

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1198  
By: Carona  
Business & Commerce  
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Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently, the authority of the state, through the Texas Department of Licensing and Regulation (department), to regulate and enforce elevator safety and required annual inspections is limited. C.S.S.B. 1198 creates a mechanism, through annual inspection, for discovering building owners whose elevators have never been inspected. It also create a fee structure for registration and inspections, sets forth requirements for inspectors and contractors, and gives the commissioner of the department the ability to shut down operation through emergency order.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

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

#### **SUBCHAPTER B. INSPECTION AND CERTIFICATION**

Sec. 754.011. DEFINITIONS. Defines “acceptance inspection,” “accident,” “alteration,” “annual inspection,” “ASME Code A18,” “contractor,” “equipment,” “industrial facility,” “serious bodily injury,” and “unit of equipment.” Redefines “ASME Code A17.3” and “related equipment.”

Sec. 754.0111. EXEMPTION. Provides that this subchapter does not apply to equipment, rather than specific equipment, in a private building owned by, rather than a private building for, a labor union, trade association, private club, or charitable organization that has two or fewer floors. Provides that this subchapter does not apply to an elevator located in a single-family dwelling.

Sec. 754.012. ELEVATOR ADVISORY BOARD. Provides that the elevator advisory board (board) is composed of 12, rather than nine, members appointed by the commissioner of licensing and regulation (commissioner). Deletes wording related to the qualifications of certain members of the board. Provides that a licensed or registered engineer or architect, rather than a representative of professional engineers or architects, is to be appointed as a member of the board. Provides that four, rather than one, public members are to be appointed to the board. Provides that a board member serves without compensation but is entitled to reimbursement for travel as provided for in the General Appropriations Act, rather than for travel and other necessary expenses incurred in performing duties under this subchapter.

Sec. 754.013. BOARD DUTIES. Makes conforming changes.

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

(b) Prohibits standards adopted by the commissioner from containing requirements in addition to the requirements in the ASME Code A18. Requires the standards to allow alteration of existing equipment if the alteration does not diminish the safety of the equipment below the level required by this subchapter at the time of the alteration.

(c) Deletes wording related to requirements of the standards adopted by the commissioner.

(d) Makes conforming changes.

(e) Requires the commissioner to grant a delay for compliance with the applicable ASME Code A17.1, ASME Code A17.3, rather than the 1994 ASME Code A17.3, or ASME Code A18 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. Prohibits the accumulated total time of all delays from exceeding three years except as provided by Subsection (f) or as allowed in the discretion of the commissioner. Makes conforming changes.

(f) Deletes wording related to the requirement of the commissioner to grant a delay. Makes conforming changes.

(g) Authorizes the commissioner to grant a waiver from compliance from an applicable code requirement, rather than specific codes, under certain conditions. Makes a conforming change.

(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 the noncompliance does not pose imminent and significant danger. Makes a conforming change.

(i) Makes a conforming change.

(j) Deletes wording related to fees the commissioner is authorized to charge.

(k) Provides that, for the purpose of 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, rather than the date the owner entered into a contract for the purchase of the elevators, escalators, or related equipment. Makes conforming changes.

Sec. 754.015. RULES. (a) Requires the commissioner, by rule, to provide for the registration of qualified inspectors and contractors, rather than the certification of qualified persons as inspectors for the purposes of this subchapter, and for notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment.

(b) Provides an exception to the prohibition of the commissioner from requiring an inspection of equipment more often than every 12 months. Prohibits the commissioner from by rule:

- requiring persons to post a bond or furnish insurance or to have minimum experience or education as a condition of certification or registration;
- requiring inspection reports or certificates of compliance to be placed in locations other than one provided in Section 754.019(a)(4);

- requiring building owners to submit proposed plans for equipment installation or alteration to the department;
- prohibiting an QEI-1 certified inspector who is registered with the department from inspecting equipment; or
- requiring an inspection report or certificate of compliance to be placed inside or immediately outside an elevator cab or escalator or in the lobby or hallways of a building.

(c) Authorizes the commissioner, by rule, to require a reinspection or recertification of equipment if the equipment has been altered and poses a significant threat to passenger 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 a fee for certain actions.

Sec. 754.016. New heading: INSPECTION DOCUMENTS AND CERTIFICATE OF COMPLIANCE. (a) Deletes wording related to the location of equipment covered in inspection reports required under this subchapter. Requires there to be separate inspection reports and certificates, rather than only one inspection report and certificate, of compliance for each unit of equipment, rather than for each building.

(b) Requires an inspector to issue the report to the building owner not later than the 10th calendar day after the date of inspection. Deletes wording related to the forms on which the inspection report shall be made.

(c) Requires the commissioner to issue a certificate of compliance to the building owner if an application is submitted by the building owner with applicable fees and the application reflects that certain actions have been taken. Deletes wording related to statements on the certificate of compliance, findings of the inspector, and delays or waivers granted by the commissioner.

Sec. 754.017. (a) Requires an individual, in order to inspect equipment, to be registered with the department, attend educational courses as required by the department, be certified as a QEI-1, rather than an ASME QEI-1, inspector by an organization accredited by the American Society of Mechanical Engineers, and pay all applicable registration fees. Deletes wording related to payment of certification charges or fees.

(b) Deletes wording related to actions the commissioner is prohibited from performing. Provides that a person assisting a certified inspector is not required to be certified, rather than not being required to be ASME-QEI-1 certified.

(c) Provides that a registration expires on the first anniversary of the date of issuance. Deletes wording related to charges the commissioner is authorized to assess.

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

(b) Requires a contractor to submit an application for registration and pay appropriate fees to the department.

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

(d) Requires a contractor registered as required by this chapter to submit to the department a quarterly report containing certain information.

(e) Requires installation, repair, alteration, and maintenance standards for contractors to be consistent with ASME Code A17.1, ASME Code A17.3, and ASME Code A18.

Sec. 754.0172. Redesignates Section 754.0171. Makes conforming changes.

Sec. 754.018. Requires that this subchapter, if a municipality operates a program for the installation, alteration, inspection or certification of equipment, subject to Section 754.014(h), not apply to equipment in that municipality. Makes conforming changes.

Sec. 754.019. (a) Requires the owner of real property on which equipment covered by this subchapter to:

- have the equipment inspected annually by a certified inspector, rather than inspected in accordance with the commissioner's rules by an ASME QEI-1 certified inspector;
- file the inspection report for each unit of equipment, and all applicable fees, with the department, rather than a copy of each inspection report and certain fees with the commissioner, not later than the 60th day after the date on which an inspection is made under this subchapter; and
- display the certificate of compliance or a copy of the certificate in a place designated by rule if related to equipment other than an elevator or escalator, rather a place designated by the commissioner if the equipment relates to related equipment.

Deletes wording related to the issuance of a certificate of compliance by the commissioner. Makes conforming changes.

(b) Requires the owner, when an inspection report is filed, to submit certain items to the department, as applicable, rather than to the commissioner.

(c) Deletes wording relating to the length of time allowed between inspections and the applicability of this requirement to certain equipment. Provides that an inspection report and filing fees, rather than a fee, are considered filed on the date of postmark, rather than mailing, by the United States mail if properly addressed to the department, rather than the commissioner. Makes a conforming change.

(d) Deletes wording related to late charges for the late filing of an inspection report and a prohibition of the commissioner regarding the placement of an inspection report.

Sec. 754.020. New heading: CHIEF ELEVATOR INSPECTOR. Authorizes the commissioner to appoint a chief elevator inspector to administer the equipment inspection and registration program. Sets forth certain qualifications for the chief elevator inspector. Deletes wording related to where fees collected under this subchapter are required to be deposited.

Sec. 754.021. New heading: LIST OF REGISTERED INSPECTORS AND CONTRACTORS; PERSONNEL. Requires, rather than authorizes, the commissioner to compile a list of certified inspectors and contractors who are registered with the department, rather than ASME QEI-1 certified inspectors who are registered with the department to perform an inspection under this subchapter, and employee personnel who are, rather than as, necessary to enforce this subchapter.

Sec. 754.022. Requires the department, rather than the commissioner, if the department learns of a situation of noncompliance under Section 754.019, to send notice by certified mail of the noncompliance and the actions required to remedy the noncompliance to the record owner of the real property on which the equipment that is the subject of the noncompliance is located.

Sec. 754.023. New heading: INVESTIGATION; LICENSE PROCEEDINGS; INJUNCTION; EMERGENCY ORDERS. (a) Authorizes a department employee, rather than the commissioner, if there is good cause to believe that equipment on real property poses an imminent and significant danger, rather than is dangerous, or that an accident involving equipment occurred on the property and serious bodily injury or property damage resulted, to enter the property during regular business hours after notice to the owner, operator, or person in charge of the property to inspect the equipment or investigate the danger or accident at no cost to the owner. Makes conforming changes.

(b) Makes a conforming change.

(c) Authorizes the department, rather than the commissioner, to deny, suspend, or revoke the registration of an inspector or contractor, rather than an ASME QEI-1 certified inspector, and to assess an administrative penalty for:

- obtaining a registration, but not with the commissioner, by fraud or false representation;
- falsifying a report, rather than any inspection report submitted to the commissioner; or
- violating this subchapter or a rule adopted under this subchapter.

(e) Requires the attorney general, if requested, to represent the department and its personnel, rather than the commissioner, in a legal suit.

(f) 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.

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

(h) Requires the commissioner, if an emergency order is issued under this section without a hearing, to set the time and place for a hearing to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued.

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

(j) Sets forth the conditions under which the building owner or manager is authorized to have the power reconnected or the equipment unlocked if an emergency order to disconnect power or lock out equipment is issued.

(k) Authorizes the commissioner or the commissioner's designee to allow delayed payment if the building owner or manager commits in writing to pay the department for the expenses required by Subsection (j) not later than the 10th day after the date power is reconnected or equipment is unlocked.

(l) Requires the commissioner or the commissioner's designee, if an emergency order to disconnect power or lock out equipment is issued and the building owner later notifies the department 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 (j) are satisfied.

SECTION 2. Effective date: September 1, 2001.

Provides that a contractor is not required to be registered under Section 754.0171, Health and Safety Code, as added by this Act, until January 1, 2002.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1. Amends As Filed S.B. 1198 as follows:

Sec. 754.011. Redefines "industrial facility."

Sec. 754.014. Removes proposed text related to requiring sprinklers in certain equipment locations.

Sec. 754.015. Removes proposed text related to a prohibition regarding a certified inspector.

Sec. 754.018. Removes proposed text related to prohibitions regarding a municipality's inspection program.

SECTION 2. No change.