

SUBJECT: Prohibiting stricter limits on building materials than those in model codes

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Hunter, P.
King, E. Rodriguez, Smithee, Springer

2 nays — Holland, Parker

1 absent — Raymond

WITNESSES: For —Trey Summers, Coastal Bend Home Builders Association; James Rodriguez, Fox Energy Specialists; Mark Cofer, LP Building Solutions; Craig Chick, Safe Building Materials Association of Texas; T. Justin MacDonald, Ned Munoz, and Ron Rohrbacher, Texas Association of Builders; Cindi Bulla, Texas Realtors; Sam Mezayek; (*Registered, but did not testify*: George Christian, American Forest and Paper Association; Jon Fisher, Associated Builders and Contractors of Texas; Mike Meroney, BASF Corporation; Joseph Carlyle, Carlyle Homes; Jason Carothers, Carothers Executive Homes; Joe Carlyle, City of Troup; Tim Jackson and David Lehde, Dallas Builders Association; Daniel Womack, Dow Chemical; Randy Bowling, El Paso Association of Builders; William Bettis, Greater Fort Worth Builders Association; Bradley Pepper, Greater Houston Builders Association; Michael Biggerstaff, Home Builders Association of San Angelo; Todd Morgan, International Paper Corp.; Bill Oswald, Koch Companies; Jeremy Susac, Lennar; Rhett Longacre, Longacre Construction; Mireya Zapata, Lumbermen's Association of Texas; Donny Mack, Mack Professionals, Inc; Annie Spilman, NFIB; Alicia Dover, Plumbing-Heating-Cooling Contractors Association of Texas; Chris Chapman, Safe Building Materials Association of Texas; Martin Janczak, Weldon Patterson, and Michael Pilkington, Temple Area Builders Association; Todd Kercheval, Texas Affiliation of Affordable Housing Providers; David Mintz, Texas Apartment Association; Victor Drozd, William Hunt, and Heather Laminack, Texas Association of Builders; Lauren Fairbanks, Texas Association of Manufacturers; Sarah Lacy, Texas Building Owners and Managers Association; Austin

McCarty, Texas Chemical Council; Mia McCord, Texas Conservative Coalition; Julia Parenteau, Texas Realtors; Stewart Townsen and Robert Wood, West Texas Home Builders Association, and 43 individuals)

Against — Corbett Howard, City of Celina; Cassandra Gill, City of Dayton; Dana Burghdoff, City of Fort Worth; Garett Nelson and Steve O'Neal, City of Lubbock; Richard Derr, City of Oak Ridge North; (*Registered, but did not testify*: Brie Franco, City of Austin; Russell Hines, City of Bedford; Marcus Winberry, City of Conroe; Tammy Embrey, City of Corpus Christi; Michael Kovacs, City of Fate; Ty Embrey, City of Garland; Jerry Bark, City of Harker Heights; Jon Weist, City of Irving; Angela Hale, City of McKinney; Karen Kennard, City of Missouri City, Texas; Rick Ramirez, City of Sugar Land; Lorena Campos, City of Dallas; Bill Kelly, City of Houston Mayor's Office; Shanna Igo, Texas Municipal League; Stephanie Ingersoll; Calvin Tillman; Al Zito)

On — Marcie Diamond, City of Coppell; Jim Pruitt, City of Rockwall Texas; Cyrus Reed, Lone Star Chapter Sierra Club; Evan Thompson, Preservation Texas; Michael Choate, South-central Partnership for Energy Efficiency as a Resource (SPEER); (*Registered, but did not testify*: Christine Wright, City of San Antonio; Kelly Sadler, International Code Council; Richard Morgan, SPEER)

BACKGROUND: Local Government Code sec. 214.217 defines "national model code" as a publication that is developed and periodically updated at a national level by industry stakeholders and government fire and building safety officials through a legislative or consensus process and is intended for consideration by units of government as local law. National model codes include the International Residential Code, the National Electrical Code, and the International Building Code.

DIGEST: CSHB 2439 would prohibit state and local governmental entities from requiring standards for building materials used in construction or renovation that were stricter than those set by a national model code published within the last three code cycles.

The bill would void rules, charter provisions, ordinances, orders, building codes, and other regulations adopted by governmental entities that conflicted with the bill's provisions.

If a building product or material was approved for use by a model code, a governmental entity would not be allowed to prohibit or limit it.

CSHB 2439 would allow a governmental entity that adopted a building code to amend it to conform to local concerns provided that the amendment did not conflict with the bill's prohibition on limiting or restricting a product otherwise allowed under the bill.

CSHB 2439 would not apply to:

- state or federal housing programs or other programs that require particular standards, incentives, or financing arrangements;
- requirements considered necessary for a building to be eligible for windstorm and hail insurance coverage; or
- buildings designated as historic landmarks or those that meet certain other criteria in statute to be considered of historical, cultural, or architectural importance, including those in the Texas Historical Commission's Main Street Program.

Fire sprinklers exempt. The bill would not affect municipal ordinances or rules relating to the installation of fire sprinkler protection systems.

Severability. If any provision of a rule, charter provision, ordinance, order, building code or other regulation was held invalid under CSHB 2439, the invalidity would not affect the other provisions that could be given effect without the invalid provision.

Injunction. The bill would authorize the attorney general or an aggrieved party to file an action in district court to enjoin a violation or threatened violation of the bill, and would authorize the court to grant appropriate relief and award of the recovery of reasonable attorney's fees and costs. CSHB 2439 would waive sovereign and governmental immunity to the

extent necessary to enforce the bill.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSHB 2439 would reduce and prevent burdensome regulations that affect housing affordability and introduce government-driven distortions into the market for building materials and products.

The bill would pre-empt city ordinances and building codes that were enacted not for safety reasons but for the benefit of a particular vendor or industry that dealt in a certain building material or product. By mandating the use of expensive and exclusive building materials, cities drive up the cost of housing and other real property.

Although local governments have a legitimate interest in ensuring the safety of homes and commercial buildings, they should not be in the business of mandating construction materials of a particular type or brand when safety is not at stake. The bill would not prevent government entities from adopting regulations to ensure safe construction or conform building practices to local concerns, as long as they did not prohibit a product approved in a recent national model building code. The experts who set these model codes are better placed than local boards or city councils to decide whether a material or product is safe.

Concerns that the bill could lead to the proliferation of aesthetically out-of-place buildings such as metal homes are unfounded because the bill would not affect deed restrictions or development agreements, which allow property owners and developers to attain a certain consistent aesthetic throughout a community. In cases where deed restrictions or developer agreements did not apply, the market itself would provide a check on the construction or renovation of homes in aesthetically unappealing ways because homes of this kind are not in demand.

CSHB 2439 would not negatively affect the safety of buildings in Texas, nor would it cause a rise in property insurance, because cities still would be able to adopt building materials standards in line with recent,

innovative international standards. Allowing builders to use materials approved in a previous but still recent model code cycle would allow a reasonable amount of time for inspectors and contractors to be trained to the requirements of the latest code, for new products to become available, or for other issues to be addressed. The three code-cycle limit would apply only to restrictions on products or materials; a city otherwise could adopt provisions of any model code cycle.

**OPPONENTS
SAY:**

CSHB 2439 could prevent cities from deviating from national model codes to adapt to local circumstances, such as climate and topography, local construction practices, and flood risks.

The bill could negatively affect the safety of buildings by preventing local regulations from keeping pace with model code cycles. These model codes can evolve based on the discovery of new hazards, but the bill would allow builders to use any building material approved within the last three code cycles, even if circumstances had changed.

CSHB 2439 also could lead to higher property insurance rates. Insurers rely on a rating system known as the Building Code Effectiveness Grading Schedule (BCEGS), which assesses the effectiveness of building codes in a particular community and the likelihood of losses from natural hazards. Since one component of this grading scale is the degree to which a municipality's building code is up to date with current practices, the bill could result in worse BCEGS ratings for municipalities.

CSHB 2439 also could make it more difficult for local governments to preserve the aesthetic integrity of neighborhoods or commercial districts. Without locally specific restrictions on building materials, a property owner could build a house out of metal or cinder blocks, for example, which might not fit with the look of the rest of the neighborhood.

The bill also would make it more difficult for local governments to set energy efficiency standards, which could inhibit energy innovation.