SUBJECT: Changing the permitting process for mass gatherings

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 8 ayes — Lewis, W. Smith, Casteel, Chisum, Farabee, Flynn, Olivo, Quintanilla

0 nays

1 absent — Farrar

SENATE VOTE: On final passage, May 8 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion, HB 2205:)*
For — David Kithil, Burnet County Judge; James ("Tim") O'Connor

Against — None

BACKGROUND: Health and Safety Code, ch. 751 is the Texas Mass Gathering Act (TMGA). It defines a "mass gathering" as a gathering that is held outside of the city limits of a municipality and that attracts or is expected to attract more than 5,000 persons who will remain at the location for more than five consecutive hours.

TMGA requires a person to obtain a permit to promote a mass gathering, which involves filing a permit application with the county judge of the county where the mass gathering will be held, at least 45 days in advance. The application must include the name and address of each performer scheduled to appear and the maximum number of persons the promoter will allow to attend. The county judge sends a copy of the filed application to the county health authority, county fire marshal or person designated to serve that purpose, and the sheriff, who each inspect the premises. The judge may conduct any additional investigation that the judge considers necessary.

No later than 10 days before the scheduled gathering, the county judge must hold a hearing on the application and either grant or deny the permit afterwards. A judge can deny the permit if:

- the application contains false or misleading information or omits required information;
- the promoter's financial backing is insufficient to ensure that the mass gathering will be conducted in the manner stated in the application;
- the location selected for the mass gathering is somehow inadequate;
- the promoter has not made adequate preparations to limit attendance at the mass gathering or to provide adequate supervision for minors;
- the promoter does not have assurances that scheduled performers will appear;
- the preparations for the mass gathering do not ensure that minimum standards of sanitation and health will be maintained, that the gathering will be conducted in an orderly manner, or that the physical safety of the attendees will be protected;
- adequate arrangements for traffic control have not been provided; or
- adequate medical and nursing care will not be available.

A county judge may revoke a permit issued under this chapter if the judge finds that preparations for the mass gathering will not be completed by the scheduled beginning of the gathering or that the permit was obtained by fraud or misrepresentation. A promoter affected by the action of a county judge in granting, denying, or revoking a permit may appeal that action to a district court.

It is a misdemeanor to promote a mass gathering without a permit and is punishable by a fine of not more than $1,000 and confinement in the county jail for not more than 90 days.

In 2002, the U.S. District Court for the Northern District of Texas - Dallas Division held in *Zen Music Festivals, L.L.C. v. Stewart*, that the TMGA violated the First Amendment by not requiring the county judge to hold a hearing on a promoter's application until 10 days before the scheduled beginning of a mass gathering, and by not specifying how soon after hearing the judge must render the decision. According to the court, this permits the judge to discriminate based on viewpoint because the judge could delay a hearing until literally the last minute in an attempt to scuttle a mass gathering that might contain speech or expression that did not meet the judge's approval.

DIGEST:

CSSB 1566 would define a "mass gathering" as a gathering held outside of the limits of a municipality that attracted, or was expected to attract:

- more than 5,000 people who remained for more than five continuous hours or for any duration between 10 p.m. and 4 a.m.; or
- more than 500 persons who remained for more than five continuous hours or for any duration between 10 p.m. and 4 a.m. where a majority of attendees reasonably could expected to be under 21 years of age, and where alcoholic beverages were, or were expected to be, sold, served, or consumed.

It would require a promoter to submit letters with the application from the sheriff, county health authority, and county fire marshal or person designated as such, stating that minimum safety standards had been met. These parties no longer would conduct an investigation, as required by current law, but a county judge still could conduct any additional investigation at the judge's discretion.

CSSB 1566 would give a judge five business days from the date a permit application was received to enter a ruling. If the judge failed to enter a ruling by this date, the permit would be considered granted. The judge could not deny a permit because a promoter did not have assurances that scheduled performers would appear if the promoter had complied with the application requirements and agreed at least five business days before the mass gathering would begin to provide the name and address of each scheduled performer and his or her agent, and a description of each agreement between the promoter and performer.

CSSB 1566 would allow a promoter who was denied a permit to request, within five business days of the denial, a hearing before that judge. The judge would have five business days after that hearing to either grant the permit or affirm the denial.

A county judge would not be able to revoke a permit because a scheduled performer canceled if the promoter exercised good faith in representing that the performer would appear. However, a permit could be revoked if a promoter failed to provide information about performers and agents and their contracts, if required.

CSSB 1566 would provide criminal penalties for violations of this chapter. Promoting a mass gathering without a permit would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000); holding a mass gathering without a permit would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000); and holding mass gathering without a permit where an injury occurred causing serious bodily harm or death would be a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000). A person or persons promoting a mass gathering without a permit also would be liable for a civil penalty of $1,000 to $25,000 per day of the violation.

The bill would allow a municipality or county that required the owner of a facility to obtain an event permit to adopt rules to grant permits for these facilities that were valid for one year and valid for all events similar to the one for which the permit originally was granted.

The bill would take effect on September 1, 2003.

SUPPORTERS SAY:

The purpose of CSSB 1566 is to change the mass gathering permit process to give promoters flexibility without weakening the county judge's involvement. Because a mass gathering under current law must go on for at least five continuous hours, most promoters schedule events and mass gatherings to end just before reaching the five-hour mark to avoid having to obtain a permit. Similarly, others will ensure, or at least state, that fewer than 5,000 persons are expected to attend. By extending the definition of "mass gathering" to include events with 500 or more people during late night hours, where a majority might be under 21, or where alcohol likely would be present, the bill would close loopholes that allow promoters to avoid meeting the standards required under a permit.

CSSB 1566 would make the permitting process fairer and more streamlined. The current process can be long and burdensome and can allow a judge to play favorites. Reducing the amount of time a judge has to grant or deny a permit and reducing the steps to get a permit would make the permitting process more efficient while still preserving public safety. Limiting the reasons that a judge could fail to issue a permit would ensure that promoters were granted or denied permits for valid public safety reasons and not based on bias or favoritism.

In addition, CSSB 1556 would clarify that the TMGA is constitutional. The U.S. District Court in *Zen Musical Festivals, L.L.C.,* objected to the lack of a time limit for judges to grant or deny permits, which this bill would address by requiring a decision no more than five business days after the completion of the hearing.

This bill would add flexibility in the application process with regard to artist contracts and line-ups. Often promoters have not signed up every act they expect will perform at a mass gathering in time to begin the permitting process. Promoting mass gatherings takes a lot of time, making it necessary for promoters to obtain these permits as early as possible. By giving them the flexibility to list all of the acts after beginning the application process, but still before the start of the event, this bill would not hamper promoters in arranging the event and would ensure that the county had the information it needed.

In addition, rather than requiring the issuance of permits on an event-by-event basis, CSSB 1556 would allow counties and municipalities to establish a blanket permit for a facility. This would enable promoters who produced similar events at particular facilities or permanent structures to obtain a single permit for several of these productions.

This bill would give law enforcement officers access to private property to ensure the safety of mass gathering attendees. Because no permit currently is required for many of these gatherings, law enforcement is not allowed to go onto the private property without a sufficient complaint, thereby preventing them from ensuring that health and safety standards are being complied with and no illegal activity is taking place.

Many gatherings that take place late at night are “raves.” These professionally promoted and sponsored parties, popular with minors and young adults, are notorious for attracting and facilitating the sale and use of drugs. The permitting requirements under this bill would help to prevent these dangerous events from occurring, or at least make them safer. Assuming that a rave promoter could meet the requirements under this bill, the facilities would be inspected prior to the event and law enforcement would have access to the facilities during the rave.

OPPONENTS SAY:

This bill could make it difficult for promoters to obtain the necessary inspections from the county health department, county fire marshal, and sheriff. Currently, a judge orders these inspections to occur, but under this bill, the burden would be on the promoter to obtain them. Because there no longer would be the weight of a judge behind requests for these inspections, county officials could delay unnecessarily the process due to an overburdened staff or even a bias against the promoter.

CSSB 1566 is unlikely to have any impact on raves. Raves often are advertised and conducted as alcohol-free events, so many raves with fewer than 5,000 attendees would not qualify under even this bill's expanded definition of mass gathering.

NOTES:

The committee substitute added to the Senate engrossed version the requirement of an inspection of a mass gathering site by a county health official, fire marshal, and sheriff. It would change the reference to time limits in the bill from "five days" to "five business days," and would add penalties to the bill.

HB 2205 by Hilderbran, the companion bill, was reported favorably, as substituted, by the County Affairs Committee on April 30.