

SENATE AMENDMENTS

2nd Printing

By: Phelan, Rodriguez, Collier, Schaefer

H.B. No. 2439

A BILL TO BE ENTITLED

AN ACT

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 10, Government Code, is amended by adding Subtitle Z to read as follows:

SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN

GOVERNMENTAL ACTIONS

CHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND

COMMERCIAL CONSTRUCTION

Sec. 3000.001. DEFINITIONS. In this chapter:

(1) "National model code" has the meaning assigned by Section 214.217, Local Government Code.

(2) "Governmental entity" has the meaning assigned by Section 2007.002.

Sec. 3000.002. CERTAIN REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS PROHIBITED. (a) Notwithstanding any other law and except as provided by Subsection (d), a governmental entity may not adopt or enforce 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

1 construction, renovation, maintenance, or other alteration of a
2 residential or commercial building if the building product or
3 material is approved for use by a national model code published
4 within the last three code cycles that applies to the construction,
5 renovation, maintenance, or other alteration of the building; or

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

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

19 (c) This section does not apply to:

20 (1) a program established by a state agency that
21 requires particular standards, incentives, or financing
22 arrangements in order to comply with requirements of a state or
23 federal funding source or housing program;

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

27 (3) an ordinance or other regulation that:

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

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

6 (4) an ordinance or order that:

7 (A) regulates outdoor lighting; and

8 (B) is adopted under Subchapter B, Chapter 229,
9 Local Government Code, or Subchapter B, Chapter 240, Local
10 Government Code;

11 (5) a building located in a place or area designated
12 for its historical, cultural, or architectural importance and
13 significance that a municipality may regulate under Section
14 211.003(b), Local Government Code, if the municipality:

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

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

21 (6) a building located in a place or area designated
22 for its historical, cultural, or architectural importance and
23 significance by a governmental entity, if designated before April
24 1, 2019;

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

27 (8) a building designated as a Recorded Texas Historic

1 Landmark;

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

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

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

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

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

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

22 Sec. 3000.003. INJUNCTION. (a) The attorney general or an
23 aggrieved party may file an action in district court to enjoin a
24 violation or threatened violation of Section 3000.002.

25 (b) The court may grant appropriate relief.

26 (c) The attorney general may recover reasonable attorney's
27 fees and costs incurred in bringing an action under this section.

1 (d) Sovereign and governmental immunity to suit is waived
2 and abolished only to the extent necessary to enforce this chapter.

3 Sec. 3000.004. OTHER PROVISIONS NOT AFFECTED. This chapter
4 does not affect provisions regarding the installation of a fire
5 sprinkler protection system under Section 1301.551(i), Occupations
6 Code, or Section 775.045(a)(1), Health and Safety Code.

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

16 SECTION 2. This Act takes effect September 1, 2019.

ADOPTED

MAY 19 2019

FLOOR AMENDMENT NO.

John Spaw
Secretary of the Senate

BY:

[Signature]
[Signature]

1 Amend H.B. No. 2439 (senate committee printing) in SECTION 1
2 of the bill as follows:

3 (1) In added Section 3000.002(c), Government Code, strike
4 Subdivision (3) (page 2, lines 7 through 12) and substitute the
5 following:

6 (3) an ordinance or other regulation that regulates
7 outdoor lighting that is adopted for the purpose of reducing light
8 pollution and that:

9 (A) is adopted by a governmental entity that is
10 certified as a Dark Sky Community by the International Dark-Sky
11 Association as part of the International Dark Sky Places Program;
12 or

13 (B) applies to outdoor lighting within five miles
14 of the boundary of a military base in which an active training
15 program is conducted;

16 (2) In added Section 3000.002(d), Government Code (page 2,
17 line 47), strike "Subsection (c)(3)(A) or (B)" and substitute
18 "Subsection (c)(5)(A) or (B)".

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 20, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2439 by Phelan (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.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

Analysis by the Texas Facilities Commission indicates the provisions of the bill relating to building codes would have no fiscal impact on state construction projects. Based on analysis by the Office of the Attorney General, it is assumed that the provisions of the bill relating to enforcement could be absorbed using existing resources.

Local Government Impact

According to the Texas Municipal League, no significant fiscal implication to cities is anticipated.

Source Agencies: 302 Office of the Attorney General, 303 Facilities Commission

LBB Staff: WP, JMO, CLo, NV, CMa, AF

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 14, 2019

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2439 by Phelan (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.), **As Engrossed**

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LBB Staff: WP, CLo, NV, JMO, CMa, AF

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 9, 2019

TO: Honorable Dade Phelan, Chair, House Committee on State Affairs

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2439 by Phelan (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.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

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Source Agencies: 302 Office of the Attorney General, 303 Facilities Commission

LBB Staff: WP, JMO, CMa, NV, AF

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 19, 2019

TO: Honorable Dade Phelan, Chair, House Committee on State Affairs

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2439 by Phelan (Relating to certain regulations adopted by governmental entities for the building products, materials, or methods used in the construction of residential or commercial structures.), **As Introduced**

No significant fiscal implication to the State is anticipated.

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LBB Staff: WP, CMa, NV, JMO, AF