

BILL ANALYSIS

Senate Research Center
87R23514 MP-F

C.S.S.B. 1090
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2019, the Texas Legislature overwhelmingly passed H.B. 2439 in order to protect housing affordability and homeowner choice. The bill allowed for the enactment of building codes with local amendments, but prohibited a city from using a building code or other local ordinance powers to mandate vendor driven and product specific mandates in construction, which result in the direct or indirect prohibition of other products approved by national codes and standards.

The purpose was to prevent cities and other governmental entities from being in the business of picking winners and losers in the competitive market if the products have been approved as safe and fit for their intended use per consensus-based building codes. With numerous exemptions for various safety issues, historical areas, and lighting concerns, it ensured that those areas would not be affected by the bill. Though that 2019 bill exempted lighting issues in existing Dark Sky Communities, an unintended result made it difficult to impossible for cities to become new Dark Sky Communities.

S.B. 1090 further exempts lighting ordinances as long as a governmental entity adopts a resolution stating its intent to become a Dark Sky Community and regulates lighting in a manner that is not more restrictive than necessary to become a certified Dark Sky Community. This will ensure that the original intent of the 2019 legislation is upheld. The bill also provides that land use restrictions that have historically been enforced by certain cities under Subchapter F, Chapter 212 of the Local Government Code will not be affected by the 2019 legislation. This will ensure that those cities authorized under Subchapter F to enforce properly recorded plans, plats, or other instruments that affect a subdivision can continue to do so.

(Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1090 amends current law relating to certain regulations adopted by governmental entities regarding land use restrictions and 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 Section 3000.002(c), Government Code, as follows:

(c) Provides that Section 3000.002 (Certain Regulations Regarding Building Products, Materials, or Methods Prohibited) does not apply to:

(1) and (2) makes no changes to these subdivisions;

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

(A) makes a nonsubstantive change to this paragraph;

(B) is adopted by a governmental entity that has adopted a resolution stating the entity's intent to become certified as a Dark Sky Community by the International Dark-Sky Association as part of the International Dark Sky Places Program and does not regulate outdoor lighting in a manner that is more restrictive than the prohibitions or limitations required to become certified as a Dark Sky Community; or

(C) creates this paragraph from existing text and makes no further changes;

(4)-(10) makes no changes to these subdivisions;

(11) and (12) makes nonsubstantive changes to these subdivisions;

(13) a standard for a plumbing product required by an ordinance or other regulation implementing a water conservation plan or program described by Section 11.1271 (Additional Requirements: Water Conservation Plans) or 13.146 (Water Conservation Plan), Water Code; and

(14) a standard for a plumbing product imposed by the Texas Water Development Board (TWDB) as a condition of applying for or receiving financial assistance under a program administered by TWDB.

SECTION 2. Amends Section 3000.004, Government Code, as follows:

Sec. 3000.004. OTHER PROVISIONS NOT AFFECTED. Provides that Chapter 3000 (Governmental Action Affecting Residential and Commercial Construction) does not affect provisions regarding certain matters, including the enforcement of land use restrictions contained in plats and other instruments under Subchapter F (Enforcement of Land Use Restrictions Contained in Plats and Other Instruments), Chapter 212 (Municipal Regulation of Subdivisions and Property Development), Local Government Code. Makes nonsubstantive changes.

SECTION 3. Amends Section 212.151, Local Government Code, as follows:

Sec. 212.151. MUNICIPALITY COVERED BY SUBCHAPTER. Provides that Subchapter F applies only to certain municipalities, including a municipality with a population of less than 4,000 that is located in two counties, one of which has a population greater than 45,000 and borders Lake Lyndon B. Johnson. Makes nonsubstantive changes.

SECTION 4. Effective date: September 1, 2021.