

BILL ANALYSIS

C.S.H.B. 4475
By: Callegari
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, two subchapters of the Local Government Code regulate county fire code enforcement in unincorporated areas. Subchapter C, Chapter 233, Local Government Code, regulates the adoption of a fire code in unincorporated areas. Subchapter B, Chapter 352, Local Government Code, creates the office of county fire marshal with authority to perform inspections for fire and safety hazards. These subchapters vary in their application and enforcement of fire code issues. For example, Chapter 233 authorizes injunctive relief while Chapter 352 does not, and Chapter 352 provides for criminal penalties while Chapter 233 does not.

C.S.H.B. 4475 creates conformity between the two sections of the Local Government Code, allowing for simpler enforcement. It authorizes fire marshals to issue conditional certificates of compliance, permitting buildings to be occupied while violations are being corrected. It also allows for a partial certificate of compliance when only a portion of a phased construction building is in compliance. The bill decreases the penalty for most violations from a Class B to a Class C misdemeanor, except for safety threatening violations that have not been resolved after notification. It increases the penalty for an individual who has been convicted of refusing to resolve safety-threatening violations on two or more occasions.

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. 4475 amends provisions of the Local Government Code relating to the adoption of a fire code in unincorporated areas of a county to authorize a county to issue a partial certificate of compliance with the county's fire code to the owner of a building or complex of buildings involved in phased completion or build-out for any portion of the building or complex the county inspector determines is in compliance with the fire code. The bill authorizes an inspector who determines that a building does not comply with the fire code to deny the certificate of compliance or to issue a conditional certificate of compliance and allow the building to be occupied. The bill removes the requirement for a county to deny a certification of compliance for a building that an inspector determines does not comply with the fire code and removes the prohibition against the building being occupied. The bill requires the conditional certificate of compliance to notify the owner of the building of the violations of the fire code and to set a time within which the building must be in compliance with the fire code and requires revocation of the conditional certificate if the owner does not remedy the violations within the time specified on the certificate. The bill requires the owner of the building to ensure that a person does not occupy a building for which the owner does not have either a certificate of compliance or a conditional certificate of compliance, or a portion of a building or complex of buildings for which a partial certificate of compliance has not been issued.

C.S.H.B. 4475 makes it a Class C misdemeanor to construct or substantially improve a building without obtaining the required building permit; to allow a building owned by the person that does not have a certificate of compliance or a conditional certificate of compliance to be occupied; to cause, suffer, allow, or permit a violation of a county's fire code; or to fail to post the required notice of a citation issued to the person by a fire marshal, an assistant fire marshal, or a certified safety inspector. The bill makes it a Class B misdemeanor to violate an order made by the county fire marshal either to take specific action or to cease and desist from a specified activity to address an immediate threat to the public safety. The bill provides that each day an offense occurs or continues constitutes a separate offense. The bill clarifies that the appropriate attorney representing the county in the district court is authorized to file a civil action in a court of competent jurisdiction to recover a civil penalty from a person who commits an offense described above, rather than a person who violates the fire code, and increases the maximum amount of the penalty from \$200 to \$500 for each day on which the offense occurs. The bill also clarifies that the appropriate attorney representing the county in the district court is authorized to seek injunctive relief to prevent a violation or threatened violation constituting an offense described above, rather than to prevent a violation or threatened violation of the fire code. The bill establishes that the county is not required to give bond. The bill requires the court to award a county that prevails in a civil action to recover a civil penalty or to obtain injunctive relief reasonable attorney's fees, court costs, and investigative costs.

C.S.H.B. 4475 authorizes a county fire marshal, an assistant fire marshal, or a certified inspector who, on inspection or investigation, determines that a person has committed an offense described above to issue a citation to the person. The bill requires a copy of a citation issued by a certified fire inspector or by an assistant fire marshal to be furnished to the county fire marshal. The bill authorizes the county fire marshal to prescribe procedures for the issuance of a notice in lieu of a citation with respect to a de minimis violation of the fire code that has no direct or immediate relationship to public safety or health. The bill requires each citation or a copy of the citation to be prominently posted by the responsible person at a location prescribed by the county fire marshal. The bill authorizes a county fire marshal who determines that an offense described above by a person creates an immediate threat to the public safety to direct the person, including a property owner or an occupant of the building, to take specific action to address the issue or to cease and desist from a specified activity. The bill requires a person who is so ordered to comply immediately with that order.

C.S.H.B. 4475 amends provisions of the Local Government Code relating to the office of county fire marshal to authorize a county fire marshal to inspect for violations of the county fire code any structure, appurtenance, fixture, or real property located within 500 feet of a structure, appurtenance, or fixture. The bill requires the marshal to inspect a structure for violations of the county fire code if called on to do so. The bill authorizes a county fire marshal of a county that has adopted a fire code to conduct the inspection using the adopted code and any nationally recognized code or standard adopted by Texas.

C.S.H.B. 4475 decreases the penalty for an initial failure to comply with an order by a county fire marshal to correct a hazardous situation from a Class B misdemeanor to a Class C misdemeanor and includes in the offense an initial failure to comply with an order by a county fire marshal to correct a violation of a fire code. The bill also makes it a Class C misdemeanor to fail to post a citation issued by a county fire marshal or to cause, suffer, allow, or permit a violation of the fire code in a county that has adopted a fire code. The bill makes it a Class B misdemeanor to violate an order made by the county fire marshal to take specific action or to cease and desist from an activity to address an immediate threat to the public safety. The bill clarifies that the penalty for such a Class B misdemeanor offense is enhanced to a state jail felony if it is shown on the trial of the offense that the defendant has been previously convicted two or more times for any of the offenses described above. The bill clarifies that each day an offense occurs or continues, rather than each refusal to comply, constitutes a separate offense. The bill authorizes a county fire marshal, an assistant fire marshal, or a certified fire safety inspector who determines on inspection or investigation that a person has committed an offense

described above to issue a citation to that person. The bill requires a copy of a citation issued by a certified fire inspector or an assistant fire marshal to be furnished to the county fire marshal. The bill authorizes the county fire marshal to prescribe procedures for the issuance of a notice in lieu of a citation with respect to a de minimis violation of the fire code that has no direct or immediate relationship to public safety or health. The bill requires each of these citations or a copy of the citation to be prominently posted by the responsible person at the location prescribed by the county fire marshal.

C.S.H.B. 4475 authorizes the appropriate attorney representing the county in civil cases to file a civil action to recover from a person who commits an offense described above a civil penalty in an amount not to exceed \$500 for each day on which the offense occurs. The bill requires the court to consider the seriousness of the offense in determining the amount of the penalty. The bill authorizes the appropriate attorney representing the county in civil cases to seek injunctive relief to prevent such an offense or threatened offense, and provides that the county is not required to give bond. The bill requires the court to award a prevailing county reasonable attorney's fees, court costs, and investigative costs. The bill authorizes a county fire marshal who determines that such an offense or a fire or life safety hazard creates an immediate threat to the public safety to direct the person committing the offense, the property owner, or an occupant of the building to take specific action or to cease and desist from a specified activity. The bill requires a person to immediately comply with such an order made by the county fire marshal.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4475 makes no substantive changes to the original, but differs from the original by making a technical change.