

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate the House principles.

B. EFFECT OF PROPOSED CHANGES:

Florida's Beverage Law

Chapters 561-565 and 567 and 568, F. S., 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. Alcoholic beverage licensees are subject to fine, suspension and/or revocation for violations of the Beverage Law. The Division of Alcoholic Beverages and Tobacco [division] of the Department of Business and Professional Regulation is the state agency given responsibility for enforcement of the Beverage Law.

Florida's retail alcoholic beverage licensing system is generally built around the quota license structure with all other retail licenses that allow the sale of liquor enacted as exceptions to the quota limitation. Unlike retail beer and wine licenses, s. 561.20(1), F.S., 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. Bars/nightclubs and liquor package stores typically operate under the authority of a quota license.

To assure impartiality in granting these liquor licenses, the law provides for a double random lottery-type drawing procedure to establish the order of selection to apply for a license. The division utilizes annual census numbers to determine the availability of quota licenses annually in each county. Since there is limited availability, quota licenses often sell on the private market for thousands of dollars.

There are numerous statutory exceptions to the quota limitation which allow the issuance of liquor licenses to various entities meeting specified conditions, e.g., hotels or motels, civic center authorities, golf clubs and restaurants. To qualify for an SRX license, a restaurant must have 2,500 square feet of service area, be equipped to serve 150 persons full course meals at tables at one time, and derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages.

While the state retains primary regulatory authority over the activities of alcoholic beverage licensees, certain areas of responsibility have been delegated to counties or municipalities by statute. Sections 562.45 and 562.14, F.S., grant zoning authority as well as the authority to enact ordinances regulating the type of entertainment, hours of operation, and conduct permitted in licensed alcoholic beverage establishments to counties and municipalities. Section 562.14(1), F.S., prohibits the sale of alcoholic beverages between the hours of midnight and 7:00 AM of the following day unless different hours of operation have been established by local ordinance.

The Tampa Theatre

The Tampa Theatre, a National Register property, is managed by the Arts Council of Hillsborough County under contract with the City of Tampa. The Theatre partners with community groups in offering the lobby for community events at no charge.

Currently, other philanthropic organizations that promote the arts and sciences have special alcoholic beverage licenses, such as the University Area Community Development Corporation, the Museum of Science and Industry, the Tampa Museum of Art, and Lowry Park Zoo.

Under the current statutory framework, the Arts Council of Tampa would be required to obtain a "quota license" pursuant to s. 561.20, F.S., in order to serve beer, wine and liquor at the Tampa Theatre. Quota licensees can be purchased on the open market but often cost thousands of dollars. In addition, if a license is available to be issued in Hillsborough County, it may be obtained through the double random selection drawing process provided in s. 561.19(2) (a), F.S.

Effect of Proposed Changes

This bill authorizes the Division of Alcoholic Beverages and Tobacco (Division) of the Florida Department of Business and Professional Regulation to issue an alcoholic beverage license pursuant to s. 561.17, F.S., to the Arts Council of Hillsborough County (Council) for use on the premises of the Tampa Theatre. In addition, the bill:

- Requires the Council to submit an application for licensure to the Division and pay the appropriate application fee as provided in s. 565.02, F.S.;
- Requires the Council to use the license only for special events on the premises of the theatre;
- Requires that the alcoholic beverages sold under the license to be sold for consumption on the premises and prohibits the sale of alcoholic beverages in sealed containers for consumption off the premises;
- Provides that an opened, partially consumed container of alcoholic beverages (e.g. an opened bottle of wine) may be removed from the premises.
- Allows the Council to transfer the license to a qualified applicant that is under contract with the Council to provide food services at the museum. The license automatically reverts to the Council upon termination of the transferee's authority or contract.

The bill does not explicitly provide immunity from any other applicable local ordinances or regulations regarding the possession of open containers of alcoholic beverages within a certain number of feet of a licensed vendor; however, the bill may be interpreted as preempting local ordinances regarding open containers.

C. SECTION DIRECTORY:

- Section 1. Authorizes issuance of an alcoholic beverage license to the Arts Council of Hillsborough County
- Section 2. Provides terms of licensure.
- Section 3. Provides for temporary transfer of license under certain circumstances.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 27, 2005.

WHERE? The Tampa Record, Tampa, Hillsborough County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

Under the current statutory framework, the Arts Council of Tampa would be required to obtain a “quota license” pursuant to s. 561.20, F.S., in order to serve beer, wine and liquor at the Tampa Theatre. Quota licenses can be purchased on the open market but often cost thousands of dollars. In addition, if a license is available to be issued in Hillsborough County, it may be obtained through the double random selection drawing process provided in s. 561.19(2) (a), F.S.

The bill authorizes the transfer of the license to “qualified applicants” who are authorized by or under contract with the council to provide food services at the theatre. The license transfer provisions of the bill may be an exemption from s. 561.32, F.S., which currently governs the transfer of a beverage licenses

City of Tampa Ordinance

The bill permits open and partially consumed containers of alcoholic beverages to be removed from the premises, which may preempt the City of Tampa Code of Ordinances, Chapter 3, Alcoholic Beverages, Article IV, Section 3-40, which prohibits possession of open containers of alcoholic beverages outside of licensed premises.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.