

## BILL ANALYSIS

Senate Research Center  
79R65 DRH-D

H.B. 1799  
By: Denny (Fraser)  
Business & Commerce  
5/14/2005  
Engrossed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Under current law, a sizable portion of Texas election law exists outside of the Election Code. During the interim period between the 78th and 79th legislative sessions, the House Elections Committee reviewed those statutes relating to election law that are not in the Election Code and held hearings relating to moving these statutes. During these interim hearings, testimony revealed that it would be advantageous to move provisions relating to local option liquor elections from the Alcoholic Beverage Code into the Election Code. Although the Texas Alcoholic Beverage Commission regulates alcohol, this agency does not have expert knowledge regarding the administration of elections and redirects most, if not all, questions regarding local option liquor elections to the Elections Division of the Secretary of State. As a result of this study, the Elections Committee recommended that these provisions be recodified into the Election Code to ease the burden on the agencies and on the local election officials responsible for administering the local option elections. H.B. 1799 transfers laws governing the holding of local option elections regarding alcoholic beverages from the Alcoholic Beverage Code to the Election Code and makes nonsubstantive revisions.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Election Code, by adding Title 17, as follows:

#### TITLE 17. LOCAL OPTION ELECTIONS

#### CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF ALCOHOLIC BEVERAGES

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. Defines "alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," "wine and vinous liquor," "municipality," and "premises."

Sec. 501.002. REFERENCES IN OTHER LAW. Provides that a reference in law to an election or a local option election held under Chapter 251 (Local Option Elections), Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. Provides that the enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of a provision of that code, including Chapter 101 (General Criminal Provisions), Alcoholic Beverage Code, apply to a violation of a provision of this chapter.

[Reserves Sections 501.004-501.020 for expansion.]

#### SUBCHAPTER B. MANNER OF CALLING ELECTION

Sec. 501.021. ELECTION TO BE HELD. Requires the commissioners court, on proper petition by the required number of voters of a county, justice precinct, or municipality in

the county, to order a local option election in the political subdivision to determine whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION TO HOLD ELECTION. (a) Requires a political subdivision to have been in existence for at least 18 months before a local option election to legalize or prohibit the sale of liquor in the political subdivision may be held.

(b) Requires the political subdivision to include substantially all the area encompassed by the political subdivision at the time of its creation and authorizes it to include any other area subsequently annexed by or added to the political subdivision.

(c) Provides that this section does not apply to a municipality incorporated before December 1, 1971.

Sec. 501.023. APPLICATION FOR PETITION. (a) Requires the county clerk of the county to issue a petition regarding a local option election regarding the sale of alcoholic beverages to specific individuals, if 10 or more qualified voters of any county, justice precinct, or municipality file a written application and provide proof of publication in a newspaper of general circulation in that political subdivision.

(b) Requires the county clerk to notify the Texas Alcoholic Beverage Commission (TABC) and the secretary of state that the petition has been issued, not later than the fifth day after the date the petition is issued.

Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO PROHIBIT. Sets forth the requirements for the application for a petition seeking an election to prohibit the sale of alcoholic beverages.

Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO LEGALIZE. Sets forth requirements for the application for a petition seeking to legalize the sale of alcoholic beverages.

Sec. 501.026. PETITION REQUIREMENTS. Requires a petition to show the date the petition is issued by the county clerk, be serially numbered, and bear the actual seal of the county clerk on each page.

Sec. 501.027. HEADING AND STATEMENT ON PETITION TO PROHIBIT. Sets forth requirements for the contents of the petition for a local option election seeking to prohibit the sale of alcoholic beverages.

Sec. 501.028. HEADING AND STATEMENT ON PETITION TO LEGALIZE. Sets forth requirements for the petition for a local option election seeking to legalize the sale of alcoholic beverages.

Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. Provides that a person commits Class B misdemeanor if the person misrepresents the purpose or effect of a petition issued under this chapter.

Sec. 501.030. COPIES OF PETITION. Requires the county clerk to supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or municipality. Requires each copy to bear the date, number, and seal on each page as required on the original petition. Requires the county clerk to keep a copy of each petition and a record of the applicants for the petition.

Sec. 501.031. VERIFICATION OF PETITION. (a) Requires the voter registrar of the county to check the names of the signers of petitions and the voting precincts in which the signers reside to determine whether the signers were qualified voters of the county,

justice precinct, or municipality at the time the petition was issued. Authorizes the political subdivision to use a statistical sampling method to verify the signatures, except that on written request from a citizen of the political subdivision for which an election is sought, the political subdivision is required verify each signature on the petition. Requires the citizen making the request to pay the reasonable cost of the verification. Requires the registrar to certify to the commissioners court the number of qualified voters signing the petition.

(b) Prohibits a petition signature from being counted unless it is the actual signature of the person and certain additional information is provided.

(c) Provides that the use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) Provides that the omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. Provides that the omission of the zip code from the address does not invalidate a signature.

(e) Provides that the signature is the only entry on the petition that is required to be in the signer's handwriting.

(f) Authorizes a signer to withdraw the signer's signature by deleting the signature from the petition or by filing with the voter registrar an affidavit requesting that the signature be withdrawn from the petition. Prohibits a signer from withdrawing the signature from a petition on or after the date the petition is received by the registrar. Provides that a withdrawal affidavit filed by mail is considered to be filed at the time of its receipt by the registrar. Provides that the withdrawal of a signature nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. Requires the commissioners court, at its next regular session on or after the 30th day after the date the petition is filed, to order a local option election to be held on the issue set out in the petition if the petition meets specific requirements. Requires voters whose names appear on the list of registered voters with the notation "S," or a similar notation, to be excluded from the computation of the number of registered voters of a particular territory.

Sec. 501.033. RECORD IN MINUTES. Requires specific information regarding the petition to be entered in the minutes of the commissioners court.

Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. Requires the election order to include specific information.

Sec. 501.035. ISSUES. (a) Provides that in the ballot issues prescribed by this section, "wine" is limited to vinous beverages that do not contain more than 17 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. Provides that for local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) Sets forth issues which the ballot is required to include in an area where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or classifications.

(c) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of all alcoholic beverages including mixed beverages has been legalized.

(d) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of all alcoholic beverages except mixed beverages has been legalized.

(e) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of beverages containing alcohol not in excess of 17 percent by volume has been legalized, and those of higher alcoholic content are prohibited.

(f) Sets forth issues which the ballot for a prohibitory election is required to include in an area where the sale of beer containing alcohol not exceeding four percent by weight has been legalized, and all other alcoholic beverages are prohibited.

(g) Provides that in an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premise consumption, no alcoholic beverage may be consumed on any licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) Provides that a local option election does not affect the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) Provides that in any local option election in which any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized before the election remains legal without regard to the outcome of that election on the question of mixed beverages. Provides that if the sale of mixed beverages by food and beverage certificate holders was legalized before a local option election on the general sale of mixed beverages, the sale of mixed beverages in an establishment that holds a food and beverage certificate remains legal without regard to the outcome of the election on the general sale of mixed beverages.

Sec. 501.037. EVIDENCE OF VALIDITY. Provides that the commissioners court election order is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make the order valid.

Sec. 501.038. FREQUENCY OF ELECTIONS. Prohibits a local option election on a particular issue from being held in a political subdivision until after the first anniversary of the most recent local option election in that political subdivision on that issue.

[Reserves Sections 501.039-501.100 for expansion.]

#### SUBCHAPTER C. HOLDING OF ELECTION

Sec. 501.101. APPLICABILITY OF ELECTION CODE. Requires the officers holding a local option election to hold the election in the manner provided by the other provisions of this code, except as provided by this chapter.

Sec. 501.102. ELECTION PRECINCTS. (a) Requires county election precincts to be used for a local option election to be held in an entire county or in a justice precinct.

(b) Requires election precincts established by the governing body of the municipality for its municipal elections to be used for a local option election to be held in a municipality. Requires the commissioners court to prescribe the election precincts for the local option election under the law governing establishment of precincts for municipal elections, if the governing body has not established precincts for its municipal elections.

Sec. 501.103. POLLING PLACES; NOTICE. (a) Requires the election to be held at the customary polling place in each election precinct. Requires the commissioners court to designate another polling place if the customary polling place is not available.

(b) Requires the notice for the election to state the polling place for each election precinct and the precinct numbers of county precincts included in each municipal election precinct if the election is for a municipality.

Sec. 501.104. NUMBER OF BALLOTS FURNISHED. Requires the county clerk to furnish the presiding judge of each election precinct with at least the number of ballots equal to the number of registered voters in the precinct plus 10 percent of that number of voters, if the election is conducted using printed ballots.

Sec. 501.105. ISSUE ON BALLOT. (a) Requires the issue ordered to appear on the ballot for an election ordered by the commissioners court to be the same as the issue applied for and set out in the petition.

(b) Requires the issue appropriate to the election to be printed on the ballot in the exact language stated in Section 501.035.

Sec. 501.106. TIME FOR VOTE TALLY. Requires the votes for a local option election to be counted and the report of the election submitted to the commissioners court within 24 hours after the time the polls close.

Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. Requires the county to pay the expense of holding a local option election authorized by this chapter in the county, justice precinct, or municipality in that county, unless certain exceptions are met.

Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a) Requires the county clerk to require the applicants for a petition for a local option election to make a deposit before the issuance of the petition if a county is not required to pay the expense of a local option election under Section 501.107.

(b) Requires the deposit to be in the form of a cashier's check in an amount equal to 25 cents per voter listed on the current list of registered voters residing in the county, justice precinct, or municipality where the election is to be held.

(c) Requires the money received to be deposited in the county's general fund. Prohibits a refund from being made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered.

(d) Prohibits the county clerk from issuing a petition to the applicants unless a deposit required by this chapter is made.

(e) Provides that a person who violates Subsection (d) commits an offense punishable in certain manners.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a) Provides that this section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) Requires an election to which this section applies to be conducted by the municipality instead of the counties. Sets forth references in this chapter for the purposes of an election conducted under this section.

(c) Requires the municipality to pay the expense of the election.

(d) Authorizes an action to contest the election under Section 501.155 to be brought in the district court of any county in which the municipality is located.

[Reserves Sections 501.110-501.150 for expansion.]

#### SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

Sec. 501.151. DECLARATION OF RESULT. (a) Requires the commissioners court to make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law on completing the canvass of the election returns.

(b) Requires the court's order, in a prohibitory election, if a majority of the votes cast do not favor a specific issue, to state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective on the 30th day after the date the order is entered. Provides that the prohibition remains in effect until changed by a subsequent local option election held under this chapter.

(c) Provides that in a legalization election, if a majority of the votes cast favor the specific issue, the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. Provides that the legalization remains in effect until changed by a subsequent local option election held under this code.

(d) Sets forth the situation in which the local option status of a political subdivision does not change.

Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. Provides that the order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

Sec. 501.153. CERTIFICATION OF RESULT. Requires the county clerk to certify the result to the secretary of state and TABC not later than the third day after the date the result of a local option election has been declared. Prohibits the clerk from charging a fee for this service.

Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) Requires a commissioners court order declaring the result of a local option election and prohibiting the sale of any or all types of alcoholic beverages to be published by posting the order at three public places in the county or other political subdivision in which the election was held.

(b) Requires the posting of the order to be recorded in the minutes of the commissioners court by the county judge. Provides that the entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of the posting.

Sec. 501.155. ELECTION CONTEST. (a) Provides that the enforcement of local option laws in the political subdivision in which an election is being contested is not suspended during an election contest.

(b) Provides that the result of an election contest finally settles all questions relating to the validity of that election. Prohibits a person from calling the legality of that election into question again in any other suit or proceeding.

(c) Provides that if an election contest is not timely instituted, it is conclusively presumed that the election is valid and binding in all respects on all courts.

SECTION 2. Amends the heading to Chapter 251, Alcoholic Beverage Code, to read as follows:

#### CHAPTER 251. LOCAL OPTION STATUS

SECTION 3. Amends Section 251.71, Alcoholic Beverage Code, by adding Subsection (e), as follows:

(e) Provides that for purposes of this code a reference to a local option election means an election held under Chapter 501, Election Code, and a local option election held under Chapter 501, Election Code, is considered to have been held under this code.

SECTION 4. Amends Section 251.72, Alcoholic Beverage Code, to redesignate the reference to Section 251.14, Alcoholic Beverage Code, to Section 501.035, Election Code.

SECTION 5. Amends Section 251.80(c), Alcoholic Beverage Code, to redesignate the reference to Section 251.40, Alcoholic Beverage Code, to Section 501.107, Election Code.

SECTION 6. Amends Subchapter D, Chapter 251, Alcoholic Beverage Code, by adding Section 251.82, as follows:

Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. Sets forth references in this code for the purposes of an election conducted under Section 501.109.

SECTION 7. Repealer: Subchapters A (Manner of Calling Election), B (Election), and C (Procedure Following Election), Chapter 251, Alcoholic Beverage Code.

SECTION 8. Effective date: September 1, 2005.