

**SUBJECT:** Allowing samples of produce at municipally owned farmers' markets

**COMMITTEE:** Public Health — committee substitute recommenced

**VOTE:** 8 ayes — Delisi, Laubenberg, Coleman, Dawson, Jackson, McReynolds, Truitt, Zedler

0 nays

1 absent — Solis

**WITNESSES:** For — Stacy Caldwell, Farmers Market Friends; Larry Casto, City of Dallas; Tony J. Johns, self and Dallas Farmers Market; Deborah Marine, Dallas Farmers Market Friends

Against — None

On — (*Registered but did not testify*: Ruth N. Hendy, John Lattimore, Texas Department of State Health Services)

**BACKGROUND:** Health and Safety Code, ch. 437 authorizes the Texas Board of Health to regulate certain food service establishments, retail food stores, mobile food units, and roadside food vendors. Texas Administrative Code, Title 25, ch. 229, establishes that a food establishment does not include a produce stand that only offers whole, uncut fruits and vegetables.

A city, municipality, county, or public health district with a health department, which includes 85 percent of the state, is required to adopt, at minimum, the state health rules. About 15 percent of the remainder of Texas does not have local health departments and relies entirely on state regulation.

**DIGEST:** CSHB 894 would add sec. 437.020 to the Health and Safety Code, saying that the chapter on regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors would not apply to providing samples of produce to consumers at municipally owned farmers' markets. The bill also would prohibit a rule adopted under state law from regulating such samples of produce.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

Under the current legal definition of food establishments, farmers' markets and produce stands are not permitted to offer samples of cut produce. CSHB 894 would exempt municipally owned farmers' markets from the requirement to serve only whole, uncut produce to customers, permitting them to offer slices of fresh fruits and vegetables.

Distributing samples is an effective means of marketing fresh produce and often is one that customers expect. This bill would allow a more practical approach to selling produce in municipally owned farmers' markets and would satisfy consumers' expectations of being able to taste fruits and vegetables offered for sale in such settings. The legislation would place farmers' markets at the same advantage as large grocery stores or supermarkets that regularly offer customers samples of produce. In so doing, the bill would stimulate increased business at municipally owned farmers' markets.

**OPPONENTS  
SAY:**

CSHB 894 would raise significant public health issues by allowing municipally owned farmers' markets to offer samples of fresh produce. It would cause concerns about the cleanliness of the food handlers' hands, cutting knives, cutting surfaces, food containers, and the food products themselves. The bill also could provoke questions about the health of employees distributing samples. Such employees could be asymptomatic, causing customers, and even employers, to be unaware of their true health.

To avoid public health concerns, the bill should require that the products be cleaned with potable (drinkable) water, that the handlers wear gloves or have acceptable hand-washing facilities nearby, that any knives or cutting instruments, cutting surfaces, and food containers be properly cleaned, and that highly perishable produce, such as melons and bean sprouts, be refrigerated at 41 degrees Fahrenheit or lower.

**OTHER  
OPPONENTS  
SAY:**

Most farmers' markets in Texas are private entities, so the term "municipally owned farmers' markets" would restrict the provisions of this bill to a very few farmers' markets in the state and therefore would not have the intended, widespread effect. The bill would have little impact beyond the city of Dallas, which has one of the few municipally owned farmers' markets in the state. The bill also could place many private, or

even municipally sponsored, farmers' markets and produce stands at a disadvantage by not affording them the same authority to offer samples of fresh, cut fruits and vegetables.

NOTES:

The author intends to offer an amendment that would address specific health and safety concerns associated with offering samples of cut produce.

The committee substitute differs from the bill as introduced by not limiting the provisions to municipally owned farmers' markets in a city of more than one million people.

A companion bill, SB 247 by West, was scheduled to be heard before the Senate Health and Human Services Committee on April 12.