

BILL ANALYSIS

C.S.S.B. 2305
By: Taylor
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Created by the Texas Legislature in 1971, the Texas Windstorm Insurance Association (TWIA) serves as the state's wind and hail insurer of last resort for Texans unable to secure commercial or residential property insurance in the private market along the coast. In most cases, an insured's property must meet windstorm building codes based on international standards to qualify for TWIA coverage. Prior to the passage of H.B. 2439 during the 84th Legislature, the Texas Department of Insurance (TDI) administered the inspection program for structures insured by TWIA to determine compliance with applicable building code standards and issued all certificates of compliance. Under current law, TDI only issues certificates of compliance for ongoing improvements, while TWIA issues certificates of compliance for completed improvements. Various stakeholders have expressed concerns with the bifurcated inspection process between TWIA and TDI to approve compliance with windstorm building code standards. For example, confusion often occurs among policyholders whose structure has been deemed in compliance by an engineer but later determined the certificate was improperly issued. Under current law, TWIA and TDI have little authority to properly affirm compliance with windstorm building code standards and lack the ability to adequately address improperly issued certificates of compliance. A recent review by the Texas Sunset Advisory Commission recommended transferring the issuance of certificates of completion back to TDI. The recommendation was adopted by legislators and publicly appointed members and published for consideration by the 86th Texas Legislature. C.S.S.B. 2305 seeks to streamline the application and approval process of TWIA certificates of compliance for completed property improvements by returning the administrative process back to TDI. In addition, the bill resolves stakeholder concerns by authorizing TDI to oversee and regulate the improper certification of windstorm inspections.

As proposed, C.S.S.B. 2305 amends current law relating to the certification of certain improvements by the Texas Department of Insurance in connection with the issuance of insurance by the Texas Windstorm Insurance Association and authorizes a penalty.

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 rulemaking authority is expressly granted to the commissioner of insurance in SECTION 2 of this bill.

ANALYSIS

C.S.S.B. 2305 amends the Insurance Code to transfer from the Texas Windstorm Insurance Association (TWIA) to the Texas Department of Insurance (TDI) the duties relating to the

issuance of certificates of compliance with applicable building codes for a completed improvement to a structure for which coverage is sought under the Texas Windstorm Insurance Association Act. The bill changes the conditions under which the certificate is required to be issued by replacing the requirement that an engineer licensed by the Texas Board of Professional Engineers (TBPE) either design and affix the engineer's seal on the improvement and submit an affirmation of compliance or complete a sealed post-construction evaluation report that confirms compliance with the applicable building code under the plan of operation with the requirements that such an engineer inspect the completed improvement in accordance with commissioner of insurance rule and affirm the improvement complies with the applicable building code under the plan of operation and, if a design of the completed improvement affixed with the seal of such an engineer was submitted, affirm that the improvement conforms to the design. The bill prohibits TDI from issuing a certificate under these conditions if, within six months after the date of the final inspection of the structure, TDI has not received fully completed TDI-prescribed forms demonstrating that the improvement satisfies the applicable requirements and payment in full for all inspection fees owed to TDI, including fees for prior TDI inspections. The bill repeals a provision authorizing a person, if TDI determines not to issue a certificate due to the prohibition, to apply for a certificate under the removed conditions. The bill makes these provisions applicable only to an application for a certificate of compliance made on or after January 1, 2020. The bill establishes that its changes reflecting transfer of the duty to issue a certificate of compliance do not affect the status of a certificate of compliance issued by TWIA before January 1, 2020, or after January 1, 2020, in response to an application made before that date for purposes of establishing evidence of insurability.

C.S.S.B. 2305 authorizes TDI to rescind a certificate of compliance if TDI finds that the certificate was improperly issued. The bill authorizes TDI, if TDI finds that a professional engineer has failed to provide complete and accurate information in connection with an application for a certificate, to submit a formal complaint to TBPE recommending license revocation, but prohibits TDI from refusing to issue the certificate solely on the basis of that engineer's conduct if TBPE finds that the engineer provided complete and accurate information.

C.S.S.B. 2305 requires TWIA to make its rate adequacy analysis publicly available on its website for at least 14 days before the date the TWIA board of directors votes on the submission of a proposed rate filing based on the analysis to TDI and to accept public comment with respect to the analysis at a public meeting of the board before the board votes on the submission. The bill requires the analysis to include all user selected hurricane model input assumptions and output data with the same content and in the same format customarily provided to TWIA by hurricane modelers and to TDI by TWIA. The rate adequacy analysis must be posted in a searchable electronic format that allows for efficient analysis and in sufficient detail to allow comparison to historical experience in the state.

C.S.S.B. 2305 includes a temporary provision set to expire January 1, 2022, requiring the windstorm insurance legislative oversight board to conduct a study to evaluate a merger of TWIA and the Fair Access to Insurance Requirements (FAIR) Plan that must consider the affordability and availability of residential property insurance, the advisability of the merger of TWIA and the FAIR Plan, efficiencies or inefficiencies from such a merger, the funding necessary to implement the merger, and any other relevant items. The bill requires the board to submit a written report of the study including findings and legislative recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, and TDI not later than January 1, 2021.

C.S.S.B. 2305 repeals Section 2210.2515(f), Insurance Code.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 2305 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute does not authorize TDI to impose a penalty on a professional engineer if TDI finds that the engineer has failed to provide complete and accurate information in connection with an application for a certificate of compliance.

The substitute includes a provision prohibiting TDI from refusing to issue a certificate solely on the basis of an engineer's conduct if TBPE finds that the engineer provided complete and accurate information in connection with an application for a certificate.

The substitute includes a provision requiring TWIA to make its rate adequacy analysis publicly available on its website before a certain date and requiring the analysis to include all user selected hurricane model input assumptions and certain output data.

The substitute includes a temporary provision requiring the windstorm insurance legislative oversight board to conduct a study to evaluate a merger of TWIA and the Fair Access to Insurance Requirements Plan, setting out required considerations for the study, and requiring the board to submit a written report of the study including findings and legislative recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, and TDI not later than January 1, 2021.

The substitute includes a provision establishing the applicability date for the bill's provisions relating to the rate adequacy analysis.