

**SUBJECT:** County authority to abate public nuisances in unincorporated areas

**COMMITTEE:** Urban Affairs — committee substitute recommended

**VOTE:** 10 ayes — Y. Davis, C. Howard, Alvarado, Fletcher, Gutierrez, Kent, Mallory Caraway, Miklos, Pierson, C. Turner

0 nays

1 absent — Walle

**WITNESSES:** For — Tommy Adkisson, Renee Green, Bexar County; Janice Gray, Walzem Road Area Revitalization Group, Montgomery Road Area Neighborhood Association, Camelot Volunteer Fire Department;  
(*Registered, but did not testify:* Monty Winn, Texas Municipal League)

Against — None

**BACKGROUND:** Health and Safety Code, sec. 343.011 states that a person may not cause, permit, or allow a public nuisance in an unincorporated area of a county. A public nuisance can include:

- the storage or accumulation of refuse or rubbish, such as newspapers, abandoned vehicles, refrigerators, and tires, unless the rubbish is completely contained in a closed receptacle, or in the case of larger rubbish, is contained in a building and is not visible from the street;
- maintaining a premises in a way that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, or other disease-carrying pests;
- maintaining a building in a manner that is structurally unsafe, constitutes a fire hazard, or constitutes a health or safety hazard due to inadequate maintenance, dilapidation, or abandonment; or
- discarding refuse on any property that is not authorized for that activity, including land owned by a county or a special district that is governed by a county commissioners court.

Sec. 343.022 establishes procedures for the abatement of public nuisances, and requires that a county provide written notice to the owner, occupant,

lessee, or other person in charge of the premises on which there is found to be a public nuisance, as well as the person responsible for the public nuisance if that person can be identified and is not the owner, occupant, lessee, or person in charge of the premises. The notice must state:

- the specific condition that constitutes the public nuisance;
- that the person receiving the notice must abate the nuisance no later than 31 days after the notice is served, or 10 business days after the notice is served if the person has previously received a notice regarding the nuisance;
- that failure to abate the nuisance may result in abatement by the county, assessment of costs to the person responsible, and a lien being placed against the property on which the nuisance exists;
- that the county may prohibit or control access to the premises to prevent a future or continued nuisance, and;
- that the person receiving the notice is entitled to submit a written request for a hearing before the 31st day after the first notice is served, or 10 days after any subsequent notice.

Notice must be given in person or by registered or certified mail. If personal service cannot be obtained, or the address of the person who would receive the notice is unknown, the notice may be posted on the premises and published in a newspaper of general circulation in the county two times within 10 days.

Sec. 343.012 establishes criminal penalties for persons who create a public nuisance and leave it unabated after the 30th day after receiving notice from the county.

**DIGEST:**

HB 459 would reduce the amount of time a person receiving notice would have to abate a public nuisance in an unincorporated area of a county, or request a hearing, to 10 business days after receipt of the notice, regardless of whether the person had received a notice previously. The bill also would permit a county to bring suit to restrict access to a building in an unincorporated area that was considered unsafe or that constituted a health or safety hazard, to land owned by a county or a special district governed by a county commissioners court that had unauthorized discarded refuse or a hazardous visual obstruction, or to the smaller of the area that spans 20 feet on each side of a utility line or the actual span of a utility easement that had discarded refuse, and to use county funds to abate such nuisances.

The bill would apply only to public nuisance offenses committed after its September 1, 2009, effective date.

**SUPPORTERS  
SAY:**

HB 459 would give counties greater authority to combat public nuisances in unincorporated areas. In many of these areas, property is left vacant for long periods of time, leading it to become dilapidated and overgrown and a potential dumping ground for garbage, thus lowering property values in the area. Many counties rely heavily on property taxes, and any reduction in value due to public nuisance could have negative consequences for the revenue needed for county budget. The bill would expedite cleanup of these properties.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

The substitute differs from the bill as filed by reducing the number of days a person has to abate a public nuisance after receiving a notice from a county from 30 days to 10 days, by making the bill applicable only to offenses committed after the bill's effective date, and by making conforming changes to current statute.