

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 689 Division of Alcoholic Beverages and Tobacco
SPONSOR(S): Commerce Committee, Ways & Means Committee, Careers & Competition Subcommittee, Burton
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 400

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N, As CS	Willson	Anstead
2) Ways & Means Committee	14 Y, 0 N, As CS	Aldridge	Langston
3) Commerce Committee	23 Y, 0 N, As CS	Willson	Hamon

SUMMARY ANALYSIS

The bill specifies that regional and district management positions within the bureaus of the Division of Alcoholic Beverages and Tobacco (Division) of the Department of Business and Professional Regulation (DBPR) are classified as Select Exempt Service in the state personnel system. The classification specified by the bill will conform positions of similar duties and responsibilities to the same position classification, and will classify certain positions as SES consistent with other state law enforcement agencies.

Alcoholic beverage license applications for consumption on the premises must be accompanied by a certificate stating that the business meets all of the sanitary requirements of the state. Currently, the certificate may be issued by the Division of Hotels and Restaurants of DBPR, the Department of Agriculture and Consumer Services, the Department of Health, or the county health department where the place of business is located. The bill adds the Agency for Health Care Administration (AHCA) to this list.

Current law requires that a caterer licensed to sell beer, wine, and distilled spirits must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. The bill provides that the percentage is based on a caterer's "gross food and nonalcoholic beverage revenue" instead of "gross revenue." A caterer must comply with the 51 percent requirement for each catered event. The bill also expands the types of records that caterers must maintain.

Currently, a \$100 fee for a temporary alcoholic beverage license is issued for the transfer of a license to the purchaser of a licensed business, or a change in the type or series of a license. The bill eliminates the fees associated with the issuance of a temporary license or for an increase in the type of a license.

A "craft distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises. All distilleries pay a license fee of \$4,000 under current law. The bill reduces the annual license fee for a craft distillery from \$4,000 to \$1,000.

The bill amends s. 562.13, F.S., to allow the employment of persons under the age of 18 in a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station to sell beer, wine and liquor. However, supervision of the minor is required for the sale of liquor by a minor.

The bill amends s. 564.01, F.S., revising the definition of "wine" to include "sake".

The Revenue Estimating Conference estimated that the bill will reduce state revenues by \$0.4 million annually.

The bill has an effective date of July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0689e.COM

DATE: 4/20/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.¹

State Employment

Chapter 110, F.S., establishes the state's personnel management system. The system establishes the means to recruit, select, train, develop, and maintain an effective and responsible workforce and must include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.²

The Department of Management Services is charged with establishing and maintaining a classification and compensation program addressing Career Service, Select Exempt Service (SES), and Senior Management Service positions.³ The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.⁴

A Career Service employee who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.⁵ Career Service employees that have completed the probationary period are also entitled to a grievance process⁶ and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.⁷

SES is a separate system of personnel administration for positions that are exempt from the Career Service System.⁸ SES employees serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.⁹ SES provides greater pay and benefits overall than are provided for Career Service employees, but less pay and benefits overall than are provided for the Senior Management Service.¹⁰

¹ s. 561.02, F.S.

² s. 110.105(1), F.S.

³ s. 110.2035(1), F.S.

⁴ s. 110.205(1), F.S.

⁵ s. 110.227(1), F.S.

⁶ s. 110.227(4), F.S.

⁷ ss. 110.227(5) and (6), F.S.

⁸ s. 110.602, F.S.

⁹ s. 110.604, F.S.

¹⁰ See s. 110.603, F.S.

*Employee Classification System at the Division*¹¹

Currently, certain supervisory staff within the Division are classified as (SES), while other supervisory staff with comparable supervisory duties are classified as Career Service. For example, while the Chiefs of the Bureaus of Enforcement, Licensing and Auditing are all classified as Select Exempt (SES):

- The Assistant Chiefs of Licensing and Auditing are classified as SES. However, the Assistant Chief of Enforcement is classified as Career Service.
- The Regional Managers of Licensing and Auditing are classified as SES. The Regional Managers for Enforcement (majors) are classified as Career Service.
- The District and Office Managers for Licensing and Auditing are SES. The District Managers for Enforcement (captains) are Career Service.

In addition, other state law enforcement agencies, including the Florida Highway Patrol, Department of Financial Services (DFS), Division of Investigative and Forensic Services, and some classifications of positions at Department of Agriculture, and Division of Law Enforcement, currently classify positions comparable to the Division's captains and majors as SES through various means. The Fish and Wildlife Conservation Commission has identified the rank of major as SES statewide.

Certification of Sanitary Compliance on License Applications

Section 561.17, F.S., requires that alcoholic beverage license applications for consumption on the premises be accompanied by a certificate stating that the business meets all of the sanitary requirements of the state. Currently, the certificate may be issued by:

- the Division of Hotels and Restaurants of the Department of Business and Professional Regulations,
- the Department of Agriculture and Consumer Services,
- the Department of Health, or
- the county health department where the place of business is located.

Chapter 2010-161, Laws of Florida, amended the food service establishment inspection jurisdiction of the Department of Health (DOH) to more explicitly delineate the food service establishment entities inspected by DOH, which effectively excluded hospitals and nursing homes. Hospitals and certain nursing homes are licensed under the jurisdiction of the Agency for Health Care Administration (AHCA), and following the 2010 legislation, are subject to inspection for the storage, preparation, serving, and display of food within AHCA's licensure and inspection processes. Chapter 2010-161, Laws of Florida, and subsequent laws did not amend s. 561.17(2), F.S., to include the new jurisdiction of AHCA as the agency with the primary jurisdiction for certification on these requirements at nursing homes and hospitals.

Caterers

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, 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 can also be issued when a county initially changes its status from a county that does not permit the sale of intoxicating liquor to one that permits such sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

The limitation on the number of quota licenses per county does not apply to a caterer licensed by the Division of Hotels and Restaurants under ch. 509, F.S., who derives at least 51 percent of its gross

¹¹ The information that follows regarding the employee classification system at the Division was provided by the Department in its Agency Analysis of 2017 House Bill 689, p.8 (Mar. 2, 2017).

revenue from the sale of food and nonalcoholic beverages, and sells or serves beer, wine, and distilled spirits only for consumption on the premises of a catered event at which the licensee provides prepared food. Current law does not specify the period during which the 51 percent requirement applies. In contrast, the quota license exception for restaurants requires that a restaurant derive at least 51 percent of its gross food and beverage revenue from the sale of food and non-alcoholic beverages for the initial 60-day operating period and each subsequent 12-month period.¹²

The annual fee is \$1,820 for a caterer's alcoholic beverage license to sell or serve beer, wine, and distilled spirits on the premises of events at which the caterer provides prepared food.¹³

A caterer is required to maintain for three years all records required by the rule of the DBPR to demonstrate compliance with its license requirements.

Temporary Licenses and Fees

Section 561.331, F.S., governs temporary beverage licenses upon application for transfer, change of location, or change of type or series. Subsection 561.331(1), F.S., establishes the authority and associated fees for a temporary license upon application for transfer of a license to a purchaser of a currently licensed business. Subsection 561.331(3), F.S., establishes the authority and associated fees for a temporary license upon application for a change in the type or series of a currently valid license.

If an application does not on its face disclose any reason for denying the license, the applicant is entitled as a matter of right to receive a temporary beverage license.¹⁴ The temporary license is valid for all purposes under the Beverage Law until the application is denied or until 14 days after the application is approved.

Temporary beverage licenses are issued by the district supervisor of the district in which the application is made, upon payment of a \$100 fee. If approved for the permanent license, the applicant must also pay the permanent license fee for the license.¹⁵

Craft Distilleries

Section 565.03, F.S., defines "distillery" as a manufacturer of distilled spirits. A "craft distillery" is defined as a licensed distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises and has notified the Division in writing of its decision to qualify as a craft distillery. All distilleries, regardless of designation as a craft distillery, are subject to the distillery license fee of \$4,000 under current law.

Age Restrictions

The Beverage Law restricts businesses who sell alcoholic beverages from employing persons under the age of 18, subject to a few exceptions. Section 562.13(2)(c), F.S., provides for an exception that permits vendors to employ persons under the age of 18 years old if the vendor is a drugstore, grocery store, department store, florist, specialty gift shop, or automobile service station that is licensed to sell beer and wine, only, for off premises consumption.

¹² s. 561.20(2)(a)4., F.S.

¹³ See ss. 561.20(2)(a)5., and 565.02(1)(b), F.S.

¹⁴ s. 561.331, F.S.

¹⁵ The temporary license fee for a type or series change varies. If the type or series or license applied for is greater than the fee for the license then held by the applicant, the applicant for such temporary license must pay a fee in the amount of \$100 or one-fourth of the difference between the fees, whichever amount is greater. A fee is not required for an application for a temporary license of a type or series for which the fee is the same as or less than the fee for the license then held by the applicant. If subsequently approved for permanent increase in the license series, applicants for an increase in license series must also pay the difference in the annual license fee for increases to a license for which the annual license fee is greater than the license held by the applicant.

Wine

Section 564.01, F.S., provides that “wine” includes “all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products.”

Effect of the Bill

The bill amends s. 561.11(2), F.S., dealing with the power and authority of the Division, to provide Select Exempt Service status to chief, assistant chiefs, regional managers (including majors), and district or office managers (including captains).

The bill amends s. 561.17(2), F.S., to add the Agency for Health Care Administration as one of the agencies from which an applicant for a consumption on premises license must obtain a certificate that its place of business meets all sanitary requirements.

The bill amends s. 561.20(2)(a)5., F.S., to revise the method used to calculate the percentage of food and nonalcoholic beverages sold by a caterer licensed to sell beer, wine, and distilled spirits by amending s. 561.20(2)(a)5., F.S. It provides that the percentage is based on a caterer’s gross food and nonalcoholic beverages revenue. A caterer must comply with the 51 percent requirement for each catered event.

The bill expands the types of records that a caterer must maintain to demonstrate compliance with its license. A caterer must maintain all records and receipts for each catered event, including all contracts, customers’ names, locations, dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by rule of the DBPR.

The bill amends s. 561.331(1), F.S., to repeal the \$100 fee for a temporary alcoholic beverage license issued in connection with the transfer of a license to the purchaser of a licensed business. The bill also repeals the fees in s. 561.331(3), F.S., for a temporary license issued in connection with an application to change the type or series of a license. The permanent license fees associated with a license transfer or an increase in the series of a license are not impacted by the bill.

The bill amends s. 562.13, F.S.,¹⁶ to allow the employment of persons under the age of 18 (minors) in a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station that is a package store licensed under s. 565.02(1)(a), F.S., to sell beer, wine, and distilled spirits only in sealed containers for off-premises consumption. A vendor that employs minors may derive no more than 30 percent of its monthly gross revenue from the sale of alcoholic beverages. For the sale of liquor, minors must be supervised by a person 18 years of age or older who verifies the age of any purchaser to be 21 years of age or older and approves the sale of distilled spirits to any purchaser. For the sale of beer and wine, the minor is permitted to make the sale without supervision.

The bill amends s. 564.01, F.S., revising the definition of “wine” to include “sake”.

The bill amends s. 565.03(2)(a)1., F.S., to reduce the annual license fee for a craft distillery from \$4,000 to \$1,000. Distillery licenses that do not qualify as a craft distillery remain subject to the \$4,000 annual license fee in current law.

¹⁶ This bill would be effective regardless of amendments made to the same section by CS/CS/SB 106 (or similar legislation enacted during the 2017 Regular Session), which was passed by the Senate on March 23, 2017 and sent to the Florida House for consideration. CS/CS/SB 106 amends the package store restrictions in s. 565.04, F.S., to provide for the phased repeal of the restrictions, revise the locations where a new package store may be located in relation to a school, revise the requirements for sale of certain sizes of distilled spirits containers in certain situations, and prohibit sales of distilled spirits at gasoline service stations locations of less than 10,000 square feet.

B. SECTION DIRECTORY:

- Section 1 Amends s. 561.11, F.S., revising the power and authority of the Division of Alcoholic Beverages and Tobacco to include appointment of Division personnel; requiring that certain personnel be assigned to the Selected Exempt Service.
- Section 2 Amends s. 561.17, F.S., authorizing the Agency for Health Care Administration to certify that an alcoholic beverage license applicant's place of business meets sanitary requirements.
- Section 3 Amends s. 561.20, F.S., revising the criteria for a caterer to be licensed to sell beer, wine, and distilled spirits, and recordkeeping requirements for such caterers.
- Section 4 Amends s. 561.331, F.S., removing the fee for transferring or changing the location of a temporary beverage license.
- Section 5 Amends s. 562.13, F.S., authorizing minors employed by specific businesses to sell beer and wine under certain circumstances.
- Section 6 Amends s. 564.01, F.S., revising a definition.
- Section 7 Amends s. 565.03, F.S., revising requirements for an annual state license tax for a distillery and craft distillery.
- Section 8 Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that the bill will reduce state revenues by \$0.4 million annually.

Also see Fiscal Comments below.

2. Expenditures:

According to DBPR, the reclassification of certain positions to SES status will increase state expenditures by between \$5,499 and \$19,800, but states that it believes the anticipated expenses can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Fee Elimination for Temporary Licenses¹⁷

Licensees will save at least \$100 or more on each temporary license in these license transactions.

Furthermore, licensees may see increased sales revenue due to the continued operation of businesses throughout their modification of licenses.

Craft Distilleries¹⁸

Craft distilleries that qualify for the craft distillery designation will see a 75% reduction in the annual license fee for a distillery license, or a savings of \$3,000 per license each year.

D. FISCAL COMMENTS:

DBPR estimates that the conversion of Career Service positions to SES will cost between \$5,499 and \$19,800 annually, depending on how many of the 11 positions choose single and how many choose family health coverage, but it believes that this additional cost can be absorbed within existing resources.

	Career Service <u>11 FTE</u>	Select Exempt <u>11 FTE</u>	Benefit <u>Increase</u>
Single (low estimate)	84,854.88	90,354.00	5,499.12
Family (high estimate)	182,107.20	201,907.20	19,800.00

Additionally, there may be an occasional increase in cost for annual leave payouts at the time of separation. Any increase is anticipated by the Department to be minimal.

Fee Elimination for Temporary Licenses¹⁹

During FY 2014-15, six temporary beverage wholesaler licenses were issued as part of an application for an increase in license type or series. Additionally, in FY 2014-15, 261 temporary beverage retailer licenses were issued for a change in license type or series, and 11 temporary beverage retailer licenses were issued for transfers with an increase in series. These temporary license fees amounted to \$191,600.

During FY 2015-16, four temporary beverage wholesaler licenses were issued as part of an application for an increase in license type or series. Additionally, in FY 2015-16, 135 temporary beverage retailer licenses were issued for a change in type or series, and 16 temporary beverage retailer licenses were issued for transfers with an increase in series. These temporary license fees amounted to \$251,300.

These amounts vary by year based on individual licensee circumstances and business discretion in determining whether to pursue the sale and transfer of a business or the increase in type or series of a license for expanded alcoholic beverage sales.

Craft Distillery Licenses²⁰

There are currently 23 designated craft distilleries on record and an additional 21 licensed distilleries that could qualify as craft distilleries based on the reported number of gallons produced by the distilleries. The reduction in the annual fees for craft distilleries from \$4,000 to \$1,000 would equal \$69,000 for the currently licensed craft distilleries and may be up to \$132,000 if the 21 distilleries that have produced less than 75,000 gallons choose to be designated as craft distilleries and seek the reduced license fee in the future.

¹⁷ See DBPR, Agency Analysis of 2017 House Bill 689, p.8 (Mar. 2, 2017)

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Careers and Competition Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute removes the provisions that amend s. 561.20(2)(a), F.S., relating to qualifications for certain special licenses that are not subject to quota limitations.

On April 5, 2017, the Ways & Means Committee amended CS/HB 689, to include provisions related to the regulation of caterers licensed to sell beer, wine and distilled spirits, that were in the bill as filed, but were removed from the bill by the Careers and Competition Subcommittee on March 21, 2017.

On April 19, 2017, the Commerce Committee adopted two amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Amends s. 562.13, F.S., specifying that minors employed by a retail drug store, grocery store, department store, florist shop, specialty gift shop, or automobile service station may sell beer, wine or liquor for consumption off premises.
 - However, liquor sales must be supervised and approved by a person over the age of 18.
- Amends s. 564.01, F.S., revising the definition of “wine” to include “sake”.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.