

SUBJECT: Limiting city regulation of retail food vendors

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Berlanga, Hirschi, Glaze, Maxey, McDonald, Rodriguez
0 nays
3 absent — Coleman, Delisi, Janek

WITNESSES: For — Chuck Courtney, Texas Retailers Association; Glenn Garey, Texas Restaurant Association; Rex T. Sherry
Against — Wayne Farrell, Texas Association of Municipal Health Officials

DIGEST: CSHB 2383 would prohibit a municipality, county or public health district from levying fines or penalties on a retailer or server of food significantly in excess of those imposed in similarly situated municipalities, counties or public health districts. A person could sue to enjoin a prohibited fine and recover reasonable attorney's fees and court costs and fines found by the court to be excessive or confiscatory in nature.

CSHB 2383 would also eliminate a provision in current law that allows counties and public health districts to charge permit fees equal to the highest fee in a municipality in the district, up to \$150, and set the limit at \$150. The bill would take effect September 1, 1995.

SUPPORTERS SAY: CSHB 2383 would prevent cities, counties and local public health districts from levying excessive fees and fines on food vendors and establishments just to cover other unrelated government expenses. Some communities are notorious for penalizing restaurants, grocery stores and other food establishments for minor infractions, much in the way "speed traps" are set up on highways to generate revenue from moving vehicle violations.

The state would not be imposing a ceiling or schedule on local communities. The fees would just have to be in line with those in other similar communities. Most officials are aware of what goes on in similar communities, so making comparisons would not be difficult.

OPPONENTS
SAY:

CSHB 2383 would limit local government discretion in penalizing unsafe restaurant or food establishment practices. The standards it proposes are ambiguous and hard to determine. Cities and counties would incur administrative costs in comparing fines and fees of "similarly situated" communities, and a cycle of cost comparisons would result.

NOTES:

The filed version would have also limited the amount and use of fines, fees and other charges collected by a municipality or county to cover compliance activities.