

STORAGE NAME: h0673.brc

DATE: March 18, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 673

RELATING TO: Alcoholic Beverage Sales Near Schools

SPONSOR(S): Representative Eggelletion

COMPANION BILL(S): CS/SB 156 (s) by Committee on Comprehensive Planning, Local and Military Affairs

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REGULATED SERVICES YEAS 6 NAYS 0
- (2) BUSINESS REGULATION AND CONSUMER AFFAIRS
- (3) COMMUNITY AFFAIRS
- (4)
- (5)

I. SUMMARY:

A “strike everything” amendment is traveling with the bill. The amendment: exempts temporary 3-day permits issued to non-profit organizations from the 500’ restriction; authorizes hearings under standard city and county zoning authority; and, makes the attempt to purchase cigarettes and alcohol unlawful.

The bill provides that a new location for on-premises consumption of alcoholic beverages may not be located within 500 feet of a school unless the county or municipal government approves the location as promoting the public health, safety and general welfare of the community.

The bill has no significant impact on state revenue.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Beverage Law consists of Chapter 561, relating to administration; chapter 562, F.S., relating to enforcement; chapters 563, 564, and 565, F.S., relating to beer, wine and liquor; and chapters 567 and 568, F.S., relating to wet and dry county elections. The Beverage Law requires a person to be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages.

The Beverage Law grants broad authority to the Division of Alcoholic Beverages and Tobacco [DABT], Department of Business and Professional Regulation, to administer and enforce the Beverage Law and local governments are prohibited from enacting any ordinance that regulates or prohibits those activities or business transactions of a licensee regulated by the DABT. [See ss. 561.02, 562.45, F.S.] Certain areas of responsibility have, however, been delegated to counties or municipalities by statute. Specifically, s. 562.45, F.S., grants zoning authority, as well as, authority to enact ordinances regulating the type of entertainment, hours of operation and conduct permitted in licensed beverage establishments, including bottle clubs, to counties and municipalities.

Section 286.0115, F.S., provides for quasi-judicial proceedings on local government land use matters. Specifically, s. 286.0115, F.S., prohibits a "local public official" from ex parte communication and requires any person at the request of a party or party-intervenor, to be sworn in as a witness, to be subject to cross-examination by other parties or party-intervenors, and to be qualified as an expert witness, if the person is attesting to be an expert. This section also outlines procedures that remove the presumption of prejudice arising from ex parte communications and provides that any such communications be noted in a public forum and incorporated as part of the official record of the proceedings.

Section 125.66(4), F.S., sets forth the enactment procedure for zoning ordinances where the proposed ordinance changes the list of permitted, conditional, or prohibited uses within a zoning category, or the proposed ordinance contains a county initiated change to the actual zoning map designation of a parcel of land. Section 166.041(3)(c), F.S., imposes these same requirements on the adoption of zoning ordinances by municipalities.

B. EFFECT OF PROPOSED CHANGES:

This bill provides that a new retail location [after July 1, 1999] for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipal government approves the location under quasi-judicial hearings for land use decisions held pursuant to s. 286.0115, F.S. At these hearings, the applicant must show that the approval of the location promotes the public health, safety and general welfare of the community.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 562.45(2)(a), Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. This section provides that a new location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the property of any public or private school. It also authorizes a county or municipal government to conduct a public hearing to approve an exception to this prohibition and grandfathers in existing locations.

Section 2. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Insignificant.

2. Recurring Effects:

Insignificant.

3. Long Run Effects Other Than Normal Growth:

Insignificant.

4. Total Revenues and Expenditures:

Insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Unknown.

2. Direct Private Sector Benefits:

To the extent that the bill reduces access to alcoholic beverages and discourages alcohol and tobacco use by underage persons, the private sector may realize an improvement in the public health.

3. Effects on Competition, Private Enterprise and Employment Markets:

By eliminating locations near schools, the bill may reduce the number of alcoholic beverage licenses allowing consumption on the premises which may be issued in the state.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

The plain language of the amendment to s. 562.45(2)(a) contained in this bill does not grant a right to a hearing under s. 286.0115, rather it provides an option that the county or municipality may choose to utilize. Further, even if this were to be considered a conditional mandate, it would be exempt since the fiscal impact would fail to surpass the threshold established for determining the estimated fiscal impact on counties and municipalities in the aggregate.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A 'strike everything' amendment was adopted by the Committee on Regulated Services on March 11, 1999. The amendment incorporates language which was added to the Senate and, also, makes a clarifying change. The amendment:

- ▶ Makes it unlawful [second degree misdemeanor] for a person under 21 years of age to *purchase or attempt to purchase* alcoholic beverages;
- ▶ Makes it unlawful [civil penalty] for a person under 18 years of age to *attempt to purchase* any tobacco product from a person or a vending machine;
- ▶ Removes the reference for a hearing under s. 286.0115, F.S. and replaces with references to the more appropriate statutes providing for the enactment of zoning ordinances for counties and municipalities [s.125.66(4) for counties and s.166.041(3)(c) for municipalities]; and

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- ▶ Clarifies that the prohibition against siting an alcoholic beverage establishment within 500 feet of a school does not apply to the issuance of temporary licenses issued to certain non-profit organizations.

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Janet Clark Morris

Staff Director:

Paul Liepshutz

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Alan W. Livingston

Staff Director:

Rebecca R. Everhart