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| BILL ANALYSIS |

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| C.S.H.B. 2156 |
| By: Harris |
| State Affairs |
| Committee Report (Substituted) |

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| **BACKGROUND AND PURPOSE** The bill author has informed the committee that restaurants in Texas must comply with a complicated patchwork of regulations and that, while the Department of State Health Services (DSHS) adopts food safety standards every few years in keeping with the FDA's Food Code, local health departments operated by cities and counties also have the authority to require permits and enforce stricter rules. Moreover, as the committee was informed, because a restaurant's location determines if it reports to DSHS or a local health department, the resulting regulatory patchwork between jurisdictions can create confusion and generate duplicative permits that become costly for restaurants, many of which are small businesses. Last regular session, in an effort to address these issues, S.B. 577, relating to regulation of food service establishments, retail food stores, mobile food units, roadside food vendors, temporary food service establishments, and food managers, was passed on a bipartisan basis but, as the bill author has further informed the committee, unfortunately many cities and counties have argued that the bill has loopholes that would allow them to ignore that bill's legislative intent. C.S.H.B. 2156 seeks to address these issues and close potential loopholes by setting out provisions relating to state and local authority to regulate the food service industry. |
| **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. 2156 amends the Health and Safety Code to prohibit a county, municipality, or public health district, including an authorized agent, employee, or department, from requiring a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment, or an employee of such an entity, to obtain a local food permit, license, certification, or other form of authority unless the entity or employee would be required to do so if the entity or employee was located within the jurisdiction of the Department of State Health Services (DSHS). C.S.H.B. 2156 prohibits a county, municipality, or public health district, including an authorized agent, employee, or department, except as provided by the bill, from charging a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment or an employee of any of those entities a fee, including any processing fees or added costs, that exceeds the fee the entity or employee would pay to DSHS if the entity or employee were located within DSHS jurisdiction. The bill authorizes a county, municipality, or public health district, including an authorized agent, employee, or department, to do the following:* calculate and assess fees in accordance this prohibition on an annual or biennial basis and using a risk-based assessment; and
* assess a reinspection fee under the following conditions:
	+ the reinspection is necessary to cure a violation that presents a direct and significant risk to public health;
	+ the reinspection fee does not exceed the lesser of the cost of an initial inspection or $200; and
	+ not more than one reinspection fee is charged within 60 days of the previous inspection, unless the entity on which the fee is imposed failed to make reasonable efforts to correct the violation.

C.S.H.B. 2156 authorizes a county with a population of 2.5 million or more, a municipality with a population of 950,000 or more, or a public health district that regulates such a county or municipality to charge a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment up to 120 percent of the total applicable local fees authorized by the bill if the county, municipality, or district determines that the increased fee is necessary to protect public safety and maintain adequate food safety staffing levels in the county, municipality, or district. The bill requires the county, municipality, or district, before imposing such increased fees, to hold at least one annual public meeting or hearing to demonstrate compliance with this authorization.C.S.H.B. 2156 establishes that its local fee limitation provisions expressly do not prohibit a county, municipality, or public health district, including an authorized agent, employee, or department, from charging a fee that is necessary for the county, municipality, or district to comply with an active, legally binding federal consent decree, enforcement order, or administrative agreement mandating food service compliance inspections. The bill requires a county, municipality, or district, before imposing such a fee, to hold at least one annual public meeting or hearing to demonstrate that the fee is limited to the amount necessary to comply with a decree, order, or agreement.C.S.H.B. 2156 removes the prohibition against a county or a municipality with a public health district that charges a fee for issuance or renewal of an applicable permit for a premises located in the county or municipality and permitted or licensed by the Texas Alcoholic Beverage Commission also charging an applicable local fee authorized under the Alcoholic Beverage Code for issuance of an alcoholic beverage permit or license for the premises and replaces it with a prohibition against a county, municipality, or public health district, including an authorized agent, employee, or department, charging such a local fee if the premises is a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment that has already paid a fee to operate to DSHS or to any county, municipality, or public health district.C.S.H.B. 2156 includes a municipality as an entity required to establish a fee schedule for any fees collected under provisions relating to the regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors and to revise the fee schedule as necessary. The bill expands the DSHS registry of certain adopted municipal ordinances that differ from state law or DSHS rules or orders to include fee schedules and requires a county, municipality, or public health district to submit a copy of their fee schedule to DSHS for inclusion in the registry not later than the 60th day before the date the fee schedule goes into effect.C.S.H.B. 2156 requires a county, municipality, or public health district that charges fees, requires permits, or conducts inspections under provisions relating to the regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors to provide an opportunity for stakeholders to sign up for email updates from the entity. The bill requires the county, municipality, or district, at least 60 days before a fee, permit, or inspection protocol or procedure is revised, to notify by email all stakeholders who have signed up for email updates.C.S.H.B. 2156 prohibits DSHS, a county, a municipality, or a public health district, including an authorized agent, employee, or department, from requiring a food service establishment to obtain a sound regulation permit, charging a sound regulation fee to an establishment, or otherwise prohibiting sound-related activity at an establishment if the establishment:* accepts delivery of supplies or other items, provided that if the delivery occurs between 10 p.m. and 5 a.m., then:
	+ the delivery lasts for one hour or less;
	+ the delivery is only for food, nonalcoholic beverages, food service supplies, or ice; and
	+ the delivery sound level when measured from the residential property closest in proximity to the establishment does not exceed 65 dBA, excluding traffic and other background noise that can be reasonably excluded; or
* is a restaurant, as defined by reference to 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 following:
	+ 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 does not exceed 70 dBA or 75 dBC when measured at the establishment's property perimeter, excluding traffic and other background noise that can be reasonably excluded.

The bill makes this restaurant exception inapplicable to a food service establishment on property that is located within 300 feet of a residence that was occupied before any food service establishment was located on the property. These provisions of the bill relating to sound regulations expressly do not restrict the authority of a municipality or county to enforce the limitations or an ordinance or order the municipality or county adopts, to the extent the ordinance or order does not conflict with the limitations. C.S.H.B. 2156 prohibits a county, a municipality, a public health district, or DSHS from requiring a permitted food service establishment or permitted mobile food unit transporting and delivering to the premises of a workplace food to be served by an employee or contractor of the establishment or unit, or from requiring an employee or contractor of such an establishment or unit, to obtain an additional permit or certification to transport, deliver, and serve food at the premises of a workplace under the following conditions:* in the event that the food is assembled at the workplace, the employees or contractors of the establishment or unit comply with applicable food handler and food manager certification requirements;
* an employee or contractor of the establishment or unit serves the prepared food at the workplace premises;
* the prepared food is sold to employees or guests of the workplace;
* the food is prepared, transported, delivered, and served in accordance with local catering food safety rules, including time and temperature requirements;
* adequate bathrooms and handwashing stations, whether plumbed or portable, are available on the workplace premises; and
* the establishment or unit transports, delivers, and serves food to the workplace premises not more than three days in a seven-day period.

C.S.H.B. 2156 does the following with respect to the prohibition against a local health jurisdiction requiring a food manager who holds a food manager certificate to hold a local food manager card:* also prohibits the jurisdiction from requiring the manager to hold a local food manager license, permit, or certification or any other credential or paperwork; and
* replaces the prohibition against the jurisdiction charging a fee for issuance of the certificate with a prohibition against the jurisdiction requiring the manager to pay a fee for such card, license, permit, or certification or any other credential or paperwork.

C.S.H.B. 2156 establishes that the effect of an order of a public health district that does not have an administrative board requiring food service establishments, retail food stores, mobile food units, and roadside food vendors in the district to obtain a permit from the district is subject to a statutory provision that prohibits 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 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 the applicable DSHS registry. The bill, with respect to the statutory provision that establishes that provisions relating to the regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors do not restrict the authority of a municipality that is a member of a public health district to adopt ordinances or administer a permit system concerning such establishments, stores, units, and vendors, limits the nonrestriction to the extent those ordinances or that system does not conflict with a provision of state law. C.S.H.B. 2156 amends the Civil Practice and Remedies Code to include an ordinance, order, or rule adopted or enforced by a municipality or county in violation of the following Health and Safety Code provisions among the local regulations adopted or enforced by a municipality or county in violation of state law for which a person who has sustained an injury in fact, actual or threatened, from the regulation, or a trade association representing the person, has standing to bring and may bring an action against the municipality or county:* provisions relating to the regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors;
* provisions relating to mobile food service establishments operating in certain counties in more than one municipality; or
* provisions relating to public health measures relating to food.

The bill establishes that, in provisions relating to municipal and county liability for certain regulation, a reference to a municipality or county includes a public health district created by one or more municipalities or counties. |
| **EFFECTIVE DATE** September 1, 2025. |
| **COMPARISON OF INTRODUCED AND SUBSTITUTE**While C.S.H.B. 2156 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 includes a provision absent in the introduced that establishes that the effect of an order of a public health district that does not have an administrative board requiring food service establishments, retail food stores, mobile food units, and roadside food vendors in the district to obtain a permit from the district is subject to a statutory provision that prohibits 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 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 the applicable DSHS registry.Whereas the introduced repealed a provision that establishes that provisions relating to the regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors do not restrict the authority of a municipality that is a member of a public health district to adopt ordinances or administer a permit system concerning such establishments, stores, units, and vendors, the substitute does not repeal that provision but instead limits the nonrestriction to the extent those ordinances or that system does not conflict with a provision of state law.With respect to the bill's prohibition against a county, municipality, or public health district, including an authorized agent, employee, or department, charging an applicable local fee authorized under the Alcoholic Beverage Code if the premises is a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment that has already paid a fee to operate to any county, municipality, or public health district, the introduced and the substitute differ as follows:* the introduced included a specification, which is not in the substitute, that the fee authorized under the Alcoholic Beverage Code is for issuance of an alcoholic beverage permit or license for the premises; and
* the substitute includes DSHS as an alternative recipient of the operation fee, whereas DSHS is not included as such a recipient in the introduced.

With respect to the bill's requirement for a county, municipality, or public health district to submit a copy of their fee schedule to DSHS for inclusion in the applicable DSHS registry, the substitute includes a deadline for such submission, which is not included in the introduced, of not later than the 60th day before the date the fee schedule goes into effect.With respect to the bill's prohibition against a county, municipality, or public health district charging a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment a fee that exceeds the fee the entity would pay to DSHS if the entity were located within DSHS jurisdiction, the substitute expands the prohibition to also prohibit the charging of such a fee to an employee of such an establishment, store, unit, or vendor, whereas the introduced did not provide for this expansion. The substitute includes provisions that were not in the introduced that do the following:* authorize a county, municipality, or public health district, including an authorized agent, employee, or department, to do the following:
	+ calculate and assess fees in accordance with the prohibition on an annual or biennial basis and using a risk-based assessment; and
	+ assess a reinspection fee under certain conditions;
* authorize a county with a population of 2.5 million or more, a municipality with a population of 950,000 or more, or a public health district that regulates such a county or municipality to charge a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment up to 120 percent of the total authorized fees if the county, municipality, or district determines that the increased fee is necessary to protect public safety and maintain adequate food safety staffing levels in the county, municipality, or district;
* require such county, municipality, or district, before imposing such increased fees, to hold at least one annual public meeting or hearing to demonstrate compliance with such authorization;
* establish that the substitute's local fee limitation provisions expressly do not prohibit a county, municipality, or public health district, including an authorized agent, employee, or department, from charging a fee that is necessary for the county, municipality, or district to comply with an active, legally binding federal consent decree, enforcement order, or administrative agreement mandating food service compliance inspections; and
* require a county, municipality, or district, before imposing such a fee, to hold at least one annual public meeting or hearing to demonstrate that the fee is limited to the amount necessary to comply with a decree, order, or agreement.

With respect to the bill's prohibition against DSHS, a county, a municipality, or a public health district requiring certain food service establishments to obtain a sound regulation permit, charging a sound regulation fee to such an establishment, or otherwise prohibiting sound-related activity at such an establishment, the substitute includes a specification, which is not included in the introduced, that the entities prohibited from doing these things include an authorized agent, employee, or department. With respect to such an establishment that accepts applicable deliveries, the introduced provided for a maximum applicable sound level of 75 dBA whereas the substitute provides for a maximum applicable sound level of 65 dBA. With respect to the bill's provision that makes the restaurant sound regulation exception inapplicable to a food service establishment on property that is located within 300 feet of a residence that was occupied before a certain establishment was located on the property, the introduced specified that establishment as the food service establishment whereas the substitute specifies that establishment as any food service establishment.The substitute includes provisions that were not in the introduced that prohibit a county, a municipality, a public health district, or DSHS from requiring a permitted food service establishment or permitted mobile food unit transporting and delivering to the premises of a workplace food to be served by an employee or contractor of the establishment or unit, or from requiring an employee or contractor of such an establishment or unit, to obtain an additional permit or certification to transport, deliver, and serve food at the premises of a workplace under certain conditions.While both the introduced and the substitute amend a prohibition against a local health jurisdiction requiring a food manager who holds a food manager certificate to hold a local food manager card, the substitute replaces the prohibition against the jurisdiction charging a fee for issuance of the certificate with a prohibition against the jurisdiction requiring the manager to pay a fee for a local food manager card, license, permit, or certification or any other credential or paperwork, whereas the introduced did not include this replacement. |
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