

BILL ANALYSIS

C.S.H.B. 760
By: McClendon
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Property owners and residents who reside in unincorporated areas of counties outside the limits of a large city are often affected by loud disturbances from adjoining properties or nearby areas. Currently, only cities have the authority to regulate sound levels, which leaves those living in unincorporated areas with no means to deal with noise except by reporting a nuisance to county law enforcement. Nuisance enforcement involves substantial delay, and filing an affidavit or complaint does not allow law enforcement to deal directly and promptly with a reported incident. C.S.H.B. 760 provides a means for counties to abate noise that interferes with the ability of property owners and other residents to enjoy the quiet use of their property in unincorporated areas.

C.S.H.B. 760 authorizes a commissioners court to regulate sound levels in unincorporated areas of a county. The bill provides a permitting process for those who stage special events that generate high level sounds on a temporary basis, and exempts high decibel sounds associated with an emergency. The bill provides that a violation is a Class C misdemeanor offense.

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. 760 amends the Local Government Code to authorize a commissioners court of a county by order to regulate sound levels to promote the public health, safety, or welfare. The bill provides that a regulation adopted under the bill's provisions applies only to the unincorporated area of a county that has a population of more than one million and in which more than 80 percent of the population lives in a single municipality. The bill requires sound level regulations adopted by a commissioners court to prohibit sound levels that exceed 85 decibels at 10 p.m. or after and before 6 a.m. and continue for one hour or more. The bill provides that the sound regulated by the bill is measured by the actual decibel level emitted and not by an average noise level based on a one-hour period. The bill permits a regulation to require that a business or enterprise in existence before the effective date of the regulation and located within 5,000 feet of an existing residence, school, hospital, or nursing home take any measure necessary to comply with the regulation within a period determined by the county, not to exceed two years. The bill provides that the authority to regulate sound levels is in addition to any regulatory authority granted by other law.

C.S.H.B. 760 exempts a sound from such regulations if it is a sound produced:

- for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime;
- by an emergency vehicle;
- by emergency work necessary to restore public utilities, to restore property to a safe condition, or to protect persons or property from imminent danger;

- by aircraft in operation at an airport or in flight, or railroad equipment in operation on railroad rights-of-way;
- by the operations of an electric utility, a power generation company, or a gas utility; or
- by the use of restricted fireworks.

C.S.H.B. 760 authorizes a commissioners court to authorize by order the holding of events that produce sounds exceeding the specified levels if the person holding an event obtains a permit from the county for the event. The bill authorizes a county to impose fees on an applicant for a permit that must be based on the administrative costs of issuing the permit. The bill requires a county that imposes a permit fee to establish procedures to reduce the fee amount if the applicant is unable to pay the full permit fee. The bill requires a person to apply for the permit in accordance with regulations adopted by the county. The bill provides that those regulations may provide for the denial, suspension, or revocation of a permit by the county, and that a district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a permit by the county. The bill authorizes a county to sue in the district court for an injunction to prohibit the violation or threatened violation of a regulation adopted by the county to regulate sound levels.

C.S.H.B. 760 makes it a Class C misdemeanor offense to violate a regulation adopted by a county to regulate sound levels and specifies that for a violation that continues for more than one hour, each complete hour during which a violation continues constitutes a separate offense.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 760 differs from the original by authorizing instead of requiring a county with certain attributes to regulate sound levels in unincorporated areas. The substitute requires sound level regulations to prohibit sound levels that continue for one hour or more, whereas the original requires prohibition of sounds continuing 24 hours or more. The substitute adds an exemption to the regulations not in the original of sound produced by the use of restricted fireworks. The substitute differs from the original by clarifying that each complete hour during which a violation of a regulation continues for more than one hour constitutes a separate offense, rather than providing that each hour that a violation continues constitutes a separate offense.