

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/29/09

Date

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

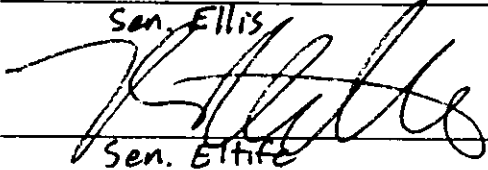
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 459 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

  
Sen. Zaffirini

  
Sen. Carona

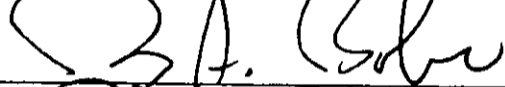
Sen. Ellis

  
Sen. Eltife


On the part of the Senate  
Sen. Hinojosa



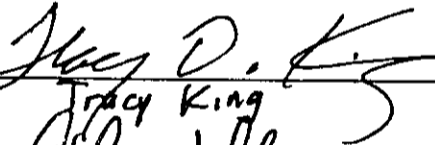
David Leibowitz



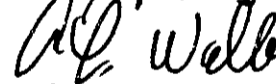
Wayne Bopac



Patricia Harless



Tracy King



On the part of the House  
Armando Walle

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 459

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authority of counties relating to the abatement and  
3 regulation of nuisances and the regulation of scrap tires and noise  
4 and sound levels; providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 343.002(1), Health and Safety Code, is  
7 amended to read as follows:

8 (1) "Abate" means to eliminate or remedy:

9 (A) by removal, repair, rehabilitation, or  
10 demolition;

11 (B) in the case of a nuisance under Section  
12 343.011(c)(1), (5), (9) [~~(8)~~], or (10) [~~(9)~~], by prohibition or  
13 control of access; and

14 (C) in the case of a nuisance under Section  
15 343.011(c)(12) [~~343.011(c)(11)~~], by removal, remediation, storage,  
16 transportation, disposal, or other means of waste management  
17 authorized by Chapter 361.

18 SECTION 2. Section 343.011(c), Health and Safety Code, as  
19 amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the  
20 80th Legislature, Regular Session, 2007, is reenacted and amended  
21 to read as follows:

22 (c) A public nuisance is:

23 (1) keeping, storing, or accumulating refuse on  
24 premises in a neighborhood unless the refuse is entirely contained

1 in a closed receptacle;

2 (2) keeping, storing, or accumulating rubbish,  
3 including newspapers, abandoned vehicles, refrigerators, stoves,  
4 furniture, tires, and cans, on premises in a neighborhood or within  
5 300 feet of a public street for 10 days or more, unless the rubbish  
6 or object is completely enclosed in a building or is not visible  
7 from a public street;

8 (3) maintaining premises in a manner that creates an  
9 unsanitary condition likely to attract or harbor mosquitoes,  
10 rodents, vermin, or disease-carrying pests;

11 (4) allowing weeds to grow on premises in a  
12 neighborhood if the weeds are located within 300 feet of another  
13 residence or commercial establishment;

14 (5) maintaining a building in a manner that is  
15 structurally unsafe or constitutes a hazard to safety, health, or  
16 public welfare because of inadequate maintenance, unsanitary  
17 conditions, dilapidation, obsolescence, disaster, damage, or  
18 abandonment or because it constitutes a fire hazard;

19 (6) maintaining on abandoned and unoccupied property  
20 in a neighborhood a swimming pool that is not protected with:

21 (A) a fence that is at least four feet high and  
22 that has a latched and locked gate; and

23 (B) a cover over the entire swimming pool that  
24 cannot be removed by a child;

25 (7) maintaining on any property in a neighborhood in a  
26 county with a population of more than 1.1 million a swimming pool  
27 that is not protected with:

1 (A) a fence that is at least four feet high and  
2 that has a latched gate that cannot be opened by a child; or

3 (B) a cover over the entire swimming pool that  
4 cannot be removed by a child;

5 (8) maintaining a flea market in a manner that  
6 constitutes a fire hazard;

7 (9) discarding refuse or creating a hazardous visual  
8 obstruction on:

9 (A) county-owned land; or

10 (B) land or easements owned or held by a special  
11 district that has the commissioners court of the county as its  
12 governing body;

13 (10) discarding refuse on the smaller of:

14 (A) the area that spans 20 feet on each side of a  
15 utility line; or

16 (B) the actual span of the utility easement;

17 (11) filling or blocking a drainage easement, failing  
18 to maintain a drainage easement, maintaining a drainage easement in  
19 a manner that allows the easement to be clogged with debris,  
20 sediment, or vegetation, or violating an agreement with the county  
21 to improve or maintain a drainage easement; or

22 (12) [~~(11)~~] discarding refuse on property that is not  
23 authorized for that activity.

24 SECTION 3. Section 343.013(c), Health and Safety Code, is  
25 amended to read as follows:

26 (c) A county may bring suit under this section to prohibit  
27 or control access to the premises to prevent a continued or future

1 violation of Section 343.011(c)(1), (5), (6), (9), or (10). The  
2 court may grant relief under this subsection only if the county  
3 demonstrates that:

4 (1) the person responsible for causing the public  
5 nuisance has not responded sufficiently to previous attempts to  
6 abate a nuisance on the premises, if the relief sought prohibits or  
7 controls access of a person other than the owner; or

8 (2) the owner of the premises knew about the nuisance  
9 and has not responded sufficiently to previous attempts to abate a  
10 nuisance on the premises, if the relief sought controls access of  
11 the owner.

12 SECTION 4. Section 343.021, Health and Safety Code, as  
13 amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the  
14 80th Legislature, Regular Session, 2007, is reenacted and amended  
15 to read as follows:

16 Sec. 343.021. AUTHORITY TO ABATE NUISANCE. If a county  
17 adopts abatement procedures that are consistent with the general  
18 purpose of this chapter and that conform to this chapter, the county  
19 may abate a nuisance under this chapter:

20 (1) by demolition or removal;

21 (2) in the case of a nuisance under Section  
22 343.011(c)(1), (5), (9), or (10), by prohibiting or controlling  
23 access to the premises;

24 (3) in the case of a nuisance under Section  
25 343.011(c)(6), by:

26 (A) prohibiting or controlling access to the  
27 premises and installing a cover that cannot be opened by a child

1 over the entire swimming pool; or

2 (B) draining and filling the swimming pool; or

3 (4) in the case of a nuisance under Section  
4 343.011(c)(12) [~~343.011(e)(11)~~], by removal, remediation, storage,  
5 transportation, disposal, or other means of waste management  
6 authorized under Chapter 361.

7 SECTION 5. Section 343.022(a), Health and Safety Code, as  
8 amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the  
9 80th Legislature, Regular Session, 2007, is reenacted and amended  
10 to read as follows:

11 (a) The abatement procedures adopted by the commissioners  
12 court must be administered by a regularly salaried, full-time  
13 county employee. A person authorized by the person administering  
14 the abatement program may administer:

15 (1) the prohibition or control of access to the  
16 premises to prevent a violation of Section 343.011(c)(1), (5), (6),  
17 (9), or (10);

18 (2) the removal or demolition of the nuisance; and

19 (3) the abatement of a nuisance described by Section  
20 343.011(c)(12) [~~343.011(e)(11)~~].

21 SECTION 6. Section 343.022(c), Health and Safety Code, is  
22 amended to read as follows:

23 (c) The notice must state:

24 (1) the specific condition that constitutes a  
25 nuisance;

26 (2) that the person receiving notice shall abate the  
27 nuisance before the:

1 (A) 31st day after the date on which the notice is  
2 served, if the person has not previously received a notice  
3 regarding a nuisance on the premises; or

4 (B) 10th business day after the date on which the  
5 notice is served, if the person has previously received a notice  
6 regarding a nuisance on the premises;

7 (3) that failure to abate the nuisance may result in:

8 (A) abatement by the county;

9 (B) assessment of costs to the person responsible  
10 for causing the nuisance when that person can be identified; and

11 (C) a lien against the property on which the  
12 nuisance exists, if the person responsible for causing the nuisance  
13 has an interest in the property;

14 (4) that the county may prohibit or control access to  
15 the premises to prevent a continued or future nuisance described by  
16 Section 343.011(c)(1), (5), (6), (9), or (10); and

17 (5) that the person receiving notice is entitled to  
18 submit a written request for a hearing before the:

19 (A) 31st day after the date on which the notice is  
20 served, if the person has not previously received a notice  
21 regarding a nuisance on the premises; or

22 (B) 10th business day after the date on which the  
23 notice is served, if the person has previously received a notice  
24 regarding a nuisance on the premises.

25 SECTION 7. Section 343.0235, Health and Safety Code, is  
26 amended to read as follows:

27 Sec. 343.0235. USE OF COUNTY FUNDS. A county is entitled to

1 use any money available under other law for a cleanup or remediation  
2 of private property to abate a nuisance described by Section  
3 343.011(c)(1), (5), (9), or (10).

4 SECTION 8. Chapter 234, Local Government Code, is amended  
5 by adding Subchapter C to read as follows:

6 SUBCHAPTER C. BUSINESSES RELATED TO AUTOMOBILE TIRES

7 Sec. 234.051. DEFINITIONS. In this subchapter:

8 (1) "Mobile tire repair business" means a business  
9 that repairs tires at any temporary location, including a roadway,  
10 alley, parking lot, or residence.

11 (2) "Used tire business" means a business or  
12 establishment at which used tires are collected, repaired,  
13 processed, recycled, scrapped, sold, bought, or stored, including a  
14 mobile tire repair business or a salvage yard.

15 Sec. 234.052. APPLICABILITY. This subchapter applies only  
16 to the unincorporated area of a county:

17 (1) with a population greater than 45,000 and less  
18 than 50,000; and

19 (2) that is adjacent to an international border.

20 Sec. 234.053. LICENSE OR PERMIT REQUIRED. The  
21 commissioners court of a county by order may require that the owner  
22 or operator of a mobile tire repair business or used tire business  
23 obtain a license or permit from the county before engaging in  
24 business in the county. The commissioners court by order may  
25 establish a fee to be paid for a license or permit.

26 Sec. 234.054. SCRAP TIRE DISPOSAL FEE. The commissioners  
27 court of a county by order may:



1           (1) establish a fee to be imposed on the purchase of an  
2 automobile tire in the county; and

3           (2) require a retailer of automobile tires to collect  
4 the fee and use the fee to comply with requirements associated with  
5 the disposal of scrap tires.

6           Sec. 234.055. RULES. The commissioners court of a county  
7 may adopt rules as necessary to administer this subchapter.

8           Sec. 234.056. INJUNCTION. A district or county attorney  
9 may bring suit to enjoin the operations of a mobile tire repair  
10 business, used tire business, or tire retailer in violation of an  
11 order or rule adopted under this subchapter.

12           Sec. 234.057. OFFENSE. A person commits an offense if the  
13 person violates an order adopted under this subchapter. An offense  
14 under this section is a Class C misdemeanor.

15           SECTION 9. Chapter 240, Local Government Code, is amended  
16 by adding Subchapter D to read as follows:

17           SUBCHAPTER D. REGULATION OF NOISE AND SOUND LEVELS

18           Sec. 240.061. APPLICABILITY OF SUBCHAPTER. This subchapter  
19 applies only to a county with a population of more than 3.3 million.

20           Sec. 240.062. AUTHORITY TO REGULATE. (a) The  
21 commissioners court of the county by order shall prohibit the  
22 production of sound from a loudspeaker or sound amplifier the level  
23 of which exceeds 85 decibels at a distance of 50 feet from the  
24 property line of the property on which the loudspeaker or sound  
25 amplifier is operated.

26           (b) A regulation adopted under this subchapter applies only  
27 to the unincorporated area of the county.

1       Sec. 240.063. PERMIT FOR CERTAIN EVENTS; PERMIT FEES. (a)

2 The commissioners court by order may authorize the holding of  
3 events at which loudspeakers or sound amplifiers that produce  
4 sounds exceeding the levels specified by Section 240.062 will be  
5 used, if the person holding an event obtains a permit from the  
6 county for the event.

7       (b) In determining whether to grant a permit under this  
8 section, the commissioners court shall consider whether the sound  
9 is recurrent, intermittent, or constant.

10       (c) A person must apply for the permit in accordance with  
11 regulations adopted by the county.

12       (d) The regulations adopted under this section may provide  
13 for the denial, suspension, or revocation of a permit by the county.

14       (e) A district court has jurisdiction of a suit that arises  
15 from the denial, suspension, or revocation of a permit by the  
16 county.

17       (f) A county may impose fees on an applicant for a permit  
18 under this section. The fees must be based on the administrative  
19 costs of issuing the permit. A county that imposes a permit fee  
20 shall establish procedures to reduce the fee amount if the  
21 applicant is unable to pay the full permit fee.

22       Sec. 240.064. METHOD OF SOUND MEASUREMENT. The  
23 commissioners court shall by rule adopt a procedure to measure  
24 noise and sound levels under this subchapter.

25       Sec. 240.065. INJUNCTION. A county may sue in the district  
26 court for an injunction to prohibit the violation or threatened  
27 violation of a prohibition or other regulation adopted under this

1 subchapter.

2 Sec. 240.066. CRIMINAL PENALTY. (a) A person commits an  
3 offense if the person violates a prohibition or other regulation  
4 adopted under this subchapter.

5 (b) An offense under this section is a Class C misdemeanor.  
6 If it is shown on the trial of an offense under this section that the  
7 person has previously been convicted of an offense under this  
8 section, the offense is a Class B misdemeanor.

9 SECTION 10. This Act takes effect September 1, 2009.

**House Bill 459**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
SECTION 1. Amends Section 343.002(1), Health and Safety Code.	SECTION 1. Same as House version.	SECTION 1. Same as House version.
SECTION 2. Reenacts and amends Section 343.011(c), Health and Safety Code, as amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the 80th Legislature, Regular Session, 2007.	SECTION 2. Same as House version.	SECTION 2. Same as House version.
SECTION 3. Amends Section 343.012(a), Health and Safety Code.	No equivalent provision.	Same as Senate version.
SECTION 4. Amends Section 343.013(c), Health and Safety Code.	SECTION 3. Same as House version.	SECTION 3. Same as House version.
SECTION 5. Amends Section 343.021, Health and Safety Code, as amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the 80th Legislature, Regular Session, 2007.	SECTION 4. Same as House version.	SECTION 4. Same as House version.
SECTION 6. Amends Section 343.022(a), Health and Safety Code, as amended by Chapters 388 (S.B. 680) and 1366 (H.B. 3581), Acts of the 80th Legislature, Regular Session, 2007.	SECTION 5. Same as House version.	SECTION 5. Same as House version.
SECTION 7. Amends Section 343.022(c), Health and Safety Code, to make conforming changes that reflect Sections 343.011(c)(12), relating to what constitutes a nuisance, as amended by this Act, and 343.012(a), relating to notice requirements, as amended by this Act.	SECTION 6. Removes conforming changes relating to notice requirements and retains conforming change relating to what constitutes a nuisance.	SECTION 6. Same as Senate version.

**House Bill 459**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
SECTION 8. Amends Section 343.0235, Health and Safety Code.	SECTION 7. Same as House version.	SECTION 7. Same as House version.
SECTION 9. Adds Subchapter D, Chapter 234, Local Government Code, MESSAGE PARLORS IN CERTAIN COUNTIES.	No equivalent provision.	Same as Senate version.
SECTION 10. Saving provision relating to the addition of Subchapter D.	No equivalent provision.	Same as Senate version.
No equivalent provision.	SECTION __. Adds Subchapter C, Chapter 361, Health and Safety Code, LAND RECLAMATION PROJECTS USING TIRES.	Same as House version.
No equivalent provision.	SECTION __. Rulemaking authority and transition provisions relating to Chapter 361, Health and Safety Code.	Same as House version.
No equivalent provision.	SECTION __. Adds Subchapter C, Chapter 234, Local Government Code, BUSINESSES RELATED TO AUTOMOBILE TIRES.	SECTION 8. Same as Senate version.
No equivalent provision.	Sec. 234.051. Defines "mobile tire repair business" and "used tire business."	Same as Senate version.
No equivalent provision.	Sec. 234.052. Applies Subchapter C only to the unincorporated area of a county with a population greater than 45,000 and less than 50,000 that is adjacent to an	Same as Senate version.

**House Bill 459**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

international border.

No equivalent provision.

Sec. 234.053. Requires the commissioners court of a county by order to require that the owner or operator of a mobile tire repair business or used tire business obtain a license or permit from the county before engaging in business in the county, and authorizes the commissioners court to establish a fee for a license or permit.

Same as Senate version.

No equivalent provision.

Sec. 234.054. Authorizes the commissioners court by order to establish a fee to be imposed on the purchase of an automobile tire in the county and to require a retailer of automobile tires to collect the fee and use the fee to comply with requirements associated with the disposal of scrap tires.

Same as Senate version.

No equivalent provision.

Sec. 234.055. Authorizes the commissioners court of a county to adopt rules as necessary to administer this subchapter.

Same as Senate version.

No equivalent provision.

Sec. 234.056. Authorizes a district or county attorney to bring suit to enjoin the operations of a mobile tire repair business, used tire business, or tire retailer in violation of an order or rule adopted under Subchapter C.

Same as Senate version.

No equivalent provision.

Sec. 234.057. Makes it a Class C misdemeanor offense to violate an order adopted under Subchapter C.

Same as Senate version.

**House Bill 459**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
No equivalent provision.	SECTION __. Adds Subchapter D, Chapter 240, Local Government Code, REGULATION OF NOISE AND SOUND LEVELS.	SECTION 9. Same as Senate version.
No equivalent provision.	Sec. 240.061. Applies Subchapter D only to a county with a population of more than 3.3 million.	Same as Senate version.
No equivalent provision.	Sec. 240.062. Requires the commissioners court of the county by order to prohibit the production of sound from a loudspeaker or sound amplifier the level of which exceeds 85 decibels at a distance of 50 feet from the property line of the property on which the loudspeaker or sound amplifier is operated and provides that a regulation adopted under Subchapter D applies only to the unincorporated area of the county.	Same as Senate version.
No equivalent provision.	Sec. 240.063. Authorizes the commissioners court to authorize the holding of events at which loudspeakers or sound amplifiers that produce sounds exceeding the levels specified by Section 240.062 will be used, if the person holding an event obtains a permit from the county for the event. Requires the commissioners court to consider whether the sound is recurrent, intermittent, or constant in determining whether to grant a permit under this section. Requires a person to apply for the permit in accordance with regulations adopted by the county. Authorizes the regulations adopted under this section to provide for the denial, suspension, or revocation of a permit by the county. Provides that a district court has	Same as Senate version.

**House Bill 459**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

jurisdiction of a suit that arises from the denial, suspension, or revocation of a permit by the county. Authorizes a county to impose fees on an applicant for a permit under this section, requires the fees to be based on the administrative costs of issuing the permit, and requires a county that imposes a permit fee to establish procedures to reduce the fee amount if the applicant is unable to pay the full permit fee.

No equivalent provision.

Sec. 240.064. Requires the commissioners court to adopt a procedure to measure noise and sound levels under Subchapter D.

Same as Senate version.

No equivalent provision.

Sec. 240.065. Authorizes a county to sue in the district court for an injunction to prohibit the violation or threatened violation of a prohibition or other regulation adopted under this subchapter.

Same as Senate version.

No equivalent provision.

Sec. 240.066. Makes it a Class C misdemeanor offense to violate a prohibition or other regulation adopted under Subchapter D, and enhances the penalty to a Class B misdemeanor for a subsequent conviction.

Same as Senate version.

SECTION 11. This Act takes effect September 1, 2009.

SECTION 8. Same as House version.

SECTION 10. Same as House version.



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 31, 2009**

**TO:** Honorable David Dewhurst , Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** HB459 by Leibowitz (relating to the authority of counties relating to the abatement and regulation of nuisances and the regulation of scrap tires and noise and sound levels; providing penalties.), **Conference Committee Report**

**No fiscal implication to the State is anticipated.**

The bill would amend the Health and Safety Code relating to procedures for a county to abate and regulate nuisances. The bill would also amend the Local Government Code relating to the regulation of tire businesses and authorizing a fee for tire purchases for regulatory compliance in certain counties. The bill would also amend the Local Government Code relating to the adoption of noise regulations by certain counties.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, KK, ESi, DB

## Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 459 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



\_\_\_\_\_  
(name)

5/30/09

\_\_\_\_\_  
(date)