

BILL ANALYSIS

C.S.H.B. 3639
By: Gervin-Hawkins
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that certain regulation of fireworks stands is needed in certain counties to protect public health and welfare. C.S.H.B. 3639 seeks to address this issue by setting out provisions relating to the regulation of fireworks stands in certain populous counties.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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

C.S.H.B. 3639 amends the Local Government Code to exempt a county with a population of more than 1.5 million in which more than 75 percent of the population lives in a single municipality from statutory provisions relating to county regulation of restricted fireworks. The bill prohibits a retail fireworks stand located in the unincorporated area of such a county from being located within 2,500 feet of the corporate boundary of a municipality or within 500 feet of any residential property. The bill requires the person who obtains a retail fireworks permit applicable to such a retail fireworks stand to ensure that a sign is conspicuously posted on the outside of the stand that provides contact information, including a mailing address, where a member of the public may submit a complaint to the county fire marshal relating to any alleged unsafe operation of the stand or any alleged nuisance resulting from the operation of the stand. The bill sets out sign format requirements and authorizes the commissioners court of the county by order to require additional signs to be provided in a language other than English if the commissioners court determines that it is likely that a substantial number of residents of the unincorporated area speak a language other than English as their familiar language.

C.S.H.B. 3639 requires the county fire marshal, if the marshal receives a complaint from a member of the public under the bill's provisions, to make a determination whether the complaint is valid and promptly notify the permit holder for the retail fireworks stand. The bill requires the permit holder to cooperate with the county fire marshal to resolve each complaint determined valid by the county fire marshal and, not later than the third business day after the date the county fire marshal notifies the permit holder that a complaint is valid, to resolve the complaint or remove the retail fireworks stand. The bill creates a Class C misdemeanor offense for a permit holder who fails to take appropriate action within such period. The bill creates an offense for a person who knowingly files a baseless complaint and sets the penalty for a first offense as a warning citation and for a subsequent offense as a Class C misdemeanor. The bill prohibits the

structure for a retail fireworks stand from being placed on a site more than 15 days before fireworks are authorized for sale by law and requires such a structure to be removed from a site not later than 15 days after the last day fireworks are authorized for sale by law.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3639 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Section 352.051, Local Government Code, is amended to read as follows:

No equivalent provision.

Sec. 352.051. REGULATION OF [RESTRICTED] FIREWORKS.

SECTION 2. Sections 352.051(c), (f), and (g), Local Government Code, are amended to read as follows:

No equivalent provision. (*But see SECTION 1 below.*)

(c) ~~The [Upon a determination under this section that drought conditions exist on average in a specified county, the] commissioners court of a [the] county by order may prohibit or restrict the sale or use of [restricted] fireworks in the unincorporated area of the county. [In addition, during the December fireworks season, the commissioners court of a county by order may restrict or prohibit the sale or use of restricted fireworks in specified areas when conditions on rural acreage in the county not under cultivation for a period of at least 12 months are determined to be extremely hazardous for the danger of fire because of high grass or dry vegetation.]~~

(f) When a county issues an order restricting or prohibiting the sale or use of [restricted] fireworks under this section, the county may designate one or more areas of appropriate size and accessibility in the county as safe areas where the use of [restricted] fireworks is not prohibited, and the legislature encourages a county to designate such an area for that purpose. The safe area may be provided by the county, a municipality within the county, or an individual, business, or corporation. A safe area may be designated in and

provided in the geographic area of the regulatory jurisdiction of a municipality if the activity conducted in the safe area is authorized by general law or a municipal regulation or ordinance. An area is considered safe if adequate public safety and fire protection services are provided to the area. A county, municipality, individual, business, or corporation is not liable for injuries or damages resulting from the designation, maintenance, or use of the safe area.

(g) A person selling [~~any type of~~ fireworks~~, including restricted fireworks,~~] in a county that has adopted an order prohibiting or restricting the use of fireworks under Subsection (c) shall, at every location at which the person sells fireworks in the county, provide reasonable notice of the order and reasonable notice of any location designated under Subsection (f) as a safe area.

SECTION 3. Sections 352.051(a), (b), (e), and (j), Local Government Code, are repealed.

No equivalent provision. (But see SECTIONS 2 and 3 above.)

No equivalent provision.

No equivalent provision. (But see SECTION 1 below.)

SECTION 1. Section 352.051, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) This section does not apply to a county subject to Section 360.001.

SECTION 2. Subtitle B, Title 11, Local Government Code, is amended by adding Chapter 360 to read as follows:

CHAPTER 360. MISCELLANEOUS PROVISIONS RELATING TO COUNTY PUBLIC SAFETY

Sec. 360.001. REGULATION OF FIREWORKS STANDS IN CERTAIN POPULOUS COUNTIES. (a) In this section:

(1) "Retail fireworks site" means a retail location for which a person has obtained a current retail fireworks permit under Section 2154.202, Occupations Code, to sell fireworks.

(2) "Retail fireworks stand" means a structure that is a retail fireworks site from which fireworks are sold over the counter to members of the general public who always remain outside of the structure.

(b) This section applies only to the unincorporated area of a county with a

population of more than 1.5 million in which more than 75 percent of the population lives in a single municipality.

(c) A retail fireworks stand may not be located:

(1) within 2,500 feet of the corporate boundary of a municipality; or

(2) within 500 feet of any residential property.

(d) The person who obtains a retail fireworks permit under Section 2154.202, Occupations Code, applicable to a retail fireworks stand shall ensure that a sign is conspicuously posted on the outside of the stand that provides contact information, including a mailing address, where a member of the public may submit a complaint to the county fire marshal relating to any alleged unsafe operation of the stand or any alleged nuisance resulting from the operation of the stand. The sign must be at least 24 inches high by 36 inches wide and must be printed in lettering at least two inches high. The commissioners court of a county by order may require additional signs to be provided in a language other than English if the commissioners court determines that it is likely that a substantial number of residents of the unincorporated area speak a language other than English as their familiar language.

(e) If the county fire marshal receives a complaint from a member of the public as provided for under Subsection (d), the county fire marshal shall make a determination whether the complaint is valid and promptly notify the permit holder for the retail fireworks stand.

(f) The permit holder shall cooperate with the county fire marshal to resolve each complaint determined valid by the county fire marshal under Subsection (e). Not later than the third business day after the date the county fire marshal notifies the permit holder that a complaint is valid, the permit holder must resolve the complaint or remove the retail fireworks stand.

(g) A permit holder who fails to take appropriate action within the period prescribed by Subsection (f) commits an offense. An offense under this subsection is a Class C misdemeanor.

(h) A person who knowingly files a baseless complaint under this section commits an offense. The penalty for a first offense under this subsection is a warning citation. A

subsequent offense under this subsection is a Class C misdemeanor.

(i) The structure for a retail fireworks stand may not be placed on a site more than 15 days before fireworks are authorized for sale by law. The structure for a retail fireworks stand must be removed from a site not later than 15 days after the last day fireworks are authorized for sale by law.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 3. Same as introduced version.