LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3494

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: DECEMBER 11, 2018

SUMMARY

Synopsis: Creates new permits to allow certain restaurants to sell alcoholic beverages and allows for issuance of additional alcoholic beverage licenses; provides tax credit under corporate business tax and gross income tax for loss in value to certain alcoholic beverage licenses.

Types of Impact: Indeterminate annual State net revenue impact. Annual State expenditure increase. Annual municipal government revenue and expenditure increases.

Agencies Affected: Department of Law and Public Safety;
Department of the Treasury; and
Certain municipalities.

Office of Legislative Services Estimate

Fiscal Impact	Multi-year Aggregate Impact
State Net Revenue Impact	Indeterminate
State Expenditure Increase	Indeterminate
Local Revenue Increase	Indeterminate
Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates this bill will result in an indeterminate annual State net revenue impact composed of: a) the revenue loss associated with the issuance of tax credits for qualified losses in the appraised fair market value of plenary retail consumption licenses; b) annual revenue increases from the fees for the newly established special restricted restaurant permit and restricted beer and wine permit; and c) annual revenue gains from penalty payments by holders of the new permits who violate the law.

- Municipalities that opt to issue the new permits authorized under the bill will realize an indeterminate annual revenue gain from annual permit fees and penalty payments.

- The State and permit-issuing municipalities will incur additional annual enforcement costs related to the increased number of restaurants that are authorized to sell alcohol. In addition,

the Division of Alcoholic Beverage Control (ABC) in the Department of Law and Public Safety will have to expend resources to meet the bill's reporting requirements.

- Municipalities will be authorized, but not required, to issue the new permits. The permissive nature of the bill precludes the OLS from forecasting the total number of permits municipalities may issue and hence the magnitude of the bill's fiscal impacts.

BILL DESCRIPTION

This bill authorizes municipalities to issue two new types of permits which allow restaurants located in qualifying restaurant districts to sell alcoholic beverages for on-premises consumption in connection with the sale of food. A special restricted restaurant permit allows the holder to sell beer, wine, and spirits. A restricted beer and wine permit, in turn, allows the holder to sell only beer and wine by the bottle or can. These permits are only available for restaurants with a gross square footage of between 800 and 4,500.

The annual fee for the special restricted restaurant permit is $7,500 for a restaurant with a gross square footage of 800 to 2,000 and $10,000 for a restaurant with a gross square footage of 2,001 to 4,500. The annual fee for the restricted beer and wine permit is set at $3,000 for a restaurant with a gross square footage of 800 to 2,000 and $5,000 for a restaurant with a gross square footage of 2,001 to 4,500.

The municipality where the restaurant is located receives $2,500 of the annual fee paid by the restaurant for the special restricted restaurant permit and $1,250 of the annual fee paid for the restricted beer and wine permit. The Division of Taxation receives the remainder of the fee to offset the revenue losses attributable to issuing the tax credits provided under the bill. After the division is reimbursed for these revenue losses, the municipality receives the full fee amount. In addition, permit holders have to pay to the ABC any applicable renewal fees that plenary retail consumption licensees are required to pay under current law.

The bill imposes certain penalties on the holders of the new permits who violate the law. For a first offense, a special restricted restaurant permit holder must pay a civil penalty of $5,000 and a restricted beer and wine permit holder $2,500. Holders of both types of permit are also subject to a mandatory six-month permit suspension. For a second offense, both permits are to be revoked and the permit holders must pay a $10,000 civil penalty. The Alcoholic Beverage Control Enforcement Bureau in the State Police receives 25 percent of each fine collected and the municipality in which the violation occurred the remaining 75 percent.

The bill provides corporation business tax (CBT) and gross income tax (GIT) credits to existing plenary retail consumption licensees for any "qualified loss in value" of their licenses after the bill's enactment, but licensees must apply for the credit within five years after the bill's effective date. The tax credit is to be taken in five equal annual installments. If the taxpayer's tax liability is less than the full tax credit amount in the year for which the credit is awarded, the taxpayer may carry any unused portion of the credit forward for up to 20 tax periods. Alternatively, the taxpayer may sell unused tax credit amounts to other taxpayers by means of tax credit transfer certificates, upon approval by the Division of Taxation. If a taxpayer sells its interest in the consumption license the taxpayer has to pay back a portion or the entirety of the tax credit amount received depending on when the license is sold.

The bill requires the ABC to submit an annual report to the Governor and the Legislature on the new permits. The ABC also is to submit a report to the Governor and the Legislature on the administration of the tax credit certification process within 450 days of the bill's effective date.

In addition, the bill provides for the issuance of additional plenary retail consumption licenses by municipalities that have adopted a master plan pursuant to N.J.S.A.40:55D-28.

The bill takes effect on the first day of the 19th month following enactment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill will result in an indeterminate annual State net revenue impact and an annual State expenditure increase. Certain municipalities will also experience annual revenue and expenditure increases. The permissive nature of the bill precludes the OLS from quantifying these impacts. Municipalities will be authorized, but not required, to issue the newly established special restricted restaurant permits and restricted beer and wine permits. The more permits municipalities will issue, the more significant the fiscal impacts will be. The OLS, however, has no informational basis for forecasting the number of municipalities that may authorize the new permits and the total number of permits they may issue.

The State will incur indeterminate annual revenue losses due to the issuance of CBT and GIT credits for the qualified loss in value of plenary retail consumption licenses ("Class C licenses"). The revenue loss will be temporary, however. Eligible licensees will have five years from the bill's effective date (the first day of the 19th month following enactment) to apply for the credit. Once approved, the credit is to be taken in five equal annual installments. If taxpayers do not have a sufficient tax liability against which to apply their non-refundable tax credits in the year for which the credits are approved, any unused portion of the credit may be used in any of the following 20 years. Therefore, the tax credit program could produce annual revenue losses for up to 30 years following the inception of the program. The bill also includes "claw back" provisions that act as a mechanism for the State to partially recover the amounts of distributed tax credits in the event that a Class C license is sold by a taxpayer within a certain time period. This provision lowers the potential revenue loss of the bill.

As of November 2018, a report available through the ABC's website lists approximately 5,900 Class C license holders in the State. Sales of these licenses are private and transaction details are not routinely disclosed. However, available information suggests that the value of a Class C license varies substantially among municipalities. A June 2018 Bizfluent article included an estimate by the executive director of the New Jersey Licensed Beverage Association that the average license sold for about $350,000 in 2017. But a Class C license in Montclair was reportedly sold for $1.25 million in 2016, the asking price for a license in Moorestown was reportedly $500,000 in 2016, and in Clifton a license could be purchased for $50,000 to $100,000 in past years. The differences are largely ascribable to the interaction of each municipality's demographic, economic, and geographic conditions with the population-based cap State law places on the number of licenses a municipality may issue (no more than one Class C license per every 3,000 people).

For purposes of illustrating the potential impact of the tax credit program, the OLS assumes that 60 percent of all Class C license holders (3,540) may receive a tax credit. The OLS bases this assumption on approximately 40 percent of Class C license holders being located in municipalities with at least 15 Class C licenses and an assumption that the bill would likely have a greater impact on license holders in municipalities with fewer Class C licenses. If the average value of a tax credit award is $50,000, the State revenue loss from awarding tax credits to 3,540 license holders will approximate $177 million. Likewise, if the average value of a tax credit award is $100,000, the State revenue loss will approximate $354 million.

The bill also creates two additional State revenue streams: a portion of annual permit fee payments and a portion of penalties paid by permit holders who violate the law.

The bill establishes annual special restricted restaurant permit fees of $7,500 or $10,000, depending on a restaurant's gross square footage. Of the annual amount collected from each such permit, the municipality in which the restaurant is located is to receive $2,500 with the remainder allocated to the State to offset the revenue losses generated by the tax credit program ($5,000 or $7,500, depending on a restaurants gross square footage). Annual restricted beer and wine permit fees are either $3,000 or $5,000, depending on a restaurant's gross square footage. Of the annual amount collected from each such permit, the municipality in which the restaurant is located is to receive $1,250 with the remainder allocated to the State to offset the revenue losses caused by the tax credit program ($1,750 or $3,750, depending on a restaurants gross square footage). After the State is fully reimbursed for these losses, the entirety of a permit's annual fee is to be distributed to the municipality in which the restaurant is sited.

The year in which the change in the allocation of permit fee collections will occur is indeterminable. However, for State permit fee collections to fully offset the revenue losses associated with the tax credits ($177 million in this example), it would take decades. As an example, if 200 restaurants obtain a special restricted restaurant permit (assuming all pay the $10,000 annual fee) and 150 restaurants obtain a restricted beer and wine permit (assuming all pay the $5,000 annual fee), the total amount in annual fees allocated to the State would approximate $2 million. If the aggregate value of tax credits issued and redeemed is $177 million, it could take over 80 years for the fees to cover the State revenue loss (assuming no change in the number of permits issued).

The State will also realize an annual revenue gain from penalties collected from permit holders who break the law. For a first offense, a special restricted restaurant permit holder is required to pay a civil penalty of $5,000 and a restricted beer and wine permit holder $2,500. For a second offense, holders of either permit type must pay a $10,000 civil penalty and the permit will be revoked. The bill requires that 25 percent of fine collections support the Alcoholic Beverage Control Enforcement Bureau in the State Police. The remaining 75 percent is for the use of the municipality in which the violation occurred.

Furthermore, the State will experience an annual increase in enforcement costs associated with the potential growth in the number of establishments that obtain the permits and sell alcohol. In addition, the ABC is to expend resources to produce an annual report on the new permits and the one-time report on the administration of the tax credit certification process.

Municipalities that elect to issue the new permits will receive an annual revenue gain equal to $2,500 for each special restricted restaurant permit issued and $1,250 for each restricted beer and wine permit issued. Once the State will be fully reimbursed for the revenue losses caused by the tax credit program, the entirety of the permit fees will accrue to municipalities. Permit-issuing municipalities will also receive 75 percent of penalties paid by permit holders who break the law and incur additional annual enforcement costs related to the increased number of restaurants that are authorized to sell alcohol.

Section:	*Revenue, Finance and Appropriations*
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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).