

BILL ANALYSIS

C.S.S.B. 968
By: West
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interactive spray fountain parks have become increasingly popular attractions throughout the United States. When not properly maintained, spray fountain parks have been associated with outbreaks of diarrheal illness. More than 15 such outbreaks of bacterial, viral, or parasitic illnesses have occurred from fountain parks in the United States and other countries. Currently, there is no existing regulation in the state of Texas requiring minimum operating standards for such facilities.

C.S.S.B. 968 requires an owner, manager, operator, or other attendant in charge of an interactive water feature or fountain to maintain it in a sanitary condition and sets forth certain standards for such features or fountains. The bill authorizes a county, municipality, or the Department of State Health Services to require the owner or operator of an interactive water feature or fountain to obtain a permit for the operation of such a fountain or water feature and authorizes a fountain or water feature to be closed under certain circumstances.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 2 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practicable, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.S.B. 968 amends the Health and Safety Code to require an owner, manager, operator, or other attendant in charge of an interactive water feature or fountain to maintain the water feature or fountain in a sanitary condition. The bill prohibits the bacterial content of the water in the feature or fountain from exceeding the safe limits prescribed by law. The bill requires the maintenance of a minimum free residual chlorine of 1.0 part for each one million units of water used in the feature or fountain. The bill prohibits water in a feature or fountain from showing an acidic reaction to a standard pH test.

C.S.S.B. 968 authorizes the executive commissioner of the Health and Human Services Commission by rule to adopt methods other than chlorination for the purpose of disinfecting interactive water features and fountains. The bill exempts a feature or fountain supplied entirely by drinking water that is not recirculated from the residual chlorine and pH requirements. The

bill requires the exclusion of a person known to be or suspected of being infected with a transmissible condition of a communicable disease from an interactive water feature or fountain. The bill authorizes a county, a municipality, or DSHS to require the owner or operator of an interactive water feature or fountain to obtain a permit for the operation of the feature or fountain, inspect an interactive water feature or fountain for compliance with the bill's provisions, and impose and collect a reasonable fee in connection with a required permit or inspection, provided, if the requirement is imposed by a county or municipality, that the auditor for the county or municipality reviews the program every two years to ensure that the fees do not exceed the cost of the program and that the county or municipality refunds the permit holders any revenue determined by the auditor to exceed the cost of the program. The bill authorizes a county, a municipality, or DSHS by order to close, for a period specified in the order, an interactive water feature or fountain, if the operation of the fountain or feature violates the bill's provisions or a permit, inspection, or fee requirement. The bill defines "interactive water feature or fountain."

C.S.S.B. 968 requires the executive commissioner of the Health and Human Services Commission to adopt emergency rules as necessary to implement the provisions of the bill not later than the 30th day after the effective date of the bill. The bill establishes that an owner, manager, operator, or other attendant in charge of an interactive water feature or fountain is not required to comply with the bill's provisions before the fifth day after the date the rules are adopted by the executive commissioner.

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.S.B. 968 differs from the original by authorizing the Department of State Health Services (DSHS), rather than the state, in addition to a county or a municipality, to require the owner or operator of an interactive water feature or fountain to obtain a permit. The substitute omits provisions included in the original specifying that an interactive water feature or fountain subject to the bill's provisions be within the jurisdiction of a county or municipality.

C.S.S.B. 968 adds a clarification not included in the original that the imposition or collection of a fee in connection with a required permit or inspection applies only if such a requirement is imposed by a county or municipality.

C.S.H.B. 968 differs from the original by adding the department to the entities authorized to close, by order, an interactive water feature or fountain under certain conditions.

C.S.S.B. 968 makes conforming changes not included in the original.