

SUBCHAPTER E. Texas Windstorm Insurance Association

Division 1. Plan of Operation 28 TAC §5.4011 and §5.4012

Division 7. Inspections for Windstorm and Hail Insurance 28 TAC §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642

INTRODUCTION. The Texas Department of Insurance (TDI) proposes new 28 TAC §5.4012 and amendments to §5.4011 and §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642, concerning windstorm building codes for structures insured by the Texas Windstorm Insurance Association (TWIA). The new and amended sections implement Insurance Code §2210.251(b) and §2210.252, which give the Commissioner authority to adopt windstorm building codes. The sections are also updated to reflect that the Texas Board of Professional Engineers is now the Texas Board of Professional Engineers and Land Surveyors.

EXPLANATION.

Section 5.4011. Amendments to §5.4011 are necessary to specify the end date of January 1, 2020, for compliance with the 2006 editions of the *International Residential Code (IRC)* and the *International Building Code (IBC)* with Texas Revisions, which are adopted by reference in the current §5.4011. The *IRC* specifies building code standards for residential structures; and the *IBC* specifies building code standards for other structures, including commercial buildings and government buildings.

Section 5.4012. Proposed new §5.4012 adopts the 2018 editions of the *IRC* and the *IBC*. Under the proposed rule, the 2018 editions apply to structures constructed, repaired, or to which additions are made on or after January 1, 2020. For construction to be eligible for windstorm coverage through TWIA, the construction must comply with the windstorm building code adopted by the Commissioner for the year in which the

construction began. The International Code Council (ICC) publishes revised building codes every three years. Adopting newer editions of the building codes is periodically necessary to ensure that new construction incorporates advances in technology and greater understanding of wind engineering.

Proposed subsection (b) of §5.4012 provides an exemption from §5.4012(a) for repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure. Subsection (b)(1) - (3) defines the attributes that make a structure a historic structure. These subsections are consistent with previously adopted building code requirements.

Figure: 28 TAC §5.4012(a)(1), Figure: 28 TAC §5.4012(a)(2), and Figure: 28 TAC §5.4012(a)(3) provide the three-second gust wind speed for each risk category in that area. The figures consolidate the wind speed requirements for each of the five wind design methods referenced in the *IRC* and reduce the narrow range of wind speeds for each category and area to one number. Specifying a single wind speed reduces potential confusion regarding interpreting the codes.

Section 5.4601. The proposed amendment to §5.4601 will update the definition of "windstorm building code standards" to include the 2018 editions in the new §5.4012. The proposed amendment to §5.4601 also reflects that the Texas Board of Professional Engineers is now the Texas Board of Professional Engineers and Land Surveyors.

Section 5.4603. The proposed amendment to §5.4603, which lists windstorm inspection forms, conforms that section to the proposed new building codes. TDI also proposes to make nonsubstantive changes to the names of some forms, to improve consistency.

Sections 5.4621, 5.4622, and 5.4642. The proposed amendments to §§5.4621, 5.4622, and 5.4642 update references to windstorm inspection forms consistent with the proposed amendments to §5.4603.

In addition, the proposed amendments update references to the Texas Board of Professional Engineers and Land Surveyors and make nonsubstantive capitalization and punctuation changes to conform the sections to the agency's current style.

TDI received comments on an informal draft of this rule, which was posted on TDI's website on January 18, 2019. TDI considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. James D. "Donny" Cox, director of inspections, Regulatory Policy Division, has determined that during each year of the first five years the proposed new and amended sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections. This is because the proposed new and amended sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or administering the proposed new section and amended section.

Mr. Cox does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Cox expects that for each year of the first five years the proposed new and amended sections are in effect, the sections will have the public benefit of ensuring that new construction incorporates advances in technology and greater understanding of wind engineering. Studies conducted after recent hurricanes show that construction practices required in the newer editions of the building codes result in structures that perform better in high wind events, mitigating property damage and related risk to human life caused by wind and hail.

The adoption of the revised codes will have the public benefit of ensuring that new construction incorporates advances in technology and greater understanding in wind

engineering. This will result in the mitigation of property damage and resulting human suffering in the designated catastrophe area in the event of a major hurricane. The 2018 edition of the *IRC* and the *IBC* will provide guidance and clarification for construction in the designated catastrophe areas, and when properly employed, will result in consistency and uniformity in the design, construction, and inspection of residences and businesses participating in the windstorm inspection process.

Mr. Cox expects that the costs associated with adopting the 2018 editions of the *IRC* and the *IBC* will be minimal. Costs include purchase of the code books or online access to the code books for use as a reference, labor to become familiar with the updated codes, and the construction costs associated with meeting the requirements of those codes. The proposed rules modify but do not add to the current rule requirements for conducting inspections and gathering substantiating information; therefore, this cost note does not consider these costs.

Engineers and construction supervisors may need to purchase a copy of the 2018 editions of the *IRC* and the *IBC*. A copy of the 2018 *IRC* costs \$144, and one month of online access costs \$9.67 from the ICC. A copy of the 2018 *IBC* costs \$147, and one month of online access costs \$9.83 from the ICC.

TDI anticipates that there may be labor costs to familiarize qualified inspectors and other stakeholders with the 2018 editions of the codes. Most appointed qualified inspectors are already generally familiar with the 2018 versions of the *IRC* and *IBC*. These codes are similar to existing adopted codes for windstorm inspections, and qualified inspectors are also familiar with codes adopted by local ordinances, including the communities that have already adopted the 2018 version of the *IRC* and *IBC*.

According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Coastal Plains Region of Texas nonmetropolitan area is \$40.86 for civil engineers, \$19.45 for civil engineering technicians, and \$34.64 for first-line supervisors of construction

trades (Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2018 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Coastal Plains Region of Texas nonmetropolitan area, accessed May 21, 2019, www.bls.gov/oes/current/oes_4800006.htm). According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Houston area is \$55.48 for civil engineers; \$28.67 for civil engineering technicians, and \$36.64 for first-line supervisors of construction trades (Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2015 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Houston-The Woodlands-Sugarland, Texas metropolitan area, accessed May 21, 2019, www.bls.gov/oes/current/oes_26420.htm). TDI estimates that affected individuals will require an average of eight hours to become familiar with the 2018 versions of the *IRC* and *IBC*. Affected individuals are in the best position to estimate this potential cost.

Replacement of one standardized building code by another is part of the nationwide construction industry's natural cost progression. Actual additional costs to comply with the revised standards will vary based on the individual circumstances of each property. Costs from slightly increased materials costs are offset by greater efficiencies created by technological changes in the manufacture and assemblage of building components, improved construction methods, and other standardization and modernization measures. This will offer greater protection and potentially lower repair costs following a wind event.

No individual or entity is required to comply with the proposed new section, because only structures that are insured through TWIA must be built in compliance with the new standards. However, in many areas of the designated catastrophe areas of the Texas sea coast, voluntary wind insurance is difficult to obtain, leaving many property owners with no option other than to insure through TWIA.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new and amended sections may have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities. TDI estimates that the proposed new and amended sections may affect approximately 442 small or micro businesses and about 110 rural communities.

As of May 21, 2019, there were 442 appointed qualified inspectors. Almost all will be small and micro businesses. As stated in the Public Benefit and Cost Note section of this proposal, TDI anticipates that each person acting as a qualified inspector would incur some costs because of this proposal. Those costs would result from acquiring copies of the revised adopted codes, and the labor costs associated with becoming familiar with them.

Rural communities may be affected by these rules updating windstorm building codes for structures insured by TWIA. There are about 110 general-law or home-rule cities in the affected coastal counties. Some rural communities may have already adopted the 2018 versions of the *IRC* and *IBC*. However, in many areas of the designated catastrophe areas of the Texas sea coast, voluntary wind insurance is difficult to obtain, leaving many property owners with no option other than to insure through TWIA. Some rural communities may have their property insured by TWIA, and therefore may be affected by the same costs as detailed in the Public Benefit and Cost Note section of this proposal.

The primary objective of this proposal is to benefit the public by ensuring that new construction incorporates advances in technology and greater understanding of wind engineering, to reduce property damage and related risk to human life caused by wind and hail. TDI considered the following alternatives to minimize any adverse impact on

small and micro businesses and rural communities while accomplishing the proposal's objectives:

- (1) not proposing the new and amended sections;
- (2) proposing a different requirement for small and micro businesses and rural communities; and
- (3) exempting small or micro businesses and rural communities from the proposed requirement that could create an adverse impact.

Not proposing the amendments and new section. The purpose of this rule proposal is to benefit the public by ensuring that new construction incorporates advances in technology and greater understanding of wind engineering. Without the proposal and adoption of amended rules for these subchapters, no one who uses a TWIA-insured structure would benefit from improved engineering requirements. Instead, they would be required to continue following standards set in 2006.

Failure to propose and adopt new rules would also undermine the purpose of Insurance Code §2210.251 and §2210.252, and it would reduce the potential eligibility to qualify for more assistance from the federal government in post-disaster recovery funding. For these reasons, TDI has rejected this option.

Proposing different requirements for small and micro businesses and rural communities. TDI believes that proposing different standards for small and micro businesses and rural communities than those included in this proposal would not provide a better option for these businesses. Alternative standards would be less relevant, less effective, and would lead to confusion. Adopting modified versions of the proposed building codes, or an earlier version of the proposed building codes, would not benefit small and microbusinesses or rural communities. This option would create confusion as to which codes are applicable. The proposed buildings codes are more current, and exceptions would mean that building codes for buildings owned by small and

microbusinesses or in rural communities would be more vulnerable to wind and hail, and lead to higher losses to TWIA. Adopting uniform building codes helps building owners, contractors, and TWIA apply consistent standards. Failure to apply the proposed adopted building codes may reduce the potential eligibility to qualify for more assistance from the federal government in post-disaster recovery funding.

The potential for public harm resulting from adopting different regulatory requirements for small and micro businesses and rural communities would outweigh any potential benefit. TDI has considered the purpose of the applicable statute and the proposed amendments and has determined that it is not necessary, reasonable, legal, or feasible to waive or modify the proposed requirements for small or micro businesses who opt to comply with the new building standards and inspection process in order to obtain windstorm coverage through TWIA. For these reasons, TDI has rejected this option.

Excluding small and micro businesses and rural communities from applicability under the amendments and new section included in this proposal. As addressed in the Public Benefit and Cost Note section of this proposal, anticipated costs under the proposal are the result of adopting the 2018 editions of the *IRC* and the *IBC*. If TDI excluded small and micro businesses under the amendments and new section, they would not incur the anticipated costs. But if TDI excluded small and micro businesses, the building codes would not be uniformly adopted among TWIA's insureds. Some buildings would fall under the old standards, and others would fall under the new standards. This would make it more difficult for TWIA to predict losses. Because structures built to older building codes are more vulnerable to wind and hail, it could also lead to higher losses for TWIA.

Excluding small and microbusinesses and rural communities from applicability of these provisions would create potential harm for affected persons and the public that would outweigh the potential benefit to small or micro businesses. Excluding small and

micro businesses and rural communities from applicability under the amendments and new section is also not practical. For this reason, TDI has rejected this option.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed new and amended sections reduce the regulatory burden the existing rule imposes on regulated persons and are necessary to receive a source of federal funds.

Adoption of the updated building codes will reduce the regulatory burden on builders and consumers by more closely conforming TDI's adopted code editions with local building requirements. Most cities in coastal counties that have adopted building codes have adopted newer editions of the *IRC* and the *IBC* than the current TDI-adopted code editions. Because of the length of time between TDI-adopted code editions and newer city-adopted code editions, there are differences between the codes. These differences would be resolved by adopting the 2018 editions of the codes because the 2012 and 2015 editions, that were widely adopted by cities, are more like the 2018 editions of the codes than the editions currently in use by TDI.

Finally, by adopting the 2018 editions of the codes, Texas can qualify for more assistance from the federal government in post-disaster recovery funding. The Federal Bipartisan Budget Act of 2018 included the Federal Cost Share Reform Incentive, which encourages states to adopt the latest building codes among other incentives. The Federal Cost Share Reform Initiative allows post-disaster federal cost-share with states to increase from 75 percent to 85 percent on a sliding scale based on several factors, including the adoption and enforcement of the latest building codes. The proposed rule amendments

are therefore necessary to receive a source of federal funds under Government Code §2001.0045(c)(4).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new and amended sections are in effect, the rules:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation to adopt the 2018 editions of the *IRC* and the *IBC* for eligibility for wind and hail insurance, making the 2018 editions apply to structures constructed, repaired, or to which additions are made on or after January 1, 2020;
- will not expand, limit, or repeal an existing regulation, although the adoption of the 2018 editions will mean different building code standards will apply to structures constructed, repaired, or to which additions are made on or after January 1, 2020;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will positively affect the Texas economy because it will reduce the impact of future storms. Advances in technology and a greater understanding of wind engineering ensure that new construction is better able to resist and reduce damage from wind storms. Requiring more modern codes will reduce property damages caused by wind and hail, which may help TWIA have more predictable and limited losses for the property it insures.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by the department no later than 5 p.m., central time, on December 2, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5 p.m., central time, on December 2, 2019. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

SUBCHAPTER E.

Division 1. Plan of Operation 28 TAC §5.4011 and §5.4012

STATUTORY AUTHORITY. TDI proposes amended §5.4011 and new §5.4012 under Insurance Code §§2210.008, 2210.251, 2210.252, and 36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

Insurance Code §2210.251(b) states that for geographic areas specified by the Commissioner, the Commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code.

Insurance Code §2210.252 provides that the Commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.4011 and Section 5.4012 implement Insurance Code §2210.251 and §2210.252, enacted by Senate Bill 14, 78th Legislature, Regular Session, 2003.

TEXT.

§5.4011. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008, and before January 1, 2020.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.4008 of this chapter (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) and which are constructed, repaired, or to which additions are made on and after January 1, 2008, and before January 1, 2020, shall comply with the 2006 Editions

of the International Residential Code and the International Building Code, as each is revised by the 2006 Texas Revisions, and all of which are adopted by reference to be effective January 1, 2008. The codes are published by and available from the International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, (Telephone: 888-422-7233), and the 2006 Texas Revisions to the 2006 Edition of the International Residential Code and the 2006 Texas Revisions to the 2006 Edition of the International Building Code are available from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas, 78714-9104 and on the Texas Department of Insurance website at www.tdi.state.tx.us. The following wind speed requirements shall apply:

(1) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on or after January 1, 2008, and before January 1, 2020, shall be designed and constructed to resist a 3-second gust of 130 miles per hour.

(2) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and East of the Specified Boundary Line and Certain Areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (b)(2)(A) and (B) of §5.4008 of this title and constructed, repaired, or to which additions are made on or after January 1, 2008, and before January 1, 2020, shall be designed and constructed to resist a 3-second gust of 120 miles per hour.

(3) Areas Inland and West of the Specified Boundary Line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (c) of §5.4008 of this title and constructed, repaired, or to which

additions are made on or after January 1, 2008, and before January 1, 2020, shall be designed and constructed to resist a 3-second gust of 110 miles per hour.

(b) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. In order for a historic structure to be exempted, at least one of the following conditions shall apply to the structure:

(1) The structure is listed or is eligible for listing on the National Register of Historic places.

(2) The structure is a Recorded Texas Historic Landmark (RTHL).

(3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

§5.4012. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on or after January 1, 2020.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in paragraphs (1), (2), and (3) of this subsection that are constructed, repaired, or to which additions are made on or after January 1, 2020, must comply with the 2018 editions of the *International Residential Code* and the *International Building Code*, which are adopted by reference and applicable beginning January 1, 2020. The codes are published by and available from the International Code Council at iccsafe.org or by calling toll-free 1-888-422-7233. The following wind speed requirements apply:

(1) Areas seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas that are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on or after January 1, 2020, must be designed and constructed to resist a three-second gust wind speed for the following risk categories of buildings and other structures:

Figure: 28 TAC §5.4012(a)(1):

Risk Category	I	II	III	IV
V _{ult}	140 mph	150 mph	160 mph	165 mph

(2) Areas inland of the Intracoastal Canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in §5.4008 (b)(2)(A) and (B) of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on and after September 1, 1998, and before February 1, 2003) and constructed, repaired, or to which additions are made on or after January 1, 2020, must be designed and constructed to resist a three-second gust wind speed for the following risk categories of buildings and other structures:

Figure: 28 TAC §5.4012(a)(2):

Risk Category	I	II	III	IV
V _{ult}	135 mph	145 mph	155 mph	160 mph

(3) Areas inland and west of the specified boundary line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas as

specified in §5.4008(c) of this title and constructed, repaired, or to which additions are made on or after January 1, 2020, must be designed and constructed to resist a three-second gust wind speed for the following risk categories of buildings and other structures:

Figure: 28 TAC §5.4012(a)(3):

Risk Category	I	II	III	IV
V _{ult}	130 mph	140 mph	150 mph	155 mph

(b) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. For a historic structure to be exempted, at least one of the following conditions must apply to the structure:

(1) The structure is listed or is eligible for listing on the National Register of Historic Places.

(2) The structure is a Recorded Texas Historic Landmark by the Texas Historical Commission.

(3) The structure has been designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old, and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure to maintain its historical designation.

SUBCHAPTER E.

Division 7. Inspections for Windstorm and Hail Insurance 28 TAC §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642

STATUTORY AUTHORITY. TDI proposes amending §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642 under Insurance Code §§2210.008, 2210.251, 2210.2515, 2210.252, and 36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

Insurance Code §2210.251(b) states that for geographic areas specified by the Commissioner, the Commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code.

Insurance Code §2210.2515 gives TDI the authority to prescribe forms on which a person may apply for a certificate of compliance.

Insurance Code §2210.252 provides that the Commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.4601 implements Insurance Code §2210.251 and §2210.252, enacted by Senate Bill 14, 78th Legislature, Regular Session, 2003.

Section 5.4603 implements Insurance Code §§2210.2515, 2210.254, and 2210.2551, as enacted by House Bill 2439, 84th Legislature, Regular Session (2015).

Section 5.4621 and §5.4622 implement Insurance Code §2210.2515 and §2210.2551, as enacted by House Bill 2439, 84th Legislature, Regular Session (2015).

Section 5.4642 implements Insurance Code §2210.256, as enacted by House Bill 2439, 84th Legislature, Regular Session (2015).

TEXT.

§5.4601. Definitions.

The following definitions apply to this subchapter:

(1) Applicant--A person who submits a new or renewal application for appointment as an appointed qualified inspector.

(2) Appointed qualified inspector--An engineer licensed by the Texas Board of Professional Engineers and appointed by TDI as a qualified inspector under Insurance Code §2210.254(a)(2).

(3) Appointed qualified inspector number--A number TDI assigns to each appointed qualified inspector.

(4) Constructed or construction--The act of building or erecting a structure or repairing (including reroofing), altering, remodeling, or enlarging an existing structure.

(5) Completed improvement--

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

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is substantially completed.

(6) Improvement--The construction of or repair (including reroofing), alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(7) Ongoing improvement--

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

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is not substantially completed.

(8) Substantially completed--An improvement for which the final framing stage, including attachment of component and cladding items and installation of

windborne debris protection, has been completed. If the improvement's windborne debris protection consists of wood structural panels, all the panels must be present at the improvement's location but need not be installed.

(9) TDI inspector--A qualified inspector authorized under Insurance Code §2210.254(a)(1) and employed by TDI.

(10) TDI--The Texas Department of Insurance.

(11) Texas Board of Professional Engineers and Land Surveyors, Texas Board of Professional Engineers, or TBPE --House Bill 1523, 86th Legislature, Regular Session, 2019, abolished the Texas Board of Professional Land Surveying and transferred its functions to the renamed Texas Board of Professional Engineers and Land Surveyors, effective September 1, 2019. All references to the Texas Board of Professional Engineers or the TBPE in this division are references to the Texas Board of Professional Engineers and Land Surveyors.

(12) [(11)] Association--The Texas Windstorm Insurance Association.

(13) [(12)] Windstorm building code standards--The requirements for building construction in §§5.4007 – 5.4012 [5.4014] of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After February 1, 2003 and before January 1, 2005; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2005, and before January 1, 2008; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to

Which Additions Are Made On and After January 1, 2008, and before January 1, 2020; and Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on or after January 1, 2020; respectively).

§5.4603. Windstorm Inspection Forms.

(a) Inspection Verification, Form WPI-2-BC-6. TDI adopts by reference the Inspection Verification, Form WPI-2-BC-6, effective January 1, 2017, for use in windstorm inspection, for structures constructed, repaired, or to which additions are made on and after January 1, 2008, and before January 1, 2020.

(b) Application, inspection, and renewal forms. TDI will make available the following forms on its website:

(1) Application for Appointment as a Qualified Inspector [~~Appointment Application Form~~], Form AQI-1, effective January 1, 2017;

(2) Renewal Application for Appointment as a Qualified Inspector [~~Appointment Renewal Application Form~~], Form AQI-R, effective January 1, 2017;

(3) Application for Certificate of Compliance for Ongoing Improvement, Form WPI-1, January 1, 2017; [~~and~~]

(4) Application Form for Certificate of Compliance (WPI-8) for Completed Improvement, effective January 1, 2020; and [~~2017.~~]

(5) Inspection Verification, Form WPI-2, effective January 1, 2020, for structures constructed, repaired, or to which additions are made on and after January 1, 2020.

(c) TDI inspection and certification forms. When appropriate, TDI will issue the following forms:

(1) Field Form, Form WPI-7, effective January 1, 2017; and

(2) Certificate of Compliance for Ongoing Improvement, Form WPI-8, effective January 1, 2017.

§5.4621. Certification of Ongoing Improvements Inspected by Appointed Qualified Inspectors.

This section describes the procedure for the certification of ongoing improvements inspected by appointed qualified inspectors.

(1) Eligible structures. An appointed qualified inspector or a designated representative of an appointed qualified inspector may only inspect an ongoing improvement for which TDI has received the following information:

(A) the physical address (including street, street number, city, county, and ZIP code);

(B) the wind zone location;

(C) the type of structure the ongoing improvement is or is a part of, including the structure's name or number, and number of units, if applicable;

(D) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(E) the name and contact information of the appointed qualified inspector inspecting the ongoing improvement, or whose designated representative is inspecting the ongoing improvement;

(F) the storm code, if applicable;

(G) the date construction of the ongoing improvement began;

(H) the date of application for the certificate of compliance for the ongoing improvement;

(I) the name of the person submitting the application for the certificate of compliance for the ongoing improvement;

(J) the owner's name and contact information;

(K) the name and contact information of the builder or contractor making the ongoing improvement;

(L) whether the structure is located inside or outside city limits; and

(M) whether the structure is in a Coastal Barrier Resource Zone.

(2) Application for Certificate of Compliance, Form WPI-1. TDI will make available the Application for Certificate of Compliance, Form WPI-1, on which the information in paragraph (1) of this section may be provided.

(3) Inspection. The appointed qualified inspector or a designated representative of the appointed qualified inspector must inspect for compliance with the applicable windstorm building code each ongoing improvement during each major construction phase, including the foundation stage; rough framing stage; final framing stage, including attachment of component and cladding items and installation of windborne debris protection; and installation of mechanical equipment. The appointed qualified inspector's designated representatives may assist in conducting inspections, but the appointed qualified inspector must closely monitor and provide direct supervision of any designated representative assisting with the inspection process.

(4) Report. The appointed qualified inspector or a designated representative of the appointed qualified inspector must prepare all necessary construction inspection reports under §5.4625 of this title (relating to Inspection Reports).

(5) Verification of compliance. If the appointed qualified inspector determines that the ongoing improvement meets the applicable windstorm building code standard, the appointed qualified inspector must submit the following information to TDI:

(A) the information required by paragraph (1)(A) - (F) of this subsection;

(B) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(C) the wind speed conditions the ongoing improvement is certified to withstand;

(D) the dates the ongoing improvement was inspected;

(E) the exposure category of the structure;

(F) information on the protection of exterior openings from windborne debris;

(G) the risk category of the structure;

(H) the appointed qualified inspector's appointment number; and

(I) the application number from TDI.

(6) Inspection Verification Form, Form WPI-2. TDI will make available the Inspection Verification Form, Form WPI-2 [~~WPI-2-BC-6~~], on which the inspector can provide the information required by paragraph (5) of this section.

(7) Notification of noncompliance. If the appointed qualified inspector determines that the ongoing improvement does not meet the applicable windstorm building code standard, the appointed qualified inspector must inform the person seeking certification in writing. The notice must:

(A) list specific deficiencies in the construction and deviations from the design;

(B) list other items of concern relating to the windstorm inspection and certification; and

(C) describe remedial actions required for compliance.

(8) Verification of noncompliance. If the remedial actions described in the notification of noncompliance in paragraph (7)(C) of this section are not taken, the appointed qualified inspector must submit the information required by paragraph (5) of this section to TDI, certifying that the ongoing improvement does not meet the applicable windstorm building code standard.

(9) Review. TDI will review the submitted information and any other relevant information, including information requested under §5.4626 of this title (relating to Substantiating Information), to determine whether the ongoing improvement meets the applicable windstorm building code standard.

(10) Certification. If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

- (A) the information described in paragraph (1)(A) - (C) of this section;
- (B) the subject of the certification (for example, entire structure, addition, alteration, or repair);
- (C) the building code standard and applicable wind load standard with which the ongoing improvement complies;
- (D) the date construction of the ongoing improvement began;
- (E) whether the occupancy type is considered residential, commercial, agricultural, or religious;
- (F) the certification date;
- (G) TDI's certification number; and
- (H) the type of inspector.

§5.4622. Inspection Verification.

In submitting an Inspection Verification, Form WPI-2, or a Form WPI-2-BC-6, an appointed qualified inspector verifies that:

- (1) the ongoing improvement:
 - (A) complies with the wind load requirements of the applicable building code;

(B) conforms to a design of the ongoing improvement that complies with the wind load requirements of the applicable building code under the plan of operation and that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers and Land Surveyors; or

(C) does not comply with the wind load requirements of the applicable building code; and

(2) if the ongoing improvement meets the requirements of paragraph (1)(A) or (1)(B) of this section, the appointed qualified inspector is able to provide TDI with information and evidence substantiating compliance.

§5.4642. Disciplinary Action.

(a) Revocation or denial of appointment. After notice and opportunity for hearing, the Commissioner [~~commissioner~~] may revoke an appointed qualified inspector's appointment or deny an appointed qualified inspector's application for appointment if:

(1) the applicant or appointed qualified inspector violates or fails to comply with the Insurance Code or any rule in this chapter;

(2) the applicant has made a material misrepresentation in the appointment application;

(3) the applicant has attempted to obtain an appointment by fraud or misrepresentation; or

(4) the applicant or appointed qualified inspector has made a material misrepresentation in any form or report required to be filed with TDI, including an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1; a construction inspection report; or an Inspection Verification, Form WPI-2 or Inspection Verification, Form WPI-2-BC-6.

(b) Cease and desist order. The Commissioner [~~commissioner~~], ex parte, may enter an emergency cease and desist order under Insurance Code Chapter 83 against an appointed qualified inspector, or a person acting as an appointed qualified inspector, if:

(1) the Commissioner [~~commissioner~~] believes that:

(A) the appointed qualified inspector has:

(i) failed to demonstrate, through submitting or failing to submit to TDI substantiating information as described in §5.4626 of this title (relating to Substantiating Information), that an ongoing improvement or a portion of an ongoing improvement subject to inspection meets the requirements of Insurance Code Chapter 2210 and TDI rules; or

(ii) refused to comply with requirements imposed under this chapter or TDI rules; or

(B) a person acting as an appointed qualified inspector is acting without appointment under Insurance Code §2210.254 or §2210.255; and

(2) the Commissioner [~~commissioner~~] determines that the conduct described by paragraph (1) of this subsection is fraudulent, hazardous, or creates an immediate danger to the public.

(c) Alternative sanctions. Under Insurance Code §2210.2551(b) and §2210.256(b), the Commissioner [~~commissioner~~], instead of revocation or denial, may impose one or more of the following sanctions if the Commissioner [~~commissioner~~] determines from the facts that the alternative sanction would be fair, reasonable, or equitable:

(1) suspension of the appointment for a specific period, not to exceed one year; or

(2) issuance of an order directing the appointed qualified inspector to cease and desist from the specified activity or failure to act determined to be in violation of

Insurance Code Chapter 2210, Subchapter F, or rules of the Commissioner [~~commissioner~~] adopted under Insurance Code Chapter 2210, Subchapter F.

(d) Failure to comply with order. Under Insurance Code §2210.2551(b) and §2210.256(d), if the Commissioner [~~commissioner~~] finds, after notice and a hearing, that an appointed qualified inspector has failed to comply with an order issued under subsection (a), (b), or (c) of this section, the Commissioner [~~commissioner~~] will, unless the Commissioner's [~~commissioner's~~] order is lawfully stayed, revoke the appointed qualified inspector's appointment.

(e) Informal disposition. The Commissioner [~~commissioner~~] may informally dispose of any matter under this section or under §5.4612 of this title (relating to Appointment as Qualified Inspector) by consent order or default.

(f) Automatic cancellation. If the Texas Board of Professional Engineers and Land Surveyors revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 16, 2019.

/s/ James Person

James Person, General Counsel
Texas Department of Insurance