The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL:	CS/SB 698
INTRODUCER:	Regulated Industries Committee and Senator Bradley
SUBJECT:	Alcoholic Beverages and Tobacco
DATE:	January 22, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Davis	DeLoach	AGG	**Pre-meeting**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 698 replaces the process for calculating beverage and tobacco taxes that cruise lines currently pay with a new methodology that calculates the taxes based on ship capacity rather than volume of alcohol or tobacco sold at port. Specifically, the bill provides a process for calculating excise tax payments by passenger vessels engaged exclusively in foreign commerce. This process applies to excise taxes from the sale of alcoholic beverages, cigarettes, and other tobacco products. The bill requires that excise taxes must be calculated based upon the base rate, which is the total taxes paid by all passenger vessel permittees for period between January 1, 2015, and December 31, 2015. The bill also provides that the permit issued to passenger vessels under the Beverage Law in s. 565.02(9), F.S., applies to alcoholic beverages, cigarettes, and other tobacco products.

The bill authorizes the Division of Alcoholic Beverages and Tobacco (division) within the Department of Business the Professional Regulation (department) to issue up to three temporary alcoholic beverage permits to municipalities and counties per year and requires that their annual financial report must include all revenues derived from the use of the temporary permits.

The bill permits the division to issue an alcoholic beverage license to railroad transit stations for the sale of beer, wine, and liquor. It also permits the division to issue a license for the sale of beer, wine, or liquor to the operators or restaurants, shops, or other facilities that are part or, or that serve, railroad transit stations.

Licenses issued to railroad transit stations would not be subject to the quota license restrictions that limit the number of such licenses that may be issued per county. These licenses may not be transferred to premises beyond the railroad transit station. The bill exempts these licenses from county and municipal restrictions on the sale of alcoholic beverages, including restrictions on the hours of sale, and also prohibits municipalities and counties from requiring any additional license or levying any tax for the privilege of selling alcoholic beverages.

For quota licenses with license periods commencing on or after July 1, 1981, but issued before September 30, 1988, the bill requires the division, upon the written request of a licensee, to provide a written waiver or extension of not more than 12 months of the requirement to maintain the licensed premises in an active manner. For quota licenses issued or transferred after September 30, 1988, the bill requires the division, upon the written request of a licensee, to issue a written waiver or extension of not more than 24 months of the requirement to maintain the licensed premises in an active manner.

The bill requires distributors to charge vendors a deposit for kegs in an amount that is not less than that charged to the distributor by the manufacturer. It requires that the deposit for kegs of a like brand must be uniform and that deposits collected and credits allowed for empty kegs or containers must be shown separately on all sales tickets or invoices, which must also be given to the vendor at the time of delivery. The bill requires distributors of malt beverage kegs to implement an inventory and reconciliation process with certain vendors in which an accounting of draft kegs is completed and any loss or variance in the number of kegs is paid for by the vendor on a per-keg basis equivalent to the required keg deposit. This inventory and reconciliation process applies to vendors qualifying as an entertainment/resort complex, a theme park, or a marine exhibition park complex.

The provisions in the bill related to alcoholic beverage tax and tobacco taxes owed by cruise lines are estimated to have a negative nonrecurring fiscal impact of $100,000 to the General Revenue Fund in Fiscal Year 2016-2017, as determined by the Revenue Estimating Conference. The remaining provisions of the bill have an indeterminate fiscal impact.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Alcoholic Beverages

In Florida, alcoholic beverages are regulated by the Beverage Law,[1] which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.[3]

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] Section 561.02, F.S.

Three Tier System

In the United States, the regulation of alcohol, since the repeal of Prohibition, has traditionally been through what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverage; the distributor obtains the beverages from the manufacturer and delivers them to the vendor. The vendor (retailer) makes the ultimate sale to the consumer.[4] Manufacturers cannot sell directly to retailers or directly to consumers.

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[5] Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.[6] Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.[7]

The system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[8] Activities between the three-tiers are heavily regulated to prevent a manufacturer or distributor from having and financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

Tied House Evil

Section 561.42(1), F.S., prohibits a licensed manufacturer or distributor from assisting any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever.

Keg Deposits

The Beverage Law defines the term "keg" in the context of s. 561.221(3), F.S., which permits a vendor of alcoholic beverages to also be licensed as a manufacturer of malt beverages if the vendor is engaged in brewing malt beverages at a single location in an amount that does not exceed 10,000 kegs per year.[9] These vendors are known in the industry as "brew pubs." For the purposes of s. 561.221(3), F.S., the term keg is defined to mean 15.5 gallons.

Implemented in relevant part pursuant to the tied house prohibition in s. 561.42(1), F.S., rule 61A-4.0131, F.A.C., relating to malt beverage keg deposits, requires distributors of malt beverages, upon sale of such beverages in "draft kegs" to a vendor, to require from all vendors a keg deposit of an amount not less than that charged the distributor by his brewer for each keg of beer sold. The amount of deposit charged to vendors for draft kegs of like brand must be uniform.

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[4] Section 561.14, F.S.
[5] Section 561.14(3), F.S. However, see discussion regarding the exceptions provided in s. 561.221, F.S.
[6] Section 561.22, F.S.
[7] Sections 563.022(14) and 561.14(1), F.S.
[8] Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board,* (June 2004) available at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (last visited December 16, 2015).
[9] Section 561.221(3)(a)1., F.S., defines the term "keg" as 15.5 gallons.

Rule 61A-4.0131, F.A.C., requires that charges made for deposits collected and credits allowed for empty containers returned must be shown separately on all sales tickets or invoices. A copy of the sales tickets or invoices must be given to the vendor at the time of delivery.

Entertainment/Resort and Marine Exhibition Park Complexes

Section 561.01(18), F.S., defines the term "entertainment/resort complex" to mean:

> a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owner(s)/operators(s) of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity shall include an area within a 5-mile radius of the theme park complex.

Section 565.02(6), F.S., allows a vendor who operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex that is owned, managed, controlled, and operated by such vendor, to operate under a master license issued for the type of service offered if:

- The theme park complex comprises at least 25 enclosed acres of land with permanent exhibitions and a variety of recreational activities;
- The enclosed area has a controlled entrance to, and exit from, the enclosed area; and
- At least one million visitors annually pay admission fees to the theme park complex.

In addition to the annual license fee, an additional tax of $1,500 is imposed for up to five additional bars, $2,500 for six to 10 additional bars, and $3,500 for more than 10 additional bars. The enclosed area within the theme park is considered an extension of the licensed premises upon the payment of the fee and the notation of such extension on the sketch accompanying the original license application.

Section 565.02(7), F.S., authorizes marine exhibition park complexes to obtain, upon the payment of appropriate fees, a license for on-premises consumption of alcoholic beverages not subject to any quota or limitation if:

- The marine exhibition park complex comprises at least 25 enclosed acres of land;
- The enclosed area has a controlled entrance to, and exit from, the enclosed area;
- At least 450,000 visitors annually pay admission fees to the marine exhibition park; and
- The marine exhibition park has been in continuous existence for at least 30 years.

In addition to the annual license fee for marine exhibition park complexes, a tax of $1,500 is imposed for up to five additional bars, $2,500 for six to 10 additional bars, and $3,500 for more than 10 additional bars.

Temporary Alcoholic Beverage Permits

Section 218.32, F.S., requires each local government entity that is determined to be a reporting entity to submit to the Department of Financial Services a copy of its annual financial report for the previous fiscal year.

Currently, s. 561.422, F.S., provides for temporary permits for bona fide nonprofit civic organizations to sell alcoholic beverages for consumption on the premises only. The permit period may not exceed three days and is subject or any state law or municipal or county ordinance regulating the time for selling alcoholic beverages. The organization must file an application and pay a $25 fee in order to obtain the permit. The division may only issue three such permits per calendar year for each organization.

Special Acts for several counties and municipalities (St. Petersburg, Tallahassee, Leesburg, Eustis, Tavares, Mount Dora, Clearwater, Ocala, Vero Beach, and Pinellas) permit non-profit organizations to apply for an additional fifteen three-day permits.[10] For example, ch. 2015-207, L.O.F., permits bona fide non-profit civic organization in Pinellas County to apply for up to an additional fifteen temporary three-day alcoholic beverage permits. To qualify for the permit, the non-profit civic organization must also receive a special event permit issued by an incorporated municipality in Pinellas County for the sale of alcoholic beverage within the special event permitted area designated by the municipality.

Current law limits the granting of temporary permits to non-profit civic organization. Counties and municipalities do not qualify for these permits. Section 561.25(1), F.S., also prohibits state, county, or municipal officers with state police power granted by the Legislature to engage in the sale of alcoholic beverages under the Beverage Law.

Quota Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor[11] along with beer and wine that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses also can be issued when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

Section 561.29(1)(h), F.S., requires quota license holders to maintain the licensed premises in an active manner in which the licensed premises are open for the bona fide sale of authorized alcoholic beverages during regular business hours of at least six hours a day for a period of 120 days or more during any 12-month period commencing 18 months after the acquisition of the license by the licensee, regardless of the date the license was originally issued. License holders

[10] See, chs. 2008-294, 2009-262, 2010-251, 2010-252, 2011-260, 2012-244, 2014-253, 2014-248, and 2015-207, L.O.F.
[11] Section 565.01, F.S., defines "[t]he words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

must notify the division in writing of any period during which the license will be inactive and place the physical license with the division to be held in an inactive status.

Section 561.29(1)(h), F.S., permits the division to waive or extend this activation requirement upon the finding of hardship, including the purchase of the license in order to transfer it to a newly constructed or remodeled location. During the period the licensed premises is closed, the licensee is required to make reasonable efforts toward restoring the license to active status. Section 561.29(1)(h), F.S., applies to all annual license periods commencing on or after July 1, 1981, but does not apply to licenses issued after September 30, 1988.

Section 561.29(1)(i), F.S., also provides an activation requirement for quota licenses issued or transferred after September 30, 1988. Those licenses must be open for the bona fide sale of authorized alcoholic beverages during regular business hours of at least eight hours a day for a period of 210 days or more during any 12-month period commencing six months after the acquisition of the license by the licensee.

Section 561.29(1)(i), F.S., permits the division, upon a written request from the licensee, to give a written waiver of the activation requirement for a period not to exceed 12 month in cases where the licensee demonstrates that:

- The licensed premises has been physically destroyed through no fault of the licensee;
- The licensee has suffered an incapacitating illness or injury which is likely to be prolonged; or
- The licensed premises has been prohibited from making sales as a result of any action of any court of competent jurisdiction.

Additional waivers may be given but the waivers necessitated by any one occurrence may not cumulatively total more than 24 months.

The division recently repealed a rule that outlined the process for receiving an extension to licenses that are inactive.[12] The repealed rule included several conditions that the licensee must demonstrate to the division for grant of an extension of the hardship waiver. Several of these conditions are not included in s. 561.29(1)(i), F.S., including the requirement that the licensee must demonstrate:

> (a) The value of the license is less than the licensee's original cost of the license;
> (b) The licensee has listed the license with a broker in a formal written agreement;
> (c) The licensee is advertising the license at least monthly in a newspaper of general circulation in the classified section;
> (d) If a corporate license has more than one shareholder, then documentation proving that corporate approval is pending for activation of the license at a new location;
> (e) Documentation that activation of the license is pending a land use approval of a new site (special exceptions, zoning, variances, environmental approvals, and comprehensive plan amendments); or

[12] *See* rule 61A-3.053, F.A.C. The rule was repealed on January 10, 2016.

> (f) Documentation showing the ongoing negotiation of a lease or purchase of a building or land.[13]

The division repealed the rule because it determined that the rule was unnecessary or repetitive of current Florida law.[14]

Quota License Exceptions

Section 561.20(2), F.S., provides several exceptions to the number of licenses that permit the sale of beer, wine, and distilled spirits. The exceptions include restaurants, caterers, hotels and motels, specialty centers built on government-owned land, bowling establishments, and airports. Quota license exceptions are known as "special licenses."

Section 561.20(2)(d), F.S., permits the division to issue a special license to any board of county commissioners in the name of the county. The special license is applicable only in and for facilities which are owned and operated by the county and in which the sale and consumption of alcoholic beverages are not otherwise prohibited. The license may be transferred from one qualified county facility to another upon written notification to the department. A comparable provision is not provided for municipalities.

Alcoholic Beverage Licenses for Railroad Transit Stations

Section 565.02(2), F.S., permits the division to issue a license for the sale of beer, wine, and liquor to the operator of railroads or sleeping cars upon payment of an annual license tax of $2,500. The license is good throughout the state for the sale of alcoholic beverages on any dining, club, parlor, buffet, or observation car operated by the licensee, but the beverages may be sold only to passengers on the cars and must be served for consumption thereon. In addition, liquor may only be sold in miniature bottles of not more than two ounces. Currently, no license is required, or tax levied by any municipality or county for the privilege of selling the beverages for consumption in such cars. Beverages can be sold only on cars in which certified copies of the licenses are posted.

All Aboard Florida

All Aboard Florida is an under-construction passenger rail service between Miami and Orlando that uses the existing Florida East Coast Railway corridor between Miami and Cocoa. It is also building a new track along State Road 528 between Cocoa and Orlando. In 2017, the route will open for service between Miami and West Palm Beach. A full-service route from Miami to Orlando will also open later that year. All Aboard Florida is constructing railroad stations in Miami, Fort Lauderdale, and West Palm Beach. The Orlando station is under construction at the Intermodal Transportation Center at Orlando International Airport.[15]

[13] Rule 61A-3.053, F.A.C.
[14] *See* vol. 41, number 179; September 15, 2015 issue of the Florida Administrative Register.
[15] See All Aboard Florida at: http://www.allaboardflorida.com/ (Last visited December 28, 2015).

Alcoholic Beverage Tax and Tobacco Taxes related to Cruise Lines

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) oversees the collection of excise taxes from the sale of cigarettes and other tobacco products. Part I, ch. 210, F.S., consisting of ss. 210.01-210.22, F.S., provides for the taxation of cigarettes. Part II, ch.210, F.S., consisting of ss. 210.25-210.75, F.S., provides for the taxation of tobacco products other than cigarettes and cigars.

The retail sale and delivery of tobacco is governed by the division under the provisions of ch. 569, F.S.

Cigarette Regulation and Taxation

Section 210.15(1)(a), F.S., requires a permit issued by the division before any person, firm, or corporation may engage in business as a manufacturer, importer, exporter, distributing agent, or wholesale dealer of cigarettes. A separate application and permit is required for each place of business located within the state or, in the absence of such place of business in this state, for wherever its principal place of business is located.

Section 210.01(1), F.S., defines the term "cigarette" to mean:

> Any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

The current excise tax in Florida ranges from 16.95 cents per package to 67.8 cents per package, depending on the number of cigarettes per package.[16] The current excise tax is 33.9 cents per standard 20-cigarette pack cigarettes.[17]

Section 210.011, F.S., imposes a surcharge on the sale, receipt, purchase, possession, consumption, handling, distribution, and use of cigarettes in this state. The amount of the surcharge varies depending on the weight of the cigarette, its length, and the number of cigarettes in a package. A one dollar surcharge is assessed for packages containing more than 10 but not more than 20 cigarettes.

A "distributing agent" is any person, firm, or corporation who receives cigarettes and distributes them to wholesalers or other distributing agents inside or outside the state.[18] An "agent" is any person authorized by the division to purchase and affix adhesive or meter stamps under part I of ch. 210, F.S.[19]

[16] Section 210.02(3) and (4), F.S.
[17] Section 210.02(3)(b), F.S.
[18] Section 210.01(14), F.S.
[19] Section 210.01(9), F.S.

A "wholesale dealer," also referred to as a "dealer," sells cigarettes to retail dealers for resale only, or operates cigarette vending machines in more than one place of business.[20]

An "exporter" is a person who transports tax-exempt cigarettes into Florida under bond for delivery beyond state borders.[21]

Section 210.06, F.S., requires that every dealer affix a tax stamp as evidence that the excise tax has been paid before the cigarettes can be offered for sale in this state. Sections 210.02 and 210.04, F.S., provide that excise taxes must be paid by the wholesale dealer upon the first sale or transaction within this state whether or not such sale or transfer is to the ultimate purchaser or consumer. Because wholesalers may purchase cigarettes from other wholesalers, only the first sale is taxed. Distributing agents, acting as agents to the manufacturers, are not required to pay taxes for the distribution of cigarettes to wholesalers. Collected excise taxes are paid to the division. Stamps representing various denominations of tax are purchased in bulk by wholesale dealers and are affixed to packages as proof of payment.[22] Cigarettes that are not properly stamped may not be sold in Florida.[23] The amount of the tax then becomes a part of the price of the cigarettes to be paid by the purchaser or consumer.

Cigarette manufacturers report information pertaining to the tobacco settlement agreement to the Attorney General's Office rather than to the division. Section 210.09(2), F.S., requires a monthly report by "any distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state." All manufacturers must report to the division the amount of cigarettes, by invoice total, shipped to Florida cigarette stamping wholesalers, i.e., distributors.

Cigarette distributing agents file a monthly report with the division detailing the number of cigarettes shipped through their warehouse for the preceding month, including all cigarettes received from manufacturers and delivered to each stamping agent. Stamping agents file a monthly report listing all stamp purchases and usage for the preceding month, including ending and beginning inventories. Wholesale distributors that are not stamping agents file a similar report of all purchases and sales inside and outside the state for the preceding month, including ending and beginning inventories. Sales of cigarettes out-of-state are reported on a wholesale dealer's monthly report as exempt from the excise tax because the tax applies only to sales in Florida. The monthly report details the number of cigarette packages, but does not include any information about the quantity of each brand. There are no reporting requirements for retailers.

If a dealer fails to timely report taxes, the division may determine the tax due within three years of the earliest sale included in the determination.[24] A dealer is entitled to judicial review of the division's determination of the amount of unpaid taxes only if the amount determined due, including penalties, is deposited with the division and an undertaking or bond is filed with the court.[25] This process is limited to wholesale dealers.

[20] Sections 210.01(5) and (6), F.S.
[21] Section 210.01(17), F.S.
[22] Sections 210.05 and 210.06, F.S.
[23] Section 210.06, F.S.
[24] Section 210.13, F.S.
[25] Id.

Passenger Vessels

Section 565.02(9), F.S., provides the finding of the Legislature that passenger vessels engaged exclusively in foreign commerce are susceptible to a distinct and separate classification for purposes of the sale of alcoholic beverages under the Beverage Law. It permits such vessels to obtain an alcoholic beverages permit with an annual fee of $1,100. The permit allows the operator, or his or her concessionaire, to sell alcoholic beverages on the vessel for consumption on board. The passenger vessel must have cabin-berth capacity for at least 75 passengers, and be engaged exclusively in foreign commerce. Alcoholic beverages may only be sold:

- During a period not in excess of 24 hours prior to departure while the vessel is moored at a dock or wharf in a port of this state; or
- At any time while the vessel is located in Florida territorial waters and is in transit to or from international waters.

Municipalities and counties may not require a license or levy a tax for the privilege of selling alcoholic beverages for consumption on board the vessels. Alcoholic beverages that a passenger vessel purchased outside the state are not considered as imported for the purposes of s. 561.14(3), F.S., which provides a license classification for importers. Passenger vessels are not required to obtain beverages from licensees under the Beverage Law, but are required to keep a strict account of all such beverages sold within Florida and must make monthly reports to the division on forms prepared and furnished by the division.

If the taxes were not previously paid by the distributor, passenger vessels are required to pay the excise tax for beverages sold within Florida, including its territorial waters in an amount equal to the tax which would be required to be paid on such sales by a licensed manufacturer or distributor. A vendor holding such permit shall pay the tax monthly to the division at the same time he or she furnishes the required report. Such report shall be filed on or before the 15th day of each month for the sales occurring during the previous calendar month.

III. Effect of Proposed Changes:

Malt Beverage Draft Kegs

The bill creates s. 561.4205, F.S., to require distributors to charge vendors a deposit for kegs in an amount that is not less than that charged to the distributor by the manufacturer. It also requires that the amount of deposit charged to vendors for kegs of a like brand must be uniform, and that the charges for the deposits collected and credits allowed for empty kegs or containers must be shown separately on all sales tickets or invoices, which must also be given to the vendor at the time of delivery.

The bill creates a new procedure for malt beverage keg deposits for certain large alcoholic beverage licensees. In lieu of receiving a per-keg deposit, the bill requires that distributors implement an inventory and reconciliation process with certain vendors in which an accounting of draft kegs is completed and any loss or variance in the number of kegs is paid for by the vendor on a per-keg basis equivalent to the required keg deposit. The bill limits this process to vendors qualifying as an entertainment/resort complex in s. 561.01(18), F.S., a theme park in s.565.02(6), F.S., and a marine exhibition park complex in s. 565.02(7), F.S.

This inventory and reconciliation process may occur at least twice per year, at the discretion of the distributor, but must occur at least annually. Upon completion of the keg inventory and reconciliation, the vendor must remit payment within 15 days of receiving an invoice from the distributor. The vendor may choose to establish and fund a separate account with the distributor for the purpose of expediting timely payment.

Temporary Permits for Local Governments

The bill amends s. 561.422, F.S., to authorize the Division of Alcoholic Beverages and Tobacco (division) to issue temporary alcoholic beverage permits to municipalities and counties. The bill requires that all alcoholic beverages purchased for sale by a municipality or county which remain unconsumed after the event must be removed from the premises of the event and properly disposed of the municipality or county.

These temporary permits would be subject to the current limitations on temporary permits, including the three-day license period, application of any state law or municipal or county ordinance regulating the time for selling alcoholic beverages, the limit of only three temporary licenses per calendar year for each applicant, and the $25 license fee.

The bill also amends s. 218.32(1)(a), F.S., which relates to annual financial reports for local government entities and independent special districts, to require that the financial report must include all revenues derived from the use of temporary permits obtained by the reporting entity.

Activation of a Quota License

For quota licenses with license periods commencing on or after July 1, 1981, but issued before September 30, 1988, the bill amends s. 561.29(1)(h), F.S., to require the division, upon the written request of a licensee, to provide a written waiver or extension of the requirement to maintain the licensed premises in an active manner. The waiver or extension may not exceed a period of 12 months.

The bill deletes the provision in s. 561.29(1)(h), F.S., that grants the division the discretion to waive or extend the activation requirement upon the finding of hardship, including the purchase of the license in order to transfer it to a newly constructed or remodeled location. It also deletes the requirement that, during the period the licensed premises is closed, the licensee is required to make reasonable efforts toward restoring the license to active status.

For quota licenses issued or transferred after September 30, 1988, the bill amends s. 561.29(1)(i), F.S., to require the division, upon the written request of a licensee, to grant a written waiver or extension of the requirement to maintain the licensed premises in an active manner. The waiver may not exceed a period of 24 months. The bill also amends s. 561.29(1)(i), F.S., to delete the list of circumstances that the licensee must demonstrate for the grant of a waiver.

Special License for Railroad Transit Stations

The bill creates a special license for railroad transit stations. Specifically, the bill creates s. 561.01(22), F.S., to define the term "railroad transit station" as a platform or terminal facility where passenger trains operating on a guided rail system according to a fixed schedule between two or more cities regularly stop to load and unload passengers or goods. The term includes the passenger waiting lounge or dining, retail, entertainment, or recreational facilities within the premises owned or leased by the railroad operator or owner.

The bill amends s. 562.14(1), F.S., to provide that the prohibition against selling, serving or consuming alcoholic beverages at a licensed premises between the hours of midnight and 7:00 a.m., except as provided under municipal or county ordinance, does not apply to railroad transit stations. Current law exempts railroads from this provision.

The bill amends s. 565.02(2)(a), F.S., to permit the division to issue a license for the sale of beer, wine, or distilled spirits to railroad transit stations, which is comparable to the current authority provided to railroads and sleeping cars. However, the bill does not subject the railroad transit stations to the requirement of the purchase and sale of liquor in miniature bottles of not more than two ounces, which is the limitation currently imposed on railroads and sleeping cars. The bill provides that a license issued to a railroad transit station may not be transferred to locations beyond the premises of the railroad transit station. The bill also prohibits municipalities and counties from requiring any additional license or levying any tax for the privilege of selling alcoholic beverages.

In addition to licensing railroad transit stations, s. 565.02(2)(c), F.S., of the bill authorizes the division to issue alcoholic beverage licenses to the operators of restaurants, shops, or other facilities that are part, or that serve, railroad transit stations, irrespective of any limitation of the number of licenses that may be issued based on county population.[26] The bill also provides that the licenses of operators of restaurants, shops, or other facilities that are part of, or that serve, railroad transit stations are exempt from county and municipal restrictions on the sale of alcoholic beverages found in s. 562.45(2), F.S., which include:

- Regulating hours of business and location of place of business licensed under the Beverage Law;
- Prescribing sanitary regulations licensed under the Beverage Law;
- Regulating type of entertainment and conduct permitted in any establishment licensed under the Beverage Law; and
- Requiring treatment of alcoholic beverage licensees to be in a nondiscriminatory manner and in a manner that is consistent with the manner of treatment of any other lawful business transacted sale.[27]

[26] Department of Business and Professional Regulation, *HB 645 2016 Agency Legislative Bill Analysis* (December 9, 2015), (copy on file with the Appropriations Subcommittee on General Government).
[27] *Id.*

Alcoholic Beverage Tax and Tobacco Taxes related to Cruise Lines

The bill amends s. 210.13, F.S., to include other persons who are required to remit the tax required under part I of ch. 210, F.S., (relating to tobacco taxes) within the process for determining the amount of unpaid taxes, including the three-year limitation for such determination and the process for judicial review.

Passenger Vessels

The bill amends s. 565.02(9), F.S., to provide a process for calculating excise tax payments by passenger vessels. The bill also provides that the permit issued to passenger vessels under the Beverage Law in s. 565.02(9), F.S., applies to alcoholic beverages, cigarettes, and other tobacco products.

The process in the bill for calculating excise tax payments applies to excise taxes from the sale of alcoholic beverages, cigarettes, and other tobacco products. The bill requires that excise taxes must be calculated based upon the base rate. The bill defines the base rate as:

> an amount equal to the total taxes paid by all permittees pursuant to this subsection for sales of alcoholic beverages, cigarettes, and other tobacco products taking place between January 1, 2015 and December 31, 2015, inclusive, divided by the sum of the annual capacities of all vessels permitted pursuant to this subsection for calendar year 2015.

The bill defines "annual capacity" as an amount equal to the number of lower berths on a vessel multiplied by the number of embarkations by that vessel during a calendar year. "Embarkation" is defined as each instance a vessel departs from a Florida port. "Lower berth" is defined as a bed affixed to a vessel that is not located above another bed in the same cabin. The "quarterly capacity" is the number of lower berths multiplied by the number of embarkations by the vessel during the calendar quarter.

The bill requires that the passenger vessels must make excise payments each calendar quarter. The amount of tax due each quarter is equal to the base rate multiplied by the permittee's quarterly capacity during the calendar quarter.

The bill requires passenger vessels to report to the division the annual capacity for each of its vessels for calendar year 2015. The report must be filed no later than August 1, 2016. The report must be filed on forms prepared and furnished by the division. No later than September 1, 2016, the division must calculate the base rate and report it to each permittee and publish the base rate in the Florida Administrative Register and on the department's website.

Effective Date

The bill has an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

As provided in s. 565.02(2)(a), F.S., CS/SB 698 authorizes operators of railroad transit stations to obtain an alcoholic beverage licenses upon the payment of the $2,500 annual license tax. This provision of the bill has an indeterminate positive fiscal impact due to the additional annual revenue from operators of railroad transit stations who apply for licensure; however, the number of individually owned railroad transit stations is unknown.

B. Private Sector Impact:

Vendors would not be required to provide malt beverage distributors with a draft keg deposit. Vendors and distributors may incur unspecified costs in the development and implementation of the inventory and reconciliation process for draft kegs required by the bill.

C. Government Sector Impact:

The bill creates a new license type with an established license fee and may result in additional annual revenue from license fees.[28] Although the number of individually owned railroad transit stations is unknown, each operator of a railroad transit station is authorized to obtain an alcoholic beverage license upon payment of the $2,500 license tax.

The Revenue Estimating Conference has determined that certain provisions in CS/SB 698 related to the cruise line per berth tax will negatively impact the General Revenue Fund by $100,000 in Fiscal Year 2016-2017.[29]

[28] *Id*.
[29] Revenue Estimating Conference, *Cruise Line Berth Tax, Proposed Language*, (January 8, 2016) *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/_pdf/Impact0108.pdf (last visited January 20, 2016).

The new railroad transit station license classification and fee require minimal information system program changes to the Department of Business and Professional Regulation (department's) information technology system. The department indicates the additional programming costs can be handled within existing resources.[30]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.13, 218.32, 561.01, 561.29, 561.422, 562.14, and 565.02.

This bill creates section 561.4205 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on January 13, 2016:

The committee substitute (CS) changes the tile of the bill from "an act relating to malt beverages" to "an act relating to alcoholic beverages and tobacco."

The CS amends s. 210.13, F.S., to include other persons who are required to remit the tax required under part I of ch. 210, F.S.

The CS amends s. 218.32(1)(a), F.S., to require the annual financial reports required of local government entities and independent special districts must include all revenues derived from the use of temporary permits obtained by the reporting entity.

The CS creates s. 561.01(22), F.S., to define the term "railroad transit station."

The CS amends ss. 561.29(1)(h) and 561.29(1)(i), F.S., to require the division, upon the written request of a licensee, to give a written waiver of the requirement to commence operations of a quota license.

The CS amends s. 561.422, F.S., relating to temporary alcoholic beverage permits for municipalities and counties.

[30] Department of Business and Professional Regulation, *HB 645 2016 Agency Legislative Bill Analysis* (December 9, 2015), (copy on file with the Appropriations Subcommittee on General Government).

The CS amends s. 562.14(1), F.S., to exempt rail road transit stations from municipal and county ordinances that prohibit selling, serving or consuming alcoholic beverages at a licensed premises between the hours of midnight and 7:00 a.m., and to prohibit municipalities and counties from requiring any additional license or levying any tax for the privilege of selling alcoholic beverages.

The CS does not create s. 563.11, F.S., to provide an inventory and reconciliation process for keg deposits. Instead, the CS creates s. 561.4205, F.S., to require distributors to charge a deposit with specified conditions and to provide an inventory and reconciliation process for keg deposits.

The CS amends s. 565.02(2)(c), F.S., to permit the division to issue alcoholic beverage licenses to the operators or restaurants, shops, or other facilities that are part or, or that serve, railroad transit stations, to also hold an alcoholic beverage license for the sale of beer, wine, and liquor.

The CS amends s. 565.02(9), F.S., to provide a process for calculating excise tax payments by passenger vessels. The bill also provides that the permit issued passenger vessels under the Beverage Law in s. 565.02(9), F.S., is for the sale of alcoholic beverages, cigarettes, and other tobacco products.

B. Amendments:

None.