

SUBJECT: TABC permit hearings for sexually-oriented businesses

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Wilson, Goolsby, Haggerty, Hamric, D. Jones, Pickett, Yarbrough
0 nays
2 absent — Kubiak, Torres

WITNESSES: For — Steve Lyons, Houston Police Department
Against — Steven Swander, Texas Entertainment Association
On — Randy Yarbrough, Texas Alcoholic Beverage Commission

BACKGROUND : Neighborhood residents can participate in a Texas Alcoholic Beverage Commission (TABC) hearing on a liquor license or alcoholic beverage permit for a sexually-oriented business planning to begin or continue its operations in their neighborhood if they submit a petition signed by 50 percent of the residents residing within 300 feet of any property line of the adult business. In cases regarding an original permit or a renewal of licensing, a hearing request must include a specific allegation or allegations of the grounds for the possible denial of the business' application.

DIGEST: CSHB 2647 would require the TABC to hold a hearing on any original or renewal application for an alcoholic beverage permit for a bar or club where a sexually-oriented business would be operated if:

- a local official, state representative, or state senator who represented the area where the business would operate requested a hearing; or
- the TABC received a petition requesting a hearing that was signed by at least 100 residents living within one-half mile of any property line of the business.

If fewer than 200 people lived within one-half mile of the property line, the petition for hearing would have to be signed by at least 50 percent of the affected residents.

A person scheduled to speak at a TABC hearing could not be temporarily excluded from the hearing to avoid hearing any comments or testimony of another person or witness.

CSHB 2647 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. It would apply only to an original or renewal application submitted on or after the effective date of the bill.

**SUPPORTERS
SAY:**

CSHB 2647 would provide for more local input into the process for the TABC uses to decide whether a liquor license or alcoholic beverage permit should be granted or renewed to sexually oriented businesses. Current law imposes a heavy burden on the average citizen seeking to participate in the hearings; although the TABC is legally authorized to hold such a permit hearing upon its own initiative, the agency can grant or refuse an application of a sexually-oriented business with or without such hearings, and the right of public participation is not guaranteed.

The current law requires residents of a neighborhood to provide specific, relevant, and detailed allegations under which an application could be denied by TABC, even when the petition requirements are met by residents. TABC usually rejects such citizen requests as offering insufficient or non-specific grounds for a hearing to be ordered. TABC has refused far more hearing requests than it has granted over the years.

When hearings are granted, residents who are slated to speak are often excluded from parts of the hearing because of the invocation of the witness exclusion rule, which is generally reserved for use in civil or criminal trials and requires exclusion to avoid listening to other witness testimony. This rule is inappropriate and unnecessary for such hearings and prevents real citizen input from being heard and considered.

The changes proposed by the bill would not alter the level of inquiry or mandate any higher standard for TABC permits. If applicants are qualified,

they will receive a license. If not, TABC is mandated to refuse them. This bill would simply allow local residents to participate and express their thoughts and opinions about a business that could have a profound effect upon the quality of life for their families and neighborhoods.

OPPONENTS
SAY:

This bill is one more attempt to attack adult-oriented businesses under the guise of providing citizen input to the process. TABC is already empowered to hold a hearing on applications by such businesses, and citizen input is seldom lacking, whether it takes place at a full hearing forum or not. The relaxation of the citizens' petition requirement to grant a hearing would make that standard almost meaningless. It would be quite easy to obtain the 100 signatures necessary to mandate a hearing, especially when the boundary is a one-half mile radius from the applicant's business. The sheer number of persons available to sign such a petition would make these TABC hearings almost automatic, thus costing TABC far more in administrative costs to review these applications.

Many adult clubs, in an effort to preempt possible complaints from their neighbors or to escape other local ordinances aimed at restricting their right to operate, have moved even farther from residential areas, even in cities like Houston, where the lack of zoning ordinances has created a checkerboard of multi-use neighborhoods. Under CSHB 2647, they would still be vulnerable to a citizen hearing if only half of the residents of an area with less than 200 residents signed a petition. Conceivably, a hearing might be required if two or five residents asked for it, assuming the club only had four or ten neighbors within a 1/2 mile radius.

Authorizing a hearing to be held upon the request of a lone local official would place far too much power into the hands of a small group of people who may have their own local agenda or take such an opportunity to make political hay out of challenging such a business, fully aware that TABC may grant the permit anyway. Designating so many local officials with the power to force a hearing could also result in a kind of "forum shopping," where adult nightclub opponents would simply look for the one official who would carry their hearing request.

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NOTES: The committee substitute would allow local officials, rather than elected officials, to request a TABC hearing and listed the local officials who could make the request.