

ASSEMBLY, No. 1505

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman JAMES J. KENNEDY

District 22 (Middlesex, Somerset and Union)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

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District 31 (Hudson)

Assemblyman JAMEL C. HOLLEY

District 20 (Union)

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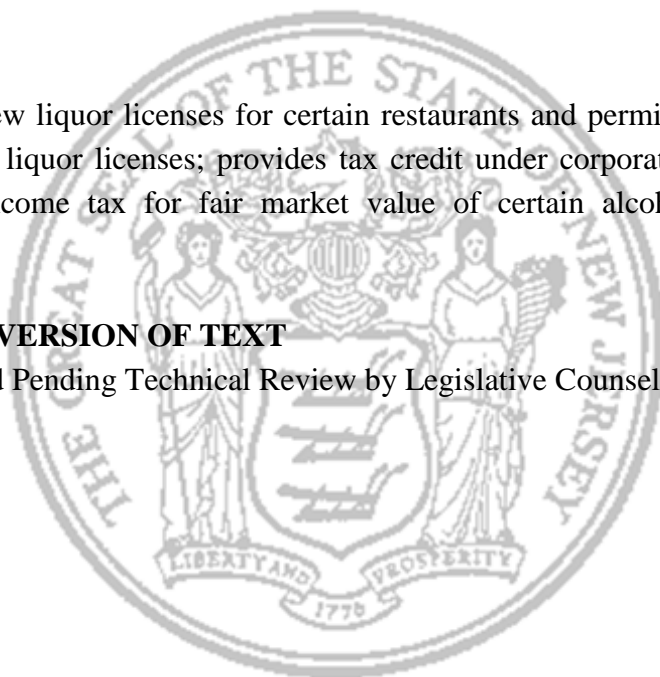
Assemblymen Gusciora, Zwicker and Assemblywoman Jones

SYNOPSIS

Creates new liquor licenses for certain restaurants and permits the issuance of additional liquor licenses; provides tax credit under corporate business tax and gross income tax for fair market value of certain alcoholic beverage licenses.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the sale of alcoholic beverages in certain
2 restaurants, creating tax credits, supplementing and amending
3 various sections of Title 33 of the Revised Statutes, and
4 supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and chapter
5 4 of Title 54A of the New Jersey Statutes.

6

7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*

9

10 1. (New section) The Legislature finds and declares that:

11 a. Under current law, a municipality may not issue a new
12 plenary retail consumption license unless and until the combined
13 total number of such licenses existing in the municipality is fewer
14 than one for each 3,000 of its population according to the most
15 recent estimates issued by the U.S. Bureau of the Census.

16 b. As a result of this restriction, there is an insufficient number
17 or complete lack of available plenary retail consumption licenses in
18 many municipalities, thereby unnecessarily inflating the value of
19 existing consumption licenses and forcing prospective restaurateurs
20 to purchase a license at an exorbitant price or operate without a
21 license.

22 c. The presence of new restaurants serving alcoholic beverages
23 in a municipality often promotes real estate development,
24 contributes to the municipal revitalization, and enhances the overall
25 quality of life for residents and visitors.

26 d. However, the introduction of a new restaurant license that is
27 not subject to a population formula may cause existing plenary
28 retail consumption licenses to lose value, thus creating the need to
29 compensate certain existing license holders by issuing tax credits.

30 e. The State of New Jersey has a legitimate government
31 interest in promoting business by issuing tax credits to the holders
32 of plenary retail consumption licenses to compensate them for the
33 devaluation of their licenses.

34 f. In order to foster and encourage economic development and
35 growth in this State, it is appropriate to create a new restaurant
36 license that would permit the licensee to sell alcoholic beverages for
37 consumption on the premises and to provide financial compensation
38 to certain plenary retail consumption licensees who already have
39 established businesses and paid market value for their licenses.

40

41 2. R.S.33:1-12 is amended to read as follows:

42 33:1-12. Class C licenses shall be subdivided and classified as
43 follows:

44 Plenary retail consumption license. 1. The holder of this license
45 shall be entitled, subject to rules and regulations, to sell any

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 alcoholic beverages for consumption on the licensed premises by
2 the glass or other open receptacle, and also to sell any alcoholic
3 beverages in original containers for consumption off the licensed
4 premises; but this license shall not be issued to permit the sale of
5 alcoholic beverages in or upon any premises in which a grocery,
6 delicatessen, drug store or other mercantile business is carried on,
7 except as hereinafter provided. The holder of this license shall be
8 permitted to conduct consumer wine, beer and spirits tasting events
9 and samplings for a fee or on a complimentary basis pursuant to
10 conditions established by rules and regulations of the Division of
11 Alcoholic Beverage Control, provided however, that the holder of
12 this license complies with the terms and conditions set forth in
13 section 3 of P.L.2009, c.216 (C.33:1-12d). Subject to such rules
14 and regulations established from time to time by the director, the
15 holder of this license shall be permitted to sell alcoholic beverages
16 in or upon the premises in which any of the following is carried on:
17 the keeping of a hotel or restaurant including the sale of mercantile
18 items incidental thereto as an accommodation to patrons; the sale, at
19 an entertainment facility as defined in R.S.33:1-1, having a seating
20 capacity for no less than 4,000 patrons, of mercantile items
21 traditionally associated with the type of event or program held at
22 the site; the sale of distillers', brewers' and vintners' packaged
23 merchandise prepacked as a unit with other suitable objects as gift
24 items to be sold only as a unit; the sale of novelty wearing apparel
25 identified with the name of the establishment licensed under the
26 provisions of this section; the sale of cigars, cigarettes, packaged
27 crackers, chips, nuts and similar snacks and ice at retail as an
28 accommodation to patrons, or the retail sale of nonalcoholic
29 beverages as accessory beverages to alcoholic beverages; or, in
30 commercial bowling establishments, the retail sale or rental of
31 bowling accessories and the retail sale from vending machines of
32 candy, ice cream and nonalcoholic beverages. The fee for this
33 license shall be fixed by the governing board or body of the
34 municipality in which the licensed premises are situated, by
35 ordinance, at not less than \$250 and not more than \$2,500. No
36 ordinance shall be enacted which shall raise or lower the fee to be
37 charged for this license by more than 20% from that charged in the
38 preceding license year or \$500.00, whichever is the lesser. The
39 governing board or body of each municipality may, by ordinance,
40 enact that no plenary retail consumption license shall be granted
41 within its respective municipality.

42 The holder of this license shall be permitted to obtain a restricted
43 brewery license issued pursuant to subsection 1c. of R.S.33:1-10
44 and to operate a restricted brewery immediately adjoining the
45 licensed premises in accordance with the restrictions set forth in
46 that subsection. All fees related to the issuance of both licenses
47 shall be paid in accordance with statutory law.

1 Seasonal retail consumption license. 2. The holder of this
2 license shall be entitled, subject to rules and regulations, to sell any
3 alcoholic beverages for consumption on the licensed premises by
4 the glass or other open receptacle, and also to sell any alcoholic
5 beverages in original containers for consumption off the licensed
6 premises, during the summer season from May 1 until November
7 14, inclusive, or during the winter season from November 15 until
8 April 30, inclusive; but this license shall not be issued to permit the
9 sale of alcoholic beverages in or upon any premises in which a
10 grocery, delicatessen, drug store or other mercantile business is
11 carried on, except as hereinafter provided. Subject to such rules
12 and regulations established from time to time by the director, the
13 holder of this license shall be permitted to sell alcoholic beverages
14 in or upon the premises in which any of the following is carried on:
15 the keeping of a hotel or restaurant including the sale of mercantile
16 items incidental thereto as an accommodation to patrons; the sale of
17 distillers', brewers' and vintners' packaged merchandise prepacked
18 as a unit with other suitable objects as gift items to be sold only as a
19 unit; the sale of novelty wearing apparel identified with the name of
20 the establishment licensed under the provisions of this section; the
21 sale of cigars, cigarettes, packaged crackers, chips, nuts and similar
22 snacks and ice at retail as an accommodation to patrons; or the retail
23 sale of nonalcoholic beverages as accessory beverages to alcoholic
24 beverages. The fee for this license shall be fixed by the governing
25 board or body of the municipality in which the licensed premises
26 are situated, by ordinance, at 75% of the fee fixed by said board or
27 body for plenary retail consumption licenses. The governing board
28 or body of each municipality may, by ordinance, enact that no
29 seasonal retail consumption license shall be granted within its
30 respective municipality.

31 Plenary retail distribution license. 3. a. The holder of this license
32 shall be entitled, subject to rules and regulations, to sell any
33 alcoholic beverages for consumption off the licensed premises, but
34 only in original containers; except that licensees shall be permitted
35 to conduct consumer wine, beer, and spirits tasting events and
36 samplings on a complimentary basis pursuant to conditions
37 established by rules and regulations of the Division of Alcoholic
38 Beverage Control, provided however, that the holder of this license
39 complies with the terms and conditions set forth in section 3 of
40 P.L.2009, c.216 (C.33:1-12d).

41 The governing board or body of each municipality may, by
42 ordinance, enact that this license shall not be issued to permit the
43 sale of alcoholic beverages in or upon any premises in which any
44 other mercantile business is carried on, except that any such
45 ordinance, heretofore or hereafter adopted, shall not prohibit the
46 retail sale of distillers', brewers' and vintners' packaged
47 merchandise prepacked as a unit with other suitable objects as gift
48 items to be sold only as a unit; the sale of novelty wearing apparel

1 identified with the name of the establishment licensed under the
2 provisions of this act; cigars, cigarettes, packaged crackers, chips,
3 nuts and similar snacks, ice, and nonalcoholic beverages as
4 accessory beverages to alcoholic beverages. The fee for this license
5 shall be fixed by the governing board or body of the municipality in
6 which the licensed premises are situated, by ordinance, at not less
7 than \$125 and not more than \$2,500. No ordinance shall be enacted
8 which shall raise or lower the fee to be charged for this license by
9 more than 20% from that charged in the preceding license year or
10 **["\$500.00"]** \$500, whichever is the lesser. The governing board or
11 body of each municipality may, by ordinance, enact that no plenary
12 retail distribution license shall be granted within its respective
13 municipality.

14 Limited retail distribution license. 3. b. The holder of this license
15 shall be entitled, subject to rules and regulations, to sell any
16 unchilled, brewed, malt alcoholic beverages in quantities of not less
17 than 72 fluid ounces for consumption off the licensed premises, but
18 only in original containers; provided, however, that this license
19 shall be issued only for premises operated and conducted by the
20 licensee as a bona fide grocery store, meat market, meat and
21 grocery store, delicatessen, or other type of bona fide food store at
22 which groceries or other foodstuffs are sold at retail; and provided
23 further that this license shall not be issued except for premises at
24 which the sale of groceries or other foodstuffs is the primary and
25 principal business and at which the sale of alcoholic beverages is
26 merely incidental and subordinate thereto. The fee for this license
27 shall be fixed by the governing body or board of the municipality in
28 which the licensed premises are situated, by ordinance, at not less
29 than \$31 and not more than \$63. The governing board or body of
30 each municipality may, by ordinance, enact that no limited retail
31 distribution license shall be granted within its respective
32 municipality.

33 Plenary retail transit license. 4. The holder of this license shall be
34 entitled, subject to rules and regulations, to sell any alcoholic
35 beverages, for consumption only, on railroad trains, airplanes,
36 limousines and boats, while in transit. The fee for this license for
37 use by a railroad or air transport company shall be \$375, for use by
38 the owners of limousines shall be \$31 per vehicle, and for use on a
39 boat shall be \$63 on a boat 65 feet or less in length, \$125 on a boat
40 more than 65 feet in length but not more than 110 feet in length,
41 and \$375 on a boat more than 110 feet in length; such boat lengths
42 shall be determined in the manner prescribed by the Bureau of
43 Customs of the United States Government or any federal agency
44 successor thereto for boat measurement in connection with issuance
45 of marine documents. A license issued under this provision to a
46 railroad or air transport company shall cover all railroad cars and
47 planes operated by any such company within the State of New
48 Jersey. A license for a boat or limousine issued under this

1 provision shall apply only to the particular boat or limousine for
2 which issued, and shall permit the purchase of alcoholic beverages
3 for sale or service in a boat or limousine to be made from any Class
4 A and B licensee or from any Class C licensee whose license
5 privilege permits the sale of alcoholic beverages in original
6 containers for off-premises consumption. An interest in a plenary
7 retail transit license issued in accordance with this section shall be
8 excluded in determining the maximum number of retail licenses
9 permitted under P.L.1962, c.152 (C.33:1-12.31 et seq.).

10 Club license. 5. The holder of this license shall be entitled,
11 subject to rules and regulations, to sell any alcoholic beverages but
12 only for immediate consumption on the licensed premises and only
13 to bona fide club members and their guests. The fee for this license
14 shall be fixed by the governing board or body of the municipality in
15 which the licensed premises are situated, by ordinance, at not less
16 than \$63 and not more than \$188. The governing board or body of
17 each municipality may, by ordinance, enact that no club licenses
18 shall be granted within its respective municipality. Club licenses
19 may be issued only to such corporations, associations and
20 organizations as are operated for benevolent, charitable, fraternal,
21 social, religious, recreational, athletic, or similar purposes, and not
22 for private gain, and which comply with all conditions which may
23 be imposed by the Director of the Division of Alcoholic Beverage
24 Control by rules and regulations.

25 Restricted restaurant license (R1). 6. The holder of this license
26 shall be entitled, subject to rules and regulations, to sell any
27 alcoholic beverages for consumption by the glass or other open
28 receptacle in or upon the premises of a restaurant with a minimum
29 square footage of 1,500 and a maximum square footage of 6,000
30 and maintains a full-service kitchen with a minimum square footage
31 of 500 regularly and principally used for the purpose of providing
32 food to customers. The full-service kitchen shall be adequately
33 equipped for the preparation and serving of food and shall have, at
34 minimum, a dishwasher, range, sink, oven, refrigerator, and
35 countertop. A licensed premises under the provisions of this
36 paragraph shall encompass not more than one physical address.
37 Alcoholic beverages only shall be sold in connection with the
38 service of food and served at a table by an employee of the
39 restaurant. The sale of alcoholic beverages shall begin at 12 p.m. or
40 one hour prior to the service of food, whichever time is later in the
41 day, and may continue until 10 p.m. on Sunday through Thursday,
42 and until 11 p.m. on Friday and Saturday.

43 The holder of this license shall not provide a bar area for
44 customers of the restaurant to congregate and consume alcoholic
45 beverages but may provide a service bar at which alcoholic
46 beverages are prepared for service to customers at a table. An
47 employee of the restaurant may be stationed at the service bar to
48 prepare drinks for customers, but shall only transfer alcoholic

1 beverages to wait staff employed by the restaurant to be delivered
2 to restaurant patrons who are seated or are waiting to be seated at a
3 table; an employee preparing drinks at the service bar shall be
4 prohibited from directly transferring alcoholic beverages to
5 restaurant patrons. The restaurant operated by the licensee shall
6 offer to customers a standard printed menu or menu board system or
7 similar signage featuring a list of meals with separate prices listed
8 adjacent to each meal, or for parties of 10 restaurant patrons or
9 greater, the restaurant may offer a full course menu with a limited
10 number of meal choices for a fixed price.

11 The holder of this license may not sell or transfer the license.
12 The governing board or body of the municipality shall not limit the
13 number of restricted restaurant licenses issued within the
14 municipality, and the restriction in section 2 of P.L.1947, c.94
15 (C.33:1-12.14) concerning the number of retail consumption
16 licenses that may be issued in a municipality shall not be applicable
17 to the license issued under this paragraph. A municipality that
18 prohibits the sale of alcoholic beverages within its borders may
19 establish by ordinance or resolution that a restricted restaurant
20 license may be issued in the municipality.

21 The initial fee and annual renewal fee for this license shall be
22 \$3,000 for a restaurant with a square footage of 1,500 to 3,000, and
23 \$10,000 for a restaurant with a square footage of 3,001 to 6,000.
24 The initial fee and annual renewal fee for this license shall be
25 distributed in the following manner:

26 (1) \$2,500 shall be paid to the municipality wherein the
27 restaurant is located and if the restaurant is located within the
28 boundaries of two or more municipalities, the fee shall be divided
29 equally among those municipalities;

30 (2) The remainder of the fee shall be paid to the Director of the
31 Division of Taxation to be used solely for the purposes of offsetting
32 the costs associated with issuing tax credits pursuant to section 6 of
33 P.L. , c. (C.)(pending before the Legislature as this bill)
34 and section 7 of P.L. , c. (C.)(pending before the
35 Legislature as this bill). After the Division of Taxation is
36 reimbursed for costs associated with issuing tax credits pursuant to
37 section 6 of P.L. , c. (C.)(pending before the Legislature as
38 this bill) and section 7 of P.L. , c. (C.)(pending before the
39 Legislature as this bill), the full fee shall be paid to the municipality
40 in the same manner as provided under paragraph (1) of this
41 subsection.

42 In addition, the holder of a restricted restaurant license shall pay
43 upon renewal of the license any applicable renewal fees which are
44 otherwise required to be paid to the Director of the Division of
45 Alcoholic Beverage Control by the holder of a plenary retail
46 consumption license.

47 Restricted beer and wine license (R2). 7. The holder of this
48 license shall be entitled, subject to rules and regulations, to sell any

1 beer or wine by the can, bottle or other sealed receptacle used for
2 holding alcoholic beverages for consumption in or upon the premises
3 of a restaurant with a minimum square footage of 1,500 and a
4 maximum square footage of 6,000 and maintains a full-service
5 kitchen with a minimum square footage of 500 regularly and
6 principally used for the purpose of providing food to customers.
7 The full-service kitchen shall be adequately equipped for the
8 preparation and serving of food and shall have, at a minimum, a
9 dishwasher, range, sink, oven, refrigerator, and countertop. A
10 licensed premises under the provisions of this paragraph shall
11 encompass not more than one physical address.

12 The holder of this license shall not provide a bar area for
13 customers of the restaurant to congregate and consume alcoholic
14 beverages. In addition, the holder of this license shall not provide
15 a service bar. Alcoholic beverages only may be sold in connection
16 with the service of food and served at a table by an employee of the
17 restaurant. The sale of beer and wine shall begin at 12 p.m. or one
18 hour prior to the service of food, whichever time is later in the day,
19 and may continue until 10 p.m. on Sunday through Thursday, and
20 until 11 p.m. on Friday and Saturday. The restaurant operated by
21 the licensee shall offer to customers a standard printed menu or
22 menu board system or similar signage featuring a list of meals with
23 separate prices listed adjacent to each meal, or for parties of 10
24 restaurant patrons or greater, the licensee may offer a full course
25 menu with a limited number of meal choices for a fixed price.

26 The holder of this license may not sell or transfer the license.
27 The governing board or body of the municipality shall not limit the
28 number of restricted beer and wine licenses issued within the
29 municipality, and the restriction in section 2 of P.L.1947, c.94
30 (C.33:1-12.14) concerning the number of retail consumption
31 licenses that may be issued in a municipality shall not be applicable
32 to the license issued under this paragraph. A municipality that
33 prohibits the sale of alcoholic beverages within its borders may
34 establish by ordinance or resolution that a restricted beer and wine
35 license may be issued in the municipality.

36 The initial fee and annual renewal fee for this license shall be
37 \$1,500 for a restaurant with a square footage of 1,500 to 3,000 and
38 \$5,000 for a restaurant with a square footage of 3,001 to 6,000. The
39 initial fee and annual renewal fee for this license shall be distributed
40 in the following manner:

41 (1) \$1,250 shall be paid to the municipality wherein the
42 restaurant is located, and if the restaurant is located within the
43 boundaries of two or more municipalities, the fee shall be divided
44 equally among those municipalities;

45 (2) The remainder of the fee shall be paid to the Director of the
46 Division of Taxation to be used solely for the purposes of offsetting
47 the costs associated with issuing tax credits pursuant to section 6 of
48 P.L. , c. (C.)(pending before the Legislature as this bill)

1 and section 7 of P.L. , c. (C.)(pending before the
2 Legislature as this bill). After the Division of Taxation is
3 reimbursed for costs associated with issuing tax credits pursuant to
4 section 6 of P.L. , c. (C.)(pending before the Legislature as
5 this bill) and section 7 of P.L. , c. (C.)(pending before the
6 Legislature as this bill), the full fee shall be paid to the municipality
7 in the same manner as provided under paragraph (1) of this
8 subsection.

9 In addition, the holder of a restricted restaurant license shall pay
10 upon renewal of the license any applicable renewal fees which are
11 otherwise required to be paid to the Director of the Division of
12 Alcoholic Beverage Control by the holder of a plenary retail
13 consumption license.

14 The provisions of section 23 of P.L.2003, c.117 amendatory of
15 this section shall apply to licenses issued or transferred on or after
16 July 1, 2003, and to license renewals commencing on or after July
17 1, 2003.

18 Sporting facility license. 6. The holder of this license shall be
19 entitled, subject to rules and regulations, to sell at retail or to serve
20 any alcoholic beverages as the owner, operator, lessee, or
21 concessionaire of a sporting facility by the glass or other receptacle
22 or in original containers only on the premises of the sporting
23 facility.

24 Notwithstanding any other provision of Title 33 of the Revised
25 Statutes and subject to conditions established by the director, the
26 holder of this license may share direction and control of the
27 premises to be licensed and share proceeds and profits from the sale
28 of alcoholic beverages with the owner, operator, concessionaire, or
29 lessee of the facility. The holder of this license shall be permitted
30 to conduct consumer wine, beer, and spirits tasting events and
31 samplings for a fee or on a complimentary basis provided, however,
32 the license holder complies with the provisions of section 3 of
33 P.L.2009, c.216 (C.33:1-12d) and rules and regulations promulgated
34 thereto. Notwithstanding any law, rule or regulation to the
35 contrary, the holder of this license shall be entitled to establish an
36 all-inclusive area within the licensed sporting facility, provided the
37 all-inclusive area is limited to one area within the sporting facility
38 for each game or event and the capacity of the all-inclusive area
39 does not exceed 500 persons.

40 The fee for this license shall be \$2,500 for venues with a
41 capacity of less than 7,500 persons; \$5,000 for venues with a
42 capacity of not less than 7,500 persons but not more than 14,999
43 persons; \$7,500 for venues with a capacity of not less than 15,000
44 persons but not more than 22,499 persons; and \$10,000 for venues
45 with a capacity of 22,500 persons or more.

46 For the purposes of this subsection:

47 "Sporting facility" means a stadium, arena, team training facility,
48 or similar venue located on public property where alcoholic

1 beverages are served or sold at retail for consumption on the
2 premises by the glass or other open receptacle or in original
3 containers.

4 "Team training facility" shall include team offices and team
5 headquarters.

6 (cf: P.L.2015, c.86, s.1)
7

8 3. Section 2 of P.L.1947, c.94 (C.33:1-12.14) is amended to
9 read as follows:

10 2. a. Except as otherwise provided in this **[act]** title, no new
11 plenary retail consumption or seasonal retail consumption license
12 shall be issued in a municipality unless and until the combined total
13 number of such licenses existing in the municipality is fewer than
14 one for each 3,000 of its population according to the most recent
15 estimates issued by the U.S. Bureau of the Census; provided,
16 however, in the year that the official federal decennial counts are
17 received by the Governor, those federal decennial counts shall be
18 used. No new plenary retail distribution license shall be issued in a
19 municipality unless and until the number of such licenses existing
20 in the municipality is fewer than one for each 7,500 of its
21 population according to the most recent estimates issued by the U.S.
22 Bureau of the Census; provided, however, in the year that the
23 official federal decennial counts are received by the Governor,
24 those federal decennial counts shall be used.

25 b. (1) A municipality which has adopted a master plan pursuant
26 to the provisions of section 19 of P.L.1975, c.291 (C.40:55D-28)
27 may issue a plenary retail consumption license based upon the
28 population projections for that municipality contained in the master
29 plan and the schedule set forth in this subsection.

30 (2) A municipality may issue additional plenary retail
31 consumption licenses based upon the peak population projection in
32 the master plan. If the projected peak population supports the
33 issuance of one or more additional plenary retail consumption
34 licenses, the municipality may issue one additional license. The
35 municipality may issue another plenary retail consumption license
36 whenever there is an increase of 3,000 or more in the population of
37 the municipality, according to the most recent estimates issued by
38 the U.S. Bureau of the Census or the official federal decennial
39 counts in the years those counts are issued, until the maximum
40 number of licenses supported by the projected peak population have
41 been issued.

42 (cf: PL.1999, c.189, s.1)
43

44 4. (New section) a. The holder of a restricted restaurant
45 license or restricted beer and wine license who violates subsections
46 a. through j. of R.S.33:1-31:

47 (1) for a first offense, shall be subject to a mandatory license
48 suspension in an amount of time determined by the director and be

1 liable for a civil penalty of \$5,000 which shall be imposed on a
2 restricted restaurant licensee, and \$2,500 which shall be imposed on
3 a restricted beer and wine license licensee.

4 (2) for a second offense, shall be subject to a permanent
5 revocation of the restricted restaurant license or restricted beer and
6 wine license and be liable for a civil penalty of three times the fair
7 market value of a plenary retail consumption license. The fair
8 market value shall be based upon the average sales price of plenary
9 retail consumption licenses in the municipality in which the
10 licensed premises is located during the five years immediately
11 preceding the effective date of P.L. , c. (pending before the
12 Legislature as this bill). If the licensed premises is located within
13 the boundaries of two or more municipalities, the highest average
14 sale price of the two or more municipalities shall be used. If less
15 than three plenary retail consumption licenses have been sold in the
16 municipality or municipalities, as the case may be, within the
17 previous five years, the municipality or municipalities shall obtain
18 an appraisal, at the applicant's expense, to determine the
19 appropriate fair market value of the license. The appraisal process
20 shall include an examination of previous transactions in the
21 municipality or municipalities, as the case may be, and shall reflect
22 what a willing buyer, under no pressure to buy, would pay a willing
23 seller, under no pressure to sell, for a plenary retail consumption
24 license in that municipality or municipalities.

25 b. The fines imposed pursuant to this section shall be collected
26 by the director and forwarded to the State Treasurer in accordance
27 with subsection b. of section 14 of P.L.1992, c.188 (C.33:1-4.1).

28
29 5. Section 14 of P.L.1992, c.188 (C.33:1-4.1) is amended to
30 read as follows:

31 14. a. All fees and penalties collected by the Director of the
32 Division of Alcoholic Beverage Control pursuant to the provisions
33 of Title 33 of the Revised Statutes shall be forwarded to the State
34 Treasurer for deposit in a special nonlapsing fund. Monies in the
35 fund shall be used exclusively for the operation of the Alcoholic
36 Beverage Control Enforcement Bureau in the Division of State
37 Police and the Division of Alcoholic Beverage Control and for
38 reimbursement of all additional costs of enforcement of the
39 provisions of Title 33 incurred by the Department of Law and
40 Public Safety.

41 b. Notwithstanding the provisions of subsection a. of this
42 section, the fines imposed pursuant to section 4 of P.L. ,
43 c. (C.)(pending before the Legislature as this bill) shall be
44 collected by the director and forwarded to the State Treasurer to be
45 used for the purposes of offsetting the costs associated with issuing
46 tax credits pursuant to section 6 of P.L. , c. (C.)(pending
47 before the Legislature as this bill) and section 7 of P.L. ,
48 c. (C.)(pending before the Legislature as this bill). After the

Division of Taxation is reimbursed for up to 75 percent of the projected estimated cost associated with issuing tax credits pursuant to section 6 of P.L. , c. (C.)(pending before the Legislature as this bill) and section 7 of P.L. , c. (C.)(pending before the Legislature as this bill), the fines shall be used exclusively for the operation of the Alcoholic Beverage Control Enforcement Bureau in accordance with subsection a. of this section.

(cf: P.L.1992, c.188, s.14)

6. (New section) a. A taxpayer that is certified as a qualified holder of a plenary retail consumption license shall be allowed a credit against the corporation business tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the credit shall be equal to 100 percent of the fair market value of the taxpayer's license prior to the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill), and shall be taken over a five-year period, in five annual installments, at the rate of one-fifth the total amount of the taxpayer's credit for each privilege period of the taxpayer, beginning with the privilege period in which the taxpayer is certified as a qualified holder of a plenary retail consumption license by the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety in accordance with subsection b. of this section.

b. (1) To be certified as a qualified holder of a plenary retail consumption license, a taxpayer shall make and file an application for certification with the Director of the Division of Alcoholic Beverage Control within 360 days of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). The application shall be made on forms furnished by the Director of the Division of Alcoholic Beverage Control, and shall require the taxpayer to demonstrate: the location of the premises operated in connection with the license; the number of years the taxpayer has held the license; the original amount paid by the taxpayer for the privilege of holding the license; and the purpose to which the license has been used by the taxpayer.

(2) The Director of the Division of Alcoholic Beverage Control shall review each application made and filed in accordance with paragraph (1) of this subsection and make a determination regarding the issuance of a certification within 180 days of the date a complete application is filed. The determination shall be made based upon the Director of the Division of Alcoholic Beverage Control's finding that: the taxpayer acquired the license prior to the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill); the taxpayer held the license in an active status prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill); and the license is used directly by the taxpayer to sell alcoholic beverages for consumption on a licensed premises in accordance with the provisions of R.S.33:1-12.

1 (3) The Director of the Division of Alcoholic Beverage Control
2 shall, at the time a determination regarding the issuance of a
3 certification is made, establish the fair market value of the
4 taxpayer's license prior to the date of enactment of P.L. , ,
5 c. (C.) (pending before the Legislature as this bill). To assist
6 in establishing the fair market value of a license, the Director of the
7 Division of Alcoholic Beverage Control may appoint an advisory
8 committee composed of representatives with knowledge and
9 experience in the appraisal of alcoholic beverage licenses in this
10 State. The fair market value of the license shall be based upon the
11 average sales price of plenary retail consumption licenses in the
12 municipality in which the licensed premises is located during the
13 five years immediately preceding the date of enactment of P.L. , ,
14 c. (C.) (pending before the Legislature as this bill). If the
15 licensed premises is located within the boundaries of two or more
16 municipalities, the fair market value shall be based on the average
17 sale price of plenary retail consumption licenses issued in the
18 municipality in which the structure of licensed premises is primarily
19 situated. If less than three plenary retail consumption licenses have
20 been sold in the municipality or municipalities, as the case may be,
21 within the previous five years, the taxpayer shall obtain an
22 appraisal, at the taxpayer's expense, to determine the appropriate
23 fair market value of the license. The appraisal process shall include
24 an examination of previous transactions in the municipality or
25 municipalities, as the case may be, and shall reflect what a willing
26 buyer, under no pressure to buy, would pay a willing seller, under
27 no pressure to sell, for a plenary retail consumption license in that
28 municipality or municipalities, as the case may be.

29 If a single plenary retail consumption license is used in
30 connection with the operation of multiple restaurants or other
31 establishments located on the same licensed premises, the fair
32 market value established under this paragraph shall be divided by
33 the number of restaurants or establishments operating in connection
34 with that plenary retail consumption license.

35 (4) The Director of the Division of Alcoholic Beverage Control
36 shall issue a written certification to each taxpayer that has made and
37 filed an application that has been reviewed and approved in
38 accordance with paragraph (2) of this subsection within 10 days of
39 the date the determination is made. The written certification shall
40 include a detailed explanation of the fair market value of the
41 taxpayer's license established in accordance with paragraph (3) of
42 this subsection. Each taxpayer issued a certification shall include a
43 copy of the written certification, along with the detailed explanation
44 of the fair market value of the taxpayer's license, when filing a
45 return that includes a claim for the credit allowed in accordance
46 with this section.

47 (5) The Director of the Division of Alcoholic Beverage Control
48 shall provide a copy of each written certification issued in

1 accordance with paragraph (4) of this subsection to the Director of
2 the Division of Taxation in the Department of the Treasury within
3 10 days of the date the certification is issued, and shall prepare a
4 report regarding the administration of the certification process
5 established in accordance with this subsection. The report shall
6 specify: the number of applications made and filed; the number of
7 certifications issued; and the fair market value of each license for
8 which a certification is issued. The report shall be submitted to the
9 Governor, the State Treasurer, and the Legislature, in accordance
10 with section 2 of P.L.1991, c.164 (C.52:14-19.1), within 450 days
11 of the effective date of P.L. , c. (C.) (pending before the
12 Legislature as this bill).

13 c. The order of priority of the application of an annual
14 installment of the credit allowed pursuant to this section and any
15 other credit allowed against the corporation business tax for a
16 privilege period shall be as prescribed by the Director of the
17 Division of Taxation in the Department of the Treasury. The
18 amount of an annual installment of the credit applied under this
19 section against the corporation business tax for a privilege period,
20 together with any other annual installment and any other credits
21 allowed against the corporation business tax, shall not reduce the
22 tax liability of the taxpayer to an amount less than the statutory
23 minimum provided in subsection (e) of section 5 of P.L.1945, c.162
24 (C.54:10A-5). No amount of *the* fair market value of the taxpayer's
25 license that is used as the basis of the credit allowed pursuant to this
26 section shall be allowed as an amount used to calculate a loss or
27 expense of the taxpayer or otherwise reduce or offset that
28 taxpayer's liability for tax pursuant to any other exclusion,
29 deduction, or credit allowed under the corporation business tax. The
30 amount of an annual installment of the credit allowable under this
31 section which cannot be applied for a privilege period due to the
32 limitations of this subsection may be carried forward, if necessary,
33 to the earliest available use within the 20 privilege periods
34 immediately following the privilege period for which the credit is
35 allowed.

36 d. A taxpayer may, upon issuance of a certification as a
37 qualified holder of a plenary retail consumption license by the
38 Director of the Division of Alcoholic Beverage Control in
39 accordance with subsection b. of this section, make and file an
40 application to the Director of the Division of Taxation for a tax
41 credit transfer certificate in lieu of the taxpayer being allowed an
42 annual installment of the credit or any amount of an annual
43 installment of the credit that may be taken against the corporation
44 business tax liability of the taxpayer. The Director of the Division
45 of Taxation may prescribe the form and manner by which a
46 taxpayer may make and file a separate application in connection
47 with each annual installment of the credit or any amount of each
48 annual installment of the credit, and may consult with the Director

1 of the Division of Alcoholic Beverage Control in reviewing and
2 approving any application for a tax credit transfer certificate of a
3 taxpayer. The tax credit transfer certificate, upon issuance thereof
4 by the Director of the Division of Taxation, may be sold or
5 assigned, in whole or in part, to any other taxpayer that may have a
6 corporation business tax or a gross income tax liability, in exchange
7 for private financial assistance to be provided by the purchaser or
8 assignee to the taxpayer that is allowed a credit under this section.
9 The certificate issued to the taxpayer shall include a statement
10 waiving the taxpayer's right to claim that amount of the annual
11 installment of the credit against the corporation business tax that the
12 taxpayer has elected to sell or assign. The sale or assignment of any
13 amount of a tax credit transfer certificate allowed under this
14 subsection shall not be exchanged for consideration received by the
15 taxpayer of less than 75 percent of the transferred credit amount.
16 Any amount of a tax credit transfer certificate used by a purchaser
17 or assignee against a corporation business tax liability shall be
18 subject to the same limitations and conditions that apply to the use
19 of a credit pursuant to subsection c. of this section. Any amount of a
20 tax credit transfer certificate obtained by a purchaser or assignee
21 under this section may be applied against the purchaser's or
22 assignee's gross income tax liability and shall be subject to the same
23 limitations and conditions that apply to the use of a credit pursuant
24 to subsection c. of section 7 of P.L. , c. (C.) (pending
25 before the Legislature as this bill).

26 e. (1) If, in the five-year period beginning with the privilege
27 period in which the taxpayer is certified as a qualified holder of a
28 plenary retail consumption license, the taxpayer sells or transfers
29 any part of the taxpayer's interest in the license to another person,
30 the taxpayer shall forfeit that portion of the taxpayer's credit that is
31 equal to the amount of consideration received by the taxpayer from
32 the sale or transfer of the license. The forfeited portion shall first
33 reduce the balance of any annual installment of a credit of the
34 taxpayer that is allowed but that has not been applied against the tax
35 liability of the taxpayer, or converted into a tax credit transfer
36 certificate and sold or assigned to another taxpayer in accordance
37 with subsection d. of this section, during the privilege period in
38 which the sale or transfer of the license occurs, and then shall
39 reduce the balance of any future annual installment of a credit of a
40 taxpayer that is allowed but that has not been applied, or converted
41 and sold or assigned to another taxpayer, beginning with future
42 annual installments allowed during the privilege period immediately
43 following the privilege period in which the sale or transfer occurs.
44 If, after being used to reduce future annual installments, the
45 forfeited portion exceeds the amount of any allowable credit
46 remaining, the taxpayer shall repay the amount of that excess to the
47 Director of the Division of Taxation; provided however, that if the
48 taxpayer converted an annual installment of the credit or any

1 amount of an annual installment of the credit into a tax credit
2 transfer certificate in accordance with subsection d. of this section,
3 the amount of the excess required to be repaid to the Director of the
4 Division of Taxation shall be reduced, if necessary, in proportion to
5 the amount of consideration received by the taxpayer from the sale
6 or assignment of the tax credit transfer certificate.

7 (2) If, in the 15-year period beginning with the fifth privilege
8 period immediately following the privilege period in which the
9 taxpayer is certified as a qualified holder of a plenary retail
10 consumption license, the taxpayer sells or transfers any part of the
11 taxpayer's interest in the license to another person, the taxpayer
12 shall forfeit that portion of the taxpayer's credit that is equal to the
13 amount of consideration received by the taxpayer from the sale or
14 transfer of the license. The forfeited portion shall first reduce the
15 balance of any tax credit carryforward from a prior privilege period
16 that is allowed but that has not been applied against the tax liability
17 of the taxpayer during the privilege period in which the sale or
18 transfer of the license occurs, and then shall reduce the balance of
19 any tax credit carryforward from a prior privilege period that
20 otherwise would have been applied against future tax liabilities of
21 the taxpayer. If, after being used to reduce carryforwards from prior
22 privilege periods, the forfeited portion exceeds the amount of any
23 allowable credit remaining, the taxpayer shall repay the amount of
24 that excess to the Director of the Division of Taxation subject to the
25 following limitations:

26 (a) if the taxpayer is required to repay the amount of any excess
27 as a result of the sale or transfer of the taxpayer's license occurring
28 in the first five years of the 15-year period, the amount of the
29 excess shall be multiplied by 0.75 to determine the amount of the
30 excess required to be repaid to the Director of the Division of
31 Taxation;

32 (b) if the taxpayer is required to repay the amount of any excess
33 as a result of the sale or transfer of the taxpayer's license occurring
34 in the second five years of the 15-year period, the amount of the
35 excess shall be multiplied by 0.50 to determine the amount of the
36 excess required to be repaid to the Director of the Division of
37 Taxation; and

38 (c) if the taxpayer is required to repay the amount of any excess
39 as a result of the sale or transfer of the taxpayer's license occurring
40 in the third five years of the 15-year period, the amount of the
41 excess shall be multiplied by 0.25 to determine the amount of the
42 excess required to be repaid to the Director of the Division of
43 Taxation.

44 In addition, if the taxpayer converted the credit or any amount of
45 the credit into a tax credit transfer certificate in accordance with
46 subsection d. of this section, the amount of the excess required to be
47 repaid to the Director of the Division of Taxation shall be further
48 reduced, if necessary, in proportion to the amount of consideration

1 received by the taxpayer from the sale or assignment of the tax
2 credit transfer certificate.

3 (3) The amount of excess required to be repaid to the Director of
4 the Division of Taxation pursuant to paragraph (1) or (2) of this
5 subsection shall be a deficiency with respect to the payment of a
6 State tax. The Director of the Division of Taxation shall have all
7 rights, powers and duties authorized under the State Uniform Tax
8 Procedure Law, R.S.54:48-1 et seq., to ensure payment, collection,
9 or recovery of the deficiency, and the taxpayer shall be afforded all
10 protections, rights, and remedies allowed under R.S.54:48-1 et seq.
11 to challenge, protest, or appeal the deficiency or any determination
12 or decision made in connection with the deficiency.

13

14 7. (New section) a. A taxpayer that is certified as a qualified
15 holder of a plenary retail consumption license shall be allowed a
16 credit against the tax imposed pursuant to the "New Jersey Gross
17 Income Tax Act," N.J.S.54A:1-1 et seq. The amount of the credit
18 shall be equal to 100 percent of the fair market value of the
19 taxpayer's license prior to the date of enactment of P.L. ,
20 c. (C.) (pending before the Legislature as this bill), and shall
21 be taken over a five-year period, in five annual installments, at the
22 rate of one-fifth the total amount of the taxpayer's credit for each
23 taxable year of the taxpayer, beginning with the taxable year in
24 which the taxpayer is certified as a qualified holder of a plenary
25 retail consumption license by the Director of the Division of
26 Alcoholic Beverage Control in the Department of Law and Public
27 Safety in accordance with subsection b. of this section.

28 b. (1) To be certified as a qualified holder of a plenary retail
29 consumption license, a taxpayer shall make and file an application
30 for certification with the Director of the Division of Alcoholic
31 Beverage Control within 360 days of the effective date of P.L. ,
32 c. (C.) (pending before the Legislature as this bill). The
33 application shall be made on forms furnished by the Director of the
34 Division of Alcoholic Beverage Control, and shall require the
35 taxpayer to demonstrate: the location of the premises operated in
36 connection with the license; the number of years the taxpayer has
37 held the license; the original amount paid by the taxpayer for the
38 privilege of holding the license; and the purpose to which the
39 license has been used by the taxpayer.

40 (2) The Director of the Division of Alcoholic Beverage Control
41 shall review each application made and filed in accordance with
42 paragraph (1) of this subsection and make a determination regarding
43 the issuance of a certification within 180 days of the date a
44 complete application is filed. The determination shall be made
45 based upon the Director of the Division of Alcoholic Beverage
46 Control's finding that: the taxpayer acquired the license prior to the
47 date of enactment of P.L. , c. (C.) (pending before the
48 Legislature as this bill); the taxpayer held the license in an active

1 status prior to the effective date of P.L. , c. (C.) (pending
2 before the Legislature as this bill); and the license is used directly
3 by the taxpayer to sell alcoholic beverages for consumption on a
4 licensed premises in accordance with the provisions of R.S.33:1-12.

5 (3) The Director of the Division of Alcoholic Beverage Control
6 shall, at the time a determination regarding the issuance of a
7 certification is made, establish the fair market value of the
8 taxpayer's license prior to the date of enactment of P.L. ,
9 c. (C.) (pending before the Legislature as this bill). To assist
10 in establishing the fair market value of a license, the Director of the
11 Division of Alcoholic Beverage Control may appoint an advisory
12 committee composed of representatives with knowledge and
13 experience in the appraisal of alcoholic beverage licenses in this
14 State. The fair market value of the license shall be based upon the
15 average sales price of plenary retail consumption licenses in the
16 municipality in which the licensed premises is located during the
17 five years immediately preceding the date of enactment of P.L. ,
18 c. (C.) (pending before the Legislature as this bill). If the
19 licensed premises is located within the boundaries of two or more
20 municipalities, the fair market value shall be based on the average
21 sale price of plenary retail consumption licenses issued in the
22 municipality in which the structure of licensed premises is primarily
23 situated. If less than three plenary retail consumption licenses have
24 been sold in the municipality or municipalities, as the case may be,
25 within the previous five years, the taxpayer shall obtain an
26 appraisal, at the taxpayer's expense, to determine the appropriate
27 fair market value of the license. The appraisal process shall include
28 an examination of previous transactions in the municipality or
29 municipalities, as the case may be, and shall reflect what a willing
30 buyer, under no pressure to buy, would pay a willing seller, under
31 no pressure to sell, for a plenary retail consumption license in that
32 municipality or municipalities, as the case may be.

33 If a single plenary retail consumption license is used in
34 connection with the operation of multiple restaurants or other
35 establishments located on the same licensed premises, the fair
36 market value established under this paragraph shall be divided by
37 the number of restaurants or establishments operating in connection
38 with that plenary retail consumption license.

39 (4) The Director of the Division of Alcoholic Beverage Control
40 shall issue a written certification to each taxpayer that has made and
41 filed an application that has been reviewed and approved in
42 accordance with paragraph (2) of this subsection within 10 days of
43 the date the determination is made. The written certification shall
44 include a detailed explanation of the fair market value of the
45 taxpayer's license established in accordance with paragraph (3) of
46 this subsection. Each taxpayer issued a certification shall include a
47 copy of the written certification, along with the detailed explanation
48 of the fair market value of the taxpayer's license, when filing a

1 return that includes a claim for the credit allowed in accordance
2 with this section.

3 (5) The Director of the Division of Alcoholic Beverage Control
4 shall provide a copy of each written certification issued in
5 accordance with paragraph (4) of this subsection to the Director of
6 the Division of Taxation in the Department of the Treasury within
7 10 days of the date the certification is issued, and shall prepare a
8 report regarding the administration of the certification process
9 established in accordance with this subsection. The report shall
10 specify: the number of applications made and filed; the number of
11 certifications issued; and the fair market value of each license for
12 which a certification is issued. The report shall be submitted to the
13 Governor, the State Treasurer, and the Legislature, in accordance
14 with section 2 of P.L.1991, c.164 (C.52:14-19.1), within 450 days
15 of the effective date of P.L. , c. (C.) (pending before the
16 Legislature as this bill).

17 c. (1) The order of priority of the application of an annual
18 installment of the credit allowed pursuant to this section and any
19 other credit allowed against the gross income tax for a taxable year
20 shall be as prescribed by the Director of the Division of Taxation in
21 the Department of the Treasury. The amount of an annual
22 installment of the credit applied under this section against the gross
23 income tax for a taxable year, together with any other annual
24 installment and any other credits allowed against the gross income
25 tax, shall not reduce the tax liability of the taxpayer to an amount
26 less than zero. No amount of the fair market value of the taxpayer's
27 license that is used as the basis of the credit allowed pursuant to this
28 section shall be allowed as an amount used to calculate a loss or
29 expense of the taxpayer or otherwise reduce or offset that
30 taxpayer's liability for tax pursuant to any other exclusion,
31 deduction, or credit allowed under the gross income tax. The
32 amount of an annual installment of the credit allowable under this
33 section which cannot be applied for a taxable year due to the
34 limitations of this subsection may be carried forward, if necessary,
35 to the earliest available use within the 20 taxable years immediately
36 following the taxable year for which the credit is allowed.

37 (2) A business entity classified as a partnership for federal
38 income tax purposes shall not be allowed a credit under this section
39 directly, but the amount of credit of a taxpayer in respect of a
40 distributive share of entity income, shall be determined by
41 allocating to the taxpayer that proportion of the credit acquired by
42 the entity that is equal to the taxpayer's share, whether or not
43 distributed, of the total distributive income or gain of the entity for
44 its taxable year ending within or with the taxpayer's taxable year
45 except as otherwise provided by law. A New Jersey S Corporation
46 shall not be allowed a credit under this section directly, but the
47 amount of credit of a taxpayer in respect of a pro rata share of S
48 Corporation income, shall be determined by allocating to the

1 taxpayer that proportion of the credit acquired by the New Jersey S
2 Corporation that is equal to the taxpayer's share, whether or not
3 distributed, of the total pro rata share of S Corporation income of
4 the New Jersey S Corporation for its privilege period ending within
5 or with the taxpayer's taxable year.

6 d. A taxpayer may, upon issuance of a certification as a
7 qualified holder of a plenary retail consumption license by the
8 Director of the Division of Alcoholic Beverage Control in
9 accordance with subsection b. of this section, make and file an
10 application to the Director of the Division of Taxation for a tax
11 credit transfer certificate in lieu of the taxpayer being allowed an
12 annual installment of the credit or any amount of an annual
13 installment of the credit that may be taken against the gross income
14 tax liability of the taxpayer. The Director of the Division of
15 Taxation may prescribe the form and manner by which a taxpayer
16 may make and file a separate application in connection with each
17 annual installment of the credit or any amount of each annual
18 installment of the credit, and may consult with the Director of the
19 Division of Alcoholic Beverage Control in reviewing and approving
20 any application for a tax credit transfer certificate of a
21 taxpayer. The tax credit transfer certificate, upon issuance thereof
22 by the Director of the Division of Taxation, may be sold or
23 assigned, in whole or in part, to any other taxpayer that may have a
24 corporation business tax or a gross income tax liability, in exchange
25 for private financial assistance to be provided by the purchaser or
26 assignee to the taxpayer that is allowed a credit under this section.
27 The certificate issued to the taxpayer shall include a statement
28 waiving the taxpayer's right to claim that amount of the annual
29 installment of the credit against the gross income tax that the
30 taxpayer has elected to sell or assign. The sale or assignment of any
31 amount of a tax credit transfer certificate allowed under this
32 subsection shall not be exchanged for consideration received by the
33 taxpayer of less than 75 percent of the transferred credit amount.
34 Any amount of a tax credit transfer certificate used by a purchaser
35 or assignee against a gross income tax liability shall be subject to
36 the same limitations and conditions that apply to the use of a credit
37 pursuant to subsection c. of this section. Any amount of a tax credit
38 transfer certificate obtained by a purchaser or assignee under this
39 section may be applied against the purchaser's or assignee's
40 corporation business tax liability and shall be subject to the same
41 limitations and conditions that apply to the use of a credit pursuant
42 to subsection c. of section 6 of P.L. , c. (C.) (pending
43 before the Legislature as this bill).

44 e. (1) If, in the five-year period beginning with the taxable year
45 in which the taxpayer is certified as a qualified holder of a plenary
46 retail consumption license, the taxpayer sells or transfers any part of
47 the taxpayer's interest in the license to another person, the taxpayer
48 shall forfeit that portion of the taxpayer's credit that is equal to the

1 amount of consideration received by the taxpayer from the sale or
2 transfer of the license. The forfeited portion shall first reduce the
3 balance of any annual installment of a credit of the taxpayer that is
4 allowed but that has not been applied against the tax liability of the
5 taxpayer, or converted into a tax credit transfer certificate and sold
6 or assigned to another taxpayer in accordance with subsection d. of
7 this section, during the taxable year in which the sale or transfer of
8 the license occurs, and then shall reduce the balance of any future
9 annual installment of a credit of a taxpayer that is allowed but that
10 has not been applied, or converted and sold or assigned to another
11 taxpayer, beginning with future annual installments allowed during
12 the taxable year immediately following the taxable year in which
13 the sale or transfer occurs. If, after being used to reduce future
14 annual installments, the forfeited portion exceeds the amount of any
15 allowable credit remaining, the taxpayer shall repay the amount of
16 that excess to the Director of the Division of Taxation; provided
17 however, that if the taxpayer converted an annual installment of the
18 credit or any amount of an annual installment of the credit into a tax
19 credit transfer certificate in accordance with subsection d. of this
20 section, the amount of the excess required to be repaid to the
21 director shall be reduced, if necessary, in proportion to the amount
22 of consideration received by the taxpayer from the sale or
23 assignment of the tax credit transfer certificate.

24 (2) If, in the 15-year period beginning with the fifth taxable year
25 immediately following the taxable year in which the taxpayer is
26 certified as a qualified holder of a plenary retail consumption
27 license, the taxpayer sells or transfers any part of the taxpayer's
28 interest in the license to another person, the taxpayer shall forfeit
29 that portion of the taxpayer's credit that is equal to the amount of
30 consideration received by the taxpayer from the sale or transfer of
31 the license. The forfeited portion shall first reduce the balance of
32 any tax credit carryforward from a prior taxable year that is allowed
33 but that has not been applied against the tax liability of the taxpayer
34 during the taxable year in which the sale or transfer of the license
35 occurs, and then shall reduce the balance of any tax credit
36 carryforward from a prior taxable year that otherwise would have
37 been applied against future tax liabilities of the taxpayer. If, after
38 being used to reduce carryforwards from prior taxable years, the
39 forfeited portion exceeds the amount of any allowable credit
40 remaining, the taxpayer shall repay the amount of that excess to the
41 Director of the Division of Taxation subject to the following
42 limitations:

43 (a) if the taxpayer is required to repay the amount of any excess
44 as a result of the sale or transfer of the taxpayer's license occurring
45 in the first five years of the 15-year period, the amount of the
46 excess shall be multiplied by 0.75 to determine the amount of the
47 excess required to be repaid to the Director of the Division of
48 Taxation;

(b) if the taxpayer is required to repay the amount of any excess as a result of the sale or transfer of the taxpayer's license occurring in the second five years of the 15-year period, the amount of the excess shall be multiplied by 0.50 to determine the amount of the excess required to be repaid to the Director of the Division of Taxation; and

(c) if the taxpayer is required to repay the amount of any excess as a result of the sale or transfer of the taxpayer's license occurring in the third five years of the 15-year period, the amount of the excess shall be multiplied by 0.25 to determine the amount of the excess required to be repaid to the Director of the Division of Taxation.

In addition, if the taxpayer converted the credit or any amount of the credit into a tax credit transfer certificate in accordance with subsection d. of this section, the amount of the excess required to be repaid to the Director of the Division of Taxation shall be further reduced, if necessary, in proportion to the amount of consideration received by the taxpayer from the sale or assignment of the tax credit transfer certificate.

(3) The amount of excess required to be repaid to the Director of the Division of Taxation pursuant to paragraph (1) or (2) of this subsection shall be a deficiency with respect to the payment of a State tax. The Director of the Division of Taxation shall have all rights, powers and duties authorized under the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., to ensure payment, collection, or recovery of the deficiency, and the taxpayer shall be afforded all protections, rights, and remedies allowed under R.S.54:48-1 et seq. to challenge, protest, or appeal the deficiency or any determination or decision made in connection with the deficiency.

8. This act shall take effect on the first day of the nineteenth month following enactment.

STATEMENT

This bill creates a restricted restaurant license (R1) which permits the holder to sell any alcoholic beverages for consumption on the premises of certain restaurants. In addition, the bill creates a restricted beer and wine license (R2) which permits the holder to sell only beer and wine by the bottle or can. These licenses would only be available for use in connection with restaurants that occupy a minimum square footage of 1,500 and a maximum square footage of 6,000 and maintain a full-service kitchen with a minimum square footage of 500. The governing board or body of a municipality may issue an unlimited number of these licenses within the municipality.

Under the provisions of the bill, alcoholic beverages only may be sold in connection with the service of food at a table by an

1 employee of the restaurant, and may begin at 12 p.m. or one hour
2 prior to the service of food, whichever is later in time, and continue
3 until 10 p.m. on Sunday through Thursday, and until 11 p.m. on
4 Friday and Saturday.

5 A license holder is prohibited from providing a bar area for
6 customers of the restaurant to congregate and consume alcoholic
7 beverages. However, the holder of a restricted restaurant license
8 (R1) may provide a service bar at which alcoholic beverages are
9 prepared for customers at a table. An employee of the restaurant
10 may be stationed at the service bar to prepare drinks for customers,
11 but may only transfer alcoholic beverages to the wait staff at the
12 restaurant. The bill prohibits the employee stationed at the service
13 bar from serving drinks directly to restaurant patrons. The holder of
14 a restricted beer and wine license (R2) is prohibited from having a
15 service bar.

16 The license holder is required to offer a standard printed menu or
17 menu board system or similar signage featuring a list of meals with
18 separate prices listed adjacent to each meal. For parties of 10
19 restaurant patrons or greater, the bill allows a licensee to offer a full
20 course menu with a limited number of meal choices for a fixed
21 price.

22 The licensed premises of the restaurant would be limited to only
23 one physical address. A municipality that prohibits the sale of
24 alcoholic beverages within its borders may establish by ordinance
25 or resolution that a restricted restaurant license may be issued in
26 that municipality.

27 The bill establishes a fee schedule for the initial issuance and
28 annual renewal fee for the restricted restaurant license and restricted
29 beer and wine license based on the square footage of the restaurant.
30 The initial fee and annual renewal fee for this for the restricted
31 restaurant license is \$3,000 for a restaurant with a square footage of
32 1,500 to 3,000, and \$10,000 for a restaurant with a square footage
33 of 3,001 to 6,000. The fees imposed for the restricted beer and wine
34 license are half the amount imposed for the restricted restaurant
35 license, and are set at \$1,500 for a restaurant with a square footage
36 of 1,500 to 3,000 and \$5,000 for a restaurant with a square footage
37 of 3,001 to 6,000.

38 The initial fee and renewal fee are to be paid in the following
39 manner: \$2,500 of the fee for the restricted restaurant license and
40 \$1250 for the fee for the restricted beer and wine license is to be paid
41 to the municipality where the restaurant is located and if the restaurant
42 is located within the boundaries of two or more municipalities, the fee
43 is to be divided equally among those municipalities; the remainder of
44 the fee is to be paid to the to the Director Division of Taxation to be
45 used solely for the purposes of offsetting the costs associated with
46 issuing tax credits provided under the bill. After the Division of
47 Taxation is reimbursed for costs associated with issuing tax credits,
48 the full fee is to be paid to the municipality. In addition, the bill

1 requires licensees to pay to the Director of the Division of
2 Alcoholic Beverage Control any applicable renewal fees that the
3 holder of a plenary retail consumption license is required to pay
4 under current law.

5 The bill imposes certain penalties on the holders of the restricted
6 restaurant license or restricted beer and wine license who violate the
7 law. For a first offense, a restricted restaurant licensee is required
8 to pay a civil penalty of \$5,000 and a restricted beer and wine
9 licensee is required to pay \$2,500. Both licensees are subject to a
10 mandatory license suspension for a period of time determined by
11 the ABC director for a first time offense. For a second offense,
12 both licensees are subject to a permanent license revocation and are
13 required to pay a fine that is equal to three times the amount of the
14 fair market value of a plenary retail consumption license in that
15 municipality. Any fine money collected is to be paid to the Director
16 of the Division of Taxation to be used solely for the purposes of
17 offsetting the costs associated with issuing tax credits provided
18 under the bill. After the Division of Taxation is reimbursed for up
19 to 75 percent of the projected estimated cost associated with issuing
20 tax credits, the full fee is to be paid to the municipality.

21 This bill further provides for the issuance of additional plenary
22 retail consumption licenses by municipalities that have adopted a
23 master plan pursuant to the provisions of section 19 of P.L.1975,
24 c.291 (C.40:55D-28). These municipalities may issue the additional
25 plenary retail consumption licenses based upon the population
26 projections for that municipality contained in the master plan and
27 the schedule set forth under the bill. The schedule relies upon the
28 population projection in the master plan. If the projected peak
29 population supports the issuance of one or more additional plenary
30 retail consumption licenses, the municipality immediately may issue
31 one additional license. The municipality may issue another plenary
32 retail consumption license whenever an additional 3,000 or more
33 persons are added to the municipality's population, until the
34 maximum number of licenses supported by the projected peak
35 population in the master plan has been issued.

36 This bill also provides a tax credit against the corporation
37 business tax and gross income tax to compensate license holders for
38 the expected loss in value resulting from the creation of the new
39 restricted licenses. Under the bill, the tax credit is equal to 100
40 percent of the fair market value of taxpayer's plenary retail
41 consumption license prior to the date of enactment of the bill. The
42 bill reduces the fair market value of licenses used in connection
43 with multiple restaurants or other establishments that are located on
44 the same licensed premises. In cases where a single license is used
45 in connection with multiple restaurants or establishments, the fair
46 market value is divided by the number of restaurants or
47 establishments operating in connection with the license. The tax
48 credit is required to be taken over a five-year period, in five annual

1 installments, at the rate of one-fifth the total amount of the
2 taxpayer's allowable credit.

3 In order to claim the credit, a license holder is required to make
4 and file an application with the Director of the Division of
5 Alcoholic Beverage Control (ABC), who is responsible for
6 certifying eligible licensees as qualified holders of a plenary retail
7 consumption license based on certain factors related to the licensee,
8 and the status of the license held by the licensee. In addition, the
9 Director of the Division of A.B.C. is responsible for determining
10 the fair market value of each license. To assist in determining fair
11 market value, the bill allows the Director of ABC to appoint an
12 advisory committee composed of representatives with knowledge
13 and experience in the appraisal of alcoholic beverage licenses in
14 this State. Upon certification, the bill requires the Director of ABC
15 to submit the written certification to the licensee (to be used in
16 filing a return that includes a claim for the credit) and to prepare a
17 report regarding the administration of the certification process that
18 will indicate the number of applications made, the number of
19 certifications issued, and the fair market value of each license for
20 which a certification is issued.

21 The bill permits qualified license holders to convert allowable
22 tax credits to tax credit transfer certificates upon application to and
23 approval by the Director of the Division of Taxation in the
24 Department of the Treasury. The bill authorizes qualified license
25 holders to sell any amount of the credit that is converted to a tax
26 credit transfer certificate to another taxpayer in exchange for private
27 financial consideration, but stipulates that the consideration
28 received by the qualified license holder from the sale cannot be less
29 than 75 percent of the transferred credit amount.

30 The bill provides that a qualified license holder who is allowed a
31 credit is permitted to maintain the plenary retail consumption
32 license and operate a licensed premises in this State. However, the
33 bill provides that taxpayers who sell their interest in the
34 consumption license during the five year tax period in which they
35 are eligible to receive annual installments of the credit, must forfeit
36 that portion of the qualified licensee's credit that is equal to the
37 amount of consideration received from the sale or transfer of the
38 license. The bill provides that the forfeited amount will reduce any
39 unused credit of the taxpayer that has not been used, sold, or
40 assigned to another taxpayer and, if after the forfeited amount is
41 used to reduce any allowable credit of the taxpayer, the balance of
42 the forfeited portion remaining must be repaid to the Director of the
43 Division of Taxation.

44 Additionally, the bill provides that taxpayers who sell their
45 interest in the consumption license during a fifteen-year period
46 following the five-year tax period in which they are eligible to
47 receive annual installments of the credit, must similarly forfeit that
48 portion of the qualified licensee's credit that is equal to the amount

1 of consideration received from the sale or transfer of the license.
2 The bill provides that the forfeited amount will reduce any tax
3 credit carryover that is allowed but has not been used by the
4 taxpayer, and, if after the forfeited amount is used to reduce any
5 allowable credit of the taxpayer, the balance of the forfeited portion
6 remaining must be repaid to the Director of the Division of
7 Taxation, at reduced amounts based upon when the sale or transfer
8 of the license occurs.

9 It is the sponsor's intent to foster and encourage economic
10 development and growth in this State by creating a new less-costly
11 restaurant license that permits the licensee to sell alcoholic
12 beverages and to provide financial compensation to certain plenary
13 retail consumption licensees who already have established
14 businesses and paid market value for their licenses.