



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 471 (as passed by the Senate)  
Sponsor: Senator Jason E. Allen  
Committee: Economic Development and Regulatory Reform

Date Completed: 2-25-08

### **RATIONALE**

Public Act 501 of 2006 amended the Michigan Liquor Control Code, effective December 29, 2006, to allow the Liquor Control Commission to issue public on-premises licenses, in addition to the population-based quota licenses allowed under the Code, to businesses engaged in activities related to dining, entertainment, and recreation, and located in city redevelopment project areas or development districts. To receive a license, an applicant must meet particular thresholds on the amount of investment in the project area or development district, and pay an enhanced license fee of \$20,000. In addition, an individual signing the application for a redevelopment license must demonstrate that the applicant attempted to secure an appropriate on-premises escrowed license or quota license and that, to the best of his or her knowledge, such a license is not readily available within the local unit of government in which the applicant proposes to operate. In order to prevent the unnecessary issuance of new liquor licenses, some people believe that an applicant should attempt to secure an escrowed license within the county, rather than only within the city, where the business intends to operate.

### **CONTENT**

The bill would amend the Michigan Liquor Control Code to require an applicant for an on-premises liquor license in a city redevelopment project area or a development district to state and demonstrate that an appropriate on-premises escrowed license or quota license issued under Section 531 is not readily available within the county, rather than the local unit of government, in which the

applicant proposes to operate. (Section 531 limits the number of public licenses granted for the sale of alcoholic liquor for on-premises consumption to one for each 1,500 residents.)

If the applicant could present the Liquor Control Commission with documentation that he or she had contacted the holder of an escrowed license in writing and had not received a written response within 30 days after the date of the contact, the Commission could not consider the escrowed license readily available to that applicant.

The bill specifies that its "clarification" as to a determination of whether an escrowed or quota license was readily available would apply only to an application submitted on or after the bill's effective date, and not to a completed application submitted or approved before January 1, 2008.

(For the purpose of a redevelopment license, the Code defines "readily available" as available under a standard of economic feasibility, as applied to the applicant's specific circumstances, that includes the following:

- The fair market value of the license, if determinable.
- The size and scope of the proposed operation.
- The existence of mandatory contractual restrictions or inclusions attached to the sale of the license.

"Escrowed license" means a license in which the rights of the licensee in the license or to the renewal of the license still exist and are subject to renewal and activation in the

manner provided for in R 436.1107 of the Michigan Administrative Code. Under that rule, a license that is not in active operation must be placed in escrow with the Commission, and the licensee has five licensing years after the expiration date of the escrowed license to put it into active operation.)

MCL 436.1521a

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Many municipalities in Michigan are struggling to revitalize their core cities, and would like to draw people downtown for dining, recreation, and entertainment, in venues that can serve alcoholic beverages. In some areas, however, there are no liquor licenses available to prospective developers or restaurateurs. Public Act 501 of 2006 was enacted to meet this need, limiting the new licenses to projects that satisfy certain economic criteria and are located in areas where redevelopment is taking place. These provisions are similar to others in the Code, which previously allowed the Liquor Control Commission to issue up to 50 on-premises licenses for restaurants located in development districts, in order to promote economic growth within the districts. The Code also allows the Commission to issue a number of on-premises resort licenses and resort economic development licenses in eligible areas.

Because all of these licenses are in addition to the quota-based licenses, an applicant must demonstrate that a quota license or an escrowed license is not available locally. In the case of the development licenses that previously were issued, an applicant had to attempt to secure a quota or escrowed license in the local unit of government where the business would operate. For a resort or resort economic development license, the applicant must show that another license is not available in the *county* in which the applicant proposes to operate—as Senate Bill 471 would require for redevelopment project licenses.

Requiring the county-wide unavailability of an escrowed license would codify what some

people believed was going to be required under the 2006 legislation. This requirement would be appropriate because, under the Code, on-premises quota licenses that are in escrow may be transferred to any local unit within the county (subject to approval of the local unit to which a license will be transferred). Therefore, if a person wished to open a liquor-serving establishment in a city redevelopment area or a development district, and could secure an escrowed license within the county, it would not be necessary for the Commission to issue a new license that exceeded the population-based quota. This would help preserve the value of existing licenses, which are considered transferable assets of the licensees.

**Response:** A license issued under Public Act 501 may not be transferred. If the licensee goes out of business, the local unit may approve another applicant but the business must be located within a city redevelopment project area or development district and the licensee must meet criteria related to dining, entertainment, or recreation activities. Thus, the extent to which such a license will diminish the value of quota licenses is limited.

### **Opposing Argument**

The bill would undermine the economic development efforts of Public Act 501 by making it more difficult to obtain a redevelopment license. The number of escrowed licenses within a county may be far more than the number in a particular city. In the City of Berkley, for example, there is only one escrowed on-premises licenses. In Oakland County, where Berkley is located, 77 on-premises licenses are in escrow. Under the bill, an applicant in Berkley would have to contact the holder of each of those licenses and negotiate with all that were interested in selling. The effort and expense this would require could be prohibitive to an applicant, especially one who is planning to make a significant economic investment in the community.

An escrowed license also could be unaffordable. The fee for a license under Public Act 501 is \$20,000, which is significantly less than what an on-premises license can go for on the open market. In Adrian, for example, it was reported that the price of a liquor license was \$50,000, when the 2006 legislation was being discussed. Although a large, chain restaurant might be

able to pay that amount, it likely would be excessive for the sort of entrepreneur that would locate in an aging, core city and would attract patrons looking for a unique venue.

**Response:** Attempting to secure an escrowed license on a county-wide basis would not be overly burdensome. The Commission's website contains a database of all escrowed licenses that can be searched by county and type of license. The on-line information includes the business owner's name, address, and telephone number, and specific information about each license. Contacting the holder of every appropriate license could be simply a matter of sending a letter. Many escrowed licenses are not available for sale, and many are not for on-premises consumption. The number of licensees a prospective buyer actually would have to negotiate with could be minimal. As the Commission requires for resort licenses, an applicant would have to show that he or she made an effort to secure an escrowed license within the county, but would not have to take extraordinary steps to do so, and would not be required to seek out an active quota license.

Also, if an applicant wrote to the holder of an escrowed license and did not receive a response within 30 days, the Commission could not consider that license to be readily available. This would help to expedite the process of obtaining a redevelopment license.

In addition, the cost of an escrowed license depends on the area. Reportedly, the market rate for a quota license in Wayne County is well below the \$20,000 fee for a redevelopment license.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt  
Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.