

## **BILL ANALYSIS**

Senate Research Center  
84R13043 SCL-F

H.B. 2439  
By: Smith (Elife)  
Business & Commerce  
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Engrossed

### **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.

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.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 2 (Section 2210.2551, Insurance Code)

Rulemaking authority previously granted to the commissioner of insurance is rescinded in SECTION 6 (Section 2210.255, Insurance Code) of this bill.

Rulemaking authority previously granted to the Texas Board of Professional Engineers is rescinded in SECTION 6 (Sections 1001.652 and 1001.653, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 7 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2210.254(a), Insurance Code, to redefine "qualified inspector."

SECTION 2. Amends Section 2210.2551, Insurance Code, by amending Subsection (b) and adding Subsection (f), as follows:

(b) Deletes existing text requiring the commissioner of insurance (commissioner) by rule to establish criteria to ensure that 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 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 to be performed by an engineer licensed by the Texas Board of Professional Engineers (TBPE) or requires an engineer to affix the engineer's seal to a document related to an inspection conducted under this subchapter.

SECTION 3. Amends Section 2210.256(a-1), Insurance Code, as follows:

(a-1) 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 the Texas Department of Insurance (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 4. Amends Section 2210.258(a), Insurance Code, as follows:

(a) Requires 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 the effective date of Sections 5 through 49, H.B. No. 4409, Acts of the 81st Legislature, Regular Session, 2009, to be eligible for insurance through the Texas Windstorm Insurance Association (association), except as provided by Subsection (c) (relating to the insurance of a residential structure constructed, altered, remodeled, enlarged, repaired, or added to on or after June 19, 2019, that is not in compliance with the applicable building code standards) and Section 2210.2581 (Mandatory Compliance with Building Standards; Certain Structures) and notwithstanding any other provisions of this chapter, be performed in compliance with the applicable building code standards, as set forth in the plan of operation, unless the construction, alteration, remodeling, enlargement, and repair of, or addition to, the structure is an enhancement to the current applicable building code standards and has been designed and sealed by a professional engineer licensed by TBPE.

SECTION 5. Amends Section 83.002(c), Insurance Code, to delete references to Section 2210.255.

SECTION 6. Repealer: Section 2210.255 (Appointment of Licensed Engineer as Inspector), Insurance Code.

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.

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

Repealer: Subchapter N (Elections), Chapter 1001 (Engineers), Occupations Code.

SECTION 7. Requires the commissioner to adopt rules to implement this Act not later than December 31, 2015.

SECTION 8. Effective date: September 1, 2015.