

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Howard of Fort Bend

H.B. No. 3581

A BILL TO BE ENTITLED

AN ACT

relating to county authority to abate nuisances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 343.002(1), Health and Safety Code, is amended to read as follows:

(1) "Abate" means to eliminate or remedy:

(A) by removal, repair, rehabilitation, or demolition;

(B) in the case of a nuisance under Section 343.011(c)(1), (8), or (9), by prohibition or control of access; and

(C) in the case of a nuisance under Section 343.011(c)(11), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Chapter 361.

SECTION 2. Sections 343.011(c) and (d), Health and Safety Code, are amended to read as follows:

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within

1 300 feet of a public street for 10 days or more, unless the rubbish  
2 or object is completely enclosed in a building or is not visible  
3 from a public street;

4 (3) maintaining premises in a manner that creates an  
5 unsanitary condition likely to attract or harbor mosquitoes,  
6 rodents, vermin, or disease-carrying pests;

7 (4) allowing weeds to grow on premises in a  
8 neighborhood if the weeds are located within 300 feet of another  
9 residence or commercial establishment;

10 (5) maintaining a building in a manner that is  
11 structurally unsafe or constitutes a hazard to safety, health, or  
12 public welfare because of inadequate maintenance, unsanitary  
13 conditions, dilapidation, obsolescence, disaster, damage, or  
14 abandonment or because it constitutes a fire hazard;

15 (6) maintaining on abandoned and unoccupied property  
16 in a neighborhood, or maintaining on any property in a neighborhood  
17 in a county with a population of more than 1.1 million, a swimming  
18 pool that is not protected with:

19 (A) a fence that is at least four feet high and  
20 that has a latched gate that cannot be opened by a child; or

21 (B) a cover over the entire swimming pool that  
22 cannot be removed by a child;

23 (7) maintaining a flea market in a manner that  
24 constitutes a fire hazard;

25 (8) discarding refuse or creating a hazardous visual  
26 obstruction on:

27 (A) county-owned land; or

1 (B) land or easements owned or held by a special  
2 district that has the commissioners court of the county as its  
3 governing body;

4 (9) discarding refuse on the smaller of:

5 (A) the area that spans 20 feet on each side of a  
6 utility line; or

7 (B) the actual span of the utility easement;  
8 [~~or~~]

9 (10) filling or blocking a drainage easement, failing  
10 to maintain a drainage easement, maintaining a drainage easement in  
11 a manner that allows the easement to be clogged with debris,  
12 sediment, or vegetation, or violating an agreement with the county  
13 to improve or maintain a drainage easement; or

14 (11) discarding refuse on property that is not  
15 authorized for that activity.

16 (d) This section does not apply to:

17 (1) a site or facility that is:

18 (A) permitted and regulated by a state agency for  
19 the activity described by Subsection (c); or

20 (B) licensed or permitted under Chapter 361 for  
21 the activity described by Subsection (c); or

22 (2) agricultural land.

23 SECTION 3. Section 343.013(a), Health and Safety Code, is  
24 amended to read as follows:

25 (a) A county or district court may by injunction prevent,  
26 [~~or~~] restrain, abate, or otherwise remedy a violation of this  
27 chapter in the unincorporated area of the county.

1 SECTION 4. Section 343.021, Health and Safety Code, is  
2 amended to read as follows:

3 Sec. 343.021. AUTHORITY TO ABATE NUISANCE. If a county  
4 adopts abatement procedures that are consistent with the general  
5 purpose of and conform to this chapter, the [A] county may abate a  
6 nuisance under this chapter:

7 (1) by demolition or removal;

8 (2) [or] in the case of a nuisance under Section  
9 343.011(c)(1), (8), or (9), by prohibition or control of access to  
10 the premises; and

11 (3) in the case of a nuisance under Section  
12 343.011(c)(11), by removal, remediation, storage, transportation,  
13 disposal, or other means of waste management authorized under  
14 Chapter 361 [if the county adopts abatement procedures that are  
15 consistent with the general purpose of this chapter and that  
16 conform to this chapter].

17 SECTION 5. Section 343.022(a), Health and Safety Code, is  
18 amended to read as follows:

19 (a) The abatement procedures adopted by the commissioners  
20 court must be administered by a regularly salaried, full-time  
21 county employee. A person authorized by the person administering  
22 the abatement program may administer:

23 (1) [but] the prohibition or control of access to the  
24 premises to prevent a violation of Section 343.011(c)(1), (8), or  
25 (9);

26 (2) [or] the removal or demolition of the nuisance;  
27 and

1           (3) the abatement of a nuisance described by Section  
2 343.011(c)(11) [~~may be made by a person authorized by the person~~  
3 ~~administering the abatement program~~].

4           SECTION 6. Section 343.023(a), Health and Safety Code, is  
5 amended to read as follows:

6           (a) A county may:

7                 (1) assess:

8                         (A) the cost of abating the nuisance, including  
9 management, remediation, storage, transportation, and disposal  
10 costs, and damages and other expenses incurred by the county;

11                         (B) the cost of legal notification by  
12 publication; [7] and

13                         (C) an administrative fee of not more than \$100  
14 on the person receiving notice under Section 343.022; or

15                 (2) by resolution or order, assess:

16                         (A) the cost of abating the nuisance;

17                         (B) [7] the cost of legal notification by  
18 publication; [7] and

19                         (C) an administrative fee of not more than \$100  
20 against the property on which the nuisance exists.

21           SECTION 7. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2007.

**ADOPTED**

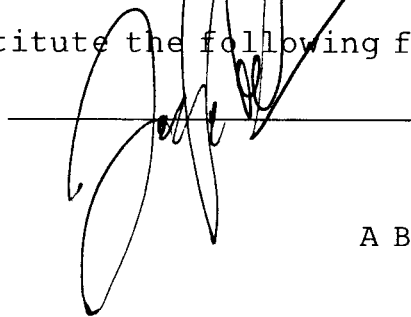
MAY 20 2007

*Leroy Spaul*  
Secretary of the Senate

By: Howard

H.B. No. 3581

Substitute the following for H.B. No. 3581:

By: 

C.S. H.B. No. 3581

A BILL TO BE ENTITLED

AN ACT

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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9 (B) in the case of a nuisance under Section  
10 343.011(c)(1), (8), or (9), by prohibition or control of access;  
11 and

12 (C) in the case of a nuisance under Section  
13 343.011(c)(11), by removal, remediation, storage, transportation,  
14 disposal, or other means of waste management authorized by Chapter  
15 361.

16 SECTION 2. Sections 343.011(c) and (d), Health and Safety  
17 Code, are amended to read as follows:

18 (c) A public nuisance is:

19 (1) keeping, storing, or accumulating refuse on  
20 premises in a neighborhood unless the refuse is entirely contained  
21 in a closed receptacle;

22 (2) keeping, storing, or accumulating rubbish,  
23 including newspapers, abandoned vehicles, refrigerators, stoves,  
24 furniture, tires, and cans, on premises in a neighborhood or within

1 300 feet of a public street for 10 days or more, unless the rubbish  
2 or object is completely enclosed in a building or is not visible  
3 from a public street;

4 (3) maintaining premises in a manner that creates an  
5 unsanitary condition likely to attract or harbor mosquitoes,  
6 rodents, vermin, or disease-carrying pests;

7 (4) allowing weeds to grow on premises in a  
8 neighborhood if the weeds are located within 300 feet of another  
9 residence or commercial establishment;

10 (5) maintaining a building in a manner that is  
11 structurally unsafe or constitutes a hazard to safety, health, or  
12 public welfare because of inadequate maintenance, unsanitary  
13 conditions, dilapidation, obsolescence, disaster, damage, or  
14 abandonment or because it constitutes a fire hazard;

15 (6) maintaining on abandoned and unoccupied property  
16 in a neighborhood, or maintaining on any property in a neighborhood  
17 in a county with a population of more than 1.1 million, a swimming  
18 pool that is not protected with:

19 (A) a fence that is at least four feet high and  
20 that has a latched gate that cannot be opened by a child; or

21 (B) a cover over the entire swimming pool that  
22 cannot be removed by a child;

23 (7) maintaining a flea market in a manner that  
24 constitutes a fire hazard;

25 (8) discarding refuse or creating a hazardous visual  
26 obstruction on:

27 (A) county-owned land; or

1 (B) land or easements owned or held by a special  
2 district that has the commissioners court of the county as its  
3 governing body;

4 (9) discarding refuse on the smaller of:

5 (A) the area that spans 20 feet on each side of a  
6 utility line; or

7 (B) the actual span of the utility easement;  
8 [~~or~~]

9 (10) filling or blocking a drainage easement, failing  
10 to maintain a drainage easement, maintaining a drainage easement in  
11 a manner that allows the easement to be clogged with debris,  
12 sediment, or vegetation, or violating an agreement with the county  
13 to improve or maintain a drainage easement; or

14 (11) discarding refuse on property that is not  
15 authorized for that activity.

16 (d) This section does not apply to:

17 (1) a site or facility that is:

18 (A) permitted and regulated by a state agency for  
19 the activity described by Subsection (c); or

20 (B) licensed or permitted under Chapter 361 for  
21 the activity described by Subsection (c); or

22 (2) agricultural land.

23 SECTION 3. Sections 343.013(a) and (b), Health and Safety  
24 Code, are amended to read as follows:

25 (a) A county or district court may:

26 (1) by injunction prevent, [~~or~~] restrain, abate, or  
27 otherwise remedy a violation of this chapter in the unincorporated



1 area of the county; and

2 (2) award abatement costs to any person who has:

3 (A) incurred abatement costs; and

4 (B) been adversely affected by a nuisance under  
5 Section 343.011(c)(11).

6 (b) A county or a person affected or to be affected by a  
7 violation under this chapter, including a property owner, resident  
8 of a neighborhood, or organization of property owners or residents  
9 of a neighborhood, may bring suit under Subsection (a). If the court  
10 grants the injunction or awards abatement costs as provided by  
11 Subsection (a), the court may award the plaintiff reasonable  
12 attorney's fees and court costs, including attorney's fees and  
13 court costs incurred in seeking relief from a nuisance under  
14 Section 343.011(c)(11) from any state or federal environmental  
15 agency or in any state or federal court at any time after the  
16 nuisance arose.

17 SECTION 4. Section 343.021, Health and Safety Code, is  
18 amended to read as follows:

19 Sec. 343.021. AUTHORITY TO ABATE NUISANCE. If a county  
20 adopts abatement procedures that are consistent with the general  
21 purpose of and conform to this chapter, the [A] county may abate a  
22 nuisance under this chapter:

23 (1) by demolition or removal;

24 (2) [~~or~~] in the case of a nuisance under Section  
25 343.011(c)(1), (8), or (9), by prohibition or control of access to  
26 the premises; and

27 (3) in the case of a nuisance under Section

1 343.011(c)(11), by removal, remediation, storage, transportation,  
2 disposal, or other means of waste management authorized under  
3 Chapter 361 [~~7, if the county adopts abatement procedures that are~~  
4 ~~consistent with the general purpose of this chapter and that~~  
5 ~~conform to this chapter~~].

6 SECTION 5. Section 343.022(a), Health and Safety Code, is  
7 amended to read as follows:

8 (a) The abatement procedures adopted by the commissioners  
9 court must be administered by a regularly salaried, full-time  
10 county employee. A person authorized by the person administering  
11 the abatement program may administer:

12 (1) [~~7, but~~] the prohibition or control of access to the  
13 premises to prevent a violation of Section 343.011(c)(1), (8), or  
14 (9);

15 (2) [~~7, or~~] the removal or demolition of the nuisance;  
16 and

17 (3) the abatement of a nuisance described by Section  
18 343.011(c)(11) [~~7, may be made by a person authorized by the person~~  
19 ~~administering the abatement program~~].

20 SECTION 6. Section 343.023(a), Health and Safety Code, is  
21 amended to read as follows:

22 (a) A county may:

23 (1) assess:

24 (A) the cost of abating the nuisance, including  
25 management, remediation, storage, transportation, and disposal  
26 costs, and damages and other expenses incurred by the county;

27 (B) the cost of legal notification by

1 publication;  and

2                    (C) an administrative fee of not more than \$100  
3 on the person receiving notice under Section 343.022; or

4                    (2) by resolution or order, assess:

5                    (A) the cost of abating the nuisance;

6                    (B)  the cost of legal notification by  
7 publication;  and

8                    (C) an administrative fee of not more than \$100  
9 against the property on which the nuisance exists.

10                    SECTION 7. The change in law made by this Act applies only  
11 to the abatement of a nuisance under Section 343.011(c)(11), Health  
12 and Safety Code, as added by this Act, that:

13                    (1) occurs on or after the effective date of this Act;  
14 or

15                    (2) arose before the effective date of this Act and  
16 continues unabated on or after the effective date of this Act.

17                    SECTION 8. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2007.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 17, 2007**

**TO:** Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3581** by Howard, Charlie (Relating to county authority to abate nuisances.), **Committee Report 2nd House, Substituted**

**No fiscal implication to the State is anticipated.**

The bill would amend the Health and Safety Code to specify that included in the costs that a county may assess for abating a nuisance would be all costs of management, remediation, storage, transportation, disposal, damages, or other expenses incurred by the county.

**Local Government Impact**

The positive fiscal impact would vary depending on what costs would otherwise have been incurred by the county if the county could not assess those costs on the person responsible for the nuisance.

**Source Agencies:**

**LBB Staff:** JOB, DB

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 16, 2007**

**TO:** Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3581** by Howard, Charlie (Relating to county authority to abate nuisances.), **As Engrossed**

**No fiscal implication to the State is anticipated.**

The bill would amend the Health and Safety Code to specify that included in the costs that a county may assess for abating a nuisance would be all costs of management, remediation, storage, transportation, disposal, damages, or other expenses incurred by the county.

**Local Government Impact**

The positive fiscal impact would vary depending on what costs would otherwise have been incurred by the county if the county could not assess those costs on the person responsible for the nuisance.

**Source Agencies:**

**LBB Staff:** JOB, DB

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

April 26, 2007

**TO:** Honorable Wayne Smith, Chair, House Committee on County Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3581** by Howard, Charlie (Relating to county authority to abate nuisances. ), **Committee Report 1st House, Substituted**

**No fiscal implication to the State is anticipated.**

The bill would amend the Health and Safety Code to specify that included in the costs that a county may assess for abating a nuisance would be all costs of management, remediation, storage, transportation, disposal, damages, or other expenses incurred by the county.

**Local Government Impact**

The positive fiscal impact would vary depending on what costs would otherwise have been incurred by the county if the county could not assess those costs on the person responsible for the nuisance.

**Source Agencies:**

**LBB Staff:** JOB, DB

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 23, 2007**

**TO:** Honorable Wayne Smith, Chair, House Committee on County Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3581** by Howard, Charlie (Relating to county authority to abate nuisances.), **As Introduced**

**No fiscal implication to the State is anticipated.**

The bill would amend the Health and Safety Code to specify that included in the costs that a county may assess for abating a nuisance would be all costs of management, remediation, storage, transportation, disposal, damages, or other expenses incurred by the county.

**Local Government Impact**

The positive fiscal impact would vary depending on what costs would otherwise have been incurred by the county if the county could not assess those costs on the person responsible for the nuisance.

**Source Agencies:**

**LBB Staff:** JOB, DB