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BILL ANALYSIS

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Senate Bills 162 and 163 (as enrolled) **PUBLIC ACTS 501 & 502 of 2006**
Sponsor: Senator Gilda Z. Jacobs (S.B. 162)
Senator Jason E. Allen (S.B. 163)
Senate Committee: Economic Development, Small Business and Regulatory Reform
House Committee: Regulatory Reform

Date Completed: 1-4-07

RATIONALE

Many municipalities in Michigan are struggling to revitalize their core cities, and would like to draw people downtown for dining, recreation, and entertainment, in venues that can serve alcoholic beverages. In some areas, however, there are no liquor licenses available to prospective developers or restaurateurs. The Michigan Liquor Control Code establishes a population-based quota on the number of on-premises liquor licenses that may be issued within a local unit of government. As a rule, only one license is allowed for each 1,500 residents, although various types of additional licenses may be issued if local units meet certain criteria. Under amendments enacted in 1996, for example, the Liquor Control Commission (LCC) could issue up to 50 on-premises licenses for restaurants located in development districts, in order to promote economic growth within the districts.

It was suggested that the LCC again should be authorized to issue additional on-premises licenses, without regard to the number of quota licenses allowed, for businesses that will offer dining, recreation, or entertainment in redevelopment areas or development districts.

CONTENT

Senate Bill 162 amended the Michigan Liquor Control Code to do the following:

-- Allow the Liquor Control Commission to issue public on-premises licenses, in addition to the quota licenses allowed, to businesses engaged in activities related to dining, entertainment, and recreation, and located in city redevelopment project areas or in development districts established under various statutes.
-- Set an initial enhanced license fee of $20,000.
-- Establish thresholds on the amount of investment in a project area or a development district.
-- Prohibit the LCC from transferring a license to another location and require the licensee to surrender the license if it goes out of business.
-- Allow a local governmental unit to approve another applicant within a city redevelopment project area to replace a business that surrenders a license.
-- Require a license applicant to demonstrate that he or she attempted to secure an on-premises escrowed license or quota license and that such a license is not readily available within the local unit where the applicant proposes to operate.

Senate Bill 163 amended the Code to eliminate the LCC's authority to issue development district licenses to restaurants meeting certain criteria, but provide that current licenses remain valid and may be renewed if licensing requirements continue to be met.

The two bills were tie-barred to each other, and took effect on December 29, 2006.

Senate Bill 162

Under the bill, the Liquor Control Commission may issue public on-premises licenses in addition to those quota licenses allowed in cities under Section 531(1) (which limits the number of public licenses granted for the sale of alcoholic liquor for on-premises consumption to one for each 1,500 of population). The LCC may issue the licenses "in order to allow cities to enhance the quality of life for their residents and visitors to their communities". The licenses must be issued to businesses that are located either in a city redevelopment project area, or in a development district or area that is any of the following:

-- An authority district established under the Tax Increment Finance Authority Act.
-- A development area established under the Corridor Improvement Authority Act.
-- A downtown district established under the downtown development authority Act.
-- A principal shopping district established under the principal shopping district Act.

The initial enhanced fee for a license issued under the bill is $20,000.

The bill defines "city" as a city established under either the Home Rule City Act or the Fourth Class City Act.

Redevelopment Project Area License

Under the bill, the LCC may not issue a license to a business located in a city redevelopment project area unless the applicant fulfills the following in relation to the licensed premises:

-- Provides activities determined by the LCC to be related to dining, entertainment, or recreation at least five days a week.
-- Is open to the public at least 10 hours per day, five days a week.
-- Presents verification of redevelopment project area status to the LCC.

The verification must include a resolution of the governing body of the city establishing its status as a redevelopment project area; and an affidavit from the assessor, as certified by the city clerk, stating the total amount of investment in real and personal property within the redevelopment project area of the city during the preceding three years. Additionally, the verification must include an affidavit from the assessor, as certified by the city clerk, separately stating the amount of investment money spent for manufacturing, industrial, residential, and commercial development within the redevelopment area of the city during the preceding three years.

In the case of an applicant seeking a license within the first license cycle after the bill's effective date, the time period covered by the assessor's affidavits may be up to five years, or seven years for a city having a population between 80,000 and 85,000 according to the 2000 Federal decennial census if the application is submitted within six months after the bill's effective date.

The amount of commercial investment in the redevelopment project area within the city must constitute at least 25% of the total investment in real and personal property in that redevelopment project area as evidenced by an affidavit of the city assessor. This requirement does not prevent the city from realigning the redevelopment project area in the presentment of verification provided for above.

An applicant must be located in a city that meets at least one of the investment requirements described below during the three years preceding application, or within the preceding five years in the case of an applicant applying during the first license cycle after the bill's effective date. The total investment in real and personal property in the redevelopment project area within the city over the appropriate time period must be one of the following:

-- At least $50.0 million in cities having a population of 50,000 or more.
-- At least an amount reflecting $1.0 million per 1,000 people in cities with a population under 50,000.

The LCC may issue a license for each monetary threshold and, after reaching the initial threshold, one additional license for each major fraction of it above the original threshold.

Development District or Area License

The bill requires a licensed business located in a development district or area to be engaged in dining, entertainment, or

recreation; be open to the general public; and have a minimum seating capacity of 50 people.

The amount spent for the rehabilitation or restoration of the building that houses the licensed premises must be at least $75,000 over the preceding five years or a commitment for a capital investment of at least that amount in the building, which must be spent before the license is issued.

In addition, the total amount of public or private investment in real and personal property within the qualified redevelopment project area must be at least $200,000 over the preceding five years, as verified to the LCC by an affidavit from the assessor, certified by the clerk of the local governmental unit. The Commission may issue one license for each $200,000 of investment, or for each major fraction of that amount.

License Transfer

The LCC may not transfer a license issued under the bill to another location. A licensee that goes out of business will have to surrender the license to the LCC. The governing body of the local governmental unit may approve another applicant within a city redevelopment project area to replace a licensee that has surrendered the license, if the new applicant's business meets the requirements of the bill (except those related to verification of redevelopment project area status, investment in the redevelopment project area, and investment within the qualified redevelopment project area).

Unavailability of Quota License

The individual signing the application for a license under the bill must state and demonstrate that the applicant attempted to secure an appropriate on-premises escrowed license or quota license issued under Section 531 and that, to the best of his or her knowledge, such a license is not readily available within the local unit of government in which the applicant proposes to operate.

The bill defines "readily available" as available under a standard of economic feasibility, as applied to the applicant's specific circumstances, that includes the following:

-- The fair market value of the license, if determinable.
-- The size and scope of the proposed operation.
-- The existence of mandatory contractual restrictions or inclusions attached to the sale of the license.

The bill defines "escrowed license" as a license in which the rights of the licensee in the license or to the renewal of the license still exist and are subject to renewal and activation in the manner provided for in R 436.1107 of the Michigan Administrative Code. (Under that rule, a license that is not in active operation must be placed in escrow with the LCC, and the licensee has five licensing years after the expiration date of the escrowed license to put it into active operation. A license held in escrow must be renewed each year in the same manner as an active license.)

Senate Bill 163

Under the Michigan Liquor Control Code, in addition to any licenses for the sale of alcoholic liquor for on-premises consumption that may be available in the local governmental unit under Section 531(1), and resort and economic development licenses, the Liquor Control Commission could issue a maximum of 50 tavern or Class C licenses to people operating businesses in development districts. (Tavern licenses allow the sale of beer and wine for consumption on the premises. Class C licenses allow the sale of beer, wine, mixed drinks, and spirits for on-premises consumption.) A business must meet all of the following conditions:

-- The business is a full-service restaurant, is open to the public, and prepares food on the premises.
-- The business is open for food service at least 10 hours per day, five days a week.
-- At least 50% of the gross receipts of the business are derived from the sale of food (excluding beer and wine) for consumption on the premises.
-- The business has dining facilities to seat at least 25 people.
-- The business is located in a development district with a population of not more than 50,000, in which the authority, after a public hearing, found that the issuance of the license would prevent further deterioration within the development

district and promote economic growth within it.

"Development district" means any of the following:

-- An authority district established under the Tax Increment Financing Authority Act.
-- An authority district established under the Local Development Financing Act.
-- A downtown district established under the downtown development authority Act.
-- A principal shopping district established under the principal shopping district Act.

Under the bill, beginning on the effective date of Senate Bill 162, the Commission may not issue any tavern or Class C licenses under these provisions. The licenses issued before the effective date of that bill remain valid and may be renewed if in compliance with the licensing requirements.

Senate Bill 163 also deleted provisions related to the issuance of development district licenses. The provisions did the following:

-- Prohibited the LCC from issuing a license unless the local unit where the authority was located, after a public hearing, passed a resolution concurring in the authority's finding.
-- Required the license applicant to state and demonstrate that he or she attempted to secure an on-premises escrowed license or quota license and, to the best of his or her knowledge, none was available.
-- Provided that only one license could be issued in a development district to any individual or entity.
-- Prohibited the LCC from issuing a license if the local unit of government had not issued all appropriate quota licenses available or if an appropriate on-premises escrowed license was readily available.
-- Prohibited the LCC from issuing more than two licenses in any city or municipality with a population over 50,000.

MCL 436.1521a (S.B. 162)
436.1521 (S.B. 163)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan's population-based liquor license quota has created a hardship for some communities that want to revitalize their core cities and need the revenue that economic development can bring. In some local units, all of the quota-based licenses have been issued; if a city's population is stagnant or falling, additional licenses will not be issued. An existing license might become available only under limited circumstances—if, for example, the Liquor Control Commission revokes a business's license for Code violations. Moreover, a city might "lose" a quota license if it is transferred to another business within the same county; in such a case, according to the LCC, the license still is counted against the quota of the local unit where it initially was issued. This can be especially problematic for a city where a number of licenses have been transferred from businesses in its aging downtown to establishments outside the city limits.

In some cases, escrowed licenses may be available for purchase or might revert to the LCC. Under Rule 436.1107, a license that is not active must be placed in escrow with the Commission and will terminate if it is not renewed within five years. The LCC, however, may extend that time period under various circumstances, such as the pendency of litigation or bankruptcy proceedings. Also, since that rule did not take effect until March 2004, and the five-year period for licenses in escrow did not begin until then, no licenses will terminate under the rule for several more years.

In addition, the cost of buying a license can be prohibitive, even in small cities that are economically challenged. Adrian, for example, has a struggling downtown and would like to attract comfortable dining establishments, but the current price of a liquor license there reportedly is $50,000. While this might be affordable for large, chain restaurants, they are unlikely to locate in an aging core city. Also, it is small, unique cafes or bistros that can make a city "cool" and bring people downtown, but would-be entrepreneurs may be unable to

afford a liquor license on the open market, especially on top of the cost of establishing a restaurant.

The bills help address this situation by creating a new category of liquor licenses that the LCC may issue without regard to local units' quota of on-premises licenses. The new licenses resemble those issued under 1996 amendments for restaurants in development districts. A business securing a license under the bills will not have to compete for a quota license or pay the sometimes-exorbitant rate to buy an active or escrowed license. A business will be required, however, to demonstrate that such a license is not readily available (which might mean not affordable, according to the circumstances). In addition, investment in a redevelopment project area or development district must meet certain monetary thresholds, which will ensure that the licenses are issued only where economic development is taking place. The availability of the new licenses will encourage people to undertake projects in these areas, which they otherwise might not do without the assurance that alcoholic beverages can be served on the premises.

Response: The $20,000 license fee is too high, especially for someone who already is making a serious investment in the community by renovating an old building and establishing a new enterprise. While $20,000 is considerably less than the price of some liquor licenses on the open market, it also is significantly more than the $600 fee for a quota license.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 162

The bill allows the Liquor Control Commission to issue licenses for city redevelopment projects and development districts meeting certain criteria, in addition to the licenses that may be issued based on population. The initial enhanced fee for these licenses is $20,000. The amount of revenue generated will depend on the demand from qualifying localities and the number of licenses issued by the Commission each year. Under the Code, licenses are issued for one year with renewal requirements, and distribution of revenue is allocated based on a formula. The formula requires that 41.5% be allocated to the Commission for licensing and enforcement, 55% be allocated to the local community for which the license is issued, and 3.5% be used to support alcohol prevention and treatment programs.

Senate Bill 163

The bill eliminated authorization for the Liquor Control Commission to issue up to 50 liquor licenses in development districts. These licenses already had been issued by the Commission.

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