

- SUBJECT:** Allowing certain cities to call local-option elections on sale of alcohol
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 9 ayes — Flores, Hamilton, Raymond, Driver, Eissler, Goolsby, Homer, D. Jones, Wise
- 0 nays
- WITNESSES:** For — Richie Jackson, Texas Restaurant Association; (*Registered, but did not testify:*) Curtis Hawk, City of Burleson; Frank F. Turner, City of Plano; Chuck Courtney, Texas Retailers Association; Rick Donley, Beer Alliance of Texas; (*On committee substitute:*) Mark Monroe, City of Garland; (*Registered, but did not testify:*) Snapper Carr, Texas Municipal League
- Against — Fred Niemann, Texas Package Store Association
- On — Mike McKinney, Wholesale Beer Distributors of Texas
- BACKGROUND:** Texas Constitution, Art. 16, sec. 20 empowers the Legislature to enact a law regulating mixed alcoholic beverages on a local-option basis and to enact laws allowing the qualified voters of a county, justice of the peace precinct, or incorporated town or city to decide whether alcoholic beverages are legal within the subdivision's boundaries. Attorney General Opinion JM-468 (1986) held that Art. 16, sec. 20 is not self-enacting; that state laws authorize only the county commissioners court to order a local-option election in an incorporated city on the issue of the sale of mixed alcoholic beverages; and that the commissioners court has no authority to order or direct a local-option election in a city that lies partly in two counties.
- Alcoholic Beverage Code, sec. 251.14(b) allows "dry" areas to hold local-option elections to legalize the sale of one or more types of alcoholic beverages for on- or off-premise consumption. Sec. 251.14(e) allows similar local-option elections in communities that prohibit the sale of beverages containing alcohol that exceeds 17 percent by volume.

To request a local-option election on the sale of alcoholic beverages, 10 or more qualified voters must file an application with the county clerk for the clerk to issue a petition to collect the needed signatures. Petitioners have 30 days to collect the signatures of 35 percent of the political subdivision's registered voters, at which point the commissioners court must call an election. A local-option election on the sale of mixed beverages in a restaurant requires a petition containing the signatures of 25 percent of the political subdivision's registered voters.

Alcoholic Beverage Code, sec. 251.10 outlines the requirements for verifying signatures on petitions. To be counted, a signature must be accompanied by a correct voter-registration certificate number and the voter's name and address as it appears on the official voter-registration roll for that year. The person signing the petition must write this information by hand.

The 77th Legislature in 2001 enacted SB 377 by Shapiro, allowing a city or town located in two or more counties to hold an election on allowing beer and wine sales under certain conditions, and HB 1222 by Truitt, allowing voters in a multicounty city that allows the sale of beer and mixed beverages to petition for a local-option election to allow the sale of wine. The population brackets in these statutes limit their effect to several cities and towns in the Dallas-Fort Worth area. In the same session, lawmakers enacted HB 1948 by Keel, allowing local-option elections on the sale of wine at a winery.

Election Code, sec. 15.081 requires a voter registrar to maintain a "suspense" list of voters whose renewal certificate is returned as undeliverable. Sec. 15.111 requires that the notation "S" or a similar notation be entered next to the name of suspense voters listed on the voter roll.

**DIGEST:**

CSHB 1199 would change procedures for a petition calling for a local-option election on alcoholic beverage sales; create a criminal penalty for misstating the purpose of a local-option election petition; set different thresholds for the number of signatures needed to call an election and extend the time required to collect signatures; and authorize elections in any city or town located in two or more counties.

**Petition requirements.** Voters seeking a local-option election would have to prove that they had advertised their request for an application for a petition in

a newspaper of general circulation in the political subdivision, in addition to filing the application with the county clerk or with the city secretary in a city that lies in more than two counties. Within five days of issuing the petition, the county clerk or city secretary would have to notify the commissioners court or the city's governing board and the secretary of state that the petition had been issued.

**Signature requirements.** In addition to signatures, the petition would have to contain each signer's printed name, address, date of birth, date of signing, and county of registration, if the jurisdiction lay in more than one county. Only the signature would have to be in the signer's handwriting. Use of ditto marks or other abbreviations would not be grounds to invalidate a signature if the required information was reasonably ascertainable. Omission of the state or zip code from a signer's address would not invalidate a signature, unless the political subdivision was located in another state as well as in Texas. Signers could withdraw their names from a petition by filing affidavits with the voter registrar or city secretary before the registrar or secretary received the petition. A withdrawal affidavit filed by mail would be considered to have been filed when the registrar or secretary received it.

A political subdivision could use a statistical sampling method to verify the validity of signatures and would have to verify each signature if a citizen submitted a written request for a verification, but the citizen would have to pay the reasonable cost of the verification.

**Penalty for misrepresenting petition.** A person who misrepresented the purpose or effect of a petition for a local-option election would commit a Class B misdemeanor, punishable by up to 180 days in jail and/or a maximum fine of \$2,000.

**Petition requirements.** CSHB 1199 would give petitioners 60 days, rather than 30, to collect the required number of signatures. It would specify that the commissioners court or the governing body of a city in more than one county would have to order the local-option election at its next regular session on or after the 30th day after a petition with the required number of signatures was filed.

The petition would have to include a number of signatures equal to 35 percent

of registered voters in the political subdivision to call a local-option election to allow or prohibit the sale of :

- all alcoholic beverages for off-premise consumption only;
- all alcoholic beverages, except mixed beverages;
- all alcoholic beverages, including mixed beverages; or
- mixed beverages.

Petitions for local-option elections on the sale of alcoholic beverages at restaurants, grocery stores, and convenience stores would require a number of signatures equal to 35 percent of those who had voted in the most recent gubernatorial election. Petitions for local-option elections on the sale of wine at wineries would require a number of signatures equal to 25 percent of those who voted in the most recent general election. Voters whose names appeared on the suspense list as provided by Election Code, sec. 15.111 would be excluded from the calculation to determine the number of registered voters in the political subdivision.

The bill would delete a current requirement that poll watchers be appointed from among qualified voters who live in the precinct in which they serve.

**Multicounty cities and towns.** CSHB 1199 would remove restrictions on which city or town located in more than one county may hold a local-option election on the sale of alcoholic beverages. It also would add conforming language to allow city rather than county officials to process the petition and to call and administer a local-option election. A legal challenge to such an election could be filed in a district court of any county in which the city or town was located.

**Other provisions.** Once an alcoholic beverage permit or license was issued, the certification that the location or address was in a “wet” area could not be changed until after a subsequent local-option election to prohibit sale of alcoholic beverages.

The bill would repeal sections of the Alcoholic Beverage Code that:

- require a local-option election on the sale of mixed beverages at restaurants to be called upon receipt of a petition signed by 25 percent of the registered voters in the political subdivision;
- relate to petitions for local-option elections on the sale of wine at wineries; and
- establish population brackets for certain cities located in more than one county that may allow local-option elections.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 1199 would establish uniformity between local-option elections on alcohol sales and other local elections and would promote fairness and respect for voters' rights. Petition requirements for alcohol local-option elections are the most onerous and complex for any kind of election in Texas. This bill would establish a reasonable deadline for submitting a petition and common-sense rules for collecting signatures.

Most voters do not know their voter registration numbers, and most typically do not sign their names as they appear on the voter-registration rolls. No such obstacles exist for citizen petitions related to other vital public policy questions, such as placing names of candidates on the ballot, recalling incumbent elected officials, or deciding on a property-tax rollback. Alcohol local-option elections should be held to the same standards as these other elections.

CSHB 1199 would resolve the problem of how to call local-option elections in a city that lies in more than two counties. The provisions in the Texas Constitution governing local regulation of liquor sales date from the 1930s, immediately after the 21st Amendment to the U.S. Constitution repealed Prohibition. This bill would modernize arcane and archaic alcoholic beverage laws and would account for the expansion of cities into multiple counties. Attorney general opinions and court cases preclude county commissioners courts from calling elections in territory outside their jurisdiction and vest that authority in city councils. CSHB 1199 would resolve this question for good and would preclude the need for piecemeal legislation to address the

concerns of the more than 100 Texas cities that have territory in two or more counties.

The bill would create consistency of alcoholic beverage regulation within cities that have expanded into new territory. Current law does not allow a city to expand a previously approved “wet” designation automatically as it expands through annexation. For example, Plano voted in 1978 to allow alcohol sales in the city, but areas annexed since then remain designated as dry and prohibit alcohol sales. Such crazy-quilt regulation, in which portions of the same block may be subject to different rules, causes confusion and can discourage development. Existing restrictions on local-option elections hamper efforts to correct these problems.

CSHB 1199 would encourage economic development while protecting citizens against problems caused by certain types of establishments selling or serving alcoholic beverages. By basing the required number of signatures on the number of actual voters in the previous election, the bill would lower the hurdle for local-option elections on alcoholic beverage sales at grocery stores, restaurants, and wineries. Grocery stores and restaurants derive a significant portion of their revenue from alcohol sales. Wine sales at Texas wineries contribute to the goal of diversifying agriculture. However, the bill would leave in place the higher standard of 35 percent of registered voters required to approve alcoholic beverage sales at bars and package stores.

Voters should have the right to petition their government to vote on matters of vital importance to their neighborhoods and communities. If they want to allow or prohibit sale of alcoholic beverages where they live, they should have that opportunity, regardless of the price tag.

State laws should not constrain the marketplace artificially. Alcoholic beverage distributors and package stores already enjoy considerable benefits because of state regulation of their industry. Most local-option elections will occur in developed urban areas already served by the beer or liquor industry, so their transportation costs should not increase significantly.

Providing criminal penalties for those who misrepresent the purpose of local-option election petitions would be appropriate to ensure open public discourse and fair elections. Local prosecutors can be trusted to make the

appropriate decision on whether to pursue these cases.

**OPPONENTS  
SAY:**

CSHB 1199 could lead to a rash of petition drives and elections that could result in wasting taxpayers' money. Local governments are facing financial difficulties and could have difficulty paying for these elections.

CSHB 1199 could create additional uncertainty as to whether new territories could be designated as wet or whether existing areas that allow liquor sales no longer could sell those products. Package store owners have a substantial investment in their properties that could be lost because of adverse election results. Adding new wet areas could lead to declining package sales because of increased competition or could lead to increased transportation costs to serve new customers.

Cities located in more than one county should continue to be required to justify their requests to the Legislature on a case-by-case basis.

**OTHER  
OPPONENTS  
SAY:**

CSHB 1911 would add possibly unenforceable criminal penalties for misrepresenting a petition. The bill's language in this area is too vague to justify punishment as a Class B misdemeanor, which can include jail time.

**NOTES:**

As filed, HB 1199 would have retained a deadline of 30 days to collect the required number of signatures and would have provided no mechanism for all cities that lie in two or more counties to hold local-option elections without special legislative authorization. The committee substitute would establish a 60-day deadline and would authorize a petition process for cities in two or more counties. The substitute also would set a different requirement for the number of signatures required to call certain types of local-option elections and would exclude voters on the suspense list from the calculation of registered voters.

The companion bill, SB 829 by Whitmire, has been referred to the Senate Business and Commerce Committee.