

BILL ANALYSIS

C.S.H.B. 1247
By: Harris, Cody
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In Texas, restaurants must comply with a complicated set of food safety regulations. These include standards from the Department of State Health Services that are usually adopted from the FDA Food Code. At the local level, local health departments operated by municipalities and counties also have the authority to enforce even stricter rules. Regulations across multiple agencies can cause confusion and create duplicative permits that become very costly for restaurants, many of which are small businesses. C.S.H.B. 1247 seeks to streamline restaurant regulations across Texas while maintaining the focus on food and safety by prohibiting municipalities and public health departments from enforcing rules that differ from statewide standards until the local rules have been posted in a public database for at least 60 days. It would also establish that ceilings, bar fronts, wall art, and similar surfaces do not have to meet the same cleanable surface standards that apply to cooking, preparation, and eating surfaces. The bill prohibits municipalities and counties from assessing a local restaurant fee and a local alcohol fee from the same business beyond the first time the business's alcohol permit or license is issued. It would also prohibit a local government from requiring food service establishments to obtain a permit or pay a fee to enforce sound regulations for background music during food supply deliveries or played on the premises. Additionally, local governments would be prohibited from charging food managers a permit fee for a person who has already completed a state-approved certification, mirroring existing state law for food handlers.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1247 amends the Health and Safety Code to prohibit a municipality or public health district of which the municipality is a member from conducting an inspection to determine compliance with an ordinance the municipality adopts that differs from state law or Department of State Health Services (DSHS) rules or orders before the 60th day following the date the municipality or district submits a copy of the ordinance to DSHS for inclusion in its online municipal ordinance registry established under the bill's provisions. The bill prohibits DSHS, a county, a municipality, or a public health district, including an authorized agent or employee, that conducts an authorized inspection from taking disciplinary action against or otherwise penalizing a food service establishment, a retail food store, a mobile food unit, a roadside food vendor, or a temporary food service establishment for failing to adhere to easily cleanable surface requirements for wall and ceiling surfaces, decorative items, or attachments in a

consumer area, provided the surfaces, items, or attachments are kept clean. For purposes of these provisions, a consumer area includes a dining room, outdoor dining area, or bar seating area in which customers consume food but does not include a table, bar top, or other similar surface where food is regularly prepared or consumed.

C.S.H.B. 1247 requires DSHS to establish and maintain on DSHS's website a registry for municipal ordinances submitted under the bill's provisions and post in the registry each submitted ordinance not later than the 10th day after the date DSHS receives the ordinance. The bill prohibits a county or a municipality with a public health district that charges a fee for issuance or renewal of a food establishment-related permit for a premises located in the county or municipality and permitted or licensed by the Texas Alcoholic Beverage Commission from also charging a local fee under the Alcoholic Beverage Code for an alcoholic beverage permit or license for the premises. The bill prohibits DSHS, a county, a municipality, or a public health district from requiring a food service establishment to obtain a sound regulation permit, charging the establishment a sound regulation fee, or otherwise prohibiting sound-related activity at the establishment if the establishment meets the following criteria:

- accepts delivery of supplies only for one hour or less between 5 a.m. and 11 p.m. and delivery of only food, water, or ice after 11 p.m., provided the delivery sound level when measured from the residential property closest in proximity to the establishment does not exceed 75 dBA, excluding traffic and other background noise that is reasonably excluded; or
- is a restaurant, as defined by the Alcoholic Beverage Code, that limits the use of amplified sound for playing music or amplifying human speech within the establishment's indoor or outside property boundaries to ensure:
 - the amplified sound is not used after 10 p.m. on Sunday through Thursday and 11 p.m. on Friday and Saturday; and
 - the amplified sound level when measured at the establishment's property perimeter does not exceed 70 dBA or 75 dBC, excluding traffic and other background noise reasonably excluded.

The bill's prohibition with respect to a restaurant does not apply to a food service establishment on property that is within 100 feet of a residence that was occupied before any food service establishment was located on the property. The bill's provisions relating to sound regulations expressly do not restrict the authority of a municipality or county to otherwise enforce limitations on sound level under the bill's prohibition or an ordinance or order the municipality or county adopts, to the extent the ordinance or order does not conflict with the bill's prohibitions.

C.S.H.B. 1247 prohibits a local health jurisdiction from requiring a food manager who holds a food manager certificate issued by the state to hold a local food manager card or charging a fee for the issuance of a food manager certificate.

C.S.H.B. 1247 applies only to an inspection conducted or order or ordinance issued on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1247 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the provision from the introduced that limited a county or a public health district to conducting an inspection for purposes of determining compliance with an order issued

by the county or district that differs from state law or DSHS rules or orders on or after the 60th day following the date the county or district submits a copy of the order to DSHS for inclusion in the DSHS registry as follows:

- by changing the entities to which the provision applies from a county or public health district, as in the introduced, to a municipality or a public health district of which the municipality is a member and accordingly replacing references to "order" with references to "ordinance" for purposes of an ordinance adopted by the municipality; and
- by changing the limitation to a prohibition against conducting an inspection for such purposes before the 60th day following the date the municipality or district submits a copy of the ordinance to DSHS for inclusion in the DSHS registry.

Accordingly, the substitute changes from orders issued by a county or public health district, as in the introduced, to ordinances adopted by a municipality the object for which DSHS is required to establish and maintain a registry.

The substitute revises the prohibitions in the introduced against DSHS, a county, a municipality, or a public health district imposing certain sound regulations on a food service establishment that meets certain conditions as follows:

- for purposes of the delivery sound level of such an establishment, clarifies that the condition in the introduced that the establishment accept delivery of food, water, or ice only after 11 p.m. applies instead to the delivery of only those items after 11 p.m.;
- specifies that the condition that the establishment limit the use of amplified sound for playing music or amplifying human speech within the establishment's indoor or outside property boundaries to ensure certain quiet hours or a certain maximum sound level applies with respect to a restaurant as defined by the Alcoholic Beverage Code, whereas the introduced did not include this specification; and
- with respect to that sound limitation condition, whereas the introduced specified as a purpose for that limitation ensuring the amplified sound level does not exceed 75 dBA when measured at the establishment's outermost property perimeter, excluding certain background noise, the substitute specifies as such a purpose ensuring that the amplified sound level when measured at the establishment's property perimeter does not exceed 70 dBA or 75 dBC, excluding such background noise, and does not specify that the applicable property perimeter is the outermost.

The substitute includes provisions not in the introduced that establish the following:

- the bill's prohibition against DSHS, a county, a municipality, or a public health district imposing certain sound regulations with respect to a restaurant does not apply to a food service establishment on a property that is within 100 feet of a residence that was occupied before any establishment was located on the property; and
- the bill's prohibition against those entities imposing certain sound regulations does not restrict the authority of a municipality or county to enforce limitations on sound level under that prohibition or an ordinance or order the municipality or county adopts, to the extent the ordinance or order does not conflict with that prohibition.