

BILL ANALYSIS

H.B. 2439
By: Smith
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that 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. The parties contend 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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2439 amends the Insurance Code to prohibit the commissioner of insurance from adopting or enforcing a rule that requires an inspection under the Texas Windstorm Insurance Association (TWIA) Act to be performed by an engineer licensed by the Texas Board of Professional Engineers or that requires an engineer to affix the engineer's seal to a document related to an inspection conducted under that act.

H.B. 2439 removes as conditions on a licensed professional engineer's eligibility for consideration as a qualified inspector under the Texas Windstorm Insurance Association Act that the engineer be on a board-prepared roster of engineers qualified to provide windstorm-related design services and that the engineer meet requirements specified by commissioner rule for appointment to conduct windstorm inspections. The bill repeals statutory provisions prohibiting the Texas Department of Insurance (TDI) from assessing a fine against a qualified inspector who is a licensed engineer and who is found by TDI to have knowingly, willfully, fraudulently, or with gross negligence signed or caused to be prepared an inspection report that contains a false or fraudulent statement. The bill repeals statutory provisions requiring the commissioner and TDI to report certain information to the board concerning qualified inspectors who are engineers licensed by the board.

H.B. 2439 removes the authorization for the commissioner, ex parte, to enter an emergency cease and desist order 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 the Texas Windstorm Insurance Association Act and TDI rules.

H.B. 2439 creates an exception to the requirement that all construction, alteration, remodeling, enlargement, and repair of, or addition to, any structure located in the catastrophe area that is begun on or after June 19, 2009, be performed in compliance with the applicable building code standards, as set forth in TWIA's plan of operation, in order for the structure to be eligible for insurance through TWIA for construction, alteration, remodeling, enlargement, and repair of, or addition to, a structure that is an enhancement to the current applicable building code standards and has been designed and sealed by a professional engineer licensed by the board.

H.B. 2439 repeals Occupations Code provisions relating to the board's powers and duties with regard to engineers providing windstorm-related design services, including provisions requiring the board to establish criteria for engineers providing such services, requiring the board to prepare and publish a roster of engineers who satisfy that criteria, and authorizing the board to take certain enforcement actions.

H.B. 2439 requires the commissioner of insurance to adopt rules to implement the bill's provisions not later than December 31, 2015.

H.B. 2439 repeals Subchapter N, Chapter 1001, Occupations Code, and the following provisions of the Insurance Code:

- Section 2210.255
- Sections 2210.2551(d) and (e)
- Section 2210.256(f)

EFFECTIVE DATE

September 1, 2015.