

BILL ANALYSIS

S.B. 1090
By: Buckingham
Land & Resource Management
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Last session, the Texas Legislature, in order to protect housing affordability and homeowner choice, passed legislation 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. The legislation allowed for the adoption of building codes with local amendments but generally prohibited a governmental entity from using a building code or other regulatory powers to mandate vendor-driven and product-specific requirements 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, the legislation ensured that certain areas would not be affected.

However, certain amendments are needed to the original legislation, such as an exemption relating to an unintended consequence of the legislation that made it difficult for cities to become new Dark Sky Communities, and a specification that the legislation does not affect provisions regarding land use restrictions that historically have been enforced by certain cities. S.B. 1090 seeks to make these amendments.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1090 amends the Government Code to establish additional exemptions to the prohibition against an applicable governmental entity adopting or enforcing a rule, charter provision, ordinance, order, building code, or other regulation that does the following:

- 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
- 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 such a national model code.

The additional exemptions are for the following:

- an ordinance or other regulation that regulates outdoor lighting that is adopted for the purpose of reducing light pollution and that 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;
- a standard for a plumbing product required by an ordinance or other regulation implementing an applicable water conservation plan or program; and
- 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 the TWDB.

S.B. 1090 amends the Government Code and Local Government Code to establish that provisions relating to the prohibition do not affect provisions regarding the enforcement of land use restrictions contained in plats and other instruments applicable to the following municipalities:

- a municipality with a population of 1.5 million or more that passes an ordinance that requires uniform application and enforcement of these provisions with regard to all property and residents; and
- a municipality that does not have zoning ordinances and passes such an ordinance.

The bill makes these provisions regarding the enforcement of land use restrictions contained in plats and other instruments applicable also to a municipality with a population of less than 4,000 that has the following characteristics:

- the municipality is located in two counties, one of which has a population greater than 45,000; and
- the municipality borders Lake Lyndon B. Johnson.

EFFECTIVE DATE

September 1, 2021.