

STORAGE NAME: h0429.br.doc
DATE: November 30, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 429
RELATING TO: Alcoholic Beverage Licenses
SPONSOR(S): Representative(s) Gibson
TIED BILL(S): None

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

- (1) BUSINESS REGULATION
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill creates an exception to the alcoholic beverage licensing statutes and authorizes the issuance of a special alcoholic beverage license to a business entity in the Town of Lady Lake and to a business entity in the unincorporated area of Sumter County. The bill provides that the special license will cover each alcoholic beverage retail outlet owned or operated by the business entity as well as other individually owned outlets within the complex which operate independent of the primary business entity.

The bill will have a negative, but insignificant, fiscal impact on state revenue collections.

The bill provides that the act will take effect upon becoming a law.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Chapters 561-565 and 567 and 568, Florida Statutes, comprise Florida’s Beverage Law. 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 sale of alcoholic beverages is generally considered to be a privilege and as such, licensees are held to a high standard of accountability. The Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation is the state agency given responsibility for enforcement of the Beverage Law.

The Beverage Law requires the Division to conduct background investigations on potential licensees and requires that licensees meet prescribed standards of moral character. Further, the Beverage Law prohibits certain business practices and relationships. Alcoholic beverage licenses are subject to fine, suspension and/or revocation for violations of the Beverage Law.

Unless sold by the package for consumption off the licensed premises, the sale and consumption of alcoholic beverages by the drink is limited to the “licensed premises” of a retail establishment over which the licensee has dominion or control. The beverage law does not allow a patron to leave an establishment with an open alcoholic beverage and/or enter another licensed premises with an alcoholic beverage.

Florida’s retail alcoholic beverage licensing system is generally built around the quota license¹ structure with all other retail licenses that allow the sale of liquor enacted as exceptions to the quota limitation. There are numerous exceptions in general law to the quota limitation that authorize the issuance of liquor licenses to certain groups under specified conditions and with specified limitations. Since these licenses are exceptions to the quota restriction they usually are not allowed as much flexibility in their operations. Bars/nightclubs and liquor package stores typically operate under the authority of a quota license; whereas, restaurants typically operate under a special restaurant license [SRX license]. A restaurant with a SRX license is required to have at least 2,500 square feet of service area; be equipped to serve 150 persons full course meals at one time; and

¹Unlike retail beer and wine licenses, s. 561.20(1), Florida Statutes, provides for a quota or limitation on the number of liquor licenses which may be issued in a county based on population: one license for each 7,500 residents. Quota limitations were initially enacted in the interest of promoting temperance by limiting the number of retail outlets and, therefore, the availability of alcoholic beverages. A quota liquor license allows the sale of all legal alcoholic beverages, beer, wine and liquor, regardless of alcoholic content. Quota licenses also allow the sale of alcoholic beverages by the package as well as by the drink. To assure impartiality in granting these liquor licenses, the law provides for a double random lottery drawing procedure to establish the order of selection to apply for a license. Since there is limited availability, quota licenses often sell on the private market for thousands of dollars.

derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. In addition, a restaurant operating under a SRX license cannot make package sales and cannot serve liquor after the hours of serving food have elapsed.

C. EFFECT OF PROPOSED CHANGES:

Notwithstanding the limitations contained in the Beverage Law, this bill authorizes the Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation, to issue two special alcoholic beverage licenses: one to a business entity operating an entertainment or lodging complex within the commercial district of a retirement community within the Town of Lady Lake and one to a business entity operating an entertainment or lodging complex within the commercial district of a retirement community in the unincorporated area of Sumter County.

As defined by the bill, the complex may include one or more restaurants, bars, breweries or brew pubs, club houses, recreation centers, lodging facilities, banquet facilities, special activity tents, or similar structures or meeting areas, or any combination thereof. The bill specifies that the complex must meet the following criteria:

- (1) A minimum of 15,000 visitors must visit the commercial district of the retirement community annually;
- (2) The complex must provide meeting facilities for at least 250 persons; and
- (3) The complex must contain at least two restaurants or lounges having at least 4,000 square feet of service area equipped to serve 250 persons full-course meals at one time. However, no size or seating requirement is applicable to any individual restaurant or lounge.

This bill specifies that the complex must be managed, controlled, and operated by a primary business entity under one business name and may include individual business entities that are owned, managed, controlled, and operated independently of the primary business entity. This provision appears to allow the issuance of one master license to the "primary business entity" which covers each of the separate outlets [restaurants, bars, clubhouses, etc.] within the complex, including those that are owned and operated independently of the primary business entity. This provision appears to create a standard for accountability that is less than that required for other licensees and may create enforcement difficulties for the division. For example, if a restaurant that is owned independently of the primary business entity that owns the complex license is found to be in violation of the Beverage Law, whom will the division charge with the violation?

The entity receiving the alcoholic beverage license will be required to pay only one license fee rather than separate fees for each business.

Legal descriptions are provided in the bill that describe the physical areas in which the two licenses may be issued. The bill stipulates that the boundaries encompass a contiguous area separated only by deeded or dedicated rights of way.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The issuance of one master license that covers each individual retail outlet within the complex will reduce projected license fee revenue collections. The extent of this reduction is unknown and is based upon the number of outlets.

2. Expenditures:

Insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Insignificant.

2. Expenditures:

The issuance of one master license that covers each individual retail outlet within the complex will reduce projected license fee revenue otherwise shared with the municipality or county within which the licenses are issued. The extent of this reduction is unknown and is based upon the number of outlets that will be exempt from paying a license fee.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

New businesses and existing businesses operating under new ownership that sell alcoholic beverages within the two retirement communities will benefit to the extent all will operate under one of the two master licenses rather than being required to purchase individual licenses as would otherwise be required under general law.

Alcoholic beverage retailers operating near these two retirement communities who are required to purchase individual licenses and exercise dominion and control over their licensed premises as a condition of licensure may perceive that the bill creates an unfair advantage for those retail outlets operating within the complex who are not required to pay a comparable license fee or be subject to the same accountability.

D. FISCAL COMMENTS:

None.

III. 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.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article III, Section 11, subsection 12 of the Florida Constitution prohibits the legislature from passing a special law or general law of local application pertaining to a grant or privilege to a private corporation. Potentially, the granting of a special alcoholic beverage license to the operating entity of an entertainment complex might be considered unconstitutional if the operating entity is a private corporation and the bill is considered a special law or a general law of local application.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Chapter 95-455, Laws of Florida, authorized the issuance of a special license to an entity operating an entertainment or lodging complex, which might include numerous retail outlets that are owned by the same entity, within the commercial district of a retirement community in the Town of Lady Lake.

Issuance of a master license had two primary benefits. First, it allowed patrons to move freely between establishments in the complex without discarding their alcoholic beverage since the entire complex is considered the licensed premises. Second, it precluded the necessity for the individual retail outlets to obtain alcoholic beverage licenses as would otherwise be required by the Beverage Law.

According to representatives from The Villages, the license issued pursuant to Chapter 95-455, Laws of Florida, covered the first phase of the planned downtown development. The two licenses authorized by this bill will cover the second and third phase of the development: the second phase in the Town of Lady Lake and the third phase in Sumter County. All three developments are owned by the same corporate entity.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VI. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

Janet Clark Morris

M. Paul Liepshutz

STORAGE NAME: h0429.br.doc

DATE: November 30, 2001

PAGE: 6