

# ASSEMBLY, No. 3494

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 5, 2018

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Cumberland, Gloucester and Salem)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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 Title  
5 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%】** 20 percent from that  
38 charged in the preceding license year or **【\$500.00】** \$500, whichever  
39 is the lesser. The governing board or body of each municipality  
40 may, by ordinance, enact that no plenary retail consumption license  
41 shall be granted 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%]** 75 percent of the fee fixed by  
27 said board or body for plenary retail consumption licenses. The  
28 governing board or body of each municipality may, by ordinance,  
29 enact that no seasonal retail consumption license shall be granted  
30 within its respective municipality.

31 Plenary retail distribution license. 3. a. The holder of this  
32 license 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%】~~ 20 percent from that charged in the preceding  
10 license year or ~~【\$500.00】~~ \$500, whichever is the lesser. The  
11 governing board or body of each municipality may, by ordinance,  
12 enact that no plenary retail distribution license shall be granted  
13 within its respective municipality.

14 Limited retail distribution license. 3. b. The holder of this  
15 license 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  
34 be 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 The provisions of section 23 of P.L.2003, c.117 amendatory of  
26 this section shall apply to licenses issued or transferred on or after  
27 July 1, 2003, and to license renewals commencing on or after July  
28 1, 2003.

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

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. The holder of this license  
11 may not sell or transfer the license.

12 Prior to issuing licenses pursuant to this paragraph, the  
13 governing board or body of the municipality shall adopt an  
14 ordinance or resolution authorizing the issuance of restricted  
15 restaurant licenses within its borders. The ordinance or resolution  
16 may establish the days and times during which the licensee is  
17 permitted to sell alcoholic beverages for consumption on the  
18 licensed premises and shall limit the sale of alcoholic beverages to  
19 one hour prior to the service of food until one hour after the service  
20 of food has ended. The hours during which the ordinance permits  
21 the holder of a restricted restaurant license to sell alcoholic  
22 beverages may differ from the hours during which other  
23 consumption or distribution licensees within the municipality are  
24 permitted to sell alcoholic beverages.

25 The governing board or body of the municipality shall issue  
26 restricted restaurant licenses for use in connection with a restaurant  
27 in accordance with this subsection. The issuance of a restricted  
28 beer and wine license shall not permit the licensee to operate  
29 without complying with all applicable zoning ordinances.

30 The restriction in section 2 of P.L.1947, c.94 (C.33:1-12.14)  
31 concerning the number of retail consumption licenses that may be  
32 issued in a municipality shall not be applicable to the license issued  
33 under this subsection. A municipality that prohibits the sale of  
34 alcoholic beverages within its borders may establish by ordinance  
35 or resolution that a restricted restaurant license may be issued in the  
36 municipality.

37 The initial fee and annual renewal fee for this license shall be  
38 \$3,000 for a restaurant with a square footage of 1,500 to 3,000, and  
39 \$10,000 for a restaurant with a square footage of 3,001 to 6,000.  
40 The initial fee and annual renewal fee for this license shall be  
41 distributed in the following manner:

42 (1) \$2,500 shall be paid to the municipality wherein the  
43 restaurant is located and if the restaurant is located within the  
44 boundaries of two or more municipalities, the fee shall be divided  
45 equally among those municipalities;

46 (2) The remainder of the fee shall be paid to the Director of the  
47 Division of Taxation to be used solely for the purposes of offsetting  
48 the costs associated with issuing tax credits pursuant to section 6 of

1 P.L. , c. (C. ) (pending before the Legislature as this bill)  
2 and section 7 of P.L. , c. (C. )(pending before the Legislature  
3 as this bill). After the Division of Taxation is reimbursed for costs  
4 associated with issuing tax credits pursuant to section 6 of P.L. ,  
5 c. (C. ) (pending before the Legislature as this bill) and  
6 section 7 of P.L. , c. (C. ) (pending before the Legislature  
7 as this bill), the full fee shall be paid to the municipality in the same  
8 manner as provided under paragraph (1) of this 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 Restricted beer and wine license (R2). 7. The holder of this  
15 license shall be entitled, subject to rules and regulations, to sell any  
16 beer or wine by the can, bottle or other sealed receptacle used for  
17 holding alcoholic beverages for consumption in or upon the  
18 premises of a restaurant with a minimum square footage of 1,500  
19 and a maximum square footage of 6,000 and maintains a full-  
20 service kitchen with a minimum square footage of 500 regularly and  
21 principally used for the purpose of providing food to customers.  
22 The full-service kitchen shall be adequately equipped for the  
23 preparation and serving of food and shall have, at a minimum, a  
24 dishwasher, range, sink, oven, refrigerator, and countertop. A  
25 licensed premises under the provisions of this paragraph shall  
26 encompass not more than one physical address.

27 The holder of this license shall not provide a bar area for  
28 customers of the restaurant to congregate and consume alcoholic  
29 beverages. In addition, the holder of this license shall not provide  
30 a service bar. Alcoholic beverages only may be sold in connection  
31 with the service of food and served at a table by an employee of the  
32 restaurant. The restaurant operated by the licensee shall offer to  
33 customers a standard printed menu or menu board system or similar  
34 signage featuring a list of meals with separate prices listed adjacent  
35 to each meal, or for parties of 10 restaurant patrons or greater, the  
36 licensee may offer a full course menu with a limited number of  
37 meal choices for a fixed price. The holder of this license may not  
38 sell or transfer the license.

39 Prior to issuing licenses pursuant to this paragraph, the  
40 governing board or body of the municipality shall adopt an  
41 ordinance or resolution authorizing the issuance of restricted  
42 restaurant licenses within its borders. The ordinance or resolution  
43 may establish the days and times during which the licensee is  
44 permitted to sell alcoholic beverages for consumption on the  
45 licensed premises and shall limit the sale of alcoholic beverages to  
46 one hour prior to the service of food until one hour after the service  
47 of food has ended. The hours during which the ordinance permits  
48 the holder of a restricted restaurant license to sell alcoholic



1 beverages may differ from the hours during which other  
2 consumption or distribution licensees within the municipality are  
3 permitted to sell alcoholic beverages.

4 The governing board or body of the municipality shall issue  
5 restricted beer and wine licenses for use in connection with a  
6 restaurant in accordance with this subsection. The issuance of a  
7 restricted beer and wine license shall not permit the licensee to  
8 operate without complying with all applicable zoning ordinances.  
9 The restriction in section 2 of P.L.1947, c.94 (C.33:1-12.14)  
10 concerning the number of retail consumption licenses that may be  
11 issued in a municipality shall not be applicable to the license issued  
12 under this paragraph. A municipality that prohibits the sale of  
13 alcoholic beverages within its borders may establish by ordinance  
14 or resolution that a restricted beer and wine license may be issued in  
15 the municipality.

16 The initial fee and annual renewal fee for this license shall be  
17 \$1,500 for a restaurant with a square footage of 1,500 to 3,000 and  
18 \$5,000 for a restaurant with a square footage of 3,001 to 6,000. The  
19 initial fee and annual renewal fee for this license shall be distributed  
20 in the following manner:

21 (1) \$1,250 shall be paid to the municipality wherein the  
22 restaurant is located, and if the restaurant is located within the  
23 boundaries of two or more municipalities, the fee shall be divided  
24 equally among those municipalities;

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

36 In addition, the holder of a restricted beer and wine license shall  
37 pay upon renewal of the license any applicable renewal fees which  
38 are otherwise required to be paid to the Director of the Division of  
39 Alcoholic Beverage Control by the holder of a plenary retail  
40 consumption license.

41 Sporting facility license. 6. The holder of this license shall be  
42 entitled, subject to rules and regulations, to sell at retail or to serve  
43 any alcoholic beverages as the owner, operator, lessee, or  
44 concessionaire of a sporting facility by the glass or other receptacle  
45 or in original containers only on the premises of the sporting  
46 facility.

47 Notwithstanding any other provision of Title 33 of the Revised  
48 Statutes and subject to conditions established by the director, the

1 holder of this license may share direction and control of the  
2 premises to be licensed and share proceeds and profits from the sale  
3 of alcoholic beverages with the owner, operator, concessionaire, or  
4 lessee of the facility. The holder of this license shall be permitted  
5 to conduct consumer wine, beer, and spirits tasting events and  
6 samplings for a fee or on a complimentary basis provided, however,  
7 the license holder complies with the provisions of section 3 of  
8 P.L.2009, c.216 (C.33:1-12d) and rules and regulations promulgated  
9 thereto. Notwithstanding any law, rule or regulation to the  
10 contrary, the holder of this license shall be entitled to establish an  
11 all-inclusive area within the licensed sporting facility, provided the  
12 all-inclusive area is limited to one area within the sporting facility  
13 for each game or event and the capacity of the all-inclusive area  
14 does not exceed 500 persons.

15 The fee for this license shall be \$2,500 for venues with a  
16 capacity of less than 7,500 persons; \$5,000 for venues with a  
17 capacity of not less than 7,500 persons but not more than 14,999  
18 persons; \$7,500 for venues with a capacity of not less than 15,000  
19 persons but not more than 22,499 persons; and \$10,000 for venues  
20 with a capacity of 22,500 persons or more.

21 For the purposes of this subsection:

22 "Sporting facility" means a stadium, arena, team training facility,  
23 or similar venue located on public property where alcoholic  
24 beverages are served or sold at retail for consumption on the  
25 premises by the glass or other open receptacle or in original  
26 containers.

27 "Team training facility" shall include team offices and team  
28 headquarters.

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

30

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

33 2. a. Except as otherwise provided in this **[act]** title, no new  
34 plenary retail consumption or seasonal retail consumption license  
35 shall be issued in a municipality unless and until the combined total  
36 number of such licenses existing in the municipality is fewer than  
37 one for each 3,000 of its population according to the most recent  
38 estimates issued by the U.S. Bureau of the Census; provided,  
39 however, in the year that the official federal decennial counts are  
40 received by the Governor, those federal decennial counts shall be  
41 used. No new plenary retail distribution license shall be issued in a  
42 municipality unless and until the number of such licenses existing  
43 in the municipality is fewer than one for each 7,500 of its  
44 population according to the most recent estimates issued by the U.S.  
45 Bureau of the Census; provided, however, in the year that the  
46 official federal decennial counts are received by the Governor,  
47 those federal decennial counts shall be used.

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

6        (2) A municipality may issue additional plenary retail  
7 consumption licenses based upon the peak population projection in  
8 the master plan. If the projected peak population supports the  
9 issuance of one or more additional plenary retail consumption  
10 licenses, the municipality may issue one additional license. The  
11 municipality may issue another plenary retail consumption license  
12 whenever there is an increase of 3,000 or more in the population of  
13 the municipality, according to the most recent estimates issued by  
14 the U.S. Bureau of the Census or the official federal decennial  
15 counts in the years those counts are issued, until the maximum  
16 number of licenses supported by the projected peak population have  
17 been issued.

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

19  
20        4. (New section) a. The holder of a restricted restaurant  
21 license or restricted beer and wine license who violates subsections  
22 a. through j. of R.S.33:1-31:

23        (1) for a first offense, shall be subject to a mandatory license  
24 suspension in an amount of time determined by the director and be  
25 liable for a civil penalty of \$5,000 which shall be imposed on a  
26 restricted restaurant licensee, and \$2,500 which shall be imposed on  
27 a restricted beer and wine license licensee.

28        (2) for a second offense, shall be subject to a permanent  
29 revocation of the restricted restaurant license or restricted beer and  
30 wine license and be liable for a civil penalty of three times the fair  
31 market value of a plenary retail consumption license. The fair  
32 market value shall be based upon the average sales price of plenary  
33 retail consumption licenses in the municipality in which the  
34 licensed premises is located during the five years immediately  
35 preceding the effective date of P.L.     , c.     (pending before the  
36 Legislature as this bill). If the licensed premises is located within  
37 the boundaries of two or more municipalities, the highest average  
38 sale price of the two or more municipalities shall be used. If less  
39 than three plenary retail consumption licenses have been sold in the  
40 municipality or municipalities, as the case may be, within the  
41 previous five years, the municipality or municipalities shall obtain  
42 an appraisal, at the applicant's expense, to determine the  
43 appropriate fair market value of the license. The appraisal process  
44 shall include an examination of previous transactions in the  
45 municipality or municipalities, as the case may be, and shall reflect  
46 what a willing buyer, under no pressure to buy, would pay a willing  
47 seller, under no pressure to sell, for a plenary retail consumption  
48 license in that municipality or municipalities.

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

4  
5       5. Section 14 of P.L.1992, c.188 (C.33:1-4.1) is amended to  
6 read as follows:

7       14. a. All fees and penalties collected by the Director of the  
8 Division of Alcoholic Beverage Control pursuant to the provisions  
9 of Title 33 of the Revised Statutes shall be forwarded to the State  
10 Treasurer for deposit in a special nonlapsing fund. Monies in the  
11 fund shall be used exclusively for the operation of the Alcoholic  
12 Beverage Control Enforcement Bureau in the Division of State  
13 Police and the Division of Alcoholic Beverage Control and for  
14 reimbursement of all additional costs of enforcement of the  
15 provisions of Title 33 incurred by the Department of Law and  
16 Public Safety.

17       b. Notwithstanding the provisions of subsection a. of this  
18 section, the fines imposed pursuant to section 4 of P.L. \_\_\_\_\_,  
19 c. (C. \_\_\_\_\_)(pending before the Legislature as this bill) shall be  
20 collected by the director and forwarded to the State Treasurer to be  
21 used for the purposes of offsetting the costs associated with issuing  
22 tax credits pursuant to section 6 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)(pending  
23 before the Legislature as this bill) and section 7 of P.L. \_\_\_\_\_,  
24 c. (C. \_\_\_\_\_)(pending before the Legislature as this bill). After the  
25 Division of Taxation is reimbursed for up to 75 percent of the  
26 projected estimated cost associated with issuing tax credits pursuant  
27 to section 6 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)(pending before the Legislature  
28 as this bill) and section 7 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)(pending before  
29 the Legislature as this bill), the fines shall be used exclusively for  
30 the operation of the Alcoholic Beverage Control Enforcement  
31 Bureau in accordance with subsection a. of this section.

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

33  
34       6. (New section) a. As used in this act, “qualified loss in  
35 value” means the loss in value to a taxpayer’s plenary retail  
36 consumption license calculated pursuant to paragraph (3) of  
37 subsection c. of this section.

38       b. A taxpayer who is certified as a qualified holder of a plenary  
39 retail consumption license shall be allowed a credit against the  
40 corporation business tax imposed pursuant to section 5 of P.L.1945,  
41 c.162 (C.54:10A-5). The amount of the credit shall be equal to the  
42 qualified loss in value to the taxpayer’s license, and shall be taken  
43 over a five-year period, in five annual installments, at the rate of  
44 one-fifth the total amount of the taxpayer’s credit for each privilege  
45 period of the taxpayer, beginning with the privilege period in which  
46 the taxpayer is certified as a qualified holder of a plenary retail  
47 consumption license by the Director of the Division of Alcoholic

1 Beverage Control in the Department of Law and Public Safety in  
2 accordance with subsection b. of this section.

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

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

28 (3) The Director of the Division of Alcoholic Beverage Control  
29 shall, at the time a determination regarding the issuance of a  
30 certification is made, establish the qualified loss in value to the  
31 taxpayer's license. To establish the qualified loss in value, the  
32 taxpayer shall issue to the director two separate independent  
33 appraisals of the taxpayer's plenary retail consumption license. The  
34 appraisals shall demonstrate the fair market value of the license  
35 prior to the date of enactment of P.L. , c. (C. ) (pending  
36 before the Legislature as this bill) and the fair market value of the  
37 license at the time taxpayer files an application for certification  
38 with the Director of the Division of Alcoholic Beverage Control.  
39 The difference between fair market value of the license prior to the  
40 date of enactment of P.L. , c. (C. ) (pending before the  
41 Legislature as this bill) and the fair market value of the license at  
42 the time the taxpayer files an application for certification shall  
43 represent the qualified loss in value to the taxpayer's license.

44 To assist in assessing the qualified loss in value to a license, the  
45 Director of the Division of Alcoholic Beverage Control may  
46 appoint an advisory committee composed of representatives with  
47 knowledge and experience in the appraisal of alcoholic beverage  
48 licenses in this State. The director or the advisory committee, as the

1 case may be, shall have the authority to review, approve, or  
2 disapprove appraisals issued by the taxpayer.

3 The fair market value of the license prior to the date of  
4 enactment of P.L. , c. (C. ) (pending before the Legislature  
5 as this bill) shall be based upon the average sales price of plenary  
6 retail consumption licenses in the municipality in which the  
7 licensed premises is located during the five years immediately  
8 preceding the date of enactment of P.L. , c. (C. ) (pending  
9 before the Legislature as this bill). If the licensed premises is  
10 located within the boundaries of two or more municipalities, the fair  
11 market value shall be based on the average sale price of plenary  
12 retail consumption licenses issued in the municipality in which the  
13 structure of licensed premises is primarily situated. If less than  
14 three plenary retail consumption licenses have been sold in the  
15 municipality or municipalities, as the case may be, within the  
16 previous five years, the taxpayer shall obtain an appraisal, at the  
17 taxpayer's expense, to determine the appropriate fair market value  
18 of the license. The appraisal process shall include an examination  
19 of previous transactions in the municipality or municipalities, as the  
20 case may be, and shall reflect what a willing buyer, under no  
21 pressure to buy, would pay a willing seller, under no pressure to  
22 sell, for a plenary retail consumption license in that municipality or  
23 municipalities, as the case may be.

24 The fair market value of the license at the time that the taxpayer  
25 files an application for certification shall be based on an appraisal,  
26 obtained at the taxpayer's expense, to determine the appropriate  
27 value of the license. The appraisal shall include, but not be limited  
28 to, an examination of the following:

29 (a) the average sales price of plenary retail consumption  
30 licenses in the municipality in which the licensed premises is  
31 located following the date of enactment of P.L. , c. (C. )  
32 (pending before the Legislature as this bill);

33 (b) the number of restricted restaurant licenses and restricted  
34 beer and wine licenses issued the municipality in which the licensed  
35 premises is located following the date of enactment of P.L. ,  
36 c. (C. ) (pending before the Legislature as this bill); and

37 (c) whether the in municipality in which the licensed premises is  
38 located has undertaken comprehensive plans for future development  
39 that would most likely necessitate the issuance of restricted  
40 restaurant licenses and restricted beer and wine licenses.

41 If a single plenary retail consumption license is used in  
42 connection with the operation of multiple restaurants or other  
43 establishments located on the same licensed premises, the qualified  
44 loss in value established under this paragraph shall be divided by  
45 the number of restaurants or establishments operating in connection  
46 with that plenary retail consumption license.

47 (4) The Director of the Division of Alcoholic Beverage Control  
48 shall issue a written certification to each taxpayer that has made and

1 filed an application that has been reviewed, approved, or  
2 disapproved in accordance with paragraphs (2) and (3) of this  
3 subsection within 10 days of the date the determination is made.  
4 The written certification shall include a detailed explanation of the  
5 fair market value of the taxpayer's license established in accordance  
6 with paragraph (3) of this subsection. The division shall submit to a  
7 taxpayer whose application is disapproved a detailed statement  
8 explaining the reasons for which the appraisals did not adequately  
9 reflect the qualified loss in value. Each taxpayer issued a  
10 certification shall include a copy of the written certification, along  
11 with the detailed explanation of the qualified loss in value to the  
12 taxpayer's license, when filing a return that includes a claim for the  
13 credit allowed in accordance with this section.

14 (5) The Director of the Division of Alcoholic Beverage Control  
15 shall provide a copy of each written certification issued in  
16 accordance with paragraph (4) of this subsection to the Director of  
17 the Division of Taxation in the Department of the Treasury within  
18 10 days of the date the certification is issued, and shall prepare a  
19 report regarding the administration of the certification process  
20 established in accordance with this subsection. The report shall  
21 specify: the number of applications made and filed; the number of  
22 certifications issued; and the qualified loss in value to each license  
23 for which a certification is issued. The report shall be submitted to  
24 the Governor, the State Treasurer, and the Legislature, in  
25 accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), within  
26 450 days of the effective date of P.L. , c. (C. ) (pending  
27 before the Legislature as this bill).

28 d. The order of priority of the application of an annual  
29 installment of the credit allowed pursuant to this section and any  
30 other credit allowed against the corporation business tax for a  
31 privilege period shall be as prescribed by the Director of the  
32 Division of Taxation in the Department of the Treasury. The  
33 amount of an annual installment of the credit applied under this  
34 section against the corporation business tax for a privilege period,  
35 together with any other annual installment and any other credits  
36 allowed against the corporation business tax, shall not reduce the  
37 tax liability of the taxpayer to an amount less than the statutory  
38 minimum provided in subsection (e) of section 5 of P.L.1945, c.162  
39 (C.54:10A-5). No amount of the qualified loss in value to the  
40 taxpayer's license that is used as the basis of the credit allowed  
41 pursuant to this section shall be allowed as an amount used to  
42 calculate a loss or expense of the taxpayer or otherwise reduce or  
43 offset that taxpayer's liability for tax pursuant to any other  
44 exclusion, deduction, or credit allowed under the corporation  
45 business tax. The amount of an annual installment of the credit  
46 allowable under this section which cannot be applied for a privilege  
47 period due to the limitations of this subsection may be carried  
48 forward, if necessary, to the earliest available use within the 20

1 privilege periods immediately following the privilege period for  
2 which the credit is allowed.

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

41 f. (1) If, in the five-year period beginning with the privilege  
42 period in which the taxpayer is certified as a qualified holder of a  
43 plenary retail consumption license, the taxpayer sells or transfers  
44 any part of the taxpayer's interest in the license to another person,  
45 the taxpayer shall forfeit that portion of the taxpayer's credit that is  
46 equal to the amount of consideration received by the taxpayer from  
47 the sale or transfer of the license. The forfeited portion shall first  
48 reduce the balance of any annual installment of a credit of the



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

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

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

47 (b) if the taxpayer is required to repay the amount of any excess  
48 as a result of the sale or transfer of the taxpayer's license occurring

1 in the second five years of the 15-year period, the amount of the  
2 excess shall be multiplied by 0.50 to determine the amount of the  
3 excess required to be repaid to the Director of the Division of  
4 Taxation; and

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

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

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

28 The holder of a plenary retail consumption license that has been  
29 inactive for more than two years immediately preceding the  
30 effective date of P.L. , c. (C. ) (pending before the  
31 Legislature as this bill) shall not be eligible for the tax credit issued  
32 pursuant to this section.

33

34 7. (New section) a. As used in this act, "qualified loss in  
35 value" means the loss in value to a taxpayer's plenary retail  
36 consumption license calculated pursuant to paragraph (3) of  
37 subsection c. of this section.

38 b. A taxpayer who is certified as a qualified holder of a plenary  
39 retail consumption license shall be allowed a credit against the tax  
40 imposed pursuant to the "New Jersey Gross Income Tax Act,"  
41 N.J.S.54A:1-1 et seq. The amount of the credit shall be equal to the  
42 qualified loss in value to the taxpayer's license and shall be taken  
43 over a five-year period, in five annual installments, at the rate of  
44 one-fifth the total amount of the taxpayer's credit for each taxable  
45 year of the taxpayer, beginning with the taxable year in which the  
46 taxpayer is certified as a qualified holder of a plenary retail  
47 consumption license by the Director of the Division of Alcoholic

1 Beverage Control in the Department of Law and Public Safety in  
2 accordance with subsection b. of this section.

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

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

28 (3) The Director of the Division of Alcoholic Beverage Control  
29 shall, at the time a determination regarding the issuance of a  
30 certification is made, establish the loss in value to the taxpayer's  
31 license. To establish the qualified loss in value, the taxpayer shall  
32 issue to the director two separate independent appraisals of the  
33 taxpayer's plenary retail consumption license. The appraisals shall  
34 demonstrate the fair market value of the license prior to the date of  
35 enactment of P.L. , c. (C. ) (pending before the Legislature  
36 as this bill) and the fair market value of the license at the time the  
37 taxpayer files an application for certification with the Director of  
38 the Division of Alcoholic Beverage Control. The difference  
39 between the fair market value of the license prior to the date of  
40 enactment of P.L. , c. (C. ) (pending before the Legislature  
41 as this bill) and the fair market value of the license at the time the  
42 taxpayer files an application for certification shall represent the  
43 qualified loss in value to the taxpayer's license.

44 To assist in assessing the qualified loss in value to a license, the  
45 Director of the Division of Alcoholic Beverage Control may  
46 appoint an advisory committee composed of representatives with  
47 knowledge and experience in the appraisal of alcoholic beverage  
48 licenses in this State. The director or the advisory committee, as the

1 case may be, shall have the authority to review, approve, or  
2 disapprove appraisals issued by the taxpayer.

3 The fair market value of the license prior to the date of  
4 enactment of P.L. , c. (C. ) (pending before the Legislature  
5 as this bill) shall be based upon the average sales price of plenary  
6 retail consumption licenses in the municipality in which the  
7 licensed premises is located during the five years immediately  
8 preceding the date of enactment of P.L. , c. (C. ) (pending  
9 before the Legislature as this bill). If the licensed premises is  
10 located within the boundaries of two or more municipalities, the fair  
11 market value shall be based on the average sale price of plenary  
12 retail consumption licenses issued in the municipality in which the  
13 structure of licensed premises is primarily situated. If less than  
14 three plenary retail consumption licenses have been sold in the  
15 municipality or municipalities, as the case may be, within the  
16 previous five years, the taxpayer shall obtain an appraisal, at the  
17 taxpayer's expense, to determine the appropriate fair market value  
18 of the license. The appraisal process shall include an examination  
19 of previous transactions in the municipality or municipalities, as the  
20 case may be, and shall reflect what a willing buyer, under no  
21 pressure to buy, would pay a willing seller, under no pressure to  
22 sell, for a plenary retail consumption license in that municipality or  
23 municipalities, as the case may be.

24 The fair market value of the license at the time that the taxpayer  
25 files an application for certification shall be based on an appraisal,  
26 obtained at the taxpayer's expense, to determine the appropriate  
27 value of the license. The appraisal shall include, but not be limited  
28 to, an examination of the following:

29 (a) the average sales price of plenary retail consumption  
30 licenses in the municipality in which the licensed premises is  
31 located following the date of enactment of P.L. , c. (C. )  
32 (pending before the Legislature as this bill);

33 (b) the number of restricted restaurant licenses and restricted  
34 beer and wine licenses issued in the municipality in which the  
35 licensed premises is located following the date of enactment of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill);  
37 and

38 (c) whether the municipality in which the licensed premises is  
39 located has undertaken comprehensive plans for future development  
40 that would most likely necessitate the issuance of restricted  
41 restaurant licenses and restricted beer and wine licenses.

42 If a single plenary retail consumption license is used in  
43 connection with the operation of multiple restaurants or other  
44 establishments located on the same licensed premises, the qualified  
45 loss in value established under this paragraph shall be divided by  
46 the number of restaurants or establishments operating in connection  
47 with that plenary retail consumption license.

1 (4) The Director of the Division of Alcoholic Beverage Control  
2 shall issue a written certification to each taxpayer that has made and  
3 filed an application that has been reviewed, approved, or  
4 disapproved in accordance with paragraphs (2) and (3) of this  
5 subsection within 10 days of the date the determination is made.  
6 The written certification shall include a detailed explanation of the  
7 qualified loss in value to the taxpayer's license established in  
8 accordance with paragraph (3) of this subsection. The division  
9 shall submit to a taxpayer whose application is disapproved a  
10 detailed statement explaining the reasons for which the appraisals  
11 did not adequately reflect the qualified loss in value. Each taxpayer  
12 issued a certification shall include a copy of the written  
13 certification, along with the detailed explanation of the fair market  
14 value of the taxpayer's license, when filing a return that includes a  
15 claim for the credit allowed in accordance with this section.

16 (5) The Director of the Division of Alcoholic Beverage Control  
17 shall provide a copy of each written certification issued in  
18 accordance with paragraph (4) of this subsection to the Director of  
19 the Division of Taxation in the Department of the Treasury within  
20 10 days of the date the certification is issued, and shall prepare a  
21 report regarding the administration of the certification process  
22 established in accordance with this subsection. The report shall  
23 specify: the number of applications made and filed; the number of  
24 certifications issued; and the qualified loss in value to each license  
25 for which a certification is issued. The report shall be submitted to  
26 the Governor, the State Treasurer, and the Legislature, in  
27 accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), within  
28 450 days of the effective date of P.L. , c. (C. ) (pending  
29 before the Legislature as this bill).

30 d. (1) The order of priority of the application of an annual  
31 installment of the credit allowed pursuant to this section and any  
32 other credit allowed against the gross income tax for a taxable year  
33 shall be as prescribed by the Director of the Division of Taxation in  
34 the Department of the Treasury. The amount of an annual  
35 installment of the credit applied under this section against the gross  
36 income tax for a taxable year, together with any other annual  
37 installment and any other credits allowed against the gross income  
38 tax, shall not reduce the tax liability of the taxpayer to an amount  
39 less than zero. No amount of the qualified loss in value to the  
40 taxpayer's license that is used as the basis of the credit allowed  
41 pursuant to this section shall be allowed as an amount used to  
42 calculate a loss or expense of the taxpayer or otherwise reduce or  
43 offset that taxpayer's liability for tax pursuant to any other  
44 exclusion, deduction, or credit allowed under the gross income tax.  
45 The amount of an annual installment of the credit allowable under  
46 this section which cannot be applied for a taxable year due to the  
47 limitations of this subsection may be carried forward, if necessary,

1 to the earliest available use within the 20 taxable years immediately  
2 following the taxable year for which the credit is allowed.

3 (2) A business entity classified as a partnership for federal  
4 income tax purposes shall not be allowed a credit under this section  
5 directly, but the amount of credit of a taxpayer in respect of a  
6 distributive share of entity income, shall be determined by  
7 allocating to the taxpayer that proportion of the credit acquired by  
8 the entity that is equal to the taxpayer's share, whether or not  
9 distributed, of the total distributive income or gain of the entity for  
10 its taxable year ending within or with the taxpayer's taxable year  
11 except as otherwise provided by law. A New Jersey S Corporation  
12 shall not be allowed a credit under this section directly, but the  
13 amount of credit of a taxpayer in respect of a pro rata share of S  
14 Corporation income, shall be determined by allocating to the  
15 taxpayer that proportion of the credit acquired by the New Jersey S  
16 Corporation that is equal to the taxpayer's share, whether or not  
17 distributed, of the total pro rata share of S Corporation income of  
18 the New Jersey S Corporation for its privilege period ending within  
19 or with the taxpayer's taxable year.

20 e. A taxpayer may, upon issuance of a certification as a  
21 qualified holder of a plenary retail consumption license by the  
22 Director of the Division of Alcoholic Beverage Control in  
23 accordance with subsection c. of this section, make and file an  
24 application to the Director of the Division of Taxation for a tax  
25 credit transfer certificate in lieu of the taxpayer being allowed an  
26 annual installment of the credit or any amount of an annual  
27 installment of the credit that may be taken against the gross income  
28 tax liability of the taxpayer. The Director of the Division of  
29 Taxation may prescribe the form and manner by which a taxpayer  
30 may make and file a separate application in connection with each  
31 annual installment of the credit or any amount of each annual  
32 installment of the credit, and may consult with the Director of the  
33 Division of Alcoholic Beverage Control in reviewing and approving  
34 any application for a tax credit transfer certificate of a  
35 taxpayer. The tax credit transfer certificate, upon issuance thereof  
36 by the Director of the Division of Taxation, may be sold or  
37 assigned, in whole or in part, to any other taxpayer that may have a  
38 corporation business tax or a gross income tax liability, in exchange  
39 for private financial assistance to be provided by the purchaser or  
40 assignee to the taxpayer that is allowed a credit under this section.  
41 The certificate issued to the taxpayer shall include a statement  
42 waiving the taxpayer's right to claim that amount of the annual  
43 installment of the credit against the gross income tax that the  
44 taxpayer has elected to sell or assign. The sale or assignment of any  
45 amount of a tax credit transfer certificate allowed under this  
46 subsection shall not be exchanged for consideration received by the  
47 taxpayer of less than 75 percent of the transferred credit amount.  
48 Any amount of a tax credit transfer certificate used by a purchaser

1 or assignee against a gross income tax liability shall be subject to  
2 the same limitations and conditions that apply to the use of a credit  
3 pursuant to subsection d. of this section. Any amount of a tax credit  
4 transfer certificate obtained by a purchaser or assignee under this  
5 section may be applied against the purchaser's or assignee's  
6 corporation business tax liability and shall be subject to the same  
7 limitations and conditions that apply to the use of a credit pursuant  
8 to subsection d. of section 6 of P.L. , c. (C. ) (pending  
9 before the Legislature as this bill).

10 f. (1) If, in the five-year period beginning with the taxable year  
11 in which the taxpayer is certified as a qualified holder of a plenary  
12 retail consumption license, the taxpayer sells or transfers any part of  
13 the taxpayer's interest in the license to another person, the taxpayer  
14 shall forfeit that portion of the taxpayer's credit that is equal to the  
15 amount of consideration received by the taxpayer from the sale or  
16 transfer of the license. The forfeited portion shall first reduce the  
17 balance of any annual installment of a credit of the taxpayer that is  
18 allowed but that has not been applied against the tax liability of the  
19 taxpayer, or converted into a tax credit transfer certificate and sold  
20 or assigned to another taxpayer in accordance with subsection e. of  
21 this section, during the taxable year in which the sale or transfer of  
22 the license occurs, and then shall reduce the balance of any future  
23 annual installment of a credit of a taxpayer who is allowed but that  
24 has not been applied, or converted and sold or assigned to another  
25 taxpayer, beginning with future annual installments allowed during  
26 the taxable year immediately following the taxable year in which  
27 the sale or transfer occurs. If, after being used to reduce future  
28 annual installments, the forfeited portion exceeds the amount of any  
29 allowable credit remaining, the taxpayer shall repay the amount of  
30 that excess to the Director of the Division of Taxation; provided  
31 however, that if the taxpayer converted an annual installment of the  
32 credit or any amount of an annual installment of the credit into a tax  
33 credit transfer certificate in accordance with subsection e. of this  
34 section, the amount of the excess required to be repaid to the  
35 director shall be reduced, if necessary, in proportion to the amount  
36 of consideration received by the taxpayer from the sale or  
37 assignment of the tax credit transfer certificate.

38 (2) If, in the 15-year period beginning with the fifth taxable year  
39 immediately following the taxable year in which the taxpayer is  
40 certified as a qualified holder of a plenary retail consumption  
41 license, the taxpayer sells or transfers any part of the taxpayer's  
42 interest in the license to another person, the taxpayer shall forfeit  
43 that portion of the taxpayer's credit that is equal to the amount of  
44 consideration received by the taxpayer from the sale or transfer of  
45 the license. The forfeited portion shall first reduce the balance of  
46 any tax credit carryforward from a prior taxable year that is allowed  
47 but that has not been applied against the tax liability of the taxpayer  
48 during the taxable year in which the sale or transfer of the license

1 occurs, and then shall reduce the balance of any tax credit  
2 carryforward from a prior taxable year that otherwise would have  
3 been applied against future tax liabilities of the taxpayer. If, after  
4 being used to reduce carryforwards from prior taxable years, the  
5 forfeited portion exceeds the amount of any allowable credit  
6 remaining, the taxpayer shall repay the amount of that excess to the  
7 Director of the Division of Taxation subject to the following  
8 limitations:

9 (a) if the taxpayer is required to repay the amount of any excess  
10 as a result of the sale or transfer of the taxpayer's license occurring  
11 in the first five years of the 15-year period, the amount of the  
12 excess shall be multiplied by 0.75 to determine the amount of the  
13 excess required to be repaid to the Director of the Division of  
14 Taxation;

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

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

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

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

44 The holder of a plenary retail consumption license that has been  
45 inactive for more than two years immediately preceding the  
46 effective date of P.L. , c. (C. ) (pending before the  
47 Legislature as this bill) shall not be eligible for the tax credit issued  
48 pursuant to this section.



1 8. R.S.33:1-76 is amended to read as follows:

2 33:1-76. Anything to the contrary hereinbefore notwithstanding,  
3 and for the benefit not of property but of persons attendant therein,  
4 no license shall be issued for the sale of alcoholic beverages within  
5 **【two hundred】** 200 feet of any church or public schoolhouse or  
6 private schoolhouse not conducted for pecuniary profit, except to  
7 manufacturers, wholesalers, hotels, clubs, and fraternal  
8 organizations which owned or were actually in possession of the  
9 licensed premises on **【December sixth, one thousand nine hundred**  
10 **and thirty-three】** December 6, 1933. The protection of this section  
11 may be waived at the issuance of the license and at each renewal  
12 thereafter, by the duly authorized governing body on authority of  
13 such church or school, such waiver to be effective until the date of  
14 the next renewal of the license. **【Said two hundred】** The 200 feet  
15 shall be measured in the normal way that a pedestrian would  
16 properly walk from the nearest entrance of said church or school to  
17 the nearest entrance of the premises sought to be licensed.

18 The prohibition contained in this section shall not apply to  
19 restricted restaurant licenses or restricted beer and wine licenses  
20 issued pursuant to R.S.33:1-12. In addition, the prohibition  
21 contained in this section shall not apply to the renewal of any  
22 license where no **【such】** church or schoolhouse was located within  
23 two hundred feet of the licensed premises **【as aforesaid】** at the  
24 time of the issuance of the license, nor to the issuance or renewal,  
25 or both, of any license where **【such】** the premises have been  
26 heretofore licensed for the sale of alcoholic beverages or  
27 intoxicating liquors, and **【such】** the church or schoolhouse was  
28 constructed or established, or both, during the time **【said】** the  
29 premises were operated under **【said】** the previous license.  
30 (cf: R.S.33:1-76)

31

32 9. This act shall take effect on the first day of the nineteenth  
33 month following enactment.

34

35

36

#### STATEMENT

37

38 This bill creates two new licenses which would allow restaurant  
39 owners to sell alcoholic beverage for on-premises consumption.  
40 The first license is a restricted restaurant license (R1) which permits  
41 the holder to sell beer, wine, and spirits. The second license is a  
42 restricted beer and wine license (R2) which permits the holder to  
43 sell only beer and wine by the bottle or can.

44 These licenses would only be available for use in connection  
45 with restaurants that occupy a square footage of between 1,500 and  
46 6,000 and maintain a full-service kitchen with a minimum square  
47 footage of 500 feet. The governing body of a municipality would

1 be permitted to issue an unlimited number of these licenses within  
2 the municipality.

3 Under the bill, alcoholic beverages only may be sold in  
4 connection with the sale of food at a table by an employee of the  
5 restaurant. A license holder is prohibited from providing a bar area  
6 for 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  
20 full-course menu with a limited number of meal choices for a fixed  
21 price.

22 Under the bill, the governing body of a municipality would be  
23 required to adopt an ordinance or resolution authorizing the  
24 issuance of the restricted R1 and R2 licenses. The bill allows the  
25 ordinance to establish the days and times during which the licensee  
26 may sell alcoholic beverage. The ordinance may set different hours  
27 during which the R1 and R2 licensees may sell alcoholic beverages  
28 from other licensees operating in the municipality.

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

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

1 Taxation is reimbursed for costs associated with issuing tax credits,  
2 the full fee is to be paid to the municipality. In addition, the bill  
3 requires licensees to pay to the Director of the Division of  
4 Alcoholic Beverage Control any applicable renewal fees that the  
5 holder of a plenary retail consumption license is required to pay  
6 under current law.

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

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

38 The bill allows R1 and R2 licensees to sell alcohol within 200  
39 feet of places of worship and schools. This practice is prohibited  
40 for other businesses that sell alcoholic beverages.

41 The bill also provides a tax credit to existing consumption  
42 licensees for "the qualified loss in value" resulting from the  
43 creation of the new restaurant licenses. The tax credit is required  
44 to be taken over a five-year period, in five annual installments, at  
45 the rate of one-fifth the total amount of the taxpayer's allowable  
46 credit. In order to calculate the qualified loss in value, a  
47 consumption licensee would be required to obtain an appraisal -at  
48 the licensee's expense- of the fair market value of the license prior

1 to the bill's enactment, and a separate appraisal of the license's  
2 value after the bill's enactment. The "qualified loss in value"  
3 would be based on the following calculation: Appraisal prior to  
4 bill's enactment - Appraisal after bill's enactment = "Qualified loss  
5 in value"

6 The first appraisal would be based upon the average sales price  
7 of plenary retail consumption licenses in the municipality in which  
8 the licensed premises is located during the five years prior to the  
9 bill's enactment. The second appraisal would be based on a number  
10 of factors including: the average sale price of a license after the  
11 bill's effective date; the number of R1 and R2 licenses issued in the  
12 municipality; and whether the municipality has undertaken plans for  
13 future development that would necessitate the issuance of new R1  
14 and R2 licenses. Under the bill, a consumption licensee would have  
15 five years from the date of the bill's enactment to obtain the  
16 appraisals and file for the tax credit. The bill allows the Director of  
17 ABC to appoint an advisory committee composed of representatives  
18 with knowledge and experience in the appraisal of alcoholic  
19 beverage licenses in this State.

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

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

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

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

8 The holder of a plenary retail consumption license which has  
9 been inactive for two years prior to the bill's effective date would  
10 not be eligible for a tax credit.

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