HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/18/2005 | SB 1137 Madla, Deuell, Estes (Swinford)

SUBJECT: Promoting the Texas wine industry and allowing tourist directional signs

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 6 ayes — Hardcastle, Anderson, B. Brown, Burnam, Farrar, Olivo

0 nays

1 absent — Herrero

SENATE VOTE: On final passage, April 18 — 29-0

WITNESSES: For — Gabriel N. Parker, Texas Wine and Grape Growers Association; Cord Switzer, Hill Country Wine Trail Association

Against — None

On — Carlos Lopez, Texas Department of Transportation

BACKGROUND: The Texas Alcoholic Beverage Commission (TABC) regulates the distribution of alcohol in the state through permitting and enforcement. Regulations maintain a separation of the three tiers of the alcoholic beverage industry — manufacturers, wholesalers, and retailers. In addition to governing alcoholic beverage licensing and permitting, the Alcoholic Beverage Code also contains general provisions relating to the advertising of alcoholic beverages.

A winery permit allows its holder to manufacture, import, bottle, and sell wine to any authorized permitee and to consumers for on-and off-premises consumption subject to the same general rules as other retailers.

A winery that is located in a "dry" area of the state is able to serve only wine that was manufactured in Texas. Wineries in dry areas can sell only wine that is at least 75 percent by volume fermented juice of Texas-grown grapes or other fruit.

The Texas Wine Marketing Research Institute is housed at the Department of Education, Nutrition, and Restaurant/Hotel Management at Texas Tech

University. The mission of the institute is to foster economic development and growth of the Texas wine industry.

Transportation Code, ch. 391, provides for highway beautification on interstate and primary highway systems and on certain roads, while subch. D governs specific information logo signs. The 75th Legislature in 1997 added Transportation Code, sec. 391.097, which requires that the Texas Transportation Commission contract for the posting and maintenance of major agricultural interest signs at appropriate locations along eligible rural highways.

The federal Manual on Uniform Traffic Control Devices (MUTCD) is the national standard for traffic control devices, including signs, on all public roads open to public travel. Traffic control devices on all public streets and highways in each state substantially must conform to standards issued or endorsed by the Federal Highway Administration. In Texas those standards are delineated in the Texas Manual on Uniform Traffic Control Devices (Texas MUTCD), authorized by Transportation Code, sec. 544.001.

DIGEST: SB 1137 would make a number of changes to Texas law including:

- establishing a Wine Industry Development Fund;
- commissioning an annual report on various aspects of the Texas wine industry;
- changes to the activities allowed under a winery permit; and
- placing signs along state highways directing tourists to Texas wineries and other agricultural attractions.

Texas Wine Industry Development Act. SB 1137 would allow the Texas Agriculture Commissioner to appoint a wine industry development advisory committee for the purpose of using research and development trends to develop a vision and a marketable identity for the Texas wine industry.

A wine industry development fund account would be established in the state's general revenue fund. The department could accept grants or gifts from any source for deposit into the fund. Dedicated funds in this account estimated to exceed appropriated amounts would not be made available to the comptroller for the purposes of budget certification.

Money in the account could be used by the Department of Agriculture to fund research, surveys, and other projects related to:

- developing the Texas wine industry;
- developing viticulture education programs;
- eliminating diseases that negatively impact the production of wine;
- developing technologies that benefit the production of wine; and
- paying any related administrative costs.

Report and agriculture commissioner's determination. Depending on available funding, SB 1137 would require the Texas Wine Marketing Research Institute or another qualified entity to conduct an annual study about Texas grapes and other fruit used for wine making. This report, submitted to the agriculture commissioner, would include various information, including the quantities and varieties of grapes available for wine making that year, the needs of Texas wineries regarding state-grown fruit, and recommendations regarding the possible need, in a particular year, to reduce the percentage of Texas grapes by volume that wine served and sold by wineries in dry areas must contain.

If, upon review of the report, the commissioner determined that there would not be enough Texas grapes available for Texas wineries in dry areas to meet their production estimates, the commissioner could reduce the percentage of Texas grapes that these wineries would be required to use in wine they sold and served. Any adjustment in the percentage would need to maximize the use of Texas grapes and other fruit while at the same time allowing Texas wineries to meet their production needs. The commissioner would publish this determination in the *Texas Register* by December 31 of the study year, and the determination would apply to wine bottled during the following year.

If a winery found that the commissioner's determination regarding a particular variety of fruit was not sufficient for the winery to meet its production estimates, the winery could submit documentation to support this claim. Upon receiving the documentation, the commissioner could review of the availability of that variety of Texas fruit and reduce the percentage requirement for wine containing that fruit bottled during the remainder of the year.

Registry. The bill would allow the commissioner to establish a voluntary registry, which could be accessed via the Internet, for Texas vineyards and fruit growers. The purpose of the registry would be to determine the availability of Texas grapes and other fruit and to facilitate communication between wineries and growers. The commissioner would be able to assess a fee to recoup the cost of administering the registry. Fees would be deposited into a designated account in the general revenue fund and would be used only to cover costs associated with administering the registry.

Winery permit changes. SB 1137 would allow the holder of a winery permit to sell and serve beer if the winery was in an area that allowed the sale and consumption of beer and if the beer was provided only to accompany the service of food. The purchase of beer by a winery would be governed by the requirements under a retail dealer's on-premise license. A winery permit holder also could contract with a caterer's permit holder to serve mixed beverages and food at a winery event.

A winery permit holder could engage in any activity authorized by the permit on the premises of another winery permit holder under an agreement between the permit holders that detailed the nature and length of the activities. The commission would have to approve such an agreement and would adopt rules to ensure accountability and separation between the businesses and operations of the permit holders.

A winery also could include information in its advertising that described where the winery's products could be purchased. The winery could not give or receive compensation to or from a wholesaler or retailer for this advertising.

The bill would lift restrictions on the number of wine festivals a winery could hold each year and would allow a winery located in a dry area to serve wine that was bottled, rather than manufactured, in Texas.

Tourist signs. SB 1137 would establish the Tourist-Oriented Directional Sign Program to place along eligible highways road signs that identified wineries or businesses related to agriculture or tourism, such as farms or ranches. To be eligible, an agriculture- or tourist-related business would have to derive a major portion of its income or visitors during peak season from non-local highway users. The business would have to comply with state and federal laws on licensing and public accommodation and be located within the mile limits established under the Texas MUTCD and the federal MUTCD. The signs would be placed near highways with noncontrolled access located outside towns with populations of at least 5,000. The signs would identify a type of business by use of an icon or symbol.

The Texas Transportation Commission would administer the program, including adopting and enforcing rules and regulating the content and placement of the signs. Eligible businesses would pay the cost of the signs plus an amount covering administrative costs to Texas Department of Transportation (TxDOT). The commission's program rules would have to be consistent with the Texas MUTCD and the federal MUTCD and could not prohibit a business from receiving a sign because that business needed supplemental directional signs in order to provide adequate guidance to the facility. TxDOT would adhere to certain timelines for responding to a business' request. If the commission required a directional sign, an eligible facility would be able to erect that sign in order to receive a tourist-oriented directional sign. The bill would repeal the major agricultural interest sign program detailed in Transportation Code, sec. 391.097.

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:

SB 1137 would make a number of important changes necessary to lay the groundwork for an economic boom in the Texas wine producing industry in the next five to 10 years.

Texas wineries currently can operate in dry areas if their wine is manufactured in the state and if 75 percent of the grapes or other fruit used to manufacture that wine is grown in the state. However factors such as weather, pestilence, and market conditions could be devastating to these wineries if the Texas grape supply became insufficient to meet demand. The bill would empower the agriculture commissioner to grant a variance to this requirement, if conditions warranted, that would safeguard the interests of Texas wineries and the economic benefits that those wineries bring to the state.

Texas wineries currently may not formally collaborate with one another to produce their products. However, winemakers in other states often share resources, especially because business investments in capital equipment can be financially restrictive. By removing this prohibition, SB 1137 would facilitate a more efficient use of capital, time, equipment, and expertise, which in turn would generate additional economic growth and profit for the industry while increasing state revenue.

By establishing a sign program, this bill would help bring more tourism dollars into the economy. Total direct travel spending in Texas was $41.2 billion in 2003, and tourist purchases translate into more sales tax revenue for the state. This program would be geared to businesses that draw tourists, such as wineries, Christmas tree farms, and pick-your-own-fruit farms. Wineries that have billboards and other signs have seen an increase in income, and studies have shown that signs are the most effective way to draw travelers to a winery.

The sign program would have no cost to state taxpayers because businesses would pay for the signs and their maintenance and would reimburse TxDOT for related administrative costs. This new sign program would be more flexible and would apply to more roads than the existing controlled-access road "logo" sign program, which allows signs only for businesses such as restaurants and hotels.

Federal language on the definition of an eligible highway is necessary to avoid jeopardizing transportation funding to the state. To meet this standard, an eligible highway would have to be outside the corporate limits of a municipality with a population of 5,000 or more.

OPPONENTS SAY:

Texas has one of the highest mortality rates related to drunk-driving in the country. This bill could facilitate driving after the consumption of wine, which would conflict with the state's duty to protect public safety. Visitors attracted by signs to the wineries would later attempt to drive home on unfamiliar and sometimes dangerous rural roads, which could lead to additional alcohol-related car crashes and possibly fatalities.

While wineries are allowed to operate in "dry" counties, they are not allowed to post billboards there. Although TxDOT may not consider the proposed directional signs to be billboards, some residents of dry counties might feel that such signs violated the spirit of the law and did not honor their wishes.

OTHER OPPONENTS SAY:

The definition of an eligible highway could be reworded to be more advantageous for tourist destinations. Currently an eligible highway must be outside the corporate limits of a city with a population of 5,000 or more. A growing number of towns and cities of various sizes incorporate many miles of low-density rural land around the city's core population. This means that some promising rural tourist destinations would not be eligible. Officials should explore how to change the language and still comply with federal standards.

Although the bill is intended to support agri-tourism, its language is broad enough that a convenience store or truck stop might make the case that it was eligible for a tourist sign, which would clutter up the roadways and undermine the purpose of the bill.

NOTES:

A similar bill, HB 2135 by Phillips, et al., which would create a tourist-oriented directional sign program, passed the House on May 3 and has been referred to the Senate Intergovernmental Relations Committee.