

# Legislative Analysis



## ON-PREMISES LIQUOR LICENSE FOR REDEVELOPMENT PROJECTS OR DEVELOPMENT DISTRICTS

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**House Bill 4257 (reported from committee as Substitute H-1)**

**Sponsor: Rep. Cindy Denby**

**Committee: Regulatory Reform**

### Revised First Analysis (11-13-13)

**BRIEF SUMMARY:** The bill would allow the Liquor Control Commission (LCC) to issue public on-premises liquor licenses, in addition to those allowed by quota (1 for each 1,500 of population), to applicants within redevelopment project areas or in development districts in any municipality in the state. Under current law, only applicants located within cities are eligible.

**FISCAL IMPACT:** House Bill 4257 would not have a substantial fiscal impact on the Liquor Control Commission (LCC).

If House Bill 4257 leads to an increase in the number of liquor licenses issued to alcohol retailers in eligible municipal districts and if that increase results in increased consumption of alcoholic products, the state would collect additional retail liquor license fees, excise taxes, and wholesale liquor revenue. By statute, 55% of retail liquor license fees are granted to local law enforcement agencies.

### **THE APPARENT PROBLEM:**

Public Act 501 of 2006 allowed the LCC to issue a new type of on-premises liquor license to businesses located within city redevelopment project areas or development districts that are not subject to the Liquor Code's population-based quota system, which generally applies to on-premises licenses. In order to qualify for a license, certain conditions have to be met regarding investment levels in the building that houses the business and total public and private investment within the project area or development district. Businesses must also be engaged in dining, entertainment, or recreation activities and be open to the public.

As enacted, these licenses are only available to businesses located within city redevelopment project areas or development districts; businesses located within a village or township are not eligible. However, under an incorrect interpretation of the statute, the LCC issued a limited number of licenses to businesses located in villages and townships. According to the LCC, there are currently 11 active licenses that do not meet the statutory eligibility criteria.

The issue came to light because a business located within a township applied for a license and was informed by the LCC that it was not eligible. This contradicted information previously distributed by the LCC that businesses in villages and townships met

eligibility criteria. To remedy the situation, the bill would allow licenses to be issued to a business in any municipality in the state (city, village, or township). It would also allow licenses that do not meet the statutory eligibility criteria concerning location to remain in effect after the bill is signed into law.

### ***THE CONTENT OF THE BILL:***

Section 521a of the Liquor Control Code allows the Liquor Control Commission (LCC) to issue public on-premises liquor licenses, in addition to those allowed by quota (1 for each 1,500 of population), for businesses that are located within city redevelopment projects or in development districts.

Currently, only businesses within city redevelopment projects or development districts that meet certain guidelines are eligible for these licenses. The bill would expand the eligibility for public on-premises licenses to be issued in development areas in any municipality in the state, which would include all villages, townships, and cities.

The bill would also allow licenses previously issued under this section to remain in effect subject to the requirements of the Liquor Code.

MCL 436.1521a

### **BACKGROUND INFORMATION:**

The Office of Regulatory Reinvention's (ORR) recommendations regarding Liquor Control, issued on June 29, 2012, recommended expanding redevelopment project area and development district licenses to villages and townships. According to the recommendation "*expanding these licenses to villages and townships will likely make more of the licenses available in areas throughout the state*" and "*will help expand the availability of licenses in certain areas and expand the existing quota system.*" To read the full text of the ORR's recommendations, see:

[https://www.michigan.gov/documents/lara/ORR\\_LCC\\_ARC\\_Recommendations\\_391015\\_7.pdf](https://www.michigan.gov/documents/lara/ORR_LCC_ARC_Recommendations_391015_7.pdf)

#### Eligibility

Public on-premises licenses are currently available to businesses that are (1) located within a city redevelopment project area that meets investment level guidelines and are engaged in dining, entertainment, or recreation activity; or (2) located in a tax increment finance authority development district, a corridor improvement authority development area, a downtown district, or a principal shopping district.

The business must provide dining, entertainment, or recreation activity at least five days per week, be open to the public for at least 10 hours per day, and show verification of their redevelopment project status. Verification includes a resolution from the local governing body and separate affidavits from the assessor verifying (1) the total amount of investment in real and personal property in the previous three years (2) and the amount of

investment spent for manufacturing, industrial, residential, and commercial development within the previous three years.

Redevelopment project area licenses and development district or area licenses are also subject to specific guidelines pertaining to public and private investment that must be met in order for a project area to be eligible.

Public on-premises licenses cannot be transferred by the LCC, but may be reissued within a city redevelopment project area upon approval by the local governing body.

[NOTE: None of these provisions are being changed by House Bill 4257, other than to expand eligibility from just cities to also include counties, villages, and townships.]

### ***ARGUMENTS:***

#### ***For:***

The bill would expand a development tool that cities have been able to use to expand and redevelop downtown areas, ultimately leading to increased economic activity. Allowing for licenses to be issued within villages and townships, in addition to cities, could lead to investment in areas that do not have quota licenses currently available. It would also allow the 11 active licensees that were issued to businesses in villages and townships to continue to operate without interruption to their businesses. According to the LCC, staff is working with affected licensees to determine what other licenses may be available to them in the event no changes are made to the statute.

Issuing additional public on-premises licenses could have a positive financial impact on municipalities. By statute, 55% of the amount of proceeds of retailers' license fees collected within a jurisdiction is returned to that jurisdiction for the specific purpose of enforcing the Liquor Code and the applicable administrative rules. Licenses issued under this section would provide a larger return to municipalities than other Class C licenses. While not a driver of the bill, additional licenses would provide an additional revenue stream for local units of government.

Additionally, the proposed change is included as part of the ORR's recommendations regarding Liquor Control to expand the number of available redevelopment project area and development district licenses throughout the state.

#### ***Against:***

There are general concerns about expanding the eligibility for a non-quota liquor license and the effect more licenses could have on the value of existing Class C licenses. Class C licenses are issued on a quota system and may be transferred between owners. In the instance where a community has exhausted its quota, individuals interested in pursuing a Class C license have to purchase one that has been put into escrow. These licenses can be very valuable depending on location and can sell for a price much higher than the original application fee. Individuals that purchase escrowed licenses as an investment

could see the value of their license eroded if the market is flooded with additional development licenses that are not subject to the quota system.

Previously, the LCC raised concerns with the method used to determine the number of the number of public on-premises licenses that can be issued within a development district. Under current law, the LCC can issue one license per \$200,000 of total investment in personal and real property over the past five years, as long as an applicant in a qualified development district has met the investment guidelines related to building restoration. According to testimony in 2012, districts with large investment levels could qualify for high numbers of licenses. For example, Lyon Township in Oakland County would qualify for over 700 public on-premises licenses within their Downtown Development district. Some have concern that investment thresholds are too low and allow development districts to qualify for excessive amounts of licenses. [Note: The LCC has exclusive authority to issue liquor licenses and even though development districts may be eligible for several licenses, the LCC has discretion to issue as few or as many as they deem appropriate].

There are several ways to address the situation, ranging from capping the total number of licenses available to each municipality or increasing the investment threshold. It should be noted that an increase in the investment threshold could make it more difficult for small and/or rural municipalities to qualify as a result of development projects being undertaken on a smaller scale.

There is also concern that businesses could bypass quota or escrowed licenses currently available and instead opt for a public on-premises redevelopment or development license. Some view this as unfair, as other licensees are required to operate within the quota restrictions. However, it should be noted that Section 521(a)(9) of the Liquor Code requires the local government official signing off on an application to state and demonstrate that the applicant attempted to secure an on-premises escrowed or quota license and, that to the best of his or her knowledge, one is not readily available within the county. ["Readily available" is defined to mean a standard of economic feasibility applied to the specific circumstances of the applicant, including the fair market value of the license based on where the applicant will be located, the size and scope of the operation, and the existence of mandatory contractual restrictions or inclusions attached to the sale of the license.] Under that standard, it could be argued that applicants are already required to pursue an available escrowed or quota license within their municipality economically feasible.

#### ***POSITIONS:***

Amway supports the bill. (11-12-13)

Michigan Brewers Guild supports the bill. (11-12-13)

Michigan Restaurant Association supports the H-1 substitute. (11-12-13)

Michigan Townships Association supports the bill. (11-12-13)

Meijer supports the bill. (11-12-13)

Michigan Licensed Beverage Association is neutral on the bill. (11-12-13)

Michigan Liquor Control Commission is neutral on the bill. (11-12-13)

Michigan Municipal League is neutral on the bill. (11-12-13)

The Village of Baroda, Michigan indicated support of the bill. (11-12-13)

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■ 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.