

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Friday, the 28th Day of September 1973

SALE OF LIQUOR AMENDMENT BILL

Proposed Amendments

Hon. Dr FINLAY, in Committee, to move the following amendments:

Clause 2A: To omit this clause.

Clause 8: To omit this clause (as substituted by the Statutes Revision Committee), and substitute the following clause:

8. Objections in respect of removal of hotel or tavern premises licence—(1) The principal Act is hereby amended by repealing section 141 (as amended by section 4 of the Sale of Liquor Amendment Act 1964), and substituting the following section:

“141. (1) Where the application for removal relates to any hotel or tavern premises licence (other than the house premises under a special hotel premises licence), any 50 or more persons residing within the area described in subsection (2) of this section who are qualified as electors of any local authority having jurisdiction over any part of that area, or any such local authority, may, at any time within 30 days after the first publication of the notice under subsection (3) of section 139 of this Act or within such further time as the Commission may allow, apply in writing to the Commission for the taking of one or both of the following polls, namely—

“(a) A poll for the purpose of ascertaining whether a majority of the electors residing in the area desire that a licence of the type proposed to be removed or an additional licence of that type, as the case may require, be not issued in the area:

“(b) A poll for the purpose of ascertaining whether, if a licence of the type proposed to be removed or an additional licence of that type, as the case may require, is issued in the area, a majority of the electors residing in the area desire that it be issued to a local Trust (hereinafter in this section referred to as a Trust poll).

“(2) The area referred to in subsection (1) of this section shall be—

“(a) Where the proposed new premises are on any land in a city, borough, town district, or county town, the area contained within a radius of 2 miles from a point at the middle of the frontage of that land:

“(b) Where the proposed new premises are on any other land, the area contained within a radius of 5 miles from a point at the middle of the frontage of that land.

“(3) On any application for the taking of a poll or polls under this section the Commission may hold such inquiry and take such evidence as it thinks fit and shall, subject to subsections (4) to (6) of this section, direct that a poll or polls be taken if it is of opinion that—

“(a) A licence of the type proposed to be removed or an additional licence of that type is necessary or desirable in the area into which it is sought to remove the licence; and

“(b) The application for the taking of the poll or polls is made in good faith; and

“(c) A poll or polls should be taken.

“(4) Where both polls are sought the Commission shall determine first whether to direct the taking of a Trust poll in the event of a licence of the type proposed to be removed or an additional licence of that type, as the case may require, being authorised in the area.

“(5) The Commission may decline to direct that a poll be taken if it is of opinion that—

“(a) Having regard to the distance between the premises from which it is proposed to remove the licence and the new premises, no poll should be taken; or

“(b) Having regard to the locality or area to which it is proposed to remove the licence, it is impracticable to define a reasonably substantial area having sufficient community of interest to justify the taking of a poll.

“(6) Without limiting the provisions of subsection (5) of this section, it is hereby declared that the Commission may decline to direct the taking of a Trust poll if it is satisfied—

“(a) That having regard to all the circumstances, including the number of licences held by the applicant for removal and the price (if any) paid by him for the particular licence, he did not acquire the licence with a view to seeking its removal; and

“(b) That there is no reasonable prospect of continuing the business profitably on the premises in respect of which the licence was granted; and

“(c) That the applicant for removal would, if the removal were prevented, be caused undue financial hardship.

“(7) If the Commission directs that a poll be taken, section 84 of this Act shall apply.

“(8) If in the case of a poll taken under paragraph (a) of subsection (1) of this section a majority in number of the valid votes recorded at the poll is in favour of the proposal that a licence of the type proposed to be removed or an additional licence of that type, as the case may require, be not issued in that area, the Commission shall not approve the removal of the licence to premises within the area in which the poll was taken or, under subsection (10) of this section, invite applications for a licence, unless in its opinion, having regard to the proportion that the total number of valid votes bears to the number of electors entitled to vote, the proportion that the number of valid votes recorded in favour of the proposal not to issue a licence bears to the total number of valid votes, the convenience of travellers in the case of a hotel premises licence, and all such other matters as it considers relevant, there are special circumstances that make it desirable in the public interest that such a licence should be issued.

“(9) If in any such case the Commission does not approve the removal of the licence or invite applications for a licence, the Commission shall not take any further steps relating to the removal of any such licence into, or the issue of any such licence in, that area for a period of 3 years from the day of the poll.

“(10) In any case where the Commission has directed that a Trust poll be taken, and a majority in number of the valid votes recorded at that poll is in favour of the proposal that a licence be issued in the area to a local Trust, the Commission shall, subject to subsection (8) of this section, cause public notice of its intention to consider applications on behalf of a local Trust for a hotel or tavern premises licence to be given as soon as practicable after the declaration of the result of the Trust poll.

“(11) On the giving of any notice under subsection (10) of this section, any local authority, either acting alone or with or on behalf of any other local authority, or any 2 or more local authorities, authorised by subsection (1) of this section to apply for a Trust poll, but no other person, may within 60 days after the last publication of the notice apply for the licence to be issued to a local Trust.

“(12) The provisions of this Act shall apply in respect of every such application with such modifications as are necessary.

“(13) The application for removal shall be adjourned until the result of any application under subsection (11) of this section is known.

“(14) If an application for the licence to be issued to a local Trust is granted the Commission shall refuse the application for removal.

“(15) If an application for the licence to be issued to a local Trust is not made or if any such application is not granted, proceedings in respect of the application for removal may be resumed.”

(2) Section 74 of the principal Act (as amended by section 2 of the Sale of Liquor Amendment Act 1964) is hereby amended by adding the following subsection:

“(6) Subsections (4) and (5) of this section shall be read subject to the provisions of section 141 of this Act.”

(3) Section 145 of the principal Act is hereby amended by adding to subsection (1) the following proviso:

“Provided that the Commission shall not grant the application for removal unless it is satisfied that the licence is not necessary or desirable in its present locality.”

(4) Section 4 of the Sale of Liquor Amendment Act 1964 is hereby consequentially repealed.

EXPLANATORY NOTE

It is proposed to omit *clauses 2A and 8*, and substitute a new *clause 8*. *Clause 8* deals with the removal of any hotel or tavern premises licence and *clause 2A* is related to it.

The proposed new section 142A which would enable the payment of a fair price to be required on the removal of any such licence is deleted.

Provision is made for a Trust poll to be sought when an application for the removal of any such licence is made. Where application is made for both a Trust poll and an area poll, the Commission is to determine first the application for a Trust poll so that if an area poll is held the electors will know whether they are to have an opportunity to vote for Trust control. The Commission may decline to direct the taking of a Trust poll if it is satisfied—

- (a) That having regard to all the circumstances, including the number of licences held by the applicant for removal and the price (if any) paid by him for the particular licence, he did not acquire the licence with a view to seeking its removal; and
- (b) That there is no reasonable prospect of continuing the business profitably on the premises in respect of which the licence was granted; and
- (c) That the applicant for removal would, if the removal were prevented, be caused undue personal hardship.

The new approach makes *clause 2A* redundant.