

SENATE AMENDMENTS

2nd Printing

By: Smith

H.B. No. 2439

A BILL TO BE ENTITLED

1 AN ACT

2 relating to inspections and other activities conducted by engineers
3 in connection with the issuance of certain windstorm and hail
4 insurance.

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

6 SECTION 1. Section 2210.254(a), Insurance Code, is amended
7 to read as follows:

8 (a) For purposes of this chapter, a "qualified inspector"
9 includes:

10 (1) a person determined by the department to be
11 qualified because of training or experience to perform building
12 inspections;

13 (2) a licensed professional engineer [~~who is on the~~
14 ~~roster described by Section 1001.652, Occupations Code, and meets~~
15 ~~the requirements specified by commissioner rule for appointment to~~
16 ~~conduct windstorm inspections~~]; and

17 (3) an inspector who:

18 (A) is certified by the International Code
19 Council, the Building Officials and Code Administrators
20 International, Inc., the International Conference of Building
21 Officials, or the Southern Building Code Congress International,
22 Inc.;

23 (B) has certifications as a buildings inspector
24 and coastal construction inspector; and

1 (C) complies with other requirements specified
2 by commissioner rule.

3 SECTION 2. Section 2210.2551, Insurance Code, is amended by
4 amending Subsection (b) and adding Subsection (f) to read as
5 follows:

6 (b) The commissioner by rule shall establish criteria to
7 ensure that a person seeking appointment as a qualified inspector
8 under this subchapter [~~, including an engineer seeking appointment~~
9 ~~under Section 2210.255,~~] possesses the knowledge, understanding,
10 and professional competence to perform windstorm inspections under
11 this chapter and to comply with other requirements of this chapter.

12 (f) The commissioner may not adopt or enforce a rule that
13 requires an inspection to be performed by an engineer licensed by
14 the Texas Board of Professional Engineers or requires an engineer
15 to affix the engineer's seal to a document related to an inspection
16 conducted under this subchapter.

17 SECTION 3. Section 2210.256(a-1), Insurance Code, is
18 amended to read as follows:

19 (a-1) In addition to any other action authorized under this
20 section, the commissioner ex parte may enter an emergency cease and
21 desist order under Chapter 83 against a qualified inspector, or a
22 person acting as a qualified inspector, if:

23 (1) the commissioner believes that:

24 (A) the qualified inspector has[+]

25 [~~(i) through submitting or failing to~~
26 ~~submit to the department sealed plans, designs, calculations, or~~
27 ~~other substantiating information, failed to demonstrate that a~~

1 ~~structure or a portion of a structure subject to inspection meets~~
2 ~~the requirements of this chapter and department rules; or~~

3 [~~(ii)~~] refused to comply with requirements
4 imposed under this chapter or department rules; or

5 (B) the person acting as a qualified inspector is
6 acting without appointment as a qualified inspector under Section
7 2210.254 [~~or 2210.255~~]; and

8 (2) the commissioner determines that the conduct
9 described by Subdivision (1) is fraudulent or hazardous or creates
10 an immediate danger to the public.

11 SECTION 4. Section 2210.258(a), Insurance Code, is amended
12 to read as follows:

13 (a) Except as provided by Subsection (c) and Section
14 2210.2581 and notwithstanding any other provision of this chapter,
15 to be eligible for insurance through the association, all
16 construction, alteration, remodeling, enlargement, and repair of,
17 or addition to, any structure located in the catastrophe area that
18 is begun on or after the effective date of Sections 5 through 49,
19 H.B. No. 4409, Acts of the 81st Legislature, Regular Session, 2009,
20 must be performed in compliance with the applicable building code
21 standards, as set forth in the plan of operation, unless the
22 construction, alteration, remodeling, enlargement, and repair of,
23 or addition to, the structure is an enhancement to the current
24 applicable building code standards and has been designed and sealed
25 by a professional engineer licensed by the Texas Board of
26 Professional Engineers.

27 SECTION 5. Section 83.002(c), Insurance Code, is amended to

1 read as follows:

2 (c) This chapter also applies to:

3 (1) a person appointed as a qualified inspector under
4 Section 2210.254 [~~or 2210.255~~]; and

5 (2) a person acting as a qualified inspector under
6 Section 2210.254 [~~or 2210.255~~] without being appointed as a
7 qualified inspector under either of those sections.

8 SECTION 6. The following laws are repealed:

9 (1) Section 2210.255, Insurance Code;

10 (2) Sections 2210.2551(d) and (e), Insurance Code;

11 (3) Section 2210.256(f), Insurance Code; and

12 (4) Subchapter N, Chapter 1001, Occupations Code.

13 SECTION 7. The commissioner of insurance shall adopt rules
14 to implement this Act not later than December 31, 2015.

15 SECTION 8. This Act takes effect September 1, 2015.

ADOPTED

MAY 26 2015

Atty Gen
Secretary of the Senate

By: _____

____.B. No. _____

Substitute the following for ____B. No. _____:

By: *Thom Yater*

C.S. H.B. No. 2439

A BILL TO BE ENTITLED

1

AN ACT

2 relating to inspections and other activities conducted by engineers
3 in connection with the issuance of certain windstorm and hail
4 insurance; authorizing a fee.

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

6 SECTION 1. The heading to Section 2210.251, Insurance Code,
7 is amended to read as follows:

8 Sec. 2210.251. PLAN OF OPERATION COMPLIANCE [~~INSPECTION~~]
9 REQUIREMENTS.

10 SECTION 2. Sections 2210.251(a), (f), and (g), Insurance
11 Code, are amended to read as follows:

12 (a) Except as provided by this section, to be considered
13 insurable property eligible for windstorm and hail insurance
14 coverage from the association, a structure that is constructed,
15 altered, remodeled, enlarged, or repaired or to which additions are
16 made on or after January 1, 1988, must comply [~~be inspected or~~
17 ~~approved by the department for compliance~~] with the plan of
18 operation.

19 (f) Notwithstanding any other provision of this subchapter
20 [~~section~~], insurance coverage for a residential structure may be
21 issued or renewed through the association subject to the inspection
22 requirements imposed under Section 2210.258, if applicable. This
23 subsection expires December 31, 2015.

24 (g) A [~~The department shall issue a~~] certificate of

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SECTION

3.0000

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1 compliance issued by the department or association under Section
2 2210.2515 demonstrates compliance with the applicable building
3 code under the plan of operation [~~for each structure that qualifies~~
4 ~~for coverage~~]. The certificate is evidence of insurability of the
5 structure by the association. [~~The decision whether to issue a~~
6 ~~certificate of compliance for a structure is wholly within the~~
7 ~~discretion of the department and is not dependent on the actions of~~
8 ~~the Texas Board of Professional Engineers or any other regulatory~~
9 ~~agency.~~]

10 SECTION 3. Subchapter F, Chapter 2210, Insurance Code, is
11 amended by adding Section 2210.2515 to read as follows:

12 Sec. 2210.2515. ISSUANCE OF CERTIFICATES OF COMPLIANCE.

13 (a) In this section:

14 (1) "Completed improvement" means:

15 (A) an improvement in which the original transfer
16 of title from the builder to the initial owner of the improvement
17 has occurred; or

18 (B) if a transfer under Paragraph (A) is not
19 contemplated, an improvement that is substantially completed.

20 (2) "Improvement" means the construction of or repair,
21 alteration, remodeling, or enlargement of a structure to which the
22 plan of operation applies.

23 (3) "Ongoing improvement" means:

24 (A) an improvement in which the original transfer
25 of title from the builder to the initial owner of the improvement
26 has not occurred; or

27 (B) if a transfer under Paragraph (A) is not

1 contemplated, an improvement that is not substantially completed.

2 (b) A person shall provide written notice on a form
3 prescribed by and submitted to the department of the person's
4 intent to construct, repair, alter, remodel, or enlarge a structure
5 for which the person is seeking coverage under this chapter before
6 the person begins to construct, repair, alter, remodel, or enlarge
7 the structure.

8 (c) A person may apply to the association on a form
9 prescribed by the department for a certificate of compliance for a
10 completed improvement. The association shall issue a certificate
11 of compliance for a completed improvement if a professional
12 engineer licensed by the Texas Board of Professional Engineers:

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

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

20 (d) A person may apply to the department on a form
21 prescribed by the department for a certificate of compliance for an
22 ongoing improvement. Except as provided by Subsection (e), the
23 department shall issue a certificate of compliance for an ongoing
24 improvement if a qualified inspector under Section 2210.254
25 inspects the ongoing improvement in accordance with commissioner
26 rule and affirms that the improvement:

27 (1) conforms to a design of the improvement that has a

1 seal affixed by a professional engineer licensed by the Texas Board
2 of Professional Engineers and complies with the applicable building
3 code under the plan of operation; or

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

6 (e) Except as otherwise provided by this subchapter, the
7 department may not issue a certificate of compliance under
8 Subsection (d) if within six months after the date of the final
9 inspection of the structure that is the subject of the application,
10 the department has not received:

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

14 (2) payment in full of all inspection fees, including
15 fees for prior department inspections, owed to the department.

16 (f) If the department determines not to issue a certificate
17 of compliance under Subsection (e), a person may apply for a
18 certificate of compliance under Subsection (c).

19 (g) The department may enter into contracts as necessary to
20 implement this section.

21 (h) The department may charge a reasonable fee to cover the
22 cost of making building requirements and inspection standards
23 available to the public. The department shall charge a reasonable
24 fee for each inspection of each structure under this section in an
25 amount set by the commissioner.

26 SECTION 4. Section 2210.254(a), Insurance Code, is amended
27 to read as follows:

1 (a) For purposes of this chapter, a "qualified inspector"
2 includes:

3 (1) a person determined by the department to be
4 qualified because of training or experience to perform building
5 inspections;

6 (2) a licensed professional engineer [~~who is on the~~
7 ~~roster described by Section 1001.652, Occupations Code, and meets~~
8 ~~the requirements specified by commissioner rule for appointment to~~
9 ~~conduct windstorm inspections~~]; and

10 (3) an inspector who:

11 (A) is certified by the International Code
12 Council, the Building Officials and Code Administrators
13 International, Inc., the International Conference of Building
14 Officials, or the Southern Building Code Congress International,
15 Inc.;

16 (B) has certifications as a buildings inspector
17 and coastal construction inspector; and

18 (C) complies with other requirements specified
19 by commissioner rule.

20 SECTION 5. Section 2210.2551, Insurance Code, is amended by
21 amending Subsections (a) and (b) and adding Subsection (f) to read
22 as follows:

23 (a) The department has exclusive authority over all matters
24 relating to the appointment and oversight of qualified inspectors
25 for purposes of this chapter and to the physical inspection of
26 structures for the purposes of determining whether to issue a
27 certificate of compliance under Section 2210.2515(d) [~~this~~

1 ~~chapter~~], including the submission of documents to the department
2 or association regarding the physical inspection of structures.

3 (b) The commissioner by rule shall establish criteria to
4 ensure that a person seeking appointment as a qualified inspector
5 under this subchapter [~~, including an engineer seeking appointment~~
6 ~~under Section 2210.255,~~] possesses the knowledge, understanding,
7 and professional competence to perform windstorm inspections for
8 the issuance of a certificate of compliance under Section
9 2210.2515(d) [~~under this chapter~~] and to comply with other
10 requirements of this chapter.

11 (f) The commissioner may not adopt or enforce a rule that
12 requires an engineer to affix the engineer's seal to an inspection
13 form submitted under this subchapter.

14 SECTION 6. Section 2210.256(a-1), Insurance Code, is
15 amended to read as follows:

16 (a-1) In addition to any other action authorized under this
17 section, the commissioner ex parte may enter an emergency cease and
18 desist order under Chapter 83 against a qualified inspector, or a
19 person acting as a qualified inspector, if:

20 (1) the commissioner believes that:

21 (A) the qualified inspector has:

22 (i) through submitting or failing to submit
23 to the department [~~sealed plans, designs, calculations, or other~~]
24 substantiating information, failed to demonstrate that a structure
25 or a portion of a structure subject to inspection is built to a
26 design that conforms to the requirements described by Section
27 2210.2515(d) [~~meets the requirements of this chapter and department~~

1 rules]; or

2 (ii) refused to comply with requirements
3 imposed under this chapter or department rules; or

4 (B) the person acting as a qualified inspector is
5 acting without appointment as a qualified inspector under Section
6 2210.254 [~~or 2210.255~~]; and

7 (2) the commissioner determines that the conduct
8 described by Subdivision (1) is fraudulent or hazardous or creates
9 an immediate danger to the public.

10 SECTION 7. Section 2210.258(b), Insurance Code, is amended
11 to read as follows:

12 (b) Except as provided by Subsection (c), the association
13 may not insure a structure described by Subsection (a) until[+]

14 [~~(1) the structure has been inspected for compliance~~
15 ~~with the plan of operation in accordance with Section 2210.251(a);~~
16 ~~and~~

17 [~~(2)~~] a certificate of compliance has been issued for
18 the structure in accordance with Section 2210.2515 [~~2210.251(g)~~].

19 SECTION 8. Section 83.002(c), Insurance Code, is amended to
20 read as follows:

21 (c) This chapter also applies to:

22 (1) a person appointed as a qualified inspector under
23 Section 2210.254 [~~or 2210.255~~]; and

24 (2) a person acting as a qualified inspector under
25 Section 2210.254 [~~or 2210.255~~] without being appointed as a
26 qualified inspector under either of those sections.

27 SECTION 9. The following laws are repealed:

- 1 (1) Sections 2210.251(c), (h), (i), (j), (k), (l), and
- 2 (m), Insurance Code;
- 3 (2) Section 2210.255, Insurance Code;
- 4 (3) Sections 2210.2551(d) and (e), Insurance Code;
- 5 (4) Section 2210.256(f), Insurance Code; and
- 6 (5) Subchapter N, Chapter 1001, Occupations Code.

7 SECTION 10. The commissioner of insurance shall adopt rules
8 to implement this Act not later than December 31, 2016.

9 SECTION 11. The changes in law made by this Act apply only
10 to a Texas Windstorm Insurance Association policy delivered, issued
11 for delivery, or renewed on or after January 1, 2017. An association
12 policy delivered, issued for delivery, or renewed before January 1,
13 2017, is governed by the law in effect immediately before the
14 effective date of this Act, and that law is continued in effect for
15 that purpose.

16 SECTION 12. This Act takes effect September 1, 2015.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 27, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2439 by Smith (Relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance; authorizing a fee.),
As Passed 2nd House

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code and Occupations Code relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance; authorizing a fee.

Based on information provided by the Texas Department of Insurance, it is assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished utilizing existing staff and resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: UP, SD, CL, ER, NHe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2439 by Smith (Relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance; authorizing a fee.),
Committee Report 2nd House, Substituted

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Insurance Code and Occupations Code relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance; authorizing a fee.

Based on information provided by the Texas Department of Insurance, it is assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished utilizing existing staff and resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: UP, CL, ER, NHe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 5, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2439 by Smith (Relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code and Occupations Code relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance.

Based on information provided by the Texas Department of Insurance, it is assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished utilizing existing staff and resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: UP, CL, ER, NHe

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 27, 2015

TO: Honorable Wayne Smith, Chair, House Committee on Licensing & Administrative Procedures

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2439 by Smith (Relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code and Occupations Code relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance.

Based on information provided by the Texas Department of Insurance, it is assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished utilizing existing staff and resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: UP, CL, ER, NHe