Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 173 of the 130th G.A. **Date:** December 4, 2013

Status: As Reported by Senate Agriculture **Sponsor:** Sen. Hughes

Local Impact Statement Procedure Required: No

Contents: Modifies the law governing tasting samples of spirituous liquor, beer, wine, and mixed beverages

State Fiscal Highlights

- The bill adjusts the laws governing both spirituous liquor tasting events and the providing of sample servings of beer, wine, and mixed beverages. In both cases, the retail store where the tasting events or sample servings are offered must have a D-8 liquor permit.
- The changes in the bill may result in an increase in applications for D-8 liquor permits and consequently a rise in D-8 permits issued by the Division of Liquor Control under the Department of Commerce. Additional D-8 permit fee revenue would be deposited into the Undivided Liquor Permit Fund (Fund 7066) and subsequently distributed to the State Liquor Regulatory Fund (Fund 5LP0) used by the Division of Liquor Control within the Department of Commerce (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.
- Any increase in spirituous liquor sales resulting from the bill would go to JobsOhio; however, the Division of Liquor Control would likely receive a proportional share subject to its contract with JobsOhio to accommodate additional merchandising expenses.
- Any additional sales of beer, wine, and mixed beverages as a result of the bill would result in a marginal increase in tax revenue deposited into the General Revenue Fund.

Local Fiscal Highlights

- If more D-8 liquor permits are issued, the local taxing district would receive a portion of the liquor permit fees collected by the state and deposited into the Undivided Liquor Permit Fund (Fund 7066). Current law specifies that local taxing districts are to receive 35% of the permit fees attributable to permitted establishments within their jurisdiction. These revenues would presumably offset any local costs as a result of additional liquor permits.
- Any additional sales of beer, wine, and mixed beverages as a result of the bill would result in a marginal increase in tax revenue for counties that have a local tax on these products.

Detailed Fiscal Analysis

Overview

The bill alters the Liquor Control Law governing two circumstances where alcoholic beverages can be sold in Ohio: (1) holding spirituous liquor tasting events, which can be conducted inside contract liquor agency stores that also have a D-8 permit, and (2) offering sample servings of beer, wine, and mixed beverages, which are authorized in a greater number of locations across the state. Altogether, the bill would likely result in increased revenue to the state from additional D-8 liquor permits being applied for and issued, and possibly increased tax revenue from a rise in liquor sales (while any increased spirituous liquor sales would go to JobsOhio). Analysis of the bill's fiscal effects on each of the two circumstances is provided in detail below.

Spirituous liquor tasting events

Currently, the state contracts with 466 privately owned and operated businesses, known as contract liquor agencies, to serve as its sales agents for spirituous liquor (alcoholic products containing more than 21% alcohol content by volume). The Division of Liquor Control (DOLC) under the Department of Commerce administers these contracts with the agency stores. The agency stores can apply for a D-8 liquor permit to host spirituous liquor tasting events, conducted by a manufacturer, supplier, or brokers, offering the sale of limited tasting samples of spirituous liquor products. Tasting events must be separately approved by DOLC, and can last up to two hours. Stores can host up to five events per month. A sample size is 0.25 ounces, and not more than four samples (totaling one ounce) can be purchased per person. They are limited to the spirituous liquor sales area of the store, conducted by marketing professionals representing the spirits supplier or manufacturer who have received alcohol server training to ensure compliance with the Ohio Liquor Control Law. A sample must cost at least 50 cents.

The bill makes two notable changes to the process of hosting tasting events by (1) increasing the number of events that can be hosted at an agency store, from five times per month in current law to ten times per month, and (2) modifying the payment process so that the spirituous liquor sales representative can purchase the liquor to be tasted at retail directly from the agency store.

Fiscal effects

These changes may result in more agency stores applying for, and being issued, a D-8 permit to host spirituous liquor tasting events. Of the 466 agency stores, 206 have D-8 liquor permits and so can already host these events. The D-8 permit application fee is $500, and permits are renewed annually. Consequently, any of the 260 agency stores that do not have D-8 permits currently could apply, so up to $130,000 in new permit revenue could be generated annually ($500 x 260 agency stores). Additional liquor permit fee revenue would be deposited into the Undivided Liquor Permit Fund (Fund 7066) and subsequently distributed to the State Liquor Regulatory Fund (Fund 5LP0) used by the Division of Liquor Control (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.

Additionally, the changes in the bill may result in increased spirituous liquor sales. Agency stores would be able to host up to 120 tasting events per year (10 events per month x 12 months), instead of up to 60 events per year in current law (5 events per month x 12 months). As such, an increase in tasting events may indirectly lead to more consumer exposure and greater spirituous liquor sales in aggregate. All spirituous liquor profits go to JobsOhio. However, DOLC would likely receive a proportional share of this revenue subject to its contract with JobsOhio to accommodate any additional merchandising expenses.

Sample servings of beer, wine, and mixed beverages

In current law, sales representatives of beer, wine, and mixed beverages who are registered with DOLC may offer sample servings of their products (at no charge to the sampler) in places where there is a retail permit for on-premises consumption of that alcohol. The sales representative must pay the retail price of the product.

The bill would allow this same practice at a retail store that sells beer, wine, and mixed beverages for off-premises consumption, as long as the store has a D-8 permit. In continuing law, a retail store that holds a D-8 permit can itself offer samples, so the effect of the change under the bill is to enable sales representatives to directly offer samples at these locations.

Fiscal effects

These changes would likely also result in an increase in D-8 permit applications and issuances. However, it is difficult to determine the magnitude of a potential increase in D-8 permits as a result of the altered law governing sample servings because more retail stores are eligible to offer the servings (as opposed to only the 466 contract agency stores eligible to host spirituous liquor tasting events). Besides liquor agency stores, C permit holders can also apply for D-8 permits to offer samples of beer, wine, and mixed beverages for consumption on premises. Generally, C permit holders are carryout stores that do not sell spirituous liquor. Currently, 422 of these carryout stores have a D-8 permit. According to DOLC's permitting website, there are around 18,000 C permits altogether, although several thousand likely overlap – for example the C-1 permit is for beer to carry out (around 8,400 permits currently), while C-2 is for wine and mixed beverages to carry out (around 8,700 permits).

Any increase in applications for D-8 permits and subsequent rise in issuances would result in additional revenue to the state. Additional liquor permit fee revenue would be deposited into the Undivided Liquor Permit Fund (Fund 7066) and subsequently distributed to the State Liquor Regulatory Fund (Fund 5LP0) used by the Division of Liquor Control (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.

Additionally, the bill may result in a slight increase in the overall sales of beer, wine, and mixed beverages across Ohio. Taxes on these alcoholic beverages are paid by the manufacturers, importers, and wholesale distributors who sell and distribute in and to Ohio. There is also a separate tax on liquor gallonage administered by DOLC. The taxes are paid into the General Revenue Fund at the state level, while other revenue may be received by counties if they have a local tax on these products.

Background on spirituous liquor profits

Each liquor agency store accounts for all sales and makes daily deposits of proceeds derived from the sale of spirituous liquor into a checking account in their own name and federal tax identification number. DOLC, within the Department of Commerce, then withdraws funds via an automated clearinghouse (ACH) transaction pursuant to an authorization included in the agency contract. Each agent is paid a commission of 6% on retail sales and 4% on wholesale sales.

Effective February 1, 2013, JobsOhio owns the state's exclusive right to manage and control spirituous liquor distribution and sales and to sell spirituous liquor. However, JobsOhio contracts with DOLC to run the liquor merchandising business operations. Consequently, DOLC continues to administer the spirituous liquor inventory and oversight of the distribution of liquor to the contract liquor agencies, while the profits from spirituous liquor sales fund JobsOhio's mission to work with businesses to spur job creation and capital investment in the state. JobsOhio received approximately $187.2 million in liquor profits in FY 2013.