

SUBJECT: Preventing the delivery of a manufactured home to a flood-prone area

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Mowery, J. Jones, Goolsby, Guillen, Haggerty, Hochberg, Howard, Noriega

0 nays

1 absent — Pickett

WITNESSES: For — Seth Mitchell, Bexar County Commissioners’ Court; Paul Sugg, Texas Association of Counties; Donald Lee, Texas Conference of Urban Counties; Craig Pardue, Dallas County; John Wiley Price, Dallas County; Jean Landess

Against — None

On — Edward Cervenka, Texas Department of Housing and Community Affairs; Bobbie Hill, Texas Department of Housing and Community Affairs; Mike French, Texas Manufactured Housing Association

BACKGROUND: Occupations Code, Ch. 1201 regulates manufactured housing in Texas. It defines a “manufactured home” as a HUD-code manufactured or mobile home. Subchapter K outlines various practices that are prohibited in the manufactured housing industry.

Title 42, Chapter 50 of the United States Code, commonly referred to as the National Flood Insurance Act of 1968, authorizes a federal flood insurance program through a partnership between the federal government and private industry. This chapter also mandates that states restrict the development of flood-prone land, maintain current information on flood hazards, and encourage flood insurance lending by credit institutions.

The Federal Emergency Management Agency (FEMA) has the authority to designate flood-prone areas and compel states and localities to restrict development there.

DIGEST: CSHB 543 would add a new section to Chapter 1201, Subchapter K of the Occupations Code to require a manufactured housing dealer to comply with the National Flood Insurance Act of 1968 and any other applicable local, state, or federal laws before selling a manufactured home.

It would prohibit the seller of a manufactured home from delivering, installing, or arranging for the delivery or installation of a home to a location in a flood plain. The seller also could not assist the purchaser in the delivery or installation of a manufactured home in a flood plain.

Prior to the sale, the purchaser of a manufactured home would be required to provide the seller with satisfactory evidence that the home would not be located in a flood plain. A copy of a permit to install a septic tank at the location would satisfy this requirement.

An inhabited manufactured home located in a flood hazard area zoned prior to September 1, 2003, would be exempt from this legislation if the home remained on that location or was moved to another flood-prone area. Real property zoned before September 1, 2003, located in a flood-prone area designated as inhabitable also would be exempt.

The bill would take effect on June 1, 2003, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 543 is a consumer protection bill that would close a loophole harming many Texans. Under current law, an individual who purchases with cash a manufactured home from a dealer may not be protected by the numerous federal, state, and local regulations preventing people from residing in flood-prone areas. This bill would prevent a dealer or installer from placing a home in a hazardous location, and reduce the potential for an individual to purchase a home only to discover that the proposed site is uninhabitable because of state and local restrictions.

There is a disconnect under the current law between requirements to obtain flood insurance and requirements to purchase a manufactured home. An insurance company will not write a flood insurance policy without data certifying that the home is not located in a flood plain, yet an individual need

not provide flood data before purchasing a home. Therefore, many individuals are caught purchasing homes for which they are unable to buy flood insurance. This bill would bring purchasing and insurance requirements into accord.

CSHB 543 would offer consumers who pay cash for manufactured homes the same protection as consumers who take out loans. Prior to obtaining a loan for a new or used manufactured home, a lending agency verifies that the home will not be placed in a flood-prone area, since such a home would be ineligible for federal flood insurance. Currently, a cash transaction triggers no investigation into whether the proposed home site is in a flood-prone area. Many purchasers do not realize that their properties lie in flood-prone areas until they are denied septic tank permits or utility hookups, essentially rendering the homes they have bought uninhabitable. At this point, purchasers have no recourse but to seek a new, satisfactory lot for their homes. This is beyond the reach of many cash buyers, who often are low-income individuals with poor credit.

By requiring consumers to present a copy of a septic tank permit, concerns about the habitability of the lot in question would be answered before the sale, even for cash transactions. At some point, every manufactured homeowner must apply for a septic tank permit to make the home habitable, and CSHB 543 would ensure that this takes place before the sale had closed. Cities and counties generally issue permits only for lots located outside flood plains.

CSHB 543 would address an important public safety issue. By seriously impeding the ability of an individual to place, knowingly or unknowingly, a manufactured home in a flood plain, this bill would minimize risk to Texas families as well as disaster-related rescue and response expenses following floods.

This bill would not unduly burden manufactured home retailers. While it would bar a dealer from delivering or installing a manufactured home on a prohibited lot, the burden of providing all necessary information would lie with the purchaser. The purchaser would have to present documentation showing that the home was not in a flood plain, and the dealer simply would have to verify the documents. This bill rests on the belief that primary responsibility for the home and the property lies with the purchaser.

Because CSHB 543 would not affect individuals who currently reside in flood-prone areas, this bill would not force existing residents to vacate those areas.

**OPPONENTS
SAY:**

It should not be the responsibility of manufactured home dealers to verify that homes they sell will not be located in flood plains. This bill would not prevent an individual from producing false documentation to a dealer, yet it would be the dealer's responsibility to "ensure" the buyer's compliance with the law. Dealers should be allowed to sell manufactured homes without such concerns.

Also, CSHB 543 would do nothing to prevent the location of a manufactured home in the flood plain by an individual who was purchasing a used home from an unregulated dealer. If a transaction occurred between two private citizens, it is unlikely that either would be aware of this statute, and it is possible that the home still could be intended for placement in a flood plain.

NOTES:

As originally filed, the bill would have required only that a seller "attempts to ensure" that the purchaser comply with the requirements of the bill. The committee substitute would require the seller to "ensure" compliance.

CSHB 543 added language specifically indicating that a permit for a septic tank on the property would constitute "satisfactory evidence" that the location is not in the flood plain. It also specifies that the bill would not retroactively affect any manufactured homes currently existing in the flood plain.

During the 2001 session, the Land and Resource Management Committee reported favorably a similar bill, HB 2481 by J. Jones, but it died in the Calendars Committee.