SENATE, No. 1626



STATE OF NEW JERSEY

218th LEGISLATURE



INTRODUCED FEBRUARY 5, 2018

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Provides for transfer and sale of inactive liquor licenses for use in qualifying smart growth municipalities.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning the transfer of alcoholic beverage licenses to qualifying smart growth municipalities, supplementing Title 33 of the Revised Statues, and amending and repealing parts of P.L.2007, c.351.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. (New section) The Legislature finds and declares that:

a. Smart growth is an innovative approach to land use planning that directs the State’s resources and funding to projects that enhance the quality of life for New Jersey residents;

b. Smart growth encourages the development of distinctive, attractive communities with mixed use development, walkable town centers and neighborhoods, a range of housing options, and a variety of transportation modes;

c. Small businesses, including restaurants and other establishments that serve alcoholic beverages, enhance the economic viability of a smart growth community and the quality of life for residents and visitors;

d. Under current law, a municipality may not issue a new plenary retail consumption license unless and until the combined total number of such licenses existing in the municipality is fewer than one for each 3,000 of its population according to the most recent estimates issued by the U.S. Bureau of the Census, and liquor licenses issued in one municipality may not be transferred to another municipality;

e. As a result of these restrictions, there is an insufficient number or complete lack of available plenary retail consumption licenses in many smart growth communities where real estate development projects including restaurants have been proposed; at the same time, there are numerous other municipalities that have a surplus of inactive plenary retail consumption licenses in excess of any foreseeable demand for those licenses; and

f. In order to foster and encourage development in smart growth communities in which there is an insufficient number or complete lack of available plenary retail consumption licenses, it is appropriate to create a method for the sale and transfer of inactive plenary retail consumption licenses existing in those communities having a surplus of inactive licenses to purchasers who will activate and utilize such licenses in smart growth communities, and to provide financial compensation to the municipalities from which such licenses are transferred.

2. (New section) a. As used in this act:

“Green building conversion redevelopment project” means any redevelopment project that includes the conversion of not less than 150,000 square feet of existing office or other commercial premises, that is vacant or functionally obsolete and at least 35 years old, into Class A office or other commercial premises satisfying the requirements for the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council.

“Inactive license” means a plenary retail consumption license that has been renewed as authorized by the provisions of R.S.33:1-12.39 for more than three license terms and for which the holder of the license certifies that he has not received any viable, reasonable, or acceptable offers to purchase and no location at which to activate the license within the issuing municipality.

“Qualifying smart growth municipality” means a municipality that:

(1) is located in a smart growth area; and

(2) is not authorized to issue any new plenary retail consumption licenses because of the limitation on the number of plenary retail consumption licenses in section 2 of P.L.1947, c.94 (C33:1-12.14), excluding plenary retail consumption licenses transferred pursuant to this act; or

(3) is unable to issue a sufficient number of new plenary retail consumption licenses to satisfy the anticipated demand for plenary retail consumption licenses to be utilized within a real estate development project, as determined by the director pursuant to subsection c. of this section.

“Real estate development project” means any building or complex of buildings, whether or not under common ownership or control, which is the subject of a common redevelopment plan, site plan, general development plan or other land use plan approved by the qualifying smart growth municipality in which it is located.

“Sending municipality” means a municipality that has one or more inactive plenary retail consumption licenses.

“Smart growth area” means a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center or designated growth center in an endorsed plan; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6); a growth area designated in the comprehensive management plan adopted pursuant to section 7 of the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-8); any area designated for growth in the Highlands regional master plan adopted by the Highlands Water Protection and Planning Council pursuant to P.L.2004, c.120 (C.13:20-1 et al.); a transit village; an urban enterprise zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in need of redevelopment or rehabilitation pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.) and as approved by the Department of Community Affairs; any area on which a green building conversion redevelopment project is located; and federally owned land approved for closure under a federal Base Realignment Closing Commission action.

b. An inactive license which has been issued by a sending municipality may, in accordance with the procedures established in this act, be purchased by:

(1) a corporation or other legal entity operating or intending to operate a restaurant or other establishment that serves alcoholic beverages in a qualifying smart growth municipality; or

(2) the owner of a real estate development project in a qualifying smart growth municipality, provided that such inactive license shall subsequently be transferred to an entity operating or intending to operate a restaurant or other establishment that serves alcoholic beverages in the real estate development project.

c. The director shall determine whether an inactive license may be transferred pursuant to the provisions of this act to a qualifying smart growth municipality. The director shall approve the transfer if the director determines that a municipality is unable to issue a sufficient number of new plenary retail consumption licenses to satisfy the anticipated demand for licenses to be utilized within a real estate development project because of the limitation on the number of plenary retail consumption licenses in section 2 of P.L.1947, c.94 (C.33:1-12.14), excluding plenary retail consumption licenses transferred pursuant to this act.

d. The purchaser and the holder of the inactive license shall enter into a contract for the sale of the license, which shall be a private transaction. Upon the signing of a contract to purchase an inactive license and utilize the license as authorized under the provisions of this act, the seller of the inactive license shall obtain resolutions adopted by the issuing authorities of the sending municipality and the qualifying smart growth municipality. The resolution adopted by the sending municipality shall consent to the transfer of the license to the qualifying smart growth municipality. The resolution adopted by the issuing authority of the qualifying smart growth municipality shall state that the municipality wishes to acquire the license and that the municipality resolves to administer the license in the same manner as a plenary retail consumption license issued by the qualifying smart growth municipality and in accordance with all applicable ordinances of that municipality.

e. Prior to the transfer of a license pursuant to the provisions of this act, the purchaser of the inactive license shall pay to the sending municipality a fee in an amount equal to 20 times the annual renewal fee for a plenary retail consumption license as established by the sending municipality pursuant to R.S.33:1-12, which shall be distributed by the sending municipality in accordance with the provisions of subsection j. of this section. The purchaser shall pay to the qualifying smart growth municipality the fee or fees required for the transfer of a plenary retail consumption license and the annual renewal fee established by the municipality which shall be prorated to the following June 30th.

f. The transfer of an inactive license pursuant to this section shall be approved by the qualifying smart growth municipality in accordance with all applicable requirements for person-to-person and place-to-place transfers of plenary retail consumption licenses.

g. No person who would fail to qualify as a licensee under Title 33 of the Revised Statutes shall be permitted to hold an interest in a license transferred under the provisions of this section.

h. Licenses transferred pursuant to the provisions of this section shall be subject to all the provisions of Title 33 of the Revised Statutes, rules and regulations promulgated by the director and municipal ordinances.

i. No license transferred pursuant to this section shall thereafter be transferred to any premises other than a premises located within the same real estate development project. A license may be transferred to a corporation or other legal entity operating or intending to operate a restaurant or other establishment that serves alcoholic beverages in the same real estate development project or to the owner of the real estate development project. The director shall, after the initial transfer of a license pursuant to this section, assign a distinctive designation for the license number in order to identify the license as being subject to the provisions of this subsection.

j. The transfer fee shall be distributed in the following manner:

(1) twenty-five percent shall be paid to the sending municipality;

(2) twenty-five percent shall be paid to the director; and

(3) fifty percent shall be divided equally among and paid to the holders of plenary retail consumption licenses in the qualifying smart growth municipality on the date of the transfer.

k. Notwithstanding the provisions of R.S.33:1-42, the director shall not issue a special concessionaire permit for any location or premises which is eligible to obtain a license to serve alcoholic beverages under the provisions of this act.

l. Pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), the director may adopt rules and regulations to effectuate the purposes of this act.

3. Section 3 of P.L.2007, c.351 (C.33:1-24.3) is amended to read as follows:

3. a. Notwithstanding the provisions of section 1 of P.L.1977, c.246 (C.33:1-12.39), a municipality in which is located an urban enterprise zone as designated pursuant to P.L.1983, c.303 (C.52:27H-60 et al.) or any supplement thereto, and a Planning Area 1 (Metropolitan), as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), may acquire by purchase any existing plenary retail consumption licenses within the municipality that are inactive for more than three years and retain any such licenses in an inactive status for a period of up to five years notwithstanding that the director has not issued a special ruling pursuant to R.S.33:1-12.39 and the license holder has not paid the annual renewal fees for the license.

b. A municipality subject to the provisions of subsection a. of this section may issue at public sale one or more of any such inactive plenary retail consumption licenses in a manner consistent with the provisions of P.L.1975, c.275 (C.33:1-19.1 et seq.), to no more than one corporation or legal entity for each such plenary retail consumption license for use only at a licensed premises that shall be located in a real estate development project within a smart growth area, as defined in section 1 of P.L.2004, c.89 (C.52:27D-10.2), in the municipality or that shall be located in a qualifying smart growth municipality pursuant to P.L. , c. (C. ) (pending before Legislature as this bill). The use of any such plenary retail consumption license shall be in a manner consistent with the provisions of Title 33 of the Revised Statutes and any regulations promulgated thereunder by the director.

(cf: P.L.2007, c.351, s.3)

4. Sections 1 and 2 of P.L.2007, c.351 (C.33:1-24.1 and 33:1-24.2) are hereby repealed.

5. This act shall take effect on the first day of the third month after enactment; provided however, the director may take such anticipatory action in advance thereof as needed for the act’s timely implementation.

STATEMENT

Under the provisions of this bill, an inactive plenary retail consumption license may be purchased by (1) a corporation or other legal entity operating or intending to operate a restaurant or bar in a qualifying smart growth municipality; or (2) the owner of a real estate development project in a qualifying smart growth municipality, provided that the inactive license would be transferred to a restaurant or bar in the real estate development project. The bill repeals sections 1 and 2 of P.L.2007, c.351 (C.33:1-24.1 and 33:1-24.2) which permit the Director of the Division of Alcoholic Beverage Control (ABC) to issue special permits for the service of alcoholic beverages in smart growth development projects.

The bill first requires the Director of the ABC to determine whether an inactive license may be transferred to a qualifying smart growth municipality. The director is required to approve the transfer if the municipality is unable to issue a sufficient number of new plenary retail consumption licenses to satisfy the anticipated demand for such licenses in a real estate development project because of the statutory limitation on the number of plenary retail consumption licenses (currently one for each 3,000 of the population).

After a contract for the sale of a license has been signed, the seller is required to obtain resolutions adopted by the issuing authorities of the sending municipality and the qualifying smart growth municipality. The resolution adopted by the sending municipality must consent to the transfer of the license to the qualifying smart growth municipality. The resolution adopted by the issuing authority of the qualifying smart growth municipality must state that the municipality wishes to acquire the license and that it will be administered in the same manner as other plenary retail consumption licenses and in accordance with all applicable municipal ordinances.

The bill requires the purchaser to pay to the sending municipality prior to the transfer of the license a fee equal to 20 times the annual renewal fee for a plenary retail consumption license in the sending municipality. The fee is to be distributed in the following manner: (1) twenty-five percent is to be paid to the sending municipality; (2) twenty-five percent is to be paid to the director; and (3) fifty percent is to be divided equally among and paid to the holders of plenary retail consumption licensees in the qualifying smart growth municipality. The bill requires the purchaser to pay the qualifying smart growth municipality any fees required for the transfer of a plenary retail consumption license as well as the annual renewal fee, prorated to the next June 30, the annual date of renewal for all retail licenses.

A license purchased pursuant to the provisions of the bill may only be transferred to a premises located within the same real estate development project. A license may be transferred to a corporation or other legal entity that operates a bar or restaurant in the same real estate development project or to the owner of the real estate development project. The bill requires the Director of the ABC to assign a distinctive designation for the license number, after the initial transfer of the license, in order to identify the license as being restricted and subject to the provisions of this bill.

The bill prohibits the director from issuing a special concessionaire permit for any location or premises which is eligible to obtain a license to serve alcoholic beverages under this bill.

Finally, the bill amends section 3 of P.L.2007, c.351 (C.33:1-24.3) which provides that a municipality containing an urban enterprise zone or a Planning Area 1 (Metropolitan) may acquire by purchase any existing plenary retail consumption licenses within the municipality that are inactive and retain them for up to five years. Under this bill, the municipality must acquire the license by purchase and the license must be inactive for more than three years. The bill also clarifies that the municipality may retain the inactive licenses notwithstanding that the Director of ABC has not issued a special ruling and the license holder has not paid the annual license renewal fees. The bill further amends current law to provide that a municipality may have a public sale of an inactive plenary retail consumption license for use only at a licensed premises in a real estate development project within a qualifying smart growth municipality as defined in the bill.