

STORAGE NAME: h0095s2.bdt

DATE: March 3, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE
ANALYSIS**

BILL #: CS/CS/HB 95

RELATING TO: Alcoholic Beverage Licenses; Hotels and Motels

SPONSOR(S): Committee on Business Development and International Trade, Regulated Services and Representative Cosgrove

COMPANION BILL(S):

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

- (1) REGULATED SERVICES YEAS 7 NAYS 2
 - (2) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE YEAS 8 NAYS 0
 - (3) FINANCE AND TAXATION
 - (4)
 - (5)
-

I. SUMMARY:

This bill expands existing statutory criteria for a special hotel license to allow the issuance of a special liquor license to hotels and motels which are located in a historic structure if the establishment meets specified criteria. The license would cover any restaurant or bar located in the hotel and would allow the sale and consumption of alcoholic beverages only on the licensed premises.

This bill expands the current definition of a speciality center to include any development having at least 150,000 square feet of leasable area containing restaurants, entertainment facilities, movie theaters, and specialty shops.

The bill has no significant impact on state revenues.

The act will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida law does not limit the number of beer or wine licenses which may be issued in a county. Florida law does, however, limit the number of retail *liquor* licenses [also referred to as *quota* licenses] which may be issued. Section 561.20, F.S., provides for a quota of alcoholic beverage liquor licenses for each county based upon population: one license for each 5,000 residents. Quota licenses allow the sale of all alcoholic beverages for either consumption on the premises or by the package. The law provides for an annual lottery-type drawing to award quota licenses.

Retail quota license fees are based on the county's population and whether alcoholic beverages would be consumed on the vendor's licensed premises or sold for consumption off-premises. The cost of a quota license ranges from \$468 in the smaller counties to \$1,820 in counties with populations over 100,000. In addition to these license fees, s. 561.19(6), Florida Statutes, requires the payment of a \$10,750 fee on the initial issuance of a quota license. This fee, commonly referred to as the "Hughes Act" fee is deposited in the Children and Family Services Operations and Maintenance Trust Fund and is used to supplement funding of alcohol and drug abuse education, treatment and prevention programs.

Quota limitations were initially enacted in the interest of promoting temperance by limiting the number of outlets and, therefore, the availability of alcoholic beverages. By restricting competition, quota limitations also enhance the value of existing liquor licenses. Quota licenses often sell on the private market for thousands of dollars.

There are numerous exceptions in general law to the quota limitation which provide for the issuance of liquor licenses to certain groups under specified conditions. A special restaurant license, for example, requires the restaurant to maintain 2,500 square feet of service area, be equipped to serve full course meals to 150 persons and derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages.

Section 561.20(2)(a)1. establishes a special license classification for certain hotels, motels and motor courts [hotels]. At present s. 561.20(2)(a)1., F.S., actually authorizes the issuance of alcoholic beverage licenses in three different categories.

First, it authorizes the issuance of a license to hotels with not fewer than 80 rooms which are located in a county whose population is less than 50,000;

Second, it authorizes the issuance of a license to hotels with not fewer than 100 rooms which are located in a county whose population is 50,000 or greater; and

Third, it authorizes the issuance of a license to hotels with fewer than 100 rooms which derive at least 51% of gross revenue from room rentals and which meet the following criteria:

- The hotel is listed on the National Register of Historic Places; or
- The hotel is within and contributes to a registered historic district pursuant to 26 U.S.C. s. 48(g)(3)(BB); or
- The hotel meets the criteria of historical significance of the Division of Historical Resources, Department of State, as certified by that Division or by a locally established historic preservation board or commission, or like body, which has been given authority to make such designations.

Subparagraph 1. ends with a clause which exempts these hotels from local laws which may require a greater number of hotel rooms.

Specialty centers are defined in s. 561.20(2)(b), F.S., as any development having at least 50,000 square feet of leasable area, containing restaurants, entertainment facilities, and specialty shops, and located adjacent to a navigable water body.

B. EFFECT OF PROPOSED CHANGES:

This bill expands the criteria set forth in s. 561.20(2)(a)1., Florida Statutes, which in effect creates a new classification, to allow the issuance of a special alcoholic beverage license to a hotel or motel which meets the following specified criteria.

The hotel or motel:

- is located in a historic structure, and is a historic structure as defined in s. 561.01(21);
- has no fewer than 10 and no more than 25 guest rooms;
- is located in a municipality with a population of no fewer than 25,000 and no more than 35,000 residents at the time of the effective date of this act according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998;
- is within a constitutionally chartered county; and,
- must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages.

The new license classification would cover a restaurant or bar operated by the licensee within the hotel and would allow the sale of alcoholic beverages for consumption only on the licensed premises.

Finally, the definition of a specialty center is revised to include any development having at least 150,000 square feet of leasable area, containing restaurants, entertainment facilities, movie theaters, and specialty shops.

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:

Sections 561.01 and 561.20(2)(a)1., Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 561.01, Florida Statutes, to create a new subsection (21) which defines the term "historic structure" for purposes of license qualification under s. 561.20(2)(a)1., Florida Statutes. The term is defined as a hotel or motel which:

-- is listed on the National Register of Historic Places; or

- is within and contributes to a registered historic district pursuant to 26 U.S.C. s. 48(g)(3)(BB);
or
- meets the criteria of historical significance of the Division of Historical Resources, Department of State, as certified by that Division or by a locally established historic preservation board or commission, or like body, which has been given authority to make such designations.

Section 2. Amends s. 561.20(2)(a)1., Florida Statutes, to create a new special alcoholic beverage license classification for hotels or motels which are located in a historic structure, as defined in s. 561.01, Florida Statutes, and which:

- is located in a historic structure, and is a historic structure as defined in s. 561.01(21);
- has no fewer than 10 and no more than 25 guest rooms;
- is located in a municipality with a population of no fewer than 25,000 and no more than 35,000 residents at the time of the effective date of this act according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998;
- is within a constitutionally chartered county; and,
- must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages.

The new license classification would cover a restaurant or bar operated by the licensee within the hotel and would allow the sale of alcoholic beverages for consumption only on the licensed premises.

Section 3. Provides that the act will take effect upon becoming a law.

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:

N/A

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:

N/A

2. Direct Private Sector Benefits:

Hotels which qualify for an alcoholic beverage license under the special license classification created by this legislation will recognize a financial benefit since they will not have to obtain a quota license for their lounge or restaurant. [See Present Situation for detailed explanation of licensing structure.]

Certain private sector businesses that develop centers having at least 150,000 square feet of leasable space containing restaurants, entertainment facilities, movie theaters, and specialty shops will benefit because they would now qualify as a specialty center. It is unknown how many facilities would be eligible to operate as a specialty center.

It is unknown how many hotels will qualify for an alcoholic beverage license under this license classification.

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

Businesses selling alcoholic beverages under the authority of a quota license [see Present Situation] may be adversely impacted to the extent the new hotel license [covering the hotel's bar and restaurant] competes with the quota license holder for consumer dollars but is not required to make the same investment. Similarly, restaurants selling alcoholic beverages under a special license which requires the restaurant to meet and maintain certain conditions, may be adversely impacted to the extent a hotel restaurant covered under the expanded classification competes with the restaurant but is not required to meet the same conditions.

Availability of this special license classification might encourage community revitalization and economic growth by enabling some historically significant smaller hotels to make liquor sales which otherwise would be cost prohibitive.

It is unknown how many hotels will qualify for an alcoholic beverage license under the expanded license classification.

Certain private sector businesses that develop centers having at least 150,000 square feet of leasable space containing restaurants, entertainment facilities, movie theaters, and specialty shops will benefit because they would now qualify as a specialty center. It is unknown how many facilities would be eligible to operate as a specialty center.

D. FISCAL COMMENTS:

None.

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 an action requiring the expenditure of funds.

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:

The CS/HB 95 includes a provision which bases the qualification for a special alcoholic beverage license in part on whether a municipality falls within a specified population range. According to the House Bill Drafting Manual, a general law of local application may not depend on an arbitrary basis. Section 11(b) of Article III of the Florida Constitution provides in part that:

“In the enactment of general laws...political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.”

It is for this reason the so-called “population act,” is often regarded as being subject to constitutional challenge.

To determine whether an act is arbitrary the question would need to be asked, “What is the rationale behind the legislation?” One could argue that creating this classification might enable some small, but historically significant, hotels in medium sized municipalities to offer full-service accommodations [rooms, restaurant & lounge] thereby creating the opportunity for community revitalization and economic growth.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 20, 1999, the Committee on Regulated Services, adopted two amendments to HB 95 and passed the bill as a committee substitute. The amendments provided additional qualifying criteria and established a definition for “historic structures.”

On March 3, 1999, the Committee on Business Development and International Trade adopted two amendments to CS\HB 95 and subsequently passed the bill as a committee substitute. The first amendment provided criteria narrowing eligibility for the new special alcoholic beverage license classification created by the bill. The second amendment revised the definition of a “Specialty Center.”

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Janet Clark Morris

Staff Director:

Paul Liepshutz

AS REVISED BY THE COMMITTEE ON BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE:

Prepared by:

Jill F. Turman

Staff Director:

J. Paul Whitfield, Jr.