

## **BILL ANALYSIS**

Senate Research Center

H.B. 2439  
By: Phelan et al. (Buckingham)  
Business & Commerce  
5/15/2019  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 2439 amends current law relating to certain regulations adopted by governmental entities for the building products, materials, or methods used in the construction or renovation of residential or commercial buildings.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 10, Government Code, by adding Subtitle Z, as follows:

#### **SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN GOVERNMENTAL ACTIONS**

#### **CHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND COMMERCIAL CONSTRUCTION**

Sec. 3000.001. DEFINITIONS. Defines "national model code" and "governmental entity" for purposes of this chapter.

Sec. 3000.002. CERTAIN REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS PROHIBITED. (a) Prohibits a governmental entity, notwithstanding any other law and except as provided by Subsection (d), from adopting or enforcing a rule, charter provision, ordinance, order, building code, or other regulation that:

(1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other 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

(2) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building.

(b) Authorizes a governmental entity that adopts a building code governing the construction, renovation, maintenance, or other alteration of a residential or commercial building to amend a provision of the building code to conform to local concerns if the amendment does not conflict with Subsection (a).

(c) Provides that this section does not apply to:

(1) 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;

(2) a requirement for a building necessary to consider the building eligible for windstorm and hail insurance coverage under Chapter 2210 (Texas Windstorm Insurance Association), Insurance Code;

(3) an ordinance or other regulation that:

(A) regulates outdoor lighting for the purpose of reducing light pollution; and

(B) is adopted by a governmental entity that is certified as a Dark Sky Community by the International Dark-Sky Association as part of the International Dark Sky Places Program;

(4) an ordinance or other order that:

(A) regulates outdoor lighting; and

(B) is adopted under Subchapter B (Regulation of Outdoor Lighting), Chapter 229, Local Government Code, or Subchapter B, Chapter 240 (Outdoor Lighting Near Observatories or Military Installations), Local Government Code;

(5) a building located in a place or area designated for its historical, cultural, or architectural importance and significance that a municipality is authorized to regulate under Section 211.003(b) (relating to authorizing the governing body of a municipality, in the case of designated places and areas of historical, cultural, or architectural importance and significance, to regulate the construction, reconstruction, alteration, or razing of buildings and other structures), Local Government Code, if the municipality:

(A) is a certified local government under the National Historic Preservation Act (54 U.S.C. Section 300101 et seq.); or

(B) has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission;

(6) 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;

(7) a building located in an area designated as a historic district on the National Register of Historic Places;

(8) a building designated as a Recorded Texas Historic Landmark;

(9) a building designated as a State Archeological Landmark or State Antiquities Landmark;

(10) a building listed on the National Register of Historic Places or designated as a landmark by a governmental entity;

(11) a building located in a World Heritage Buffer Zone; and

(12) a building located in an area designated for development, restoration, or preservation in a main street city under the main street program established under Section 442.014 (Main Street Program).

(d) Authorizes a municipality that is not a municipality described by Subsection (c)(3)(A) or (B) to adopt or enforce a regulation described by Subsection (a) that applies to a building located in a place or area designated on or after April 1, 2019, by the municipality for its historical, cultural, or architectural importance and significance, if the municipality has the voluntary consent from the building owner.

(e) Provides that a rule, charter provision, ordinance, order, building code, or other regulation adopted by a governmental entity that conflicts with this section is void.

Sec. 3000.003. INJUNCTION. (a) Authorizes the Texas attorney general (attorney general) or an aggrieved party to file an action in district court to enjoin a violation or threatened violation of Section 3000.002.

(b) Authorizes the court to grant appropriate relief.

(c) Authorizes the attorney general to recover reasonable attorney's fees and costs incurred in bringing an action under this section.

(d) Provides that sovereign and governmental immunity to suit is waived and abolished only to the extent necessary to enforce this chapter.

Sec. 3000.004. OTHER PROVISIONS NOT AFFECTED. Provides that this chapter does not affect provisions regarding the installation of a fire sprinkler protection system under Section 1301.551(i) (relating to prohibiting a municipality from enacting an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system in a new or existing one- or two-family dwelling after a certain date), Occupations Code, or Section 775.045(a)(1) (relating to providing that Section 1301.551(i), Occupations Code, applies to an emergency services district as if the district were a municipality), Health and Safety Code.

Sec. 3000.005. SEVERABILITY. Provides that, if any provision of a rule, charter provision, ordinance, order, building code, or other regulation described by Section 3000.002(a) is held invalid under this chapter, the invalidity does not affect other provisions or applications of the rule, charter provision, ordinance, order, building code, or other regulation that can be given effect without the invalid provision or application, and to this end the provisions of the rule, charter provision, ordinance, order, building code, or other regulation are severable.

SECTION 2. Effective date: September 1, 2019.