

SUBJECT: Discharge of firearms and certain other weapons in recently annexed areas.

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Mowery, Harper-Brown, Blake, R. Cook, Escobar, Miller, Orr

0 nays

2 absent — Leibowitz, Pickett

WITNESSES: For — Kirby Brown, Texas Wildlife Association; Jimmy Gaines, Texas Land Owners Council; Mike Harris; Kyle Kacal, Texas Farm Bureau; John Merrill; Ed Small, Texas and Southwestern Cattle Raisers Association; (*Registered but did not testify*: Mica Tara, National Rifle Association; Alice Tripp, Texas State Rifle Association)

Against — Scott Houston, Texas Municipal League; David Lilley, City of Copperas Cove

BACKGROUND: Local Government Code, ch. 229, authorizes a municipality to restrict the use of firearms and weapons within its municipal limits. The same restriction on firearms and weapons use in annexed areas of extraterritorial jurisdictions is in Local Government Code, ch. 43, which authorizes a home rule municipality to regulate firearms and weapons discharge in annexed areas. This authority applies as reasonably necessary to agricultural land that has been annexed, according to Agriculture Code, ch. 251.

DIGEST: CSHB 1364 would amend Local Government Code, ch. 229 to discontinue municipal authority restricting discharge of firearms in the extraterritorial jurisdiction of a municipality or in an area annexed after September 1, 1981, under the following conditions:

- On 10-acre or larger tracts of land, a shotgun, air rifle or pistol, BB gun, or bow and arrow could be discharged more than 150 feet from a residence or occupied building located on another property.

- On 50-acre or larger tracts of land, a center fire or rim fire rifle or pistol of any caliber could be discharged more than 300 feet from a residence or occupied building located on another property.

CSHB 1364 also would amend Local Government Code, ch. 43 and Agriculture Code, ch. 251 to comply with the bill's proposed changes to Local Government Code, ch. 229.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

CSHB 1364 would protect certain land owners from unfair restrictions imposed through annexation laws. Currently, when areas are annexed, discharge of firearms is banned despite any pre-annexation hunting or wildlife management activity. Even with enactment the Agricultural Protection Act of 1981, which was intended to protect agricultural activity from municipal requirements, the right to discharge weapons and firearms on agricultural lands in extraterritorial jurisdictions can be forbidden. This prevents land owners from managing wildlife overpopulation and controlling predators, which may include leasing parts of their land for deer hunting. Preventing owners of agricultural and open space lands from monitoring their property as they deem fit is unreasonable, especially when it restricts personal earnings. As development pressure mounts in unincorporated areas, municipalities rapidly are annexing land to provide essential services. Meanwhile, land owners must have some relief in meeting the challenges of urban/suburban encroachment.

The bill would provide safety precautions for area residents. CSHB 1364 would guarantee that firearms and weapons be discharged only on large tracts and far from other residents on adjacent land. Some municipalities already grant reasonable exceptions to the use of firearms and weapons through city ordinances. College Station successfully has upheld a similar exception since 1995. Applying the bill to areas annexed since September 1, 1981, would correspond to the effective date of the Agricultural Protection Act enacted that year.

CSHB 1364 would reduce police responses to non-threatening incidents involving hunters and wildlife management. Currently, municipal police departments, obligated to respond to any violation of the law, needlessly

expend resources addressing safe and responsible wildlife management on recently annexed areas.

OPPONENTS  
SAY:

CSHB 1364 would usurp local control and potentially harm public safety. Cities should have discretion to regulate firearm and weapons discharge according to local needs. Some cities, under local ordinances and given certain conditions, do allow weapons discharge, but many other cities find it inappropriate and dangerous. Current law preserves local authority and provides citizens with the proper recourse to address concerns through the city. The bill would impose state control over municipal authority across the state.

CSHB 1364 would jeopardize the safety of residents. In planning for growth and demands for services, municipalities establish annexation plans, slating areas for annexation years in advance. When areas finally are annexed, they may be surrounded by residential and commercial development often populated by families and school-aged children. Increased weapons and firearms discharge within municipal boundaries, despite the bill's provisions, would endanger the public. Any proliferation of weapons and firearms use would increase the chance for misuse, accidental ricochets, and misfires. Certainly many areas that may have been undeveloped or open space when annexed in the early 1980s have since become heavily developed with residential communities where discharge of firearms would be inappropriate and dangerous.

OTHER  
OPPONENTS  
SAY:

CSHB 1364 would uphold the rights of residents in recently annexed areas to hunt and manage wildlife responsibly. However, the safety provisions of the bill could be strengthened, and the acreage and distance from occupied buildings should be increased to better protect residents. A .22 short bullet, for example, can travel more than a mile, and that distance does not account for a bullet's skipping off surfaces, which could cause a bullet to travel farther than its ballistic trajectory indicates. Also, the bill would not protect people traveling on nearby roads because it stipulates discharge distances only from nearby residences and occupied buildings.

NOTES:

The committee substitute would apply to areas annexed since September 1, 1981, rather than September 1, 2005 and also would amend Local Government Code, sec. 43.002.

The companion bill, SB 734 by Williams, passed the Senate by 28-0 on March 31 and was reported favorably, as substituted, by the House Land and Resource Management Committee on April 14, making it eligible to be considered in lieu of HB 1364.