

SUBJECT: Elections for mixed beverage sales by food and beverage certificate holders

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Wilson, Yarbrough, Haggerty, D. Jones, J. Moreno, Palmer, A. Reyna

0 nays

2 absent — Flores, Goolsby

WITNESSES: For — Richie Jackson, Texas Restaurant Association; David W. Mayfield, Donald Grantges Company; William E. Stonaker, Wilson and Stonaker, LLC; David R. Harry

Against — None

On — Randy Yarbrough, Texas Alcoholic Beverage Commission

BACKGROUND: A local option election is a special election held to authorize or prohibit certain alcohol sales within a political subdivision. Under the Alcoholic Beverage Code, as interpreted by the courts and the Attorney General's Office (Opinions JM-468 and DM-44), cities located in more than one county cannot hold these elections because the election must be conducted by a county commissioners court and can only apply to the entire county or justice precinct within such cities.

Texas Alcoholic Beverage Code Sec. 251.14 (b) and (c) provide for several ballot choices in local option elections, ranging from off-premises beer sales only to the on-premises sale of all alcoholic beverages. The sale of mixed beverages by food and beverage certificate holders only is not currently available as a ballot option. Mixed beverages include beer, wine, and hard liquor. Under Texas Alcoholic Beverage Code Sec. 25.13, a food and beverage certificate can only be held by an establishment with a full kitchen offering multiple entrees where food service is the primary business and alcohol sales do not exceed 75 percent of the gross receipts.

Under Texas Alcoholic Beverage Code Sec. 251.11, a local option election can be held only when a petition for the election is presented to the county commissioners court and signed by 35 percent or more of the registered voters in the political subdivision. Petitions must include the actual signature of each signer, a notation showing the residence address of each of the signers, and each signer's voter registration certificate number.

DIGEST: CSHB 1814 would add a new option — sale of mixed beverages by food and beverage certificate holders only — to the local option election ballot choices available to all political subdivisions under the Alcoholic Beverage Code.

The petition for a local option election on mixed beverage sales by food and beverage certificate holders only would require the signatures of 25 percent of the registered voters in the political subdivision, rather than the 35 percent required for other local-option elections. Also, the petition would require only each signer's actual signature.

CSHB 1814 also would allow multi-county cities and towns to hold their own local option elections for the sale of mixed beverages by food and beverage certificate holders only. City officials would take the place of the county officials in the local option election process, and the city would pay the cost of the election.

CSHB 1814 would take effect September 1, 1999.

SUPPORTERS SAY: CSHB 1814 would add needed flexibility to the Alcoholic Beverage Code by adding a new option limiting mixed beverage sales to restaurants and similar establishments. It also grant this election option to multi-county cities.

Cities and towns located in more than one county include many burgeoning areas such as Mansfield, Garland, Richardson, Coppell, and Copperas Cove. Large restaurant chains that are essential for economic growth will not move into dry areas because of their limited ability to sell mixed beverages. Membership systems for private-club liquor sales are difficult and costly to administer. Multi-county cities and town are at an economic disadvantage compared to neighboring cities and towns located entirely within a county. The result is that many residents of a multi-county city have to travel to another city to enjoy a meal at a major chain restaurant.

CSHB 1814 would use the strict standards of the food and beverage certificate to ensure that only true restaurants would be able to sell mixed beverages, with voter approval, in multi-county cities and towns. Bars could not meet the 75 percent maximum gross receipts for liquor sales. Restaurants do not raise the same concerns that bars do concerning crime and liquor offenses.

The petition requirement should be lowered from 35 percent of registered voters to 25 percent for this limited option because these fast-growing cities and towns often have inaccurate voter lists due to highly mobile populations. This lower petition requirement would apply only to local option elections on the sale of mixed beverages by food and beverage certificate holders. The higher percentage requirement would remain unchanged for petitioning for local-option elections involving more general sales of alcoholic beverages.

OPPONENTS
SAY:

Lowering the petition requirement for local-option elections involving sale of alcoholic beverages under any circumstances would set a bad precedent. Others will use the same economic development arguments in the future in seeking to lower the petition requirement for local-option elections for other types of alcoholic beverage sales. The threshold for petitioning such elections should remain high enough to show genuine community consensus favoring such elections no matter where they are held and no matter how limited the sale option.

CSHB 1814 would make an unjustified special exception from the requirement that petition signers include their residence address and voter registration number only for local-option elections for mixed beverage sales by restaurants and related businesses. The petition standards should remain consistent for all local-option elections.

OTHER
OPPONENTS
SAY:

Multi-county cities and towns should be able to hold local-option elections for any type of alcoholic beverage sales, not just sale of mixed beverages by food and beverage certificate holders. This limitation would maintain the economic disadvantage that multi-county cities and towns have compared to other cities and towns. If all other local-option elections were available to multi-county cities and towns, the higher petition requirement still would limit the expansion of liquor sales into areas where it was not wanted.

NOTES:

The committee substitute changed the general term “restaurant” in the original bill to “food and beverage certificate holders.” The substitute also would require that petition signers include only their actual signatures on a petition for local-option elections for sale of mixed beverages by food and beverage certificate holders. The substitute also added the September 1, 1999, effective date.

The companion bill, SB 789 by Harris, has been referred to the Senate Economic Development Committee.

A related bill, HB 1937 by Truitt, which would allow multi-county cities and towns to hold any type of local option election under the Alcoholic Beverage Code, is scheduled for a public hearing in the House Licensing and Administrative Procedures Committee tomorrow.