

- SUBJECT:** Authorizing public health districts to fine retail food services
- COMMITTEE:** County Affairs — committee substitute recommended
- VOTE:** 7 ayes — R. Allen, Casteel, Coleman, Farabee, Laney, Naishtat, Otto
0 nays
2 absent — W. Smith, Olivo
- WITNESSES:** For — Gerey Glen, Texas Restaurant Association
(*Registered but did not testify:* Lee Lane, Texas Association of Local Health Officials; Mark Mendez, Tarrant County; Chris Newton, Texas Petroleum Marketers & Convenience Store Assoc; Joe Williams, Texas Retailers Association)

Against — None

On — (*Registered, but did not testify:* Dan Sowards, Department of State Health Services)
- BACKGROUND:** Under Health and Safety Code, ch. 437, cities and counties have the authority to issue permits and citations to food service establishments, retail food stores, mobile food units, and roadside vendors for health and safety violations. The Department of State Health Services also may impose an administrative penalty of up to \$10,000 per day upon a permitted food service establishment in response to a violation.
- A public health district that is formed by at least one county and one or more municipalities in the county may issue permits to the food service establishments listed above, but it lacks the authority to issue citations. Instead, public health districts respond to violations by either issuing a warning or revoking the permit, which closes down the establishment.
- The enforcement options available to public health districts are too lenient at one extreme and too strict at the other. Public health districts need the authority to address health and safety violations of food-oriented businesses appropriately by issuing citations.

DIGEST: CSHB 1598 would allow a public health district to issue a citation to a permitted businesses for a violation of ch. 437. A district could issue a fine of up to \$500 per day, taking into account:

- the seriousness of the violation;
- any history of violations;
- the amount necessary to constitute a deterrent;
- any efforts by the establishment to correct the violation; and
- anything else necessary to see justice done.

The subject of the fine would have 20 days to either pay the fine or request a hearing from the local justice of the peace. The court would rule on whether a violation occurred and, if so, how much of the fine should be paid.

The enforcement of the penalty could be stayed pending judicial review if the subject of the fine paid the penalty to the court clerk, or submitted an affidavit to the effect that he could not afford to pay. If the court's ruling dismissed the fine or reduced the penalty, the court would order the appropriate amount returned to the fined party.

Either DSHS or a public health district could impose an administrative penalty for a violation, but both could not penalize the same violation.

The bill would take effect September 1, 2005.

NOTES: The substitute details the administrative process of issuing the citation. It would exclude counties from the bill, and it would not allow both the state and district to impose a fine on the same business for the same violation.