

SUBJECT: Alcohol sales and advertising in certain city-owned entertainment venues

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Kuempel, Thompson, Geren, Gutierrez, Hamilton, Jones, Menendez, Quintanilla

0 nays

1 absent — Chisum

WITNESSES: For —Veronica Ocañas, City of Corpus Christi (*Registered, but did testify*: Shanna Igo, Texas Municipal League)

Against — None

On — Lou Bright, Alcoholic Beverage Commission

BACKGROUND: Ch. 108, subch. C of the Alcoholic Beverage Code regulates the relationship between private vendors of alcoholic beverages and public entertainment facilities. Sec. 108.53 prohibits the sale, storage, or solicitation of orders for alcohol without first acquiring a permit and disallows a permit to be transferred to a third party. The section also states the intent of the Legislature to prevent subterfuge ownership of or unlawful use of a permit for alcohol or the premises covered by such permit. The Texas Alcoholic Beverage Commission (TABC) is charged with preventing subterfuge ownership and related practices and may interpret provisions in the statute liberally for these purposes.

Sec 108.75 governs advertising and promotion of alcoholic beverages in a public entertainment facility. A company involved in distillation, manufacturing, distributing, or wholesaling may promote, sponsor, or advertise an alcoholic product at a public entertainment facility if the alcoholic beverage is furnished by an independent concessionaire. An independent concessionaire cannot receive a direct monetary benefit from these promotional activities.

DIGEST: CSHB 1505 would provide that profit sharing and other financial arrangements between a concessionaire operating in a facility constructed with tax exempt bonds and a manager of the facility operating under a contract with the alcoholic beverage permit holder or a local government would not qualify as a subterfuge ownership arrangement prohibited by state law.

The bill also would exempt publicly owned entertainment facilities financed with tax exempt bonds from provisions in Sec. 108.75, Alcoholic Beverage Code, that govern the promotion, sponsorship, or advertising of an entertainment event, or the promotion or advertising of an alcoholic beverage.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 1505 would resolve an untenable situation affecting local governments that use tax-exempt government bonds to finance the construction of publicly owned entertainment facilities, such as arenas, convention centers, and civic stadiums. The situation results from incongruities in federal and state laws governing the use of publicly-owned venues financed with tax exempt bonds. The federal tax code limits the use of bond proceeds to uses that do not meet tests for private activity, defined in the code. The requirements for public use limit the profit that can accrue to a private interest as a result of operating at the publicly owned venue.

Governmental owners of entertainment venues, however, may restructure agreements with private vendors to obtain a greater percentage of the profits generated by these private businesses and in so doing achieve compliance with the federal tax code. The Texas Alcoholic Beverage Code, however, prohibits so-called “subterfuge ownership” arrangements in which a party with a permit to sell alcohol may divert a majority of profit to a third party.

This unfortunate tension in state and federal law has forced cities with publicly owned entertainment venues built with tax exempt bonds, such as Corpus Christi and Hidalgo, to enter into complicated agreements involving non-profit third parties. Corpus Christi has structured a three-party agreement between the city, a non-profit entity with an alcohol permit, and the vendor with the contract to dispense alcohol to satisfy both bond requirements and state law. Agreements of this nature, however, are

unduly complex and limit the profit that a local government may derive from the sale of alcohol at a publicly owned venue.

CShB 1505 would allow local governments with publicly-owned venues financed with tax exempt bonds to collect more revenue from the ownership and operation of these sites. This would be a critical change, since under current arrangements cities that own such venues have considerable construction and maintenance expenses. Corpus Christi, for example, could lose as much as \$3.2 million on maintenance and other costs for the American Bank Center in 2009.

CShB 1505 would allow local governments that use tax exempt bonds to restructure agreements with alcohol vendors directly without potentially violating restrictions on subterfuge ownership. By specifically stating in law that profit-sharing agreements between vendors, managers, and cities with tax exempt bond-financed venues would not constitute subterfuge ownership, the bill would allow affected governments to negotiate freely with private parties involved in the sale of alcohol. Further, the bill would not hinder in any way TABC's ability to investigate and enforce subterfuge ownership arrangements that fall outside those authorized by the bill.

In addition to authorizing direct negotiation with concessionaires, the bill would exempt these publicly owned venues from a section of state law governing advertising, promotion, and sponsorship of alcohol. This would expand the range of advertising and promotion options open for these venues and make more revenue sources available to local governments.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee substitute would exempt a facility constructed with tax exempt bonds from certain provisions governing the advertising, promotion, and sponsorship of alcoholic beverages in a public entertainment facility.

The companion bill, SB 1678 by Hinojosa, is scheduled for a public hearing on April 21 in the Senate Business and Commerce Committee.