



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [Sub. H.B. 243 of the 129th G.A.](#)

Date: December 13, 2011

Status: As Reported by Senate Insurance,
Commerce & Labor

Sponsor: Reps. Kozlowski and Young

Local Impact Statement Procedure Required: No

Contents: Revises certain provisions of the Liquor Control Law

State Fiscal Highlights

- As a result of the bill, there are likely to be additional liquor permits issued. If so, there would be a gain in liquor permit fee revenue to the Undivided Liquor Permit Fund (Fund 7066). Fund 7066 revenues are subsequently distributed to the GRF (45%), the local taxing district where the permit is issued (35%), and the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Alcohol and Drug Addiction Services (20%). There would also be a minimal gain in revenue to the Liquor Control Fund (Fund 7043) from the \$100 processing fee that accompanies all permanent liquor permit applications.
- There may also be a gain in revenue to Fund 7043 of about \$10,000 every two years from the \$50 biennial registration fee paid by trade marketing professionals, whom the bill requires to be registered.
- The bill relaxes some restrictions that apply to liquor permit transfers for economic development purposes. As a result, additional liquor permit transfer applications may be submitted. If so, Fund 7043 would gain additional revenue from the \$100 processing fee that accompanies the transfer applications.
- Some provisions of the bill may lead to an increase in spirituous liquor sales. If so, there would be a gain in revenue from the state sales tax. If the number of gallons sold also increases, there would be a gain in revenue to the GRF from the liquor gallonage tax.

Local Fiscal Highlights

- If more liquor permits are issued, the municipality or township where the permitted premises is located would gain a minimal amount of revenue from a portion of the liquor permit fee paid.
- The bill may lead to more local option liquor elections. If so, county boards of elections may experience a minimal increase in expenses to verify signatures, hold protest hearings, and notify permit holders concerning any additional petitions that are submitted. County boards of elections may also incur some small additional expense for printing the language of the question(s) on ballots.
- If there are more local option liquor questions placed on the ballot during "off-year" elections, the municipalities and townships in which the applicable precinct is located would likely bear some minimal additional costs associated with holding the election.
- Some provisions of the bill may lead to an increase in spirituous liquor sales. If so, there would be a gain in revenue from local sales taxes.

Detailed Fiscal Analysis

Overview

The bill makes a number of changes to the Liquor Control Law. Among other revisions, the bill eliminates the restrictions on the number of A-3a liquor permits that may be issued across the state, allows D-5j and D-5l permits to be issued in a greater variety of circumstances, creates the F-9 temporary liquor permit, and eases the requirements for transferring a liquor permit for economic development purposes. The bill also permits contract liquor agencies to sell tasting samples of spirituous liquor under certain conditions and requires "trade marketing professionals" to register with the Division of Liquor Control (DOLC) in the Department of Commerce. These provisions and their fiscal effects are discussed in more detail below.

Liquor permit provisions

As noted above, the bill makes a number of modifications to existing liquor permits and creates a new temporary liquor permit. Overall, there is likely to be an increase in the number of liquor permits issued, though the number of new permits issued as a result of the bill is uncertain. The fee revenue from these permits is initially deposited into the Undivided Liquor Permit Fund (Fund 7066) and subsequently distributed to the GRF (45%), the local taxing district where the permit is issued (35%), and the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Alcohol and Drug Addiction Services (20%). Thus, these state funds and the municipalities and townships in the areas where the permitted premises are located may experience a minimal gain in liquor permit fee revenue. There would also be a minimal gain in revenue to the Liquor Control Fund (Fund 7043) from the \$100 processing fee that accompanies all permanent liquor permit applications. The bill's liquor permit-related provisions are described in more detail below.

A-3a liquor permits – craft distillers

The bill expands the availability of the A-3a liquor permit, which applies to so-called craft distillers (those that manufacture less than 10,000 gallons of spirituous liquor per year). The permit enables the permit holder to sell to personal consumers at the permitted location for consumption off the premises, including liquor that the permit holder manufactures and liquor purchased from DOLC and made available for sale in a separate area of the permitted location. Though the permit holder can make sales of DOLC liquor as an independent contractor, it is not eligible to receive the sales commissions paid to contract liquor agency stores.

Current law restricts the issuance of A-3a permits to one per county and only in a county with a population exceeding 800,000. Effectively, this limits the issuance of these permits to Cuyahoga, Franklin, and Hamilton counties. Currently, there are only two such active permits, one in Franklin County and the other in Hamilton County. An

application for an A-3a permit in Cuyahoga County is currently in "pending" status. The bill eliminates the quota and county population restrictions so that an unlimited number of A-3a permits could be issued across the state, though the precinct where the permitted premises is located must permit the sale of spirituous liquor. The bill also allows a permit holder to offer for sale no more than four tasting samples of up to a quarter ounce of spirituous liquor each per person per day.

Finally, the bill eliminates an inconsistency in current law regarding the A-3a permit fee. Currently, an A-3a permit holder may only produce less than 10,000 gallons of spirituous liquor per year. However, current law states that the fee for an A-3a permit is \$3,906 for each plant that produces more than 25,000 gallons of spirituous liquor per year. For each plant that produces less than 25,000 gallons of spirituous liquor per year, the fee is \$2 per 50-gallon barrel. The bill eliminates this inconsistency by specifying that the fee for all A-3a permits is \$2 per 50-gallon barrel produced.

Local option liquor elections

If a prospective A-3a permit holder seeks to locate the distillery in an area where the sale of spirituous liquor is currently prohibited (referred to as a "dry" precinct or location), there may be more local option liquor elections held to attempt to change the precinct or location's status in order to allow the permit to be issued. These elections would only be held during elections in which a candidate is on the ballot, limiting the questions to appearing during primary or general elections. As a result, county boards of elections and various municipalities and townships are likely to incur some additional elections-related costs, which are described in more detail below.

County boards of elections are required to provide petitioners with voter or street lists, notify through certified mail each permit holder affected by the local option election, hear protests filed against a local option election, and verify signatures. Though the boards of elections may charge a reasonable fee to cover the cost of the voter or street lists, they do not pass on the costs for petition signature verification, holding hearings, and notifying permit holders. If there were more local option liquor elections, counties may experience a minimal increase in expenses to perform the above functions on any additional petitions that may be submitted. County boards of elections could also incur some small additional expense for printing the language of the question(s) on ballots. This would be the case for absent voter and provisional ballots for the precincts in which the questions are posed to voters. In addition, counties using optical scan ballots would also incur some additional cost for printing this language on the appropriate precinct ballot forms.

Even though county boards of elections might incur new costs for holding local option liquor elections, there is a process in place for recouping these expenses in certain cases. Under current law, the municipality or township of which the applicable precinct is a part may be charged for the expenses of holding a local option liquor election. If there are more local option liquor questions placed on the ballot during odd-numbered calendar year ("off-year") elections, the municipalities and townships in

which the applicable precinct is located would likely bear some minimal additional costs. Typically, county boards of elections do not charge election costs back to these entities for elections held in even-numbered calendar years.

D-5j and D-5l liquor permits – community entertainment and revitalization districts

Current law provides for the creation of community entertainment districts and revitalization districts, both of which are bounded areas that include or will include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments in close proximity.¹ The creation of such a district permits a specified number of additional liquor permits, which are not subject to liquor permit quota requirements, to be issued to retail food establishments and food service operations located within the district and meeting certain requirements. The annual fee for both the D-5j permit (for community entertainment districts) and the D-5l permit (for revitalization districts) is \$2,344. According to the Department of Commerce, there are currently 29 community entertainment districts and six revitalization districts.

Current law allows the issuance of D-5j permits only if the community entertainment district meets one of five qualifications involving either the population of the municipality or township of which the district is a part or a combination of population and specified levels of investment in the district by developers. The bill creates additional qualifications under which a D-5j liquor permit may be issued. Specifically, the bill allows D-5j permits to be issued in a district within a township with at least 20,000 residents, provided that developers have committed to invest at least \$70 million in the district. This qualification applies to Miami Township in Montgomery County. The bill also allows D-5j permits to be issued in a district located in a municipality with between 10,000 and 20,000 residents, provided that the municipality was incorporated as a village prior to calendar year 1840 and currently has a historic downtown business district and the municipality is located in the same county as another municipality with at least one community entertainment district. This latter qualification applies to the city of Worthington.

The bill also loosens the requirements for obtaining a D-5l permit in a revitalization district. Currently, D-5l permits may only be issued to retail food establishments or food-service operations that earn at least 75% of total gross annual receipts from the sale of food and meals and that meet certain other permit quota and population requirements. The bill eliminates the food-related criteria, and instead allows the D-5l permit to be issued to a business establishment, provided that the business is not classified as an adult entertainment establishment. The bill also

¹ Community entertainment districts may be created in municipalities with 100,000 or more residents or townships with 40,000 or more residents. Municipalities with smaller populations may also qualify if certain levels of investment are made in the district by developers. Revitalization districts may be created in municipalities and townships with less than 100,000 residents, provided that the quota for D-5 permits in the municipality or township has been met and the district is located in a county with no more than 125,000 residents according to the population estimates for calendar year 2006.

increases the maximum number of D-51 permits that may be issued in any one revitalization district from 5 to 15, which has the effect of increasing the maximum allowable size of a district from 25 acres to 75 acres since no more than one permit can be issued for each five acres of land located within the district. The change also makes a revitalization district's maximum size and permit allowance consistent with those of a community entertainment district.

F-9 temporary liquor permit

The bill creates the F-9 temporary liquor permit to authorize a nonprofit corporation that operates a city park or provides or manages entertainment for a nonprofit corporation that operates a city park to sell beer or intoxicating liquor by the individual drink at specific events conducted within the park property and ancillary streets. The F-9 permit may only be issued if the park property is located in a county with between 1.1 million and 1.2 million residents. Consequently, the provision applies to Columbus Commons in downtown Columbus. The bill limits the duration of an F-9 permit to nine months and establishes various other requirements that govern its use. The fee for the permit is \$1,700.

Liquor permit transfers

Current law limits how many liquor permits may be issued to carryout stores and restaurants and night clubs through what are known as liquor permit quotas. Under the quota system, only one liquor permit may be issued for each type of carryout, restaurant, or night club permit for each 1,000 to 2,000 residents in each municipality or township (these units of government are also referred to as taxing districts). The particular quota limitation depends on the type of liquor permit involved. However, liquor permits are not taken away if a taxing district's population falls over time. This has resulted in some areas of the state having more permits than allowed by the quota, also known as being "over-issued."

Current law also provides for a "transfer exempt," or "TRES" liquor permit transfer for economic development purposes. Generally, in order to TRES transfer a liquor permit, the location where the permit is being transferred from must be over-issued. Also, the location where the permit is being transferred to must have no openings available for additional liquor permits. Further, a letter from the taxing district where the permit is being transferred to must certify that the transfer will be to an economic development project. The bill removes the requirement that the location where the permit is being transferred from must be over-issued, making it easier to transfer permits in this way. A processing fee of \$100 accompanies all TRES transfer applications, which is deposited into the Liquor Control Fund (Fund 7043). If more TRES transfers occur as a result of this change, Fund 7043 would gain some additional revenue. For each permit so transferred, there would also be a shift in the taxing district that receives the local share of the fee revenue from the liquor permit.

Tasting samples

Contract liquor agencies

DOLC contracts with about 460 private businesses, known as contract liquor agencies, to serve as its sales agents for spirituous liquor. Contract liquor agencies are currently prohibited from offering for sale tasting samples of spirituous liquor. Tasting samples are generally defined as small amounts of the applicable beverage designed to allow the purchaser of the sample to determine, by tasting only, the quality and character of the beverage. That is, tasting samples are not to be sold for the purpose of general consumption.

Contract liquor agencies may currently offer for sale tasting samples of beer, wine, or mixed beverages, but only if they hold certain liquor permits. D-1, D-2, and D-5 liquor permits offer tasting sample privileges to contract liquor agencies for certain beverage types, depending on the permit type held. However, relatively few contract liquor agencies hold those permit types. Contract liquor agencies may also offer tasting samples of beer, wine, or mixed beverages if they have a D-8 permit, which is only issued to agencies holding C-class or "carryout" store permits and meeting certain other requirements.

The bill eliminates the restriction on the sale of spirituous liquor tasting samples at contract liquor agencies under certain circumstances spelled out in the bill. For example, the agency must have a D-8 permit, the restrictions for which are amended by the bill to allow the permit holder to sell such tasting samples. There are currently 147 liquor agencies that hold a D-8 liquor permit, about one-third of all contract liquor agencies. If contract liquor agencies not already holding a D-8 permit wish to sell tasting samples of spirituous liquor, there may be an increase in the number of D-8 permits issued. The fee for a D-8 permit is \$500.

There is another condition that applies to the sale of spirituous liquor samples under the bill. Specifically, the bill requires that tasting samples be offered for sale at an agency store by a trade marketing professional, broker, or solicitor. Generally, these persons or companies solicit the sale or purchase of beer and intoxicating liquor. While agents, solicitors, and salespersons of beer and intoxicating liquor manufacturers, suppliers, brokers, or wholesale distributors must be registered under current law, the bill requires trade marketing professionals to register as well. The biennial fee for registration is \$50, the revenue from which is deposited into the Liquor Control Fund (Fund 7043). DOLC expects about 200 trade marketing professionals to register. As a result, there could be an estimated gain of \$10,000 in biennial revenue to Fund 7043 from the registration fees collected under this new requirement.

Beer manufacturers

The bill allows A-1 permit holders, i.e., beer manufacturers, to offer for sale tasting samples of beer that is made on the premises. Currently, tasting samples of beer are permitted at the premises of an A-1 permit holder under what is referred to as "Rule

30" (OAC 4301:1-1-30), adopted by the Liquor Control Commission. However, there are some key differences between the bill and Rule 30. For instance, Rule 30 requires the tastings to be closed to the public, whereas the tastings authorized under the bill are open to the general public visiting the permitted premises. Also, Rule 30 requires notice to and approval from DOLC before the event is held. The bill contains no such notice or approval requirements. Finally, the rules require the manufacturer conducting the tasting to provide the samples without charge. The bill requires the samples to be sold. Overall, there is likely to be little, if any, fiscal effect resulting from these revisions. There are 64 active A-1 permit holders in the state.

Effect on spirituous liquor sales

The bill contains provisions that may affect spirituous liquor sales volume. For example, should new craft spirituous liquor distilleries be formed through an expansion in the availability of the A-3a liquor permit, there could also be an increase in the amount of spirituous liquor sold in the state. Tastings of spirituous liquor at contract liquor agencies may also affect liquor sales. This is based on the experience of other states, in which the availability of tastings has encouraged buyers to trade up to more premium brands and try new flavors. Since sales of the products featured at the tastings are likely to increase and premium brands are more expensive, DOLC expects the overall sales of spirituous liquor to increase slightly as a result of the tastings.

If sales increase, there would be a gain in revenue from state and local sales taxes. If the number of gallons sold also increases, then there would be a gain in revenue from the liquor gallonage tax, which is collected at a rate of \$3.38 per gallon of spirituous liquor sold by DOLC and deposited into the GRF. While revenue from the sale of spirituous liquor is currently used to fund a number of state programs, in the future liquor sales profits will benefit JobsOhio exclusively. This is because H.B. 153 of the 129th General Assembly, the main operating budget act for FY 2012-FY 2013, authorized the transfer of the state's liquor enterprise to JobsOhio to provide a direct funding source for that entity's economic development programs. The transfer is likely to be effectuated early in calendar year 2012.