SUBJECT: Requiring engineers for windstorm inspections, slabs on expansive soils

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Kuempel, Thompson, Geren, Gutierrez, Hamilton, Quintanilla

0 nays

1 present not voting — Jones

2 absent — Chisum, Menendez

WITNESSES: For — Thomas Archer and Wayne Caswell, Homeowners of Texas, Inc.; Kirby Meyer and Gerhardt Schulle, Jr., Texas Society of Professional Engineers

Against — None

On — Ned Munoz, Texas Association of Builders; (*Registered, but did not testify:* Dale Beebe Farrow, Texas Board of Professional Engineers)

BACKGROUND: Occupations Code sec. 1001.056 provides an exemption to the licensing requirements of the Texas Engineering Practice Act for the construction, repair, or planning of certain buildings if there is no representation that engineering services have been or will be offered to the public. This exception applies to persons erecting, constructing, enlarging, altering, or repairing or drawing plans for private dwellings or certain other types of specified buildings.

Local Government Code, ch. 143, subch. G lists provisions applicable to municipalities with population of 1.5 million or more and certain other municipalities.

DIGEST: CSHB 2649 would make two current activities subject to the licensing requirements of the Engineering Practices Act:

- persons providing services necessary to comply with windstorm certification standards for residences; and

- persons constructing, enlarging, altering, or repairing, or drawing plans for residential slabs on certain specified types of expansive soil.

The bill also would authorize the professional use of the term "fire engineer" by members of certain fire departments if the person held the position of fire apparatus operator and was not engaged in the practice of engineering. It would apply to cities with populations of one million or more that have adopted the Local Government Code's civil service provisions for municipal firefighters and to which Subchapter G provisions do not apply.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS SAY:

CSHB 2649 would ensure that persons performing certain activities relating to windstorm standards and those working with residential slab foundations in expansive soils are licensed and regulated by the engineering board. Licensed, qualified engineers should perform these jobs because of the effect that poor work in these areas can have on homeowners and the Texas Windstorm Insurance Association (TWIA).

An author's floor amendment would narrow the scope of the bill so that the windstorm portion would apply only to inspections required of properties applying for coverage through TWIA. This would put into statute the current requirements of the Texas Department of Insurance (TDI) that licensed engineers or TDI inspectors perform the inspections that verify compliance of structures for evidence of insurability for windstorm coverage through TWIA. Putting this into statute would strengthen the enforcement of the requirement and protect the public from substandard work and TWIA's potential losses.

The author's amendment also would make CSHB 2649 apply to persons working with residential slabs in expansive soils as defined by the International Residential Code, and would remove the ASTM standards as a trigger for using an engineer. The amendment would allow foundations on these soils either to be engineered or the homes to be built to the International Residential Code standards.

While current law allows some construction activities relating to slabs to be exempt from being done by professional engineers, in the case of expansive soils it is inappropriate. Foundations on expansive soils must be engineered properly for a home to be built safely and correctly, something best done by a licensed engineer. If a slab on an expansive soil is not engineered properly, the home can be compromised, leading to problems such as cracks in tiles, bricks, ceilings, driveways, doors, and windows, and broken pipes, which can result in mold intrusion.

It is much better and cheaper to prevent these problems by having a slab engineered properly than trying to fix a poorly engineered slab, and the ensuing problems, after a home has been built. CSHB 2649 may not increase costs at all for some builders, and any cost increase that would occur would be in the range of a few hundred dollars per home. This would be more than offset by savings to homeowners, who may spend tens of thousands of dollars fixing a poorly engineered slab if it sits on expansive soil. Having a licensed engineer provide the work for slabs in expansive soils would give homeowners and builders someone to hold accountable if the slab was engineered improperly. It often is difficult to recover losses through home warranties, many of which only cover a limited number of years.

CSHB 2649 also would allow certain firefighters to go back to using "fire engineer," which they had traditionally used to distinguish a firefighter who drove the fire engine. After this use was called into question due to Occupations Code restrictions on the use of the term, some departments, including the San Antonio fire department, stopped using it. CSHB 2649 would allow a narrow class of firefighters to go back to using the term without violating the Occupations Code. These firefighters do not engage in engineering work and do not present themselves as engineers, so their use of the term would not threaten the public or other engineers.

OPPONENTS SAY:

Mandating that all slabs on certain types of soil be engineered by licensed engineers could raise unnecessarily the cost of a home without a corresponding benefit for homeowners. Currently, homes must be built according to building codes that include requirements for foundations. These building code requirements take into account different types of soils in local areas. Many builders currently are using foundations that have proven themselves over time to be solid and appropriate for the area, and in many instances soil samples already are required as part of the building code process. In addition, home warranties can cover foundations. Better

enforcement of current requirements would be the best route to solve problems with poorly engineered slabs on expansive soils.

The title "engineer" should be reserved for use by persons licensed as engineers under the Occupations Code. Firefighters are free to call themselves fire engineers internally within their departments, but public use should continue to be reserved for licensed engineers.

NOTES:

Rep. Smith plans to offer a floor amendment that would amend the provision relating to windstorm certifications so that it applied only to *inspection* services for windstorm certification standards for residential dwellings being insured under the Texas Windstorm Insurance Association.

The amendment also would change the provisions covering residential slabs so that it applied to residential slabs on expansive soil that met the expansive soil classification of the International Residential Code in the jurisdiction where the residence was located, unless the work met the International Residential Code requirements as applied in the jurisdiction where the dwelling is located.

The committee substitute also added the provisions allowing certain firefighters to use the term fire engineer.

The companion bill, SB 2414 by Deuell, has been referred to the Senate Business and Commerce Committee.