

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 1293 Brevard County  
**SPONSOR(S):** Community & Military Affairs; Tobia  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	11 Y, 0 N, As CS	Tait	Hoagland
2) Economic Affairs Committee			

### SUMMARY ANALYSIS

This bill authorizes the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation to issue a special alcoholic beverage license to the Brevard Art Museum, Inc., (the Corporation) for use within the museum's two buildings.

The bill requires the Corporation to pay the applicable license fee provided in s. 565.02, F.S.

The license authorized by this bill allows the Corporation to sell alcoholic beverages for consumption at the Brevard Art Museum. Further, the bill allows the Corporation to transfer the license to qualified applicants authorized by contract with the Corporation to provide food services on the premises.

According to the Economic Impact Statement, the bill may result in additional state revenues in the form of alcoholic beverage taxes from an increase in sales by the license holder.

The division has indicated that the provisions of this bill will result in an increase in an increase of annual revenues due to the payment of the license fee. The division has indicated that it can handle issuing a single license to the Corporation within existing resources; however, it states that additional personnel may be necessary depending on the number of times the license is transferred to food service providers and then returned to the Corporation.

This bill has an effective date of upon becoming law.

**House Rule 5.5(b), states that 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. This bill appears to provide an exemption to s. 561.17, F.S.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages within the state. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler and retailer. The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level and the state "sales tax" is collected at the retail level.

Chapters 561-568, F.S., comprise Florida's Beverage Law. Section 561.02, F.S., provides that the division is responsible for the enforcement of these statutes. 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 fines, suspensions and/or revocations for violations of the Beverage Law.

Section 561.17, F.S., requires a business entity or 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.<sup>1</sup> The sale of alcoholic beverages is generally considered to be a privilege and, as such, licensees are held to a high standard of accountability.<sup>2</sup>

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 premise with an alcoholic beverage.

Section 565.02(1)(b), F.S., provides that a vendor must pay an annual license fee of \$1,820 if it operates a place of business where consumption on the premises is permitted in a county having a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, F.S., for such county.<sup>3</sup>

No alcoholic beverage license is currently issued to the Brevard Art Museum, Inc., a not-for-profit corporation.

#### **Effect of Proposed Changes**

Notwithstanding the limitations contained in the Beverage Law, this bill authorizes the Division to issue a special alcoholic beverage license to the Brevard Art Museum, Inc., (the Corporation) for use within the museum's two buildings.

The bill requires the Corporation to pay the applicable license fee provided in s. 565.02, F.S.

The license authorized by this bill allows the Corporation to sell alcoholic beverages for consumption within the Brevard Art Museum. According to DBPR, the two museum locations would be considered one licensed premise location allowing for the purchase and consumption of alcoholic beverages

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<sup>1</sup> According to s. 561.01(4)(a), F.S., "alcoholic beverages" are defined as distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

<sup>2</sup> According to s. 561.01(14), F.S., "licensee" is defined as a legal or business entity, person, or persons that hold a license issued by the division and meets the qualifications set forth in s. 561.15, F.S.

<sup>3</sup> Section 186.901, F.S., addresses "population census determination."

throughout the licensed premises, with multiple points of sale within the licensed premises permitted. The license prohibits the sale of alcoholic beverages in sealed containers for consumption outside the Brevard Art Museum.

Further, the bill allows the Corporation to transfer the license to qualified applicants authorized by contract with the Corporation to provide food services on the premises. However, upon termination of a transferee's authorization or contract, the license automatically reverts to the Corporation by operation of law. DBPR has advised that the Corporation use the division's transfer forms when transferring the license to authorized vendors.

According to the Bureau of Economic and Business Research at the University of Florida, the 2010 population estimate for Brevard County is 555,248. Therefore, the license fee of \$1,820 listed in s. 565.02(1)(b), F.S., would apply to the Corporation.

The bill takes effect upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Authorizes the issuance of an alcoholic beverage license to the Brevard Art Museum, Inc., for use within the museum's two buildings, upon application and payment of the license fee.

**Section 2:** Authorizes the sale of alcoholic beverages to be consumed on the premises of the Brevard Art Museum. The authorized license prohibits the sale of alcoholic beverages in sealed containers for consumption outside the premises.

**Section 3:** Authorizes the transfer of the license and provides for subsequent reversion of the license under certain circumstances.

**Section 4:** Provides an effective date of upon becoming a law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? February 3, 2011.

WHERE? *Florida Today*, a daily newspaper of general circulation published in Brevard 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

According to the Economic Impact Statement, the bill may result in additional state revenues in the form of alcoholic beverage taxes from an increase in sales by the license holder.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Other Comments**

The division has indicated that the provisions of this bill will result in an increase of annual revenues due to the payment of the license fee. The division has indicated that it can handle issuing a single license to the Corporation within existing resources; however, it states that additional personnel may be necessary depending on the number of times the license is transferred to food service providers and then returned to the Corporation.

House Rule 5.5(b), states that 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. This bill appears to provide an exemption to s. 561.17, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 1, 2011, the Community & Military Affairs Subcommittee adopted one amendment to the bill, which was reported favorably as a Committee Substitute.

The amendment changed the license fee the Corporation will pay from \$400 to the applicable license fee provided in s. 565.02, F.S.

This analysis reflects the amendment adopted by the Community & Military Affairs Subcommittee.