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DATE: February 5, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 429
RELATING TO: Alcohol License/Retirement Community
SPONSOR(S): Representative Gibson
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill creates an exception to the alcoholic beverage licensing statutes and authorizes the issuance of a special alcoholic beverage license to a business entity in the Town of Lady Lake and to a business entity in the unincorporated area of Sumter County. The bill provides that the special license will cover each alcoholic beverage retail outlet owned or operated by the business entity as well as other individually owned outlets within the complex which operate independent of the primary business entity.

The attached Economic Impact Statement indicates, "The proposed bill provides for a minimum number of special licenses within the commercial district of a retirement community in the Town of Lady Lake and within the unincorporated area of Sumter County. The Division of Alcoholic Beverages and Tobacco administers these licenses. The implementation, administration, and enforcement of the increase in the number of licenses will be minimal, and will not require additional costs to the Division." The bill will have a negative, but insignificant, fiscal impact on state revenue collections.

The Sponsor has agreed to offer a strike-everything amendment which includes the substance of the bill as filed, with modifications to the bill as filed, that requires each individual business operating within an entertainment or lodging complex that sells alcoholic beverages to have a separate alcohol license; and deletes a provision that no size or seating requirement is applicable to individual restaurants or lounges. **This amendment appears to resolve the issue raised in Section 2.C. "EFFECT OF PROPOSED CHANGES."**

Pursuant to House Rule 5.6(b), a local bill providing an exception from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill. (See II.C. "EFFECT OF PROPOSED CHANGES:" section.)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Chapters 561-565 and 567 and 568, Florida Statutes, comprise Florida’s Beverage Law. The Beverage Law requires a person to be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages. The sale of alcoholic beverages is generally considered to be a privilege and as such, licensees are held to a high standard of accountability. The Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation is the state agency given responsibility for enforcement of the Beverage Law.

The Beverage Law requires the Division to conduct background investigations on potential licensees and requires that licensees meet prescribed standards of moral character. Further, the Beverage Law prohibits certain business practices and relationships. Alcoholic beverage licenses are subject to fine, suspension and/or revocation for violations of the Beverage Law.

Unless sold by the package for consumption off the licensed premises, the sale and consumption of alcoholic beverages by the drink is limited to the “licensed premises” of a retail establishment over which the licensee has dominion or control. The beverage law does not allow a patron to leave an establishment with an open alcoholic beverage and/or enter another licensed premises with an alcoholic beverage.

Florida’s retail alcoholic beverage licensing system is generally built around the quota license¹ structure with all other retail licenses that allow the sale of liquor enacted as exceptions to the quota limitation. There are numerous exceptions in general law to the quota limitation that authorize the issuance of liquor licenses to certain groups under specified conditions and with specified limitations. Since these licenses are exceptions to the quota restriction they usually are not allowed as much flexibility in their operations. Bars/nightclubs and liquor package stores typically operate

¹Unlike retail beer and wine licenses, s. 561.20(1), Florida Statutes, provides for a quota or limitation on the number of liquor licenses which may be issued in a county based on population: one license for each 7,500 residents. Quota limitations were initially enacted in the interest of promoting temperance by limiting the number of retail outlets and, therefore, the availability of alcoholic beverages. A quota liquor license allows the sale of all legal alcoholic beverages, beer, wine and liquor, regardless of alcoholic content. Quota licenses also allow the sale of alcoholic beverages by the package as well as by the drink. To assure impartiality in granting these liquor licenses, the law provides for a double random lottery drawing procedure to establish the order of selection to apply for a license. Since there is limited availability, quota licenses often sell on the private market for thousands of dollars.

under the authority of a quota license; whereas, restaurants typically operate under a special restaurant license [SRX license]. A restaurant with a SRX license is required to have at least 2,500 square feet of service area; be equipped to serve 150 persons full course meals at one time; and derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. In addition, a restaurant operating under a SRX license cannot make package sales and cannot serve liquor after the hours of serving food have elapsed.

C. EFFECT OF PROPOSED CHANGES:

Notwithstanding the limitations contained in the Beverage Law, this bill authorizes the Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation, to issue two special alcoholic beverage licenses: one to a business entity operating an entertainment or lodging complex within the commercial district of a retirement community within the Town of Lady Lake and one to a business entity operating an entertainment or lodging complex within the commercial district of a retirement community in the unincorporated area of Sumter County.

As defined by the bill, the complex may include one or more restaurants, bars, breweries or brew pubs, club houses, recreation centers, lodging facilities, banquet facilities, special activity tents, or similar structures or meeting areas, or any combination thereof. The bill specifies that the complex must meet the following criteria:

- (1) A minimum of 15,000 visitors must visit the commercial district of the retirement community annually;
- (2) The complex must provide meeting facilities for at least 250 persons; and
- (3) The complex must contain at least two restaurants or lounges having at least 4,000 square feet of service area equipped to serve 250 persons full-course meals at one time. However, no size or seating requirement is applicable to any individual restaurant or lounge.

This bill specifies that the complex must be managed, controlled, and operated by a primary business entity under one business name and may include individual business entities that are owned, managed, controlled, and operated independently of the primary business entity. This provision appears to allow the issuance of one master license to the "primary business entity" which covers each of the separate outlets [restaurants, bars, clubhouses, etc.] within the complex, including those that are owned and operated independently of the primary business entity. This provision appears to create a standard for accountability that is less than that required for other licensees and may create enforcement difficulties for the division. For example, if a restaurant that is owned independently of the primary business entity that owns the complex license is found to be in violation of the Beverage Law, whom will the division charge with the violation?

The entity receiving the alcoholic beverage license will be required to pay only one license fee rather than separate fees for each business.

Legal descriptions are provided in the bill that describe the physical areas in which the two licenses may be issued. The bill stipulates that the boundaries encompass a contiguous area separated only by deeded or dedicated rights of way.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Paragraph 1 of this section provides any entity operating an entertainment or lodging complex within the commercial district of a retirement community in the Town of Lady Lake may be

issued a special alcoholic beverage license by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation permitting the sale of alcoholic beverages, and the manufacture and sale of malt beverages, for consumption on premises only. The complex, including the use of areas or facilities pursuant to the authorization of a community development district, must be managed, controlled, and operated by a primary business entity under one business name and may include individual business entities that are owned, managed, controlled, and operated independently of the primary business entity. The bill provides the boundaries of the complex within the Town of Lady Lake; the bill provides that these boundaries encompass a contiguous area separated only by deeded or dedicated rights-of-way. Paragraph 2 provides for the term "entity operating an entertainment or lodging complex within the commercial district of a retirement community" and definition, the bill provides a list of criteria for permitted use as defined by the Town of Lady Lake ordinances. Paragraph 3 provides the license authorized by this section will not entitle the licensee to maintain or construct any structure on the premises that is prohibited by the ordinances or regulations of the Town of Lady Lake. The bill provides the license will not exempt the licensee from complying with the municipal ordinances of the Town of Lady Lake. The bill provides all provisions of the alcoholic beverage laws of the State of Florida apply to such license and licensee that are not inconsistent with this provision.

Section 2. Paragraph 1 of this section provides any entity operating an entertainment or lodging complex within the commercial district of a retirement community in the Town of Lady Lake may be issued a special alcoholic beverage license by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation permitting the sale of alcoholic beverages, and the manufacture and sale of malt beverages, for consumption on premises only. The complex, including the use of areas or facilities pursuant to the authorization of a community development district, must be managed, controlled, and operated by a primary business entity under one business name and may include individual business entities that are owned, managed, controlled, and operated independently of the primary business entity. The bill provides the boundaries of the complex within Sumter County; the bill provides that these boundaries encompass a contiguous area separated only by deeded or dedicated rights-of-way. Paragraph 2 provides for the term "entity operating an entertainment or lodging complex within the commercial district of a retirement community" and definition, the bill provides a list of criteria for permitted use as defined by Sumter County ordinances. Paragraph 3 provides the license authorized by this section will not entitle the licensee to maintain or construct any structure on the premises that is prohibited by the ordinances or regulations of Sumter County. The bill provides the license will not exempt the licensee from complying with the municipal ordinances of Sumter County. The bill provides all provisions of the alcoholic beverage laws of the State of Florida apply to such license and licensee that are not inconsistent with this provision.

Section 3. Provides effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? September 9, 2001 and September 13, 2001

WHERE? Daily Sun in Lady Lake, Lake County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article III, Section 11, subsection 12 of the Florida Constitution prohibits the legislature from passing a special law or general law of local application pertaining to a grant or privilege to a private corporation. Potentially, the granting of a special alcoholic beverage license to the operating entity of an entertainment complex might be considered unconstitutional if the operating entity is a private corporation and the bill is considered a special law or a general law of local application.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Chapter 95-455, Laws of Florida, authorized the issuance of a special license to an entity operating an entertainment or lodging complex, which might include numerous retail outlets that are owned by the same entity, within the commercial district of a retirement community in the Town of Lady Lake.

Issuance of a master license has two primary benefits. First, it allows patrons to move freely between establishments in the complex without discarding their alcoholic beverage since the entire complex is considered the licensed premises. Second, it precludes the necessity for the individual retail outlets to obtain alcoholic beverage licenses as would otherwise be required by the Beverage Law.

According to representatives from The Villages, the license issued pursuant to Chapter 95-455, Laws of Florida, covered the first phase of the planned downtown development. The two licenses authorized by this bill will cover the second and third phase of the development: the second phase in the Town of Lady Lake and the third phase in Sumter County. All three developments are owned by the same corporate entity.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor of the bill is submitting a strike-everything amendment to the bill, which includes the substance of the bill as filed, with modifications to the bill as filed, and to require each individual business operating within an entertainment or lodging complex that sells alcoholic beverages to have a separate alcohol license; and deletes a provision that no size or seating requirement is applicable to individual restaurants or lounges. The amendment conforms to the Senate bill CS/SB 1130.

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VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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