

BILL ANALYSIS

C.S.S.B. 1460
By: Lindsay
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The current laws governing the powers and duties of county fire marshals were first established in 1987 and have undergone only minor changes since then. Over the past 16 years a number of counties and their fire marshals have identified several areas for improvement in the law that would enhance efficiency, effectiveness, and flexibility of the administration of fire safety by Texas counties. C.S.S.B. 1460 allows the county fire marshal to investigate fires that cause personal injury; gives the commissioners court the authority to promulgate rules determining which fires warrant fire marshal investigation; allows the fire marshal to require timely reports from fire departments and emergency medical services agencies to ensure timely prosecution by the district attorney; updates the list of conditions for which the fire marshal may inspect a structure; clarifies the authority of the fire marshal to enforce fire safety orders; allows a fire marshal to promulgate voluntary rules regarding fire department participation in the Texas or National Fire Incident Reporting System; allows a commissioners court to authorize a fire marshal to conduct training programs, operate a training facilities, and collect a fee for its service; and increases the statute of limitations for the crime of arson from five to 10 years.

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

SECTION 1. Amends Sections 352.013, 352.014, and 352.016, Local Government Code, as follows:

Sec. 352.013. INVESTIGATION OF FIRES. (a) Requires the county fire marshal to investigate fires that destroy or damage property, or cause personal injury.

(b) Requires the commissioners court of a county, with the advice of the county fire marshal, to adopt rules and procedures for determining which fires warrant investigation by the county fire marshal. Requires the county fire marshal to begin an investigation within 24 hours after the receipt of information regarding a fire that warrants investigation under commissioners court rules and procedures.

©) Deletes language requiring the marshal to conduct an examination in a manner designed to impose the least inconvenience to any persons living in the building.

Sec. 352.014. RECORD OF INVESTIGATION. Requires each fire department and state or local agency that provides emergency medical services to submit reports requested by the county fire marshal in a timely manner.

Sec. 352.016. New heading: INSPECTION OR REVIEW OF PLAN FOR FIRE OR LIFE SAFETY HAZARDS. (a) Defines "fire or life safety hazard" to include improper electrical components, storage of dangerous substances, inappropriate means of ingress or egress, and any other condition that endangers the safety of a structure and its occupants and promotes or causes

fire or combustion.

(b) Authorizes the county fire marshal, in the interest of safety and fire prevention, to inspect for fire or life safety hazards any structure, appurtenance, fixture, or real property located within 500, rather than 200, feet of a structure, appurtenance, or fixture. Authorizes the county fire marshal, in the absence of a county fire code, to conduct an inspection using any nationally recognized code or standard adopted by the state. Requires an owner or occupant, if ordered to do so, to correct the hazardous situation in accordance with the order. Makes conforming changes.

(b-1) Requires the county fire marshal, in the interest of safety and fire prevention, to, if required, review the plans of a business, single-family residence, multi-family dwelling, or commercial property for fire or life safety hazards. Authorizes the county fire marshal to make such a review on request.

©) Authorizes the commissioners court by order to authorize the county fire marshal to charge a fee to the owner of a business, a multi-family dwelling, or commercial property for a plan review or inspection conducted under this section in a reasonable amount determined by the commissioners court to cover the cost of the plan review or inspection.

(d) Makes conforming changes.

SECTION 2. Amends Section 352.017(b), Local Government Code, to require service of process required by this subchapter to be made by a peace officer, rather than constable or sheriff, and to be signed by the county fire marshal or the fire marshal's deputy.

SECTION 3. Amends Section 352.019, Local Government Code, by amending Subsections (b) and ©) and adding Subsections (b-1), (e), (f), and (g) as follows:

(b) Authorizes the county fire marshal, on request, to assist a rural fire prevention district or emergency services district located wholly or partially in the county to accomplish its powers and duties.

(b-1) Requires the commissioners court, if the commissioners court establishes procedures for firefighter certification under Subsection (b), to ensure that the procedures are at least as stringent as the minimum qualifications set by the Texas Commission on Fire Protection (TCFP) under Section 419.032, Government Code. Provides that this subsection does not apply to a volunteer firefighter as defined by Section 419.001, Government Code.

©) Authorizes the county fire marshal or the county fire marshal's designee to perform as the incident commander in a major event if the incident commander of the responsible fire department consents. Prohibits the county fire marshal from enforcing orders and decrees within a municipality in the county unless specifically required to do so by interlocal agreement and authorizes the fire marshal to act in a cooperative and advisory capacity there only on request.

(e) Authorizes a county commissioners court to authorize the fire marshal to provide training programs and operate a training facility for the various fire-fighting and fire prevention units in the county. Authorizes the county to establish and collect a reasonable fee for the training programs, use of the facility, and services provided by the facility.

(f) Authorizes the commissioners court and county fire marshal to jointly adopt voluntary guidelines, including voluntary funding guidelines, for fire departments located in unincorporated areas of the county, including fire departments located within rural fire prevention districts or emergency services districts, regarding participation in the Texas Fire Incident Reporting System (TXFIRS) or the National Fire Incident Reporting System (NFIRS), or both. Authorizes the commissioners court to establish certain model procedures for voluntary use by the various fire departments in the

county.

(g) Requires the fire marshal, if a commissioners court authorizes a fire marshal to provide training programs and operate a training facility under Subsection (e), to ensure that the training programs and operation of the training facility are at least as stringent as the minimum qualifications set by TCFP under Section 419.032, Government Code. Provides that this subsection does not apply to a volunteer firefighter as defined by Section 419.001, Government Code.

SECTION 4. Amends Section 352.021(b), Local Government Code, to provide that an offense under this section is a misdemeanor punishable by a fine of not more than \$2,000, rather than \$25.

SECTION 5. Amends Section 352.022, Local Government Code, as follows:

Sec. 352.022. PENALTY FOR FAILURE TO COMPLY WITH ORDER. Provides that an owner or occupant who is subject to an order issued under Section 352.016 commits an offense if that person fails to comply with the order. Provides that each refusal to comply is a separate offense. Provides that the offense remains B misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted two or more times under this section, in which event the offense is a state jail felony.

SECTION 6. Amends Article 12.01, Code of Criminal Procedure, as amended by Chapters 12, 1479, and 1482, Acts of the 77th Legislature, Regular Session, 2001, to increase the statute of limitations for the crime of arson from five to 10 years.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2003.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all 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, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute amended SECTION 5 of the bill to keep the penalty for failure to comply with an order of the fire marshal as a Class B misdemeanor; the original bill increased the penalty to a Class A misdemeanor. The committee substitute also added a new SECTION 6 to the bill that increases the statute of limitations for the crime of arson from five to 10 years, and renumbered following sections appropriately.