House Legislative Analysis Section

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

ESCROWED LIQUOR LICENSES

House Bill 5649 as introduced
First Analysis (3-21-96)

Sponsor: Rep. Beverly Bodem
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

Under the Liquor Control Act, licenses for the on-premises consumption of alcoholic beverages are generally limited by population; only one such license per 1,500 people can be issued within any governmental unit. (There are, however, a number of exceptions.) The term "escrowed license" means a license that is not in active operation but to which the rights of the licensee in the license or to the renewal of the license are still in existence and are subject to renewal and activation.

Liquor licenses can be put into escrow for a variety of reasons, including the death of a licensee, or circumstances such as a business being damaged by fire or going out of business. The license can then be put in escrow for one year from the expiration date of the license. Subsequent extensions can be granted by the LCC upon request. Should the licensee reopen the business after repairs are completed or open a new business in the same community, the licensee can then reactivate the license. In cases where a licensee dies or goes out of business but does not intend on reopening a new business, the licensee typically either gives the license back to the Liquor Control Commission (LCC) or sells the license to a business in the same community. (Any transfer of a liquor license is subject to LCC approval.)

Currently, an escrowed liquor license is only available to an applicant whose proposed business is within the same local unit of government (village, city, township, etc.) as the location of the escrowed license. Often, a community may have several new licenses that have not been issued under the population quota system in addition to escrowed licenses, while a community just a few miles down the road may have many license requests but no licenses available. Legislation has been proposed that would allow an escrowed liquor license to be transferred anywhere within the county that it had been issued in originally.

THE CONTENT OF THE BILL:

House Bill 5649 would amend the Liquor Control Act to permit an escrowed liquor license to be available to an applicant whose proposed place of business was within the same county as the location of the escrowed license. If the local unit where the former liquor licensee had had his or her business spanned more than one county, the escrowed license would be available to applicants in either county. In regards to the population quota, if the escrowed license was transferred to a business in a locale other than the governmental unit where the former licensee had been, the license would be counted against the local governmental unit that had originally issued the license.

MCL 436.19c

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

According to the Liquor Control Commission, approximately 600-650 on-premise liquor licenses are held in escrow at any given time. Licenses are put in escrow for a variety of reasons, such as a business sustaining physical damage to the premises, remodeling, etc. Other times, a business has folded and a licensee may be unable to find a person to buy the license within the same community. Meanwhile, because of population shifts or development in other areas, a nearby community may not have enough available licenses to fill requests. The bill would alleviate this situation by allowing an escrowed license to be transferred county-wide instead of just city-wide. This would increase flexibility for license holders to find buyers for escrowed licenses, as well as for business owners whose own communities have no available licenses. Further, because an escrowed license would be counted against the community it originated in, a city who has already exhausted its quota of licenses could transfer unused escrowed licenses from rural and suburban areas without being in violation of the act's quota provision.

Against:

Currently, many cities are experiencing deterioration in their downtown business areas. Meanwhile, communities in scenic, rural areas or near outlying malls are experiencing a boom. Since liquor licenses are distributed on a population area, a rural area will have less total licenses available to it regardless of the amount of development it is experiencing. The bill's provision to count the escrowed license against the community originally issuing the license rather than counting it against the license quota of the community it is being transferred to could result in developers of rural areas with big bank accounts siphoning off a larger city's escrowed licenses. Since most cities have already issued their allotted quota licenses, escrowed licenses are necessary bait to attract businesses to certain areas within a city undergoing revitalization efforts. This bill could therefore make it more difficult for those cities trying to revitalize their downtown areas to attract restaurants or hotels.

Against:

Some people feel that a larger problem with escrowed liquor licenses is that a licensee can "sell" a license that really belongs to the state. A licensee pays $600 a year in fees for the liquor license, but makes many times that amount from liquor sales. Yet, if the licensee retires or goes out of business, he or she can escrow the license. With the possibility of extensions granted by the LCC, the licensee in essence can "hold out" for the highest bidder. Reportedly, some licensees have been able to command in excess of $100,000 for their escrowed licenses. The bill's provision to allow for "county-wide" transfer of liquor licenses instead of the current city-wide practice would only worsen this scenario. A holder of an escrowed license can command big dollars from a proposed business looking to set up shop in an area where there are no available licenses. People should not be allowed to make a profit on what is essentially property of the state.

Against:

Some persons believe that increasing the availability of alcohol leads to an increase in alcohol-related problems. The bill represents a further erosion of the liquor law's restrictions on the availability of on-premises licenses and runs contrary to the public policy that lies behind a population quota system for liquor licenses. In the past, moreover, some people have expressed concern that continuing to allow additional resort licenses will harm existing businesses.

Response:

It may be that the population-based restriction no longer serves any useful purpose, except perhaps to protect existing licensees. There are quite a few exceptions to the quota in statute that render it less than fully effective or consistent. It might be best to revisit the issue of retail liquor licensing in its entirety.

POSITIONS:

The Liquor Control Commission supports the bill. (3-20-96)

The Michigan Licensed Beverage Association supports the bill. (3-20-96)

Michigan Restaurant Association supports the bill. (3-20-96)

The Michigan Municipal League opposes the bill. (3-20-96)

The Michigan Council on Alcohol Problems (MICAP) opposes the bill. (3-21-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.