

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 139 Alcoholic Beverage Licenses
SPONSOR(S): Stansel and others
TIED BILLS: IDEN./SIM. BILLS: SB 968

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Business Regulation Committee, 15 Y, 0 N, Shoemaker, Liepshutz. Row 2: Finance & Tax Committee, Levin, Diez-Arguelles. Rows 3-5 are empty.

SUMMARY ANALYSIS

This bill creates a new alcoholic beverage license for a sporting or recreational lodge complex meeting specified criteria. The license will be an exception to the existing quota liquor licensing limitation of one license for every 7,500 residents in a county.

To qualify for the license the complex must:

- Comprise at least 10,000 acres of land.
Have indoor sleeping facilities with at least twelve rooms.
Have a restaurant that seats at least twenty-five persons.
Have been in continuous existence for at least two years.

The bill provides that the "enclosed area within the complex shall be considered the licensed premises." Alcoholic beverages may be sold or provided in a manner consistent with any applicable local ordinance having jurisdiction.

The bill will have a minimal fiscal impact on state revenue collections and should have no impact on state expenditures. The bill provides an effective date of July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government--The bill establishes a new category of alcoholic beverage license. Application for the licensure, however, is elective.

#### B. EFFECT OF PROPOSED CHANGES:

##### **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. Alcoholic beverage licensees are subject to fine, suspension and/or revocation for violations of the Beverage Law. The Division of Alcoholic Beverages and Tobacco (the Division) of the Department of Business and Professional Regulation is the state agency given responsibility for enforcement of the Beverage Law.

##### **"Quota" Liquor Licenses**

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 which are available without limitation, s. 561.20(1), F. S., establishes a limitation or quota on the number of liquor licenses that 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.

New quota licenses are created and issued when there is an increase in the population of a county. The Division utilizes the annual Florida Estimate of Population as published by the Bureau of Economic and Business Research at the University of Florida to establish the number of licenses, if any, available in each county on an annual basis. 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. For the application period ending on November 13, 2004, fifty-four licenses became available in twenty-five Florida counties.<sup>1</sup> Since there is limited availability, quota licenses often sell on the private market for thousands of dollars.

Section 565.02(1)(b)-(f), F.S., establishes license fees for quota licenses selling alcoholic beverages for consumption on the licensed premises based on the population of the county.<sup>2</sup> The fees range from \$1,820 for a license in a county with a population of 100,000 or more to \$624 for a license in a county with a population of 25,000 or less. Paragraph (g) of s. 565.02(1), F.S., also establishes a \$1,000 fee, in addition to the fees set out in paragraphs (b)-(f), for any vendor operating a place of business where consumption on the premises is permitted and which has more than three separate rooms or

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<sup>1</sup> Quota Licenses Available Based on Increases in Population, at [http://www.state.fl.us/dbpr/abt/licensing/quota\\_notice.shtml](http://www.state.fl.us/dbpr/abt/licensing/quota_notice.shtml) (last visited March 19, 2005).

<sup>2</sup> License Fees, at [http://www.state.fl.us/dbpr/abt/rules\\_statutes/fee\\_chart.pdf](http://www.state.fl.us/dbpr/abt/rules_statutes/fee_chart.pdf) (last visited March 19, 2005).

enclosures in which permanent bars or counters are located from which alcoholic beverages are served. In addition to these fees, s. 561.19, F.S., requires a one-time fee of \$10,750 for each new quota liquor license. A quota license holder electing to sell alcoholic beverages only in sealed containers for consumption off the vendor's licensed premises is required to pay a fee in an amount equal to 75 percent of the fee that consumption on premises vendors are required to pay in that same county.

### Exceptions to Quota Limitation

Sections 561.20(2) and 565.02(2)-(11), F.S., establish numerous statutory exceptions to the quota limitations 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. For example, to qualify for a special restaurant 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.

### Hours of Operation

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.

### Summary of Legislation

This bill amends s. 565.02(2), F.S., to create a new alcoholic beverage license classification for a sporting or recreational lodge complex. The license will be an exception to the quota liquor licensing limitations imposed in s. 561.20, F.S., i.e., one license for every 7,500 residents in a county.

The bill provides that, upon payment of the appropriate license fee, a liquor license may be issued to a sporting and recreational lodge complex meeting specified criteria. To qualify for the license the complex must:

- Comprise at least 10,000 acres of land.
- Have indoor sleeping facilities with at least 12 rooms.
- Have a restaurant that seats at least 25 persons.
- Have been in continuous existence for at least two years.

The bill provides that the enclosed area within the complex shall be considered the licensed premises. The bill does not, however, define the term "enclosed area within the complex." It is unclear whether the term refers to the structures within the complex or to a fenced or otherwise enclosed area.

The legislation does not establish a license fee for this license classification; therefore, it appears that the fee would be comparable to the fees established in 565.02(1), F.S., for quota liquor licenses: ranging from \$624 for a license in a county with a population of 25,000 or less to \$1,820 for a license in a county with a population of 100,000 or more and may also be subject to an additional \$1,000 fee for each additional room or enclosure in which permanent bars or counters are located from which alcoholic beverages are served. The license would not, however, be subject to the one-time fee of \$10,750 established in s. 561.19(5), F.S., for quota licenses.

Alcoholic beverages may not be sold at the complex 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 Division estimates that there may be five facilities that meet the licensing criteria established in this legislation. Therefore, it is expected that the bill will have an insignificant fiscal impact on state revenue collections and expenditures. The bill will take effect July 1, 2005.

C. SECTION DIRECTORY:

**Section 1:** Amends s. 565.02, F.S., to create a new subsection (12) which authorizes the issuance of an alcoholic beverage license to a sporting and recreational lodge complex meeting specified criteria.

**Section 2:** Provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Pursuant to s. 565.02(1)(b)-(f), F.S., which prescribes the fees for the sale of alcoholic beverages regardless of alcohol content, the Division would collect fees ranging from \$624 to \$1,820 for each qualifying applicant, with the amount dependent upon the population of the county in which the sporting and recreational lodge complex is located.

The Division estimates that there may be five facilities that meet the criteria established for an alcoholic beverage license in this legislation. If those five facilities elect to obtain a license and if each of those facilities is located in counties with a population of 100,000 or more, the division would collect a minimum of \$9,100 in license fee revenue.

2. Expenditures:

Minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Minimal. Counties receive 24% of license fee revenue for alcoholic beverage licenses located in that county and municipalities receive 38% of license fee revenue for alcoholic beverage licenses located in that municipality.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any cost incurred would be elective.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or cities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the authority that cities or counties have to raise revenues in the aggregate. This bill does not reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.