

By: Lozano

H.B. No. 3141

A BILL TO BE ENTITLED

AN ACT

relating to the appeal of decisions by the Texas Department of Insurance regarding issuance of certain certificates of compliance under the Texas Windstorm Insurance Association Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2210.003, Insurance Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Appeals panel" means the appeals panel established under Section 2210.262.

(1-a) "Association" means the Texas Windstorm Insurance Association.

SECTION 2. Section 2210.251(g), Insurance Code, is amended to read as follows:

(g) The department shall issue a certificate of compliance for each structure that qualifies for coverage. The certificate is evidence of insurability of the structure by the association. Except as provided by Section 2210.264, the [The] decision whether to issue a certificate of compliance for a structure is wholly within the discretion of the department and is not dependent on the actions of the Texas Board of Professional Engineers or any other regulatory agency.

SECTION 3. Subchapter F, Chapter 2210, Insurance Code, is amended by adding Sections 2210.261 through 2210.268 to read as

1 follows:

2 Sec. 2210.261. REQUEST FOR APPEAL; RESPONSE. (a) A person
3 whose request for a certificate of compliance is rejected may
4 appeal the decision rejecting the request by filing a written
5 request for appeal with the appeals panel established under Section
6 2210.262, and contemporaneously providing a copy of the request for
7 appeal to the department. The request for appeal must be made not
8 later than the 90th day after the date the department issued a
9 decision rejecting the request for certification.

10 (b) The department shall file a written response with the
11 appeals panel not later than the 15th day after the date on which
12 the request for appeal is filed and shall on the same date serve a
13 copy of the response on the appellant.

14 Sec. 2210.262. APPEALS PANEL: COMPOSITION. (a) The
15 appeals panel is composed of seven members appointed by the
16 governor.

17 (b) Three members must:

18 (1) be engineers licensed by, and in good standing
19 with, the Texas Board of Professional Engineers; and

20 (2) have knowledge of and professional expertise in
21 wind-related design and construction practices in coastal areas
22 subject to high winds and hurricanes.

23 (c) Two members must be public members who, at the time of
24 each appointment, reside in different first tier coastal counties.

25 (d) One member must be a licensed general property and
26 casualty agent who is not a captive agent.

27 (e) One member must represent the construction industry and

1 have knowledge of and professional expertise in wind-related design
2 and construction practices in coastal areas subject to high winds
3 and hurricanes.

4 (f) All members of the appeals panel must reside or have
5 employment in a first tier coastal county.

6 (g) Each appointment to the appeals panel must be made
7 without regard to the race, color, disability, sex, religion, age,
8 or national origin of the appointee.

9 Sec. 2210.263. APPEALS PANEL: TERMS; VACANCY. (a) Members
10 of the appeals panel serve two-year staggered terms, with terms of
11 either three or four members expiring on January 1 of each year.

12 (b) The governor shall fill a vacancy on the appeals panel
13 in accordance with Section 2210.262.

14 Sec. 2210.264. APPEALS PANEL: POWERS AND DUTIES. (a)
15 Within a reasonable time after receipt of a request for appeal, the
16 appeals panel shall conduct a hearing on the request and determine
17 whether the requested certificate of compliance should be issued.

18 (b) In making its determination, the appeals panel shall
19 consider the written request for appeal and the department's
20 response.

21 (c) The appeals panel may require the head engineer of the
22 unit responsible for certification of windstorm inspections at the
23 department to advise the appeals panel on issues relating to the
24 inspection process.

25 Sec. 2210.265. APPEALS PANEL: CONFLICT OF INTEREST. The
26 appeals panel shall determine if a member of the appeals panel has a
27 conflict of interest regarding a request for appeal. The member

1 with the conflict of interest shall recuse himself or herself from
2 all proceedings relating to that request.

3 Sec. 2210.266. APPEALS PANEL: HEARING PROCEDURES. (a)
4 Each party to a hearing conducted by the appeals panel may be
5 represented by an attorney licensed to practice law in this state.

6 (b) The standard of review for an appeal filed under Section
7 2210.261 is de novo.

8 (c) All appeals panel proceedings shall be conducted in
9 Travis County.

10 Sec. 2210.267. APPEALS PANEL: DECISION. (a) Within a
11 reasonable time after the conclusion of the hearing, the appeals
12 panel shall issue a written decision reflecting the appeals panel's
13 determination under Section 2210.264.

14 (b) If the appeals panel is unable to reach a decision, the
15 appeals panel shall affirm the decision of the department.

16 (c) The appeals panel shall mail a copy of the appeals
17 panel's decision to each party not later than the seventh day after
18 the date the appeals panel renders its decision.

19 (d) Subject to Subsection (e), if the appeals panel
20 determines that a certificate of compliance should be issued, the
21 department shall promptly issue the certificate.

22 (e) A decision made by the appeals panel under this
23 subchapter is subject to judicial review under Chapter 2001,
24 Government Code.

25 Sec. 2210.268. APPEALS PANEL: ADMINISTRATION. The appeals
26 panel is administratively attached to the department. The
27 department shall provide the staff, services, and facilities

1 necessary for the appeals panel to operate, including:

2 (1) administrative assistance and services, including
3 budget planning and purchasing;

4 (2) personnel services;

5 (3) office space; and

6 (4) computer equipment and support.

7 SECTION 4. The changes in law made by this Act apply only to
8 a decision by the Texas Department of Insurance to reject a request
9 for a certificate of compliance issued on or after the effective
10 date of this Act. A decision issued before the effective date of
11 this Act is governed by the law as it existed immediately before the
12 effective date of this Act, and that law is continued in effect for
13 that purpose.

14 SECTION 5. This Act takes effect September 1, 2015.