

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3494

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 22, 2018

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3494, with committee amendments.

As amended and reported by the committee, Assembly Bill No. 3494 establishes two new permits which would allow restaurants located in certain restaurant districts to sell alcoholic beverage for on-premises consumption. The first permit is a special restricted restaurant permit which allows the holder to sell beer, wine, and spirits. The second permit is a restricted beer and wine permit which allows the holder to sell only beer and wine by the bottle or can. As amended, the bill defines “restaurant district” as an urban enterprise zone; downtown business improvement zone; pedestrian mall or pedestrian mall improvement or special improvement district; transit oriented development; area determined to be in need of redevelopment; area determined to be in need of rehabilitation; or any area designated by statute following the bill’s enactment which allows a municipality to adopt a zoning ordinance for the purpose of improvement, development, redevelopment, rehabilitation, or revitalization.

These permits would only be available for use in connection with restaurants that occupy a gross square footage of between 800 and 4,500. The governing body of a municipality may establish by ordinance the number of permits that would be issued, but would be allowed to issue an unlimited number of these permits within the municipality. The amended bill prohibits the issuance of these permits in a county of the fifth or sixth class having a population less than 200,000 according to the latest federal decennial census.

Under the amended bill, alcoholic beverages only may be sold in connection with the sale of food at a table by an employee of the restaurant. The amended bill prohibits a permit holder from closing the restaurant during the months of September through May for a period of more than 30 consecutive days. The permit holder is prohibited from providing a bar area for customers of the restaurant to congregate and consume alcoholic beverages. However, the holder of a special restricted restaurant permit may provide a service bar at which alcoholic beverages are prepared for customers at a table. An employee of the restaurant may be stationed at the

service bar to prepare drinks for customers, but may only transfer alcoholic beverages to the wait staff at the restaurant. The bill prohibits the employee stationed at the service bar from serving drinks directly to restaurant patrons. The holder of a restricted beer and wine permit is prohibited from having a service bar.

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

Under the bill, the governing body of a municipality would be required to adopt an ordinance or resolution authorizing the issuance of the permits. The bill allows the ordinance or resolution to establish the days and times during which the permit holder may sell alcoholic beverages. The ordinance may set different hours during which the permit holders may sell alcoholic beverages from other licensees operating in the municipality.

The bill allows the holders of special restricted restaurant permits and beer and wine permits to sell alcohol within 200 feet of places of worship and schools. This practice is prohibited for other businesses that sell alcoholic beverages.

The bill requires the governing body of the municipality to coordinate with the Director of the Division of Alcoholic Beverage Control (ABC) to require municipal law enforcement officers to enforce Title 33 of the Revised Statutes governing the sale of alcoholic beverages by the holder of a special restricted restaurant permit or beer and wine permit. If the municipality does not have a municipal law enforcement agency, the additional enforcement of Title 33 of the Revised Statutes is to be assumed by the appropriate law enforcement agency serving the municipality. The bill requires a law enforcement officer authorized to coordinate with the division to enforce Title 33 of the Revised Statutes to receive appropriate training by the division.

The bill establishes a fee schedule for the initial issuance and annual renewal of the special restricted restaurant permit and restricted beer and wine permit based on the gross square footage of the restaurant. The initial fee and annual renewal fee for the special restricted restaurant license 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 fees imposed for the restricted beer and wine permit are 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 initial fee and renewal fee are to be paid in the following manner: \$2,500 of the fee for the special restricted restaurant license and \$1250 for the fee for the restricted beer and wine license is to be

paid to the municipality where the restaurant is located and if the restaurant is located within the boundaries of two or more municipalities, the fee is to be divided equally among those municipalities; the remainder of the fee is to be paid to the to the Director Division of Taxation to be used solely for the purposes of offsetting the costs associated with issuing tax credits provided under the amended bill. After the Division of Taxation is reimbursed for costs associated with issuing tax credits, the full fee is to be paid to the municipality. In addition, the bill requires permit holders to pay to the Director of the Division of Alcoholic Beverage Control any applicable renewal fees that the holder of a plenary retail consumption license is required to pay under current law.

The amended bill imposes certain penalties on the holders of the special restricted restaurant permit or restricted beer and wine permit who violate 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 is required to pay \$2,500. Both permit holders are subject to a mandatory suspension of the permit for six months. For a second offense, both permits are to be revoked and the permit holders are required to pay a \$10,000 civil penalty. A revocation for a second offense would render the permit holder and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate permit holder ineligible to receive another special restricted restaurant permit or restricted beer and wine permit for 10 years following the date that the revocation of the permit became effective. The amended bill requires that 25 percent of the fine money is to be paid to Division of Taxation to be used solely for operating the Alcoholic Beverage Control Enforcement Bureau in the Division of ABC and the State Police. The remaining 75 percent of the fines imposed is to be collected by the Director of ABC and paid to the municipality in which the violation occurred.

The amended bill also allows the holder of a permit to make an offer of payment to the Director of ABC in lieu of suspension or revocation of the permit. This practice is currently permitted for the holder of a plenary retail consumption license, which is subject to suspension.

This amended bill further provides for the issuance of additional plenary retail consumption licenses by municipalities that have adopted a master plan pursuant to the provisions of section 19 of P.L.1975, c.291 (C.40:55D-28). These municipalities may issue the additional plenary retail consumption licenses based upon the population projections for that municipality contained in the master plan and the schedule set forth under the amended bill. The schedule relies upon the population projection in the master plan. If the projected peak population supports the issuance of one or more

additional plenary retail consumption licenses, the municipality immediately may issue one additional license. The municipality may issue another plenary retail consumption license whenever an additional 3,000 or more persons are added to the municipality's population, until the maximum number of licenses supported by the projected peak population in the master plan has been issued.

Finally, the amended bill provides a tax credit to existing consumption licensees for "the qualified loss in value" resulting from the creation of the new restaurant licenses. The tax credit is required to be taken over a five-year period, in five annual installments, at the rate of one-fifth the total amount of the taxpayer's allowable credit. In order to calculate the qualified loss in value, a consumption licensee would be required to obtain an appraisal—at the licensee's expense—of the fair market value of the license prior to the bill's enactment, and a separate appraisal of the license's value after the bill's enactment. The "qualified loss in value" would be based on the following calculation: Appraisal prior to bill's enactment - Appraisal after bill's enactment = "Qualified loss in value."

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

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

The amended bill provides that a qualified license holder who is allowed a credit is permitted to maintain the plenary retail consumption license and operate a licensed premises in this State. However, the amended bill provides that taxpayers who sell their

interest in the consumption license during the five-year tax period in which they are eligible to receive annual installments of the credit, must forfeit that portion of the qualified licensee's credit that is equal to the amount of consideration received from the sale or transfer of the license. The amended bill provides that the forfeited amount will reduce any unused credit of the taxpayer that has not been used, sold, or assigned to another taxpayer and, if after the forfeited amount is used to reduce any allowable credit of the taxpayer, the balance of the forfeited portion remaining must be repaid to the Director of the Division of Taxation.

Additionally, the amended bill provides that taxpayers who sell their interest in the consumption license during a fifteen-year period following the five-year tax period in which they are eligible to receive annual installments of the credit, must similarly forfeit that portion of the qualified licensee's credit that is equal to the amount of consideration received from the sale or transfer of the license. The bill provides that the forfeited amount will reduce any tax credit carryover that is allowed but has not been used by the taxpayer, and, if after the forfeited amount is used to reduce any allowable credit of the taxpayer, the balance of the forfeited portion remaining must be repaid to the Director of the Division of Taxation, at reduced amounts based upon when the sale or transfer of the license occurs.

The bill requires the Director of ABC to submit a report to the Governor and the Legislature within one year of the amended bill's enactment and annually thereafter. The report is to include, but not be limited to, the number of permits issued pursuant to this section; the locations for which the permits are issued; the number of permit suspensions or revocations initiated; any information pertaining to violations committed by a permit holder under Title 2C of the New Jersey Statutes and Title 33 of the Revised Statutes; and the status of pending applications for a tax credit and the number of tax credits approved or denied.

COMMITTEE AMENDMENTS

The committee amendments:

- 1) replace the designation of restricted restaurant and beer and wine plenary retail consumption license with the designation of special restricted restaurant permit and restricted beer and wine permit;
- 2) require the permits to be issued within a "restaurant district" as defined by the bill;
- 3) provide that the permits would only be available for use in connection with restaurants that occupy a gross square footage of between 800 and 4,500. As introduced, the licenses were to be issued to use in connection with restaurants that occupy a square footage of between 1,500 and 6,000;

4) prohibit the issuance of permits in a county of the fifth or sixth class having a population less than 200,000 according to the latest federal decennial census;

5) prohibit a permit holder from closing the restaurant between the months of September and May for a period of more than 30 consecutive days;

6) clarify that a municipality may, by ordinance or resolution, establish the number of permits issued within its municipal borders;

7) require the governing body of the municipality to coordinate with the Director of ABC to require municipal law enforcement officers to enforce Title 33 of the Revised Statutes governing the sale of alcoholic beverages by the permit holder;

8) require a law enforcement officer authorized to coordinate with the division to enforce Title 33 of the Revised Statutes to receive appropriate training by the division;

9) change the initial issuance and annual renewal fees for a restricted restaurant license to \$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. As introduced, the fees for the restricted restaurant license were \$3,000 for a restaurant with a square footage of 1,500 to 3,000, and \$10,000 for a restaurant with a square footage of 3,001 to 6,000;

10) change the initial issuance and annual renewal fees for the special restricted beer and wine permit to \$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. As introduced, the fees for the restricted beer and wine license were \$1,500 for a restaurant with a square footage of 1,500 to 3,000 and \$5,000 for a restaurant with a square footage of 3,001 to 6,000;

11) change the penalties imposed on a permit holder who violates the law;

12) provide that a second offense under the law would render the permit holder and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate permit holder ineligible to receive another restricted restaurant permit or restricted beer and wine permit for 10 years following the date that the revocation of the permit became effective;

13) require that 25 percent of the fine money is to be paid to Division of Taxation to be used solely for operating the Alcoholic Beverage Control Enforcement Bureau in the Division of ABC and the State Police;

14) require that the remaining 75 percent of the fines imposed is to be collected by the Director of ABC and paid to the municipality in which the violation occurred;

15) allow the permit holder to make an offer of payment to the Director of ABC in lieu of suspension or revocation of the permit; and

16) require the Director of ABC to submit a report regarding the permits to the Governor and the Legislature within one year of the bill's enactment and annually thereafter.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill, as amended, will result in a net increase in revenues for the State and municipal governments derived from the issuance and annual renewal of newly established permits, penalties associated with those permits, and increased economic activity from more businesses being able to obtain permits. However, the impact of the bill could span over at least two decades and can fluctuate on an annual basis. The OLS notes that the bill is permissive, so a municipality may choose to adopt or not to adopt an ordinance to allow special restricted restaurant permits and restricted beer and wine permits. The bill's impact is tied to the number of municipalities that choose to adopt the ordinance establishing these permits, the number of taxpayers (businesses) that take advantage of these new permits, and the number of taxpayers that apply for and receive tax credits authorized by the bill.

The OLS notes that the State will experience revenue losses due to the issuance of corporation business tax (CBT) and gross income tax (GIT) credits to taxpayers equal to the qualified loss in value of a taxpayer's plenary retail consumption license ("Class C license"). The State's revenue loss attributable to the tax credits is temporary, since the initial fee and annual renewal fees of the special restricted restaurant permit and the restricted beer and wine permit are partially dedicated to repaying the tax credits authorized by the bill. Once the costs of the tax credits are fully reimbursed to the State from revenues derived from those permits and penalties, the revenues will remain with the municipalities. The bill includes "claw back" provisions that act as a mechanism for the State to partially recover the costs of distributed tax credits in the event that a Class C license is sold by a taxpayer within a certain time period. These tax credits are non-refundable, but may be transferred to other taxpayers for consideration.

The OLS cannot determine the time period during which the bill will achieve net positive status due to various temporal factors. Specifically, taxpayers have five years following the date of enactment to apply for the tax credits. Those tax credits, once approved, are distributed over five years and may be carried forward for 20 privilege periods or taxable years depending on the taxpayer's liability. Furthermore, the OLS cannot predict the number of new businesses or existing businesses that will take advantage of the new permits. The number of permits issued will impact the timetable during which the State will be fully reimbursed for the costs of the tax credits.