

CHAPTER 407

H.B. No. 2012

AN ACT

relating to inspection and approval of structures under the Texas Catastrophe Property Insurance Pool.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The Texas Catastrophe Property Insurance Pool Act (Article 21.49, Insurance Code) is amended by adding Section 6A to read as follows:

Sec. 6A. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE. (a) All structures that are constructed or repaired or to which additions are made on or after January 1, 1988, to be considered insurable property for windstorm and hail insurance from the Association, must be inspected or approved by the Board for compliance with the building specifications in the plan of operation. The Board may appoint or employ qualified inspectors as defined in this Section to perform any inspections required by this Section.

(b) The Board shall issue for each structure that qualifies a certificate of compliance that is evidence of insurability of the structure by the Association.

(c) The Board may charge a reasonable inspection fee for each inspection in an amount that does not exceed 50 percent of the actual cost of the inspection exclusive of training and general administrative costs. The fee shall be paid before a certificate of compliance may be issued.

(d) A "qualified inspector" includes a person determined by the Board to be qualified to perform building inspections because of training or experience. A qualified inspector must be approved and appointed or employed by the Board to perform building inspections. The Board may charge a reasonable fee not to exceed \$200 for the filing of applications and determining the qualifications of persons for appointment as qualified inspectors.

(e) The Board shall promulgate rules and forms to effect the provisions of this Section under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). In promulgating those rules, the Board should consider the following:

(1) insuring that inspections conducted by the Board are done within 48 hours of the time an inspection request is made;

(2) providing periodic inspections to allow building to proceed without stopping to await inspections;

(3) allowing inspections to be coordinated, when possible, with inspections by other governmental subdivisions;

(4) allowing continued construction if an inspection is not made in a timely manner with minimum disturbance of a structure for subsequent inspections;

(5) providing inspection standards including:

(A) the number of inspections; and

(B) the items to be inspected for compliance with the building specifications set forth in the plan of operation; and

(6) furthering knowledge and understanding of the building specifications through education programs for builders, contractors, and other appropriate persons.

(f) The Board shall appoint an advisory committee to advise and make recommendations to the Board on building specifications in the plan of operation. The advisory committee should be composed of at least one representative of the Association, a representative of the residential building industry in the catastrophe area, a representative of municipal building officials in the catastrophe area, a registered professional engineer with knowledge of building codes, a representative of the Board, and other persons as may be deemed appropriate by the Board. Before the adoption of a change in the building specifications in the plan of operation, the Board shall give the members of the advisory committee notice required by Section 5, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), except the notice is not required for emergency actions.

(g) The Board may make agreements and contracts as necessary to effect the provisions of this Section.

(h) The Board may charge a reasonable fee to cover the cost of making building specifications and inspection standards available to the public.

(i) All fees collected by the Board under this Section shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

(j) After notice and hearing, the Board may cancel or revoke an appointment or authorization made, issued, or existing under this Section if the holder or possessor of the appointment or authorization is found to be in violation of, or to have failed to comply with, specific provisions of this Section or any rule or regulation of the Board made under this Section. In lieu of cancellation or revocation, the Board may order one or more of the following sanctions, if it determines from the facts that it would be fair, reasonable, or equitable:

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

(2) an order directing the holder or possessor of the authorization or appointment to cease and desist from the specified activity determined to be in violation of specific provisions of this Section or rules and regulations of the Board made pursuant to this Section or from failing to comply with those provisions of this Section or the rules and regulations promulgated under this Section; or

(3) if the person authorized or appointed is found by the Board to have knowingly, wilfully, fraudulently, or with gross negligence signed or caused to be prepared an inspection report that contains a false, fictitious, or fraudulent statement or entry, directing the holder or possessor of the authorization or appointment to remit within a specified time, not to exceed 60 days, a specified monetary forfeiture not to exceed \$5,000 for the violation or failure to comply.

(k) A monetary forfeiture paid as a result of an order issued under Subsection (j)(3) of this Section shall be deposited to the credit of the general revenue fund. If it is found after hearing that any holder or possessor has failed to comply with an order issued under Subsection (j) of this Section, the Board shall, unless its order is lawfully stayed, cancel the authorization or appointment of the holder or possessor. The Board may informally dispose of any matter under Subsection (j) of this Section by consent order or default.

SECTION 2. Section 5(d), Texas Catastrophe Property Insurance Pool Act (Article 21.49, Insurance Code), is amended to read as follows:

(d) On or before 45 days after the effective date of this Act, the temporary board of directors of the Association shall submit to the Board for review and approval a proposed plan of operation. Such proposed plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors and shall provide for the efficient, economical, fair, and nondiscriminatory administration of the Associa-

tion. Such proposed plan may include a preliminary assessment of all members for initial expenses necessary to the commencement of operation, the establishment of necessary facilities, management of the Association, plan for assessment of members to defray losses and expenses, underwriting standards, procedures for the acceptance and cession of reinsurance, procedures for determining the amount of insurance to be provided to specific risks, time limits and procedures for processing applications for insurance, and for such other provisions as may be deemed necessary by the board of directors and the Board to carry out the purposes of this Act. The proposed plan shall be reviewed by the Board and approved, unless it finds that such plan does not properly fulfill the purposes of this Act. In the review of the proposed plan the Board may, in its discretion, consult with the directors of the Association and may seek any further information which it deems necessary for a decision. If the Board approves the proposed plan, it shall certify such approval to the directors and the plan shall become effective 10 days after such certification. If the Board disapproves all or any part of the proposed plan of operation, it shall return the same to the directors with its written statement setting forth the reasons for the disapproval and any recommendations it may wish to make. The directors may alter the plan in accordance with the recommendations of the Board or shall, within 15 days from the date of disapproval, return a new plan to the Board. ~~[In the event the Association has not proposed a plan satisfactory to the Board on or before the 14th day of May, 1971, the Board shall certify and adopt a plan under which the Association shall operate.]~~

The Directors of the Association may, subject to the approval of the Board, amend the plan of operation at any time.

In the absence of an appeal, the Association shall adopt amendments to the plan proposed by the Board within 30 days.

Any interested person may petition the Board to modify the plan of operation in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 3. This Act takes effect September 1, 1987.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 18, 1987, by the following vote: revenue dedication: Yeas 138, Nays 0, 2 present, not voting; remainder of the bill: non-record vote. Passed by the Senate on May 26, 1987, by a viva-voce vote.

Approved June 17, 1987.

Effective Sept. 1, 1987.