SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1444

SPONSOR: Committee on Regulated Industries and Senator Jones

SUBJECT: Beverage License/Historic Structures

DATE: April 7, 1999 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Guthrie	RI	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

The bill creates a special liquor license for a new category of historic hotels. To qualify for this exemption, the hotel must: have no fewer than 10 and no more than 25 guest rooms, be located in a historic structure, be located in a municipality which on the effective date of the act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents, be located within a "constitutionally chartered county", derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages, and sell alcoholic beverages for consumption only on the licensed premises. The bill defines "historic structure."

The bill also creates a new category of specialty center and limits consumption of alcoholic beverages within any specialty center to designated areas within the center.

The bill substantially amends sections 561.01 and 561.20 of the Florida Statutes.

II. Present Situation:

Although there is no limit on the number of licenses that may be issued to sell malt beverages and wine, s. 561.20(1), F.S., limits the number of liquor licenses issued in any county to one license per 5,000 county residents. Licenses issued pursuant to s. 561.20(1), F.S., are referred to as quota licenses.

Hotels. Subsection (2) of s. 561.20, F.S., provides exemptions to the quota limitation, providing for issuance of special licenses to specified types of businesses, including three categories of hotels, motels, or motor courts:

- Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents.

- Any bona fide hotel, motel, or motor court of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater.

- Any bona fide hotel or motel of fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants, and which:

  - is listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, or

  - is within and contributes to a registered historic district pursuant to 126 U.S.C. s. 48(g)(3)(B), or

  - has been found to meet the criteria of historical significance of the Division of Historical Resources of the Department of State, as certified by that division or by a locally established historic preservation board or commission, or like body, which has been granted authority to designate historically significant properties by the jurisdiction within which the hotel or motel is located.

No local laws may require a greater number of hotel rooms within these categories.

Specialty Centers. Subsection 561.20(2)(b), F.S., provides for issuance of a special alcoholic beverage license to a specialty center. The term specialty center is defined as any development having at least 50,000 square feet of leasable area, containing restaurants, entertainment facilities, and specialty shops, and located adjacent to a navigable water body. Alcoholic beverages sold for consumption on the premises by a vendor in a specialty center may be consumed anywhere within the specialty center. The beverages may not be removed from the specialty center premises.

III. Effect of Proposed Changes:

Section 1 amends s. 561.01, F.S., to define "historic structure," using the same language contained in the current statutory exemption for historic hotels and motels in s. 561.20(2), F.S. With this definition in place, **section 2** of the bill amends s. 561.20(2), F.S., to incorporate the shorthand reference to "historic structures."

Section 2 also creates a new exemption for historic hotels or motels. To qualify for this exemption, the hotel or motel must have no fewer than 10 and no more than 25 guest rooms, be located in a historic structure, be located in a municipality which on the effective date of the act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents, and be located within a "constitutionally chartered county." The new special license permits the sale of alcoholic beverages for consumption only on the licensed premises of the hotel or motel. Additionally, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages.

Section 2 also amends the provisions on specialty centers. A new category of specialty center is created, consisting of an enclosed shopping mall having at least 150,000 square feet of leasable

area and containing restaurants, movie theaters with not less than 18 operating screens, and specialty shops. The bill limits consumption of alcoholic beverages within any specialty center to designated areas within the center.

Section 3 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill restricts issuance of the new type of special license to a municipality that is within a constitutionally charted county and that on the effective date of the act has a population of no fewer than 25,000 and no more than 35,000 residents, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998. This may raise two constitutional issues: lack of the required notice for a local law and failure to base a classification of governmental entities on a basis reasonably related to the subject of the law.

The Florida Constitution prohibits enactment of a local law unless notice of intention to seek enactment has been published as provided by general law. *s. 10, Art. III, Fla. Const.* The notice is required unless the local law will become effective only upon approval of the electors of the area affected. *Id*. General law requires that the notice be published in each county affected either by publication in a newspaper of general circulation or, if there is no such newspaper, by posting at not less than three public places in the county, one of which must be at the county courthouse. s. 11.02, F.S. Evidence of publication must be established before the bill is passed. s. 11.021, F.S.

Additionally, the Florida Constitution provides that in the enactment of general laws, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law. s. 11, Art. III, Fla. Const.

The courts frequently apply these two provisions simultaneously. An example is *Carter v. Norman*, in which the Florida Supreme Court set forth the classification that is permissible in a general law. 38 So.2d 30, 32 (Fla. 1948). In a general law, a classification of counties according to population is permissible so long as the classification is reasonable and not

arbitrary, and is based on some difference which bears some reasonable and just relation to the subject matter affected. *Id*. Arbitrary classification by population for the purpose of avoiding the Constitution's mandated notice for local laws is not constitutional. *Id*. Additionally, where a statute that the Legislature treated as a general law does not meet these requirements and a court can determine from the statute's obvious purpose or legal effect that it is operative only as a local law, the court must treat the statute as a local law, regardless of whether the locality intended to be affected is named in the statute. *Id*.

In *Carter*, the Court found that the effect of the county population restriction in the challenged law was to limit application of the statute to Hillsborough County, and that the effect of the municipal population restriction was to limit application to a strip of property three miles wide surrounding the City of Tampa. *Carter*, at 33. Furthermore, the effect of the restriction to a hotel, resort, or restaurant that had facilities for serving meals to not less than 500 people at one time limited the application of the statute to one particular business. *Id*.

The Court found that "no population statute having such a narrowly restrictive application and effect and resting upon such an arbitrary classification could ever be construed by the courts as being a valid general law based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class affected" and, as the law had not been advertised prior to enactment, held the statute unconstitutional. *Id*.

Such a law is commonly known as a "general law of local application" or a "general bill of local application." A general law of local application is a law that uses a classification scheme based on population or some other criterion so that its application is restricted to particular localities. *City of Miami Beach v. Frankel*, 363 So.2d 555 (Fla. 1978). As the Supreme Court indicated in *Carter*, a general bill of local application must meet the constitutional requirements for a local bill.

In restricting issuance of the new type of special license to a municipality within a constitutionally chartered county, which applies only to Dade County, the bill may raise issues relating to Dade County's Home Rule Charter. s. 6, Art. VIII, Fla. Const. and s. 11, Art. VIII, of the Constitution of 1885, as amended. In 1958, in its first case on the issue of local bills affecting only Dade County, the Florida Supreme Court stated that when the voters of Dade County adopted the home rule charter on May 21, 1957, "the authority of the Legislature in affairs of local government in Dade County ceased to exist. Thereafter, the Legislature may lawfully exercise this power only through passage of general acts applicable to Dade County and any other one or more counties, or a municipality in Dade County and any other one or more municipalities in the State." *Chase v. Cowart*, 102 So.2d 147, 150 (Fla. 1958). Since this case, the courts have consistently held that the Constitution prohibits enactment of a law that affects only Dade County.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An unknown number of hotels will qualify for the newly created special license, which will enable them to sell liquor without waiting for or paying for a quota license, to the competitive detriment of existing holders of quota or special licenses.

An unknown number of enclosed shopping malls will qualify for the newly created special license for specialty centers, which may result in economic benefit to those which choose to obtain such a license.

C. Government Sector Impact:

There will be an insignificant expense in processing the new licenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.