

## **BILL ANALYSIS**

Senate Research Center  
84R31047 SCL-F

C.S.H.B. 2439  
By: Smith (Elife)  
Business & Commerce  
5/21/2015  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Department of Insurance requires a licensed professional engineer to seal inspection documents in order for a structure to be certified as insurable by the Texas Windstorm Insurance Association. An issue has been raised that the act of inspecting a structure is not within the scope of the practice of engineering and should not require an engineer's seal. Additionally, there are concerns regarding the appropriateness of the role the Texas Board of Professional Engineers plays in determining whether a licensed engineer is qualified to conduct windstorm inspections. H.B. 2439 seeks to address these concerns.

C.S.H.B. 2439 amends current law relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance and authorizes a fee.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 5 (Section 2210.2551, Insurance Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Insurance is rescinded in SECTION 6 (Section 2210.256, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 10 of this bill.

Rulemaking authority previously granted to the commissioner of insurance is rescinded in SECTION 9 (Section 2210.255, Insurance Code) of this bill.

Rulemaking authority previously granted to the Texas Board of Professional Engineers is rescinded in SECTION 10 (Section 1001.652, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 2210.251, Insurance Code, to read as follows:

Sec. 210.251. PLAN OF OPERATION COMPLIANCE REQUIREMENTS.

SECTION 2. Amends Sections 2210.251(a), (f), and (g), Insurance Code, as follows:

(a) Requires that, except as provided by this section, to be considered insurable property eligible for windstorm and hail insurance coverage from the Texas Windstorm Insurance Association (association), a structure that is constructed, altered, remodeled, enlarged, or repaired or to which additions are made on or after January 1, 1988, comply with the plan of operation, rather than be inspected or approved by the Texas Department of Insurance (TDI) for compliance with the plan of operation.

(f) Notwithstanding any other provision of this subchapter, rather than section, insurance coverage for a residential structure may be issued or renewed through the association subject to the inspection requirements imposed under Section 2210.258 (Compliance

With Building Codes; Eligibility), if applicable. Provides that this subsection expires December 31, 2015.

(g) Provides that a certificate of compliance issued by TDI or association under Section 2210.2515 demonstrates compliance with the applicable building code under the plan of operation. Provides that the certificate is evidence of insurability of the structure by the association. Deletes existing text providing that the decision whether to issue a certificate of compliance for a structure is wholly within the discretion of TDI and is not dependent on the actions of the Texas Board of Professional Engineers (TBPE) or any other regulatory agency.

SECTION 3. Amends Subchapter F, Chapter 2210, Insurance Code, by adding Section 2210.2515, as follows:

Sec. 2210.2515. ISSUANCE OF CERTIFICATES OF COMPLIANCE. (a) Defines "completed improvement," "improvement," and "ongoing improvement."

(b) Requires a person to provide written notice on a form prescribed by and submitted to TDI of the person's intent to construct, repair, alter, remodel, or enlarge a structure for which the person begins to construct, repair, alter, remodel, or enlarge the structure.

(c) Authorizes a person to apply to the association on a form prescribed by TDI for a certificate of compliance for a completed improvement. Requires the association to issue a certificate of compliance for a completed improvement if a professional engineer licensed by TBPE:

(1) has designed the improvement, has affixed the engineer's seal on the design, and submits to the association on a form prescribed by TDI an affirmation of compliance with the applicable building code under the plan of operation; or

(2) completes a sealed post-construction evaluation report that confirms compliance with the applicable building code under the plan of operation.

(d) Authorizes a person to apply to TDI on a form prescribed by TDI for a certificate of compliance for a completed improvement. Requires TDI, except as provided by Subsection (e), to issue a certificate of compliance for a completed improvement if a qualified inspector under Section 2210.254 inspects the ongoing improvement in accordance with commissioner rule and affirms that the improvement:

(1) conforms to a design of the improvement that has a seal affixed by a professional engineer licensed by TBPE and complies with the applicable building code under the plan of operation; or

(2) complies with the applicable building code under the plan of operation.

(e) Prohibits TDI, except as otherwise provided by this subchapter, from issuing a certificate of compliance under Subsection (d) if within six months after the date of the final inspection of the structure that is the subject of the application, TDI has not received:

(1) fully completed forms prescribed by TDI demonstrating that the improvement satisfies the requirements under Subsection (d)(1) or (2); and

(2) payment in full of all inspection fees, including fees for prior TDI inspections, owed to TDI.

(f) Authorizes a person to apply for a certificate of compliance under Subsection (c), if TDI determines not to issue a for a certificate of compliance under Subsection (e).

(g) Authorizes TDI to enter into contracts as necessary to implement this section.

(h) Authorizes TDI to charge a reasonable fee to cover the cost of making building requirements and inspection standards available to the public. Requires TDI to charge a reasonable fee for each inspection of each structure under this section in an amount set by the commissioner.

SECTION 4. Amends Section 2210.254(a), Insurance Code, to redefine “qualified inspector.”

SECTION 5. Amends Section 2210.2551, Insurance Code, by amending Subsections (a) and (b) and adding Subsection (f), as follows:

(a) Provides that TDI has exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for purposes of determining whether to issue a certificate of compliance under Section 221.2515(d), rather than under this chapter, and to the physical inspection of structures for the purposes of this chapter, including the submission of documents to TDI or association regarding the physical inspection of structures.

(b) Requires the commissioner of insurance (commissioner) by rule to establish criteria to ensure that an engineer seeking appointment under this subchapter, rather than under this chapter, including an engineer seeking appointment under Section 2210.255 (Appointment of Licensed Engineer as Inspector) possesses the knowledge, understanding, and professional competence to perform windstorm inspections for the issuance of a certificate of compliance under Section 2210.2515(d), rather than under this chapter, and to comply with other requirements of this chapter. Makes no further change to this subsection.

(f) Prohibits the commissioner from adopting or enforcing a rule that requires an inspection engineer to affix the engineer's seal to an inspection form submitted under this subchapter.

SECTION 6. Amends Section 2210.256(a-1), Insurance Code, as follows:

(a-1) Authorizes the commissioner ex parte, in addition to any other action authorized under this section, to enter an emergency cease and desist order under Chapter 83 against a qualified inspector, or a person acting as a qualified inspector, if the commissioner believes that the qualified inspector has, through submitting or failing to submit to TDI substantiating information, failed to demonstrate that a structure or a portion of a structure subject to inspection is built to a design that conforms to the requirements described by Section 2210.2515(d); or refused to comply with requirements imposed under this chapter or department rules; or the person acting as a qualified inspector is acting is acting without appointment as a qualified inspector under Section 2210.254.

Deletes existing text authorizing the commissioner, in addition to any other action authorized under this section, to ex parte enter an emergency cease and desist order under Chapter 83 against a qualified inspector, or a person acting as a qualified inspector, if the commissioner believes that the qualified inspector has, through submitting or failing to submit to TDI sealed plans, designs, calculations, or other substantiating information, failed to demonstrate that a structure or a portion of a structure subject to inspection meets the requirements of this chapter and TDI rules or if the commissioner believes that the person acting as a qualified inspector is acting is acting without appointment as a qualified inspector under Section 2210.255. Makes nonsubstantive changes.

SECTION 7. Amends Section 2210.258(b), Insurance Code, as follows:

(b) Prohibits the association, except as provided by Subsection (c), from insuring a structure described by Subsection (a) until a certificate of compliance has been issued for the structure in accordance with Section 2210.2515.

Deletes existing text prohibiting the association, except as provided by Subsection (c), from insuring a structure described by Subsection (a) until the structure has been inspected for compliance with the plan of operation in accordance with Section 2210.251(a), and a certificate of compliance has been issued for the structure in accordance with Section 2210.251(g).

SECTION 8. Amends Section 83.002(c), Insurance Code, to delete references to Section 2210.255.

SECTION 9. (1) Repealers: Sections 2210.251 (c) (relating to notice of a windstorm inspection), (i) (relating to TDI charging a reasonable fee for making building requirements available to the public), (j) (relating to a reasonable fee for each inspection), (k) (relating the TDI's authority to enforce this chapter), (l) (relating to certain requests not permissible to be considered), and (m) (relating to a person making a new request if a structure is rejected for coverage on the first request), Insurance Code;

(2) Repealer: Section 2210.255 (Appointment of Licensed Engineer as Inspector), Insurance Code.

(3) Repealers: Sections 2210.2551(d) (requiring TDI to report to TBPE upon determining that the results of a windstorm inspection performed by a qualified inspector who is licensed by TBPE are based on questionable grounds or that a qualified inspector failed to submit to TDI certain information) and (e) (requiring TDI to include in its biennial report the number of matters reported to TBPE under this section and the outcome of those matters), Insurance Code.

(4) Repealer: Section 2210.256(f) (relating to a false or fraudulent inspection report), Insurance Code.

(5) Repealer: Subchapter N (Windstorm Related Design Services), Chapter 1001 (Engineers), Occupations Code.

SECTION 10. Requires the commissioner to adopt rules to implement this Act not later than December 31, 2016.

SECTION 11. Provides that the changes in law made by this Act apply only to a Texas Windstorm Insurance Association policy delivered, issued for delivery, or renewed on or after January 1, 2017. Provides that an association policy delivered, issued for delivery or renewed before January 1, 2017 is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 12. Effective date: September 1, 2015.