

BILL ANALYSIS

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S.B. 19
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texans face some of the highest homeowners insurance rates in the nation. Research has shown that the most effective means to permanently reduce those rates is to mitigate against the risk of property loss through the protection and reinforcement of structures. For example, strapping, rather than nailing, roofing trusses to a structure's frame reduces the risk that the roof will be lifted away from the structure in a weather event. The most cost-effective time to take risk mitigation steps is when a structure is being constructed, but valuable mitigation steps may also be taken on existing structures.

Most counties currently have the ability to adopt and enforce building codes in unincorporated areas of the state. However, many choose not to utilize this authority as they may not recover costs for administering the program and current law does not provide an effective enforcement mechanism to ensure compliance.

S.B. 19 includes a number of provisions that will result in more resilient housing throughout the state by utilizing property risk mitigation. Over time, the improved construction and resulting loss risk reductions produced by this legislation will have a real and permanent impact on Texans' homeowners insurance rates.

S.B. 19 provides the Texas Department of Insurance (TDI) with the authority to establish a statewide loss mitigation program directed at reducing residential property loss due to windstorms, hail, wildfires, and other natural disasters. The program will provide grants for loss mitigation measures, and authorize TDI and the Office of Public Insurance Counsel to initiate a public education program on the benefits of loss mitigation. Specifically, the commissioner of insurance will have broad authority to seek funding for the mitigation program and will establish criteria for the provision of grants to ensure that grant funds are used in the manner that provides the highest return on investment to the state. S.B. 19 requires all counties to enforce building codes and allows for a self-leveling fee.

In order to prevent substandard repair work and protect consumers against insurance fraud, S.B. 19 additionally establishes a requirement that roofing contractors performing roof replacements be licensed with the Texas Department of Licensing and Regulation. The bill does not apply to new construction provided that a newly constructed roof includes a warranty and is generally required to undergo inspection. S.B. 19 prevents roofing contractors from also acting as insurance adjusters and from offering to pay a portion of a homeowner's insurance deductible in return for allowing the contractor to replace a roof.

As proposed, S.B. 19 amends current law relating to certain residential and other structures and mitigation of loss to those structures resulting from natural catastrophes, and provides administrative and criminal penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Sections 152.005 and 152.006, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation (TCLR) in SECTION 6 (Sections 1307.102 and 1307.152 Occupations Code) of this bill.

Rulemaking authority is expressly granted to TCLR, the Texas Department of Licensing and Regulation (TDLR), and the executive director of TDLR in SECTION 10 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 2, Insurance Code, by adding Chapter 152, as follows:

CHAPTER 152. LOSS MITIGATION PROGRAMS

Sec. 152.001. DEFINITIONS. Defines "construction," "mitigation measure," "qualified inspector," "seacoast territory," and "trade association" in this chapter.

Sec. 152.002. ESTABLISHMENT OF PROGRAMS; PURPOSE. (a) Requires the commissioner of insurance (commissioner) in cooperation with the Office of Public Insurance Counsel (OPIC) to develop and implement statewide emergency preparedness and loss mitigation programs designed to reduce potential insured residential property losses in this state.

(b) Authorizes the programs to:

(1) improve preparedness for windstorm, hail, wildfire, and other natural catastrophes;

(2) reduce the risk and amount of potential insured residential property losses arising from windstorm, hail, wildfire, and other natural catastrophes;

(3) provide grants for loss mitigation measures; and

(4) promote public education about emergency preparedness and loss mitigation related to windstorm, hail, wildfire, and other natural catastrophes.

(c) Authorizes the Texas Department of Insurance (TDI) and OPIC to enter into an interagency contract or other agreements with each other as appropriate to implement this chapter. Authorizes TDI and OPIC, jointly or severally, to enter into agreements with any individual or entity, including a political subdivision, a state or federal agency, a trade association, a university, or a nonprofit entity or other private entity as appropriate to implement this chapter.

Sec. 152.003. FUNDING FOR LOSS MITIGATION GRANT PROGRAM. Requires TDI in cooperation with OPIC to use its best efforts to obtain funding for loss mitigation grants available under Section 152.005, including obtaining:

(1) grants from any individual or entity, including a political subdivision, a state or federal agency, a trade association, a university, or a nonprofit entity or other private entity; or

(2) gifts or grants of money or in kind.

Sec. 152.004. ADDITIONAL FUNDING FOR LOSS MITIGATION GRANTS IN SEACOAST TERRITORY. Requires the Texas Windstorm Insurance Association, at the direction of the commissioner, to provide money described by Section 2210.454 (Mitigation and Preparedness Plan) in an amount determined by the commissioner to provide funding in addition to the funding under Section 152.003 for grants available only to residential property owners in the seacoast territory.

Sec. 152.005. LOSS MITIGATION GRANT PROGRAM. (a) Authorizes TDI in cooperation with OPIC to establish and administer a grant program to provide to residential property owners financial assistance to implement mitigation measures.

(b) Authorizes grants under this section, subject to eligibility requirements determined by the commissioner by rule, to be made available to residential property owners in areas susceptible to windstorm, hail, wildfire, and other natural catastrophes as determined by the commissioner by rule.

(c) Authorizes grants to be made available for implementation, addition, or installation of mitigation measures, including:

- (1) roof deck attachments;
- (2) secondary water barriers;
- (3) roof coverings;
- (4) brace gable ends;
- (5) roof-to-wall connection reinforcements;
- (6) exterior opening protections;
- (7) exterior doors, including garage doors;
- (8) tie downs;
- (9) reinforcements of trusses, studs, or other structural components; or
- (10) other mitigation measures approved by the commissioner by rule.

(d) Authorizes the commissioner to adopt by rule quality standards applicable to the mitigation measures described by Subsection (c).

Sec. 152.006. LOSS MITIGATION CREDIT AND SURCHARGE PROGRAM. (a) Authorizes the commissioner to, by rule, identify actuarially justified premium credits that are authorized to be given for a residential property insurance policy if mitigation measures identified by the commissioner by rule have been implemented, added, or installed in an insured structure or in the construction of the structure.

(b) Authorizes the commissioner to, by rule, adopt an actuarially justified premium surcharge that is authorized to be imposed by an insurer for a residential property insurance policy if the insured structure or the construction of the structure does not meet building code standards adopted by the commissioner by rule. Requires that the surcharge be retained by the insurer issuing the policy for which the surcharge is paid.

(c) Authorizes the commissioner to, by rule, require inspection by a qualified inspector of an insured structure or the construction of the structure for a property owner to qualify for a premium credit or to be subject to a premium surcharge under this section.

(d) Requires the commissioner to adopt rules necessary to implement and enforce this section, including rules that adopt building code standards and define "actuarially justified" for the purposes of this section.

Sec. 152.007. COLLECTION OF INFORMATION; PUBLIC AVAILABILITY. (a) Authorizes TDI to collect information relating to premium credits and surcharges:

(1) related to loss mitigation generally; or

(2) authorized under Section 152.006.

(b) Authorizes the information collected under Subsection (a) to include:

(1) the name of a credit or surcharge;

(2) the amount of a credit or surcharge;

(3) mitigation measures eligible for a credit;

(4) building code standards required to be met to avoid a surcharge; and

(5) other information the commissioner in cooperation with OPIC reasonably believes promotes the purpose of this chapter.

(c) Authorizes the information collected under this section to be used in connection with the public education program established under Section 152.009.

(d) Requires that the information collected under this section be:

(1) made available to the public;

(2) posted on TDI's Internet website; and

(3) posted on the Internet website of OPIC.

(e) Requires TDI and OPIC to take all reasonable precautions to prevent disclosure or use of personal information obtained in the collection of information under this section.

Sec. 152.008. FUNDING FOR PUBLIC EDUCATION PROGRAM. Requires TDI in cooperation with OPIC, to use its best efforts to obtain funding for the public education program established under Section 152.009, including obtaining:

(1) grants from any individual or entity, including a political subdivision, a state or federal agency, a trade association, a university, or a nonprofit entity or other private entity; or

(2) gifts or grants of money or in kind.

Sec. 152.009. PUBLIC EDUCATION PROGRAM. (a) Authorizes the commissioner in cooperation with OPIC, to create a public education program to educate and inform the public about:

(1) the programs established under this chapter;

(2) the appropriateness of particular mitigation measures in certain circumstances;

(3) the availability of credits described by this chapter; and

(4) the imposition of surcharges described by this chapter.

(b) Authorizes TDI, in cooperation with OPIC, to develop and implement the public education program, to coordinate or collaborate with any individual or entity, including a political subdivision, a state or federal agency, a trade association, a university, or a nonprofit entity or other private entity.

SECTION 2. Amends Sections 2210.454(a), (b), and (d), Insurance Code, as follows:

- (a) Requires the commissioner to annually develop and implement a mitigation and preparedness plan in coordination with the loss mitigation programs authorized under Chapter 152.
- (b) Authorizes TDI, each state fiscal year, to fund the mitigation and preparedness plan and provide additional funding for the loss mitigation program as described by Section 152.004 using available funds.
- (d) Prohibits money in excess of \$1 million from being used under this section or provided to the loss mitigation program described by Section 152.004 if the commissioner determines that an expenditure of investment income from the trust fund would jeopardize the actuarial soundness of the fund or materially impair the ability of the fund to serve the state purposes for which the fund was established.

SECTION 3. Amends Sections 233.153(a), (c), and (f), Local Government Code, as follows:

- (a) Requires new residential construction of a single-family house or duplex in the unincorporated area of a county, rather than in the unincorporated area of a county to which this subchapter applies, to conform to the version of the International Residential Code published as of May 1, 2008, or the version of the International Residential Code that is applicable in the county seat of that county.
- (c) Provides that if a municipality, rather than if a municipality located within a county to which this subchapter applies, has adopted a building code in the municipality's extraterritorial jurisdiction, the building code adopted by the municipality controls and building code standards under this subchapter have no effect in the municipality's extraterritorial jurisdiction.
- (f) Creates an exception under Section 233.1546 from the prohibition against a county charging a fee to a person subject to standards under this subchapter to defray the costs of enforcing the standards.

SECTION 4. Amends Sections 233.154(b) and (c), Local Government Code, as follows:

- (b) Requires a builder, before commencing new residential construction, to provide notice to the county on a certain form with certain content. Deletes existing text requiring a builder to provide that notice if required to do so by a county to which this subchapter applies.
- (c) Requires the builder, not later than the 10th day after the date of the final inspection under this section, to submit notice of the inspection stating whether or not the inspection showed compliance with the building code standards applicable to that phase of construction in a form required by the county to certain individuals. Deletes existing text requiring the builder to submit that notice if required to do so by the county.

SECTION 5. Amends Subchapter F, Chapter 233, Local Government Code, by adding Sections 233.1545 and 233.1546, as follows:

- Sec. 233.1545. CERTIFICATION OF COMPLIANCE; CONNECTION OF UTILITIES. (a) Requires a county to require the issuance of a certificate of compliance as a precondition to obtaining utility services as provided by this section.
- (b) Requires the county, not later than the fifth business day after the date a notice of inspection described by Section 233.154(c) stating that the inspection showed compliance with applicable building code standards is received, to issue to the party submitting the notice a written certificate of compliance.

(c) Prohibits an electric, gas, water, or sewer service utility from permanently serving or connecting new residential construction of a single-family house or duplex as described by Section 233.151(a)(1) (defining "new residential construction") with electricity, gas, water, sewer, or other utility service unless the utility receives a certificate issued by the county under Subsection (b).

(d) Provides that Subsection (c) does not prevent the temporary use or connection of utilities necessary to complete new residential construction, including temporary use or connection of utilities to pass an inspection under this subchapter.

Sec. 233.1546. FEES. Authorizes a county to charge a reasonable fee to issue a certificate of compliance under Section 233.1545. Prohibits the fees, aggregated annually, from exceeding the annual cost of issuing the certificates under Section 233.1545.

SECTION 6. Amends Title 8, Occupations Code, by adding Chapter 1307, as follows:

CHAPTER 1307. ROOFING CONTRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1307.001. SHORT TITLE. Authorizes this chapter to be cited as the Roofing Contractor Consumer Protection Act.

Sec. 1307.002. DEFINITIONS. Defines "advisory board," "commission," "controlling person," "department," "executive director," "roofing contractor," "roofing product," and "roofing services" in this chapter.

Sec. 1307.003. EXEMPTIONS. (a) Provides that this chapter does not apply to:

(1) the owner of residential property or property used primarily for agricultural purposes, or an employee of the owner, who physically performs roofing services on the owner's dwelling or on another structure located on the property;

(2) an authorized employee or representative of the United States government, this state, or any county, municipality, or other political subdivision of this state acting in an official capacity;

(3) a person who furnishes any fabricated or finished roofing product, material, or article of merchandise that is not incorporated into or attached to real property by the person;

(4) an employee of a roofing contractor licensed under this chapter; or

(5) a person who performs roofing services for the new construction of a commercial or residential structure.

(b) Provides that a person described by Subsection (a)(5), notwithstanding Subsection (a), may be subject to the requirements of this chapter to the extent the person provides roofing services other than those described by that subdivision.

Sec. 1307.004. CONSTRUCTION OF CHAPTER; CONFLICT WITH OTHER LAW. Requires that this chapter be construed to be in addition to any required licensure of persons in this state. Provides that this chapter is not intended to conflict with or affect the authority of any state or local agency, board, or department that administers or enforces any law or ordinance or that establishes, administers, or enforces a policy, rule, qualification, or standard for a trade or profession.

SUBCHAPTER B. ADVISORY BOARD

Sec. 1307.051. ROOFING CONTRACTORS ADVISORY BOARD. (a) Provides that the roofing contractors advisory board (advisory board) consists of five members appointed by the presiding officer of the commission with the approval of the Texas Commission of Licensing and Regulation (TCLR) as follows:

- (1) one general contractor who is not a roofing contractor;
- (2) three roofing contractors licensed under this chapter; and
- (3) one public member.

(b) Authorizes TCLR, for purposes of Subsection (a)(2), to appoint a roofing contractor who is not licensed under this chapter if the contractor has fulfilled the requirements for the issuance of a license and has submitted a complete application to the Texas Department of Licensing and Regulation (TDLR). Requires TCLR to remove from the advisory board a roofing contractor appointed under this subsection if the contractor does not receive a license before the 31st day after the date the contractor is appointed to the advisory board.

(c) Requires that appointments to the advisory board be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(d) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the composition or duration of the advisory board.

Sec. 1307.052. POWERS AND DUTIES OF ADVISORY BOARD. Requires the advisory board to provide advice and recommendations to TCLR on the adoption of rules governing the repair of a roofing system.

Sec. 1307.053. COMPENSATION. Prohibits advisory board members from receiving compensation for serving as a member.

SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1307.101. GENERAL POWERS AND DUTIES. Authorizes TDLR, the executive director of TDLR (executive director), or TCLR, as appropriate, to take action as necessary to administer and enforce this chapter.

Sec. 1307.102. RULES. Requires TCLR to adopt rules as necessary to administer this chapter, including rules relating to:

- (1) licensing roofing contractors and establishing standards of conduct for license holders, including the display of a license by a license holder;
- (2) investigating and resolving complaints filed under this chapter;
- (3) establishing the minimum financial responsibility requirements for license holders;
- (4) administering a licensing examination; and
- (5) prohibiting false, misleading, or deceptive advertising practices by license holders.

Sec. 1307.103. CRIMINAL HISTORY BACKGROUND CHECK. Authorizes TDLR to obtain criminal history record information under Subchapter F (Criminal History Record

Information), Chapter 411 (Department of Public Safety of the State of Texas), Government Code, for an applicant for or holder of a license under this chapter. Provides that for purposes of Section 411.093 (Access to Criminal History Record Information: Texas Department of Licensing and Regulation), Government Code, an applicant for or holder of a license under this chapter includes a controlling person of an applicant or holder.

Sec. 1307.104. LICENSE HOLDER DATABASE. Requires TCLR to make available on its Internet website a publicly accessible list of licensed roofing contractors. Requires that the list contain the following for each licensed roofing contractor:

- (1) contact information for the contractor;
- (2) a statement indicating whether the contractor is licensed in good standing;
- (3) a summary of any disciplinary action taken by TCLR against the contractor; and
- (4) any other information that TCLR determines is relevant.

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 1307.151. LICENSE REQUIRED. (a) Prohibits a person from acting as or offering to act as a roofing contractor unless the person holds a license issued under this chapter.

(b) Provides that a license:

- (1) is valid only with respect to the person or company named on the license; and
- (2) authorizes the license holder to operate one roofing contractor business for each license.

(c) Provides that a license issued under this chapter is not transferable or assignable.

Sec. 1307.152. APPLICATION; APPLICATION FEE. (a) Requires an applicant for a license to:

- (1) apply to TDLR on a form prescribed by the executive director and under rules adopted by TCLR;
- (2) submit with the application a nonrefundable application fee in an amount set by TCLR; and
- (3) pass an examination adopted by TDLR.

(b) Requires TCLR by rule to specify the information that is required to be included on an application submitted to TDLR. Requires that the rules require each application to include:

- (1) the name and address of, and an authorization for TDLR to obtain criminal history record information for, each controlling person; and
- (2) evidence that the applicant satisfies the minimum financial responsibility requirements established by TCLR rule.

Sec. 1307.153. TERM OF LICENSE. Provides that a license issued under this chapter is valid for one year.

Sec. 1307.154. EXAMINATION. (a) Requires that an examination required by this chapter be conducted at locations throughout the state.

(b) Requires TDLR to accept, develop, or contract for the examination required by this chapter, including the administration of the examination. Requires that each examination test the knowledge of the applicant about basic contracting principles and roofing services.

(c) Requires the executive director to determine uniform standards for acceptable performance on an examination.

SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

Sec. 1307.201. DISPLAY OF LICENSE INFORMATION. (a) Requires a roofing contractor to display the contractor's business name and the number of the license issued by the executive director on each vehicle owned by the contractor and used in providing roofing services.

(b) Requires that the information required to be displayed be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) affixed in conspicuous places on both sides of the vehicle.

Sec. 1307.202. COMPLIANCE WITH LOCAL REQUIREMENTS. Requires a roofing contractor to comply with local ordinances and regulations relating to standards and permits for roofing services.

Sec. 1307.203. OBTAINING LICENSE UNDER ANOTHER NAME PROHIBITED. (a) Prohibits a person from attempting to obtain a license under any other name during any period during which the person's roofing contractor license is suspended or revoked.

(b) Provides that Subsection (a) applies to any controlling person of a business entity or other group whose license is suspended or revoked.

Sec. 1307.204. NOTIFICATION OF CHANGE OF INFORMATION. Requires a roofing contractor to timely notify TDLR of any change to the name, address, business entity, liability coverage, or legal service agent of the contractor.

Sec. 1307.205. PROHIBITED ACTS. Prohibits a roofing contractor providing roofing services to be paid by a consumer from the proceeds of the consumer's property or casualty insurance policy from paying or rebating or promising to pay or rebate all or part of any applicable insurance deductible.

Sec. 1307.206. CONFLICTS OF INTEREST PROHIBITED. (a) Defines "public insurance adjuster" in this section.

(b) Prohibits a roofing contractor from acting as a public insurance adjuster for any property for which the contractor is providing roofing services, regardless of whether the contractor holds a license under Chapter 4102 (Public Insurance Adjusters), Insurance Code.

(c) Provides that a roofing contractor is subject to the prohibitions under Section 4102.158 (Conflicts of Interest Prohibited), Insurance Code.

SUBCHAPTER F. ENFORCEMENT

Sec. 1307.251. INVESTIGATION OF COMPLAINTS. (a) Requires TDLR to investigate any complaint alleging that a violation of this chapter or a rule adopted under this chapter has occurred.

(b) Requires that a complaint be filed in a manner prescribed by TDLR.

Sec. 1307.252. ADMINISTRATIVE PENALTY. Authorizes TCLR or the executive director to impose an administrative penalty on a person under Subchapter F (Administrative Penalty), Chapter 51 (Texas Department of Licensing and Regulation), regardless of whether the person holds a license under this chapter, if the person violates this chapter or a rule adopted under this chapter or a rule or order of TCLR or the executive director.

Sec. 1307.253. SANCTIONS. Authorizes TCLR to impose sanctions as provided by Section 51.353 (License Denial; Administrative Sanctions).

Sec. 1307.254. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person violates the licensing requirements of this chapter or performs roofing services without a license required by this chapter.

(b) Provides that an offense under this section is a Class C misdemeanor.

SECTION 7. Repealer: Section 233.152 (Applicability), Local Government Code.

SECTION 8. Makes application of Chapter 152, Insurance Code, as added by this Act prospective to January 1, 2014.

SECTION 9. (a) Provides that, except as provided by Subsection (b) of this section, Subchapter F, Chapter 233 (County Regulation of Housing and Other Structures), Local Government Code, as amended by this Act, applies only to new residential construction that commences on or after the effective date of this Act.

(b) Provides that, in a county that, before the effective date of this Act, required notice under Section 233.154(b), Local Government Code, as it existed before amendment by this Act, Subchapter F, Chapter 233, Local Government Code, as amended by this Act, applies only to new residential construction for which notice was given on or after the effective date of this Act.

SECTION 10. Requires TCLR, TDLR, and the executive director, as appropriate, not later than February 1, 2014, to adopt rules and forms necessary to implement Chapter 1307, Occupations Code, as added by this Act.

SECTION 11. Requires TDLR to issue a roofing contractor license under Chapter 1307, Occupations Code, as added by this Act, to an applicant who:

- (1) applies for a license under this section not later than June 1, 2014;
- (2) submits to TDLR the information required by rule;
- (3) has at least 10 years of experience performing roofing services as defined by Section 1307.002, Occupations Code, as added by this Act; and
- (4) pays the application fee established by TCLR.

SECTION 12. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2013.

(b) Effective date, Section 1307.151, Occupations Code, and Subchapters E and F, Chapter 1307, Occupations Code, as added by this Act: September 1, 2014.