House Legislative Analysis Section
Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

RESORT LIQUOR LICENSES

House Bill 4332 as enrolled
Public Act 282 of 1998
Sponsor: Rep. Beverly Bodem

House Committee: Regulatory Affairs
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Second Analysis (10-27-98)

THE APPARENT PROBLEM:

Under the Liquor Control Code of 1998, 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. One significant exception is the issuance of "resort licenses" and "development district" licenses above and beyond the quota. Liquor Control Commission (LCC) rules prohibit the issuing of a resort license where an on-premise license remains available under the quota system, but this requirement can be waived. In 1952, 550 resort licenses were made available statewide and a fixed number have been made available each year since 1964. Currently, the LCC may issue 10 additional resort licenses each year to establishments whose business and operation, as determined by the commission, are designed to attract and accommodate tourists and visitors to the resort area, and whose primary purpose is not the sale of alcoholic beverages. Additionally, the commission may issue another 25 resort licenses to businesses with a capital investment of over $1 million and whose primary purpose is not the sale of alcoholic beverages. The LCC may also issue 10 package liquor licenses in local governmental units with a population under 50,000 people.

In addition to the exception from the population quota restriction for resort licenses, Public Act 440 of 1996 authorized the commission to issue up to a total of 50 additional on-premise licenses for establishments located in development districts and whose primary business would not be the sale of alcohol. These additional licenses have been made available partly in recognition of the fact that the fixed population of an area does not always accurately reflect the volume of economic activity, particularly in areas where there are sizable seasonal populations. However, the commission's authority to issue additional resort licenses expires this year.

A further concern has been raised by on-premise liquor licensees who operate banquet halls in a building separate from the licensed premises. Some feel that the on-premise license should extend to a separate facility if it is used only for catered events. Licensees argue that sufficient space to add a banquet hall to the existing licensed building is not always available, nor is it feasible to obtain an additional on-premise liquor license for the hall. Some licensees believe that their on-premise license should allow them serve to alcohol at catered events held in a free-standing banquet hall.

Legislation has been introduced to extend the authority of the commission to issue additional resort licenses, to amend the requirements regarding the availability of development district licenses to more closely parallel similar provisions affecting resort licenses, and to create a new banquet facility permit.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Liquor Control Act to extend through 1998 the authority of the Liquor Control Commission (LCC) to issue a limited number of resort licenses each year. The bill contains the following provisions regarding resort licenses for 1998:

** Up to 10 licenses would be available for establishments whose business and operation are designed to attract and accommodate tourists to a resort area, and whose primary business is not the sale of liquor.

** Up to 25 licenses could be issued for businesses with a capital investment of over $1.5 million (increased from the current $1 million investment), whose primary business is not the sale of alcohol, and whose operation is designed to attract and accommodate visitors to a resort area. The bill would also rename the license as a "resort economic development license".

** Up to 10 specially-designated distributor (SDD) licenses for the sale of package liquor, including spirits, would be available in local units of governments with populations under 50,000 in which the package liquor license quota has been exhausted. The licenses could only be issued to established merchants whose business and operation are designed to attract and accommodate tourists and visitors to a resort area. Currently, commission rules restrict one SDD license for every 3,000 population in cities, incorporated villages, or townships, and also require that SDD licensed establishments be located at least a half mile from each other. (An exception is made in the act for resort SDDs to be located within half a mile of existing SDDs.) The bill would allow an SDD license issued under the population rule to be located within half a mile of a resort SDD license.

Further, the bill would amend provisions pertaining to the fifty development district on-premises licenses established by PA 440 of 1996. The bill would specify that these licenses would be transferable either to a new owner or to a new location within the development district. If licenses were available through the quota provision or if escrowed licenses were readily available in the municipality in which the development district was located, the commission would be prohibited from issuing a development district license. An applicant for a license would have to state and demonstrate that he or she attempted to secure an on-premise escrowed license or quota license and that, to the best of his or her knowledge, neither was readily available. Also, the commission could only issue up to two development district licenses in any city or municipality with a population over 50,000. If an establishment was located in more than one development district, an applicant for licensure would have to obtain the approval of each of the applicable municipalities or development districts. The names of those businesses receiving on-premise licenses under this provision would have to be reported annually to the legislature by the commission.

In other provisions under the bill, the commission would also have to annually report the names of the businesses issued licenses under Section 531 of the code (formerly Section 19c) and their locations to the legislature. Currently, escrowed licenses can be transferred county wide in those counties having a population under 500,000. The bill would extend the county-wide transferability of escrowed licenses to counties with a population over 700,000. (A county with a population between 500,000 and 700,000 could not transfer an escrowed license outside of the local unit that granted the license.)

The bill would also create a banquet facility permit. The permit would allow an on-premise licensee to serve alcohol at a permitted premises, such as a banquet facility, that was located separately from the bar or restaurant. The commission could issue an unlimited number of banquet facility permits in a governmental unit, but each licensee could receive only one permit. Further, the commission could not issue such permits unless the local unit of government in which the facility was located adopted a resolution to approve the permit. The banquet facility would be restricted to scheduled functions and events and could not have regular meal service or be generally open to the public. The licensee would also have to provide documentation that demonstrated a preexisting ownership or lease interest in the banquet facility, as well as documentation that at least 75 percent of the gross receipts of the on-premise license were derived from the sale of food and nonalcoholic beverages. In addition, the licensee could not be approved for a banquet facility permit if he or she had a record of a prior offense or violation that the commission considered to be of such a nature as to pose a threat to the general public if a permit were issued.

An application for a permit would have to be on a form provided by the commission, and contain information such as a diagram of the premises and evidence that the premises met local safety, building, and health codes. Initial and renewal permit fees would have to be based on the costs of administering the permits, and would be set by commission rule. A banquet facility license would expire on the date that the on-premise liquor license would expire, and would be renewed in conjunction with the on-premise license.

MCL 436.1521 and 436.1531

FISCAL IMPLICATIONS:

According to the Michigan Liquor Control Commission, it is anticipated that permit fees established by commission rules would cover the primary cost of administration and enforcement of the new banquet facility permits. (9-10-98)

ARGUMENTS:

For:

Continuing the practice of issuing resort liquor licenses would help boost the tourism and recreation industries throughout the state, particularly in northern Michigan, and thus create jobs for Michigan people. Without these licenses being available, the quota system would inhibit business expansion in some areas where all the quota licenses have been allocated. Both large and small businesses could benefit by the bill. At the same time, the bill would allow the three largest counties in the state to transfer on-premise licenses county wide, which should serve to encourage the transfer and active use of licenses currently in escrow, and eventually reduce the demand for resort licenses in some areas of the state. (It will also enhance the value of the escrowed licenses.)

Response:

In some parts of the state, it is reported that escrowed licenses are selling for $100,000 or more. For those areas, a new resort license would be a better deal. Besides, county-wide transferability of licenses, along with the creation of more and more resort licenses, is not necessarily a good thing. Already some cities, such as Royal Oak and Hamtramck, are experiencing a heavy concentration of on-premise liquor establishments. Such a concentration of bars and restaurants may result in unintended effects on the character and flavor of a community, such as changing the makeup of neighborhoods or impacting the business climate in a negative fashion. Allowing three of the more heavily populated counties to engage in the county wide transfer of escrowed licenses could therefore result in further erosion of certain neighborhoods, rather than be a boon in developing them.

For:

Commission rules prohibit specially designated distributor (SDD) licenses (package stores) from being closer than half a mile to each other, yet, under the act, a resort SDD may locate within half a mile of an existing package store. The bill would allow a package store issued under the population quota system to locate near an existing resort SDD. Without such an amendment, the law would unfairly favor resort SDDs over those going through the traditional process for licensure.

For:

Many restaurants have a room or hall on the licensed premises to use for catered events, such as weddings and banquets, but some maintain a separate facility for such activities. In order to serve alcoholic beverages at the banquet hall, the business must first secure a second on-premise liquor license. However, an on-premise license may not be available in the area in which the banquet hall is located either because licenses issued under the quota or resort system have already been issued, escrowed licenses are not available, or an available escrowed license may carry a prohibitive price tag (some escrowed licenses have been sold at $100,000). The bill would solve the problem by allowing a restaurant or bar owner's original on-premise liquor license to extend to a banquet facility.

Under the bill, the Liquor Control Commission could issue one permit to an on-premise licensee that would allow the licensee to serve alcohol at a banquet facility that was not located on the licensed premises. The permit would only extend to the facility listed on the permit, and other controls would also be instituted. For instance, the facility could only be used for scheduled functions and events (such as catered events like wedding receptions) and could not offer regular meal services or be opened to the general public. Therefore, a restaurant could not use the permit to operate a second liquor establishment. Even a practice such as a Friday night fish fry would be seen as a violation of the bill's provisions. According to commission staff, the bill is viewed as only allowing an on-premise liquor licensee to operate a free-standing banquet hall for catered events. The bill would, therefore, aid a business owner in expanding his or her business to meet the needs of the community without constituting an expansion of liquor licenses.

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.

On the other hand, the bill could be seen, at least in part, as serving to slow down the expansion of new licenses. As mentioned above, some see the inclusion of Wayne, Oakland, and Macomb counties in the county-wide transferability of escrowed on-premise licenses as being an incentive for business owners to seek out and utilize existing licenses that are currently in escrow. Secondly, the bill clearly specifies that a development district license could not be issued for a geographic region that had not used up all available licenses under the population quota system or available escrow licenses and requires stricter documentation of an applicant's attempt to locate an escrowed license. In addition, the bill would allow a development district license to be transferable within that district. That means that a licensee could sell the liquor license to another business or move the business to a new location within the development district. Since the establishment of the 50 development district licenses by Public Act 440 of 1996, only nine businesses have completed the approval phase of the licensing procedure. The bill would further serve to slow down the issuance of new licenses if applicants had to first apply for and receive existing licenses, and were no longer prohibited from selling the license or moving to a new location.

Against:

The bill would allow any county with a population under 500,000 or over 700,000 to transfer on-premise liquor license to any location within the county. However, Kent County, which falls in between the figures, would be excluded from this provision and so would operate under the old system whereby a license must remain in the local governmental unit

where it was issued. Reportedly, this was by choice. However, a county could find itself ineligible to transfer licenses within its borders if, at a future date, it experienced a population shift. Or, if Kent County were to drop in population (the 1990 census recorded a population of 500,631), licensees would be eligible to apply for escrowed licenses in other towns and cities within the county.

The provision restricting development districts with a population over 50,000 from receiving only two on-premise licenses could also be problematic for the commission to administer. According to commission staff, records on population are not generally available by neighborhoods or development districts, so it may be difficult to determine the population of a particular development district.

Analyst: S. Stutzky

■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.