

BILL ANALYSIS

C.S.H.B. 2439
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been concerns raised regarding the elimination of consumer and builder choice in construction through overly restrictive local municipal zoning ordinances, building codes, design guidelines, and architectural standards. Critics argue that these restrictive ordinances, codes, guidelines, and standards create monopolies, increase the cost of construction, and ultimately price thousands of Texans out of the housing market. C.S.H.B. 2439 seeks to address these concerns and eliminate the ability of a governmental entity to enact overly restrictive, vendor-driven building regulations.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2439 amends the Government Code to prohibit an applicable governmental entity from adopting or enforcing a regulation that either:

- directly or indirectly prohibits or limits the use or installation of a building product or material in the construction or alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or
- establishes a standard for a building product, material, or aesthetic method in the construction or alteration of such a building that is more stringent than a standard for the product, material, or aesthetic method under such a code that applies to the construction or alteration of the building.

C.S.H.B. 2439 sets out the following exceptions to the bill's prohibition:

- a program established by a state agency that requires particular standards, incentives, or financing arrangements in order to comply with requirements of a state or federal funding source or housing program;
- a requirement for a building necessary to consider the building eligible for windstorm and hail insurance coverage under the Texas Windstorm Insurance Association Act;
- a building located in a place or area designated for its historical, cultural, or architectural

importance and significance the construction, reconstruction, alteration, or razing of which a municipality may regulate under specified statutory provisions, if the municipality:

- is a certified local government under the federal National Historic Preservation Act; or
- has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission;
- a building located in a place or area designated for its historical, cultural, or architectural importance and significance by a governmental entity, if designated before April 1, 2019;
- a building located in an area designated as a historic district on the National Register of Historic Places;
- a building designated as a Recorded Texas Historic Landmark;
- a building designated as a State Archeological Landmark or State Antiquities Landmark;
- a building listed on the National Register of Historic Places or designated as a landmark by a governmental entity;
- a building located in a World Heritage Buffer Zone; and
- a building located in an area designated for development, restoration, or preservation in a main street city under the main street program administered by the Texas Historical Commission.

C.S.H.B. 2439 voids a regulation that conflicts with the bill's prohibition. The bill authorizes a governmental entity that adopts a building code governing the construction or alteration of a residential or commercial building to amend a provision of the code to conform to local concerns if the amendment does not conflict with the prohibition. The bill authorizes a municipality that is not a certified local government under the federal National Historic Preservation Act to adopt or enforce a certain regulation otherwise prohibited by the bill that applies to a building located in a place or area designated on or after April 1, 2019, by a municipality for its historical, cultural, or architectural importance and significance, if the municipality has the voluntary consent from the building owner.

C.S.H.B. 2439 authorizes the attorney general or an aggrieved party to file an action in district court to enjoin a violation or threatened violation of the prohibition established under the bill's provisions and authorizes the court to grant appropriate relief. The bill authorizes the attorney general to recover reasonable attorney's fees and costs incurred in bringing the action and waives and abolishes sovereign and governmental immunity to suit only to the extent necessary to enforce the bill's provisions.

C.S.H.B. 2439 expressly does not affect the installation of a fire sprinkler protection system under applicable state law and provides for the severability of regulations invalidated for violating the bill's prohibition.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2439 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the regulations subject to the bill's prohibition by:

- making the prohibition applicable to the installation of a building product or material that meets certain conditions in the construction or alteration of a residential or commercial building;
- making the prohibition applicable with respect to any direct or indirect limit on the use or installation of such a building product or material in the construction or alteration of a residential or commercial building;
- making the prohibition applicable with respect to residential or commercial buildings, rather than structures, and no longer applicable to building methods;
- specifies the national model codes under which the applicable product or material must be approved for use to be subject to the prohibition; and
- prohibiting the regulation from establishing any standard for a certain building product, material, or aesthetic method that is more stringent than a standard under the specified national model codes.

The substitute provides several exceptions to the bill's prohibition, whereas the original did not provide any exception to the bill's prohibition. The substitute includes an authorization for a municipality that is not a certified local government under the federal National Historic Preservation Act to adopt and enforce certain otherwise prohibited regulations.

The substitute includes a provision authorizing a governmental entity to amend a provision of an applicable building code to conform to local concerns under certain circumstances.

The substitute specifies that the bill's prohibition also applies to the adoption of a building code and voids a building code that conflicts with the bill's provisions.

The substitute includes an aggrieved party among those who may file an action to enjoin a violation of an applicable bill provision and authorizes such an action to also be filed with respect to a threatened violation. The substitute includes a provision authorizing the court to grant appropriate relief and a provision waiving and abolishing sovereign and governmental immunity to suit to the extent necessary to enforce the bill's provisions.

The substitute includes a provision establishing that the bill does not affect the installation of a fire sprinkler protection system and a provision providing for the severability of certain regulations.