurance the commission is required to provide for by rule as a condition of contractor registration is to be written by an insurer authorized to engage in the business of insurance in Texas or an eligible surplus lines insurer. The bill requires the commission by rule to provide for 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 TDLR; and an owner's designation of an agent for purposes of statutory provisions relating to elevators, escalators, and related equipment.

C.S.S.B. 673, in a provision authorizing the executive director to charge a reasonable fee as set by the commission for applying for a waiver, variance, or delay, specifies that the variance is a new technology variance. The bill authorizes the commission by rule to require inspection reports, other documents, and fees to be filed in a manner prescribed by TDLR, including electronically, and revises procedures relating to inspection reports and certificates of compliance, including the deadline by which an inspector is required to issue an inspection report to the owner. The bill removes the requirement that the commission by rule specify the information required to be contained in a certificate of compliance and describe the procedure by which a certificate is issued and instead requires TDLR to prescribe the format and the required information contained in the inspection reports, the certificates of compliance, and other documents.

C.S.S.B. 673 prohibits a person from altering or testing equipment without registering as a contractor with TDLR and requires the testing standards for contractors to be consistent with specified ASME Codes.

C.S.S.B. 673 defines "owner," as it applies to statutory provisions relating to elevators, escalators, and related equipment, as a person, company, corporation, authority, commission, board, governmental entity, institution, or other entity that holds title to a building or facility in which regulated equipment is located and revises the duties of an owner under such statutory provisions, including the duty to maintain the equipment in compliance with the standards and codes adopted under commission rules and the duty to report to TDLR each accident involving equipment not later than 24 hours, rather than 72 hours, following the accident.

C.S.S.B. 673 sets out provisions relating to the authority of TDLR to conduct an inspection or investigation of regulated equipment; proceedings for the denial, suspension, or revocation of a registration; injunctive relief and the assessment of a civil penalty not to exceed \$5,000 per day for each violation; authorization of the executive director to issue an emergency order; and orders to disconnect power to or lock out equipment. The bill makes these provisions inapplicable to the owner of a single-family dwelling.

C.S.S.B. 673 removes a provision that makes applicable to a registered inspector certain Occupations Code provisions establishing the consequences of criminal convictions. The bill makes Occupations Code provisions governing general license expiration and renewal and endorsements and licensing by reciprocity applicable to provisions relating to registered elevator inspectors and contractor registration. The bill specifies that statutory provisions relating to elevators, escalators, and related equipment do not apply to equipment located in a building owned and operated by the federal government.

C.S.S.B. 673 requires the elevator advisory board to meet as determined by the executive director or by the presiding officer of the commission, rather than at least twice each calendar year.

C.S.S.B. 673 repeals provisions relating to a safety device requirement for passenger elevators,

certain required inspections and approvals or disapprovals by the Industrial Accident Board of each model, drawing, or design of an elevator safety device submitted to the elevator advisory board, and to certain criminal penalties for the operation of an elevator without a required safety device and for the failure to remedy a noncompliance for which a person receives notice. The bill repeals certain provisions requiring initial and subsequent reports from a person registering as a contractor.

C.S.S.B. 673 requires the commission, not later than January 1, 2014, to adopt rules implementing the bill's provisions and specifies that the bill's provisions relating to the filing of an inspection report by an inspector or owner apply only to an inspection initiated on or after January 1, 2014. The bill specifies that the repeal of statutory provisions relating to criminal penalties for the operation of an elevator without a required safety device and for the failure to remedy a noncompliance for which a person receives notice do not apply to an offense committed before the bill's effective date.

C.S.S.B. 673 repeals the following provisions of the Health and Safety Code:

- Subchapter A, Chapter 754
- the heading to Subchapter B, Chapter 754
- Section 754.014(i)
- Sections 754.0171(d) and (e)
- Section 754.022
- Section 754.023
- Section 754.024

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 673 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 754.011, Health and Safety Code, is amended.	SECTION 1. Same as engrossed version.
SECTION 2. Section 754.0111, Health and Safety Code, is amended.	SECTION 2. Same as engrossed version.
SECTION 3. Subsections (a) and (d), Section 754.012, Health and Safety Code, are amended.	SECTION 3. Same as engrossed version except for recitation.
SECTION 4. Section 754.013, Health and Safety Code, is amended.	SECTION 4. Same as engrossed version.
SECTION 5. Section 754.014, Health and Safety Code, is amended.	SECTION 5. Same as engrossed version.

SECTION 6. Subsections (a), (b), (c), (e), and (f), Section 754.0141, Health and Safety Code, are amended.

SECTION 7. Section 754.015, Health and Safety Code, is amended to read as follows:

Sec. 754.015. RULES. (a) The commission by rule shall provide for:

- (1) an annual inspection and certification of the equipment covered by standards adopted under this chapter ~~[subchapter]~~;
- (2) enforcement of those standards;
- (3) registration, including certification, of elevator [qualified] inspectors [and contractors];
- (4) registration of contractors;
- (5) the procedures by which a certificate of compliance is issued and displayed [the form of inspection documents, contractor reports, and certificates of compliance];
- (6) ~~[(5)]~~ notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment;
- (7) ~~[(6)]~~ approval of continuing education programs for registered elevator [QEI-4 certified] inspectors;
- (8) ~~[(7)]~~ standards of conduct for individuals who are registered under this chapter ~~[subchapter]~~;
- (9) ~~[(8)]~~ general liability insurance as a condition of contractor registration with coverage of not less than:

(A) \$1 million for each single occurrence of bodily injury or death; and

(B) \$500,000 for each single occurrence of property damage;

(10) ~~[(9)]~~ the submission and review of plans for the installation or alteration of equipment; ~~[and]~~

(11) ~~[(10)]~~ continuing education requirements for renewal of contractor registration;

(12) maintenance control programs, maintenance, repair, and parts manuals, and product-specific inspection, testing, and maintenance procedures;

(13) the method and manner of reporting accidents and reportable conditions to the department; and

(14) an owner's designation of an agent for

SECTION 6. Same as engrossed version except for recitation.

SECTION 7. Section 754.015, Health and Safety Code, is amended to read as follows:

Sec. 754.015. RULES. (a) The commission by rule shall provide for:

(1) an annual inspection and certification of the equipment covered by standards adopted under this chapter ~~[subchapter]~~;

(2) enforcement of those standards;

(3) registration, including certification, of elevator [qualified] inspectors [and contractors];

(4) registration of contractors;

(5) the procedures by which a certificate of compliance is issued and displayed [the form of inspection documents, contractor reports, and certificates of compliance];

(6) ~~[(5)]~~ notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment;

(7) ~~[(6)]~~ approval of continuing education programs for registered elevator [QEI-4 certified] inspectors;

(8) ~~[(7)]~~ standards of conduct for individuals who are registered under this chapter ~~[subchapter]~~;

(9) ~~[(8)]~~ general liability insurance written by an insurer authorized to engage in the business of insurance in this state or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code, as a condition of contractor registration with coverage of not less than:

(A) \$1 million for each single occurrence of bodily injury or death; and

(B) \$500,000 for each single occurrence of property damage;

(10) ~~[(9)]~~ the submission and review of plans for the installation or alteration of equipment; ~~[and]~~

(11) ~~[(10)]~~ continuing education requirements for renewal of contractor registration;

(12) maintenance control programs, maintenance, repair, and parts manuals, and product-specific inspection, testing, and maintenance procedures;

(13) the method and manner of reporting accidents and reportable conditions to the department; and

(14) an owner's designation of an agent for

purposes of this chapter.

(b) The commission by rule may not:

(1) require inspections of equipment to be made more often than every 12 months, except as provided by Subsection (c); or

(2) require persons to post a bond or furnish insurance or to have minimum experience or education as a condition of certification or registration, except as otherwise provided by this chapter~~[-or~~

~~[(3) prohibit a QEI-1 certified inspector who is registered with the department from inspecting equipment].~~

(c) The commission by rule may require a reinspection or recertification of equipment if:

(1) the equipment has been altered;

(2) the equipment ~~[and]~~ poses a significant threat to passenger or worker safety; or

(3) ~~[if]~~ an annual inspection report indicates an existing violation has continued longer than permitted in a delay granted by the executive director.

(d) The executive director may charge a reasonable fee as set by the commission for:

(1) registering or renewing registration of an elevator inspector;

(2) registering or renewing registration of a contractor;

(3) applying for a certificate of compliance;

(4) filing an inspection report as required by Section 754.019(a)(3), 30 days or more after the date the report is due, for each day the report remains not filed after the date the report is due;

(5) submitting for review plans for the installation or alteration of equipment;

(6) reviewing and approving continuing education providers and courses for renewal of elevator inspector and contractor registrations ~~[registration]~~;

(7) applying for a waiver, new technology variance, or delay; and

(8) attending a continuing education program sponsored by the department for registered elevator ~~[QEI-1]~~ inspectors.

(e) The commission by rule may require inspection reports, other documents, and fees to be filed in a manner prescribed by the department, including electronically.

SECTION 8. Section 754.016, Health and Safety Code, is amended.

SECTION 9. The heading to Section

purposes of this chapter.

(b) The commission by rule may not:

(1) require inspections of equipment to be made more often than every 12 months, except as provided by Subsection (c); or

(2) require persons to post a bond or furnish insurance or to have minimum experience or education as a condition of certification or registration, except as otherwise provided by this chapter~~[-or~~

~~[(3) prohibit a QEI-1 certified inspector who is registered with the department from inspecting equipment].~~

(c) The commission by rule may require a reinspection or recertification of equipment if:

(1) the equipment has been altered;

(2) the equipment ~~[and]~~ poses a significant threat to passenger or worker safety; or

(3) ~~[if]~~ an annual inspection report indicates an existing violation has continued longer than permitted in a delay granted by the executive director.

(d) The executive director may charge a reasonable fee as set by the commission for:

(1) registering or renewing registration of an elevator inspector;

(2) registering or renewing registration of a contractor;

(3) applying for a certificate of compliance;

(4) filing an inspection report as required by Section 754.019(a)(3), 30 days or more after the date the report is due, for each day the report remains not filed after the date the report is due;

(5) submitting for review plans for the installation or alteration of equipment;

(6) reviewing and approving continuing education providers and courses for renewal of elevator inspector and contractor registrations ~~[registration]~~;

(7) applying for a waiver, new technology variance, or delay; and

(8) attending a continuing education program sponsored by the department for registered elevator ~~[QEI-1]~~ inspectors.

(e) The commission by rule may require inspection reports, other documents, and fees to be filed in a manner prescribed by the department, including electronically.

SECTION 8. Same as engrossed version.

SECTION 9. Same as engrossed version.

754.017, Health and Safety Code, is amended.

SECTION 10. Subsections (a), (b), and (d), Section 754.017, Health and Safety Code, are amended.

SECTION 11. Subsections (a) and (f), Section 754.0171, Health and Safety Code, are amended.

SECTION 12. Section 754.0172, Health and Safety Code, is amended.

SECTION 13. The heading to Section 754.0174, Health and Safety Code, is amended.

SECTION 14. Section 754.0174, Health and Safety Code, is amended.

SECTION 15. Section 754.018, Health and Safety Code, is amended.

SECTION 16. The heading to Section 754.019, Health and Safety Code, is amended.

SECTION 17. Subsections (a), (b), and (e), Section 754.019, Health and Safety Code, are amended to read as follows:

(a) The owner ~~[of real property on which equipment covered by this subchapter is located]~~ shall:

(1) have the equipment inspected annually by a registered elevator ~~[certified]~~ inspector;

(2) obtain an inspection report from the inspector evidencing that all equipment in a building on the real property was inspected in accordance with this chapter ~~[subchapter]~~ and rules adopted under this chapter ~~[subchapter]~~;

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

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

~~[(A) in a publicly visible area of the building, as determined by commission rule under Section 754.016, if the certificate relates to an elevator;~~

~~[(B) in the escalator box if the certificate~~

SECTION 10. Same as engrossed version except for recitation.

SECTION 11. Same as engrossed version except for recitation.

SECTION 12. Same as engrossed version.

SECTION 13. Same as engrossed version.

SECTION 14. Same as engrossed version.

SECTION 15. Same as engrossed version.

SECTION 16. Same as engrossed version.

SECTION 17. Sections 754.019(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a) The owner ~~[of real property on which equipment covered by this subchapter is located]~~ shall:

(1) have the equipment inspected annually by a registered elevator ~~[certified]~~ inspector;

(2) obtain an inspection report from the inspector evidencing that all equipment in a building on the real property was inspected in accordance with this chapter ~~[subchapter]~~ and rules adopted under this chapter ~~[subchapter]~~;

(3) file with the executive director each inspection report, and all applicable fees, not later than the 30th ~~calendar~~ ~~[60th]~~ day after the date on which an inspection is made under this chapter ~~[subchapter]~~;

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

~~[(A) in a publicly visible area of the building, as determined by commission rule under Section 754.016, if the certificate relates to an elevator;~~

~~[(B) in the escalator box if the certificate~~

~~relates to an escalator; or~~  
~~[(C) in a place designated by the executive director if the certificate relates to equipment other than an elevator or escalator]; and~~

(5) maintain the equipment in compliance with the standards and codes adopted under commission rules ~~[display the inspection report at the locations designated in Subdivision (4) until a certificate of compliance is issued].~~

(b) When an inspection report is filed, the owner shall submit to the executive director, as applicable:

(1) 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; or

(2) any application for delay or waiver of an applicable standard.

(e) An owner shall report to the department each accident involving equipment not later than 24 ~~[72]~~ hours following the accident.

SECTION 18. Section 754.020, Health and Safety Code, is amended.

SECTION 19. Section 754.021, Health and Safety Code, is amended.

SECTION 20. Chapter 754, Health and Safety Code, is amended.

SECTION 21. Section 754.025, Health and Safety Code, is amended.

SECTION 22. The following provisions of the Health and Safety Code are repealed:

(1) Subchapter A, Chapter 754;

(2) the heading to Subchapter B, Chapter 754;

(3) Subsection (i), Section 754.014;

(4) Subsections (d) and (e), Section 754.0171; and

(5) Sections 754.022, 754.023, and 754.024.

SECTION 23. (a) The Texas Commission of Licensing and Regulation shall adopt rules implementing Chapter 754, Health and Safety Code, as amended by this Act, not later than January 1, 2014.

(b) Subsection (b), Section 754.016 and Subdivision (3), Subsection (a), Section

~~relates to an escalator; or~~

~~[(C) in a place designated by the executive director if the certificate relates to equipment other than an elevator or escalator]; and~~

(5) maintain the equipment in compliance with the standards and codes adopted under commission rules ~~[display the inspection report at the locations designated in Subdivision (4) until a certificate of compliance is issued].~~

(b) When an inspection report is filed, the owner shall submit to the executive director, as applicable:

(1) 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; or

(2) any application for delay or waiver of an applicable standard.

(e) An owner shall report to the department each accident involving equipment not later than 24 ~~[72]~~ hours following the accident.

SECTION 18. Same as engrossed version.

SECTION 19. Same as engrossed version.

SECTION 20. Same as engrossed version.

SECTION 21. Same as engrossed version.

SECTION 22. Substantially same as engrossed version.

SECTION 23. Substantially same as engrossed version.

754.019, Health and Safety Code, as amended by this Act, apply only to an inspection initiated on or after January 1, 2014.

(c) 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. 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. 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. This Act takes effect September 1, 2013.

SECTION 24. Same as engrossed version.