

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3128

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: NOVEMBER 19, 2020

SUMMARY

- Synopsis:** Expands opportunities for restaurants, bars, distilleries, and breweries to provide outdoor dining and permits certain farms to adjust operations in response to COVID-19 public health emergency.
- Type of Impact:** Time-limited increase in State and municipal expenditures; time-limited impact on State revenues; time-limited decrease in municipal revenues.
- Agencies Affected:** Division of Alcoholic Beverage Control in the Department of Law and Public Safety, Department of Transportation, and municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>From Enactment Until January 2, 2023</u>
State Cost Increase	Indeterminate
State Revenue Impact	Indeterminate
Local Cost Increase	Indeterminate
Local Revenue Decrease	Indeterminate

- The Office of Legislative Services (OLS) estimates the bill will nominally increase administrative expenses for the State while the provisions of the bill are in effect and result in an indeterminate impact in State revenues due to the bill’s prohibition on collecting license fees from certain restaurants, bars, distilleries, and breweries that expand their premises, while allowing the division to collect permit fees for vendors wishing to sell alcoholic beverages at a seasonal farm market.
- The bill will also nominally increase administrative and enforcement expenses for municipalities and lead to a potential indeterminate reduction in local revenues due to the bill prohibiting municipal zoning officers from collecting application fees. Any fiscal impact for the State or local governments would be in effect no longer than the bill’s expiration date, January 2, 2023.

- Under the bill, the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety would issue a special ruling within 10 calendar days of the effective date of the bill entitling certain license holders to expand their premises. In addition to this potential administrative expense, the bill may reduce State revenues because it would not require licensees to submit an application to, receive approval from, or pay a fee to the division, to extend their licensed premises. Currently, the division charges a \$75 license fee and \$10 renewal fee for these purposes. Separately, the bills allows the director to establish a fee not to exceed \$25 for a daily permit and not to exceed \$75 for an annual permit for the issuance and renewal of a permit to sell any of the licensee's alcoholic products at a seasonal farm market for consumption off the premises of the seasonal farm market.
- Additionally, the bill requires a zoning officer to approve a compliant application, along with other documentation as may be required by the municipality, within 15 business days of being submitted and is forbidden from charging a fee for accepting the application or issuing the approval. However, there is a provision in the bill that permits municipalities, via resolution, to waive all requirements under the bill, except for the provision regarding COVID-19 safety protocols.

BILL DESCRIPTION

The bill would allow the owners and operators of restaurants, bars, distilleries, or breweries to use outdoor spaces which they own or lease and which are located on, or adjacent to, their business premises, as an extension of their business premises for the purpose of conducting sales of food and beverages, including alcoholic beverages if so licensed. The bill defines "outdoor spaces" as including patios and decks, both covered and uncovered, yards, walkways, and parking lots, or a portion thereof. The bill would also allow the owners and operators of those establishments to use public sidewalks, as defined in the bill, as an extension of their business premises for that purpose, as well.

The bill requires owners and operators of those establishments seeking to utilize outdoor spaces or public sidewalks as extensions of their business premises pursuant to the provisions of the bill to file an application with the municipal zoning officer, including information concerning the use of the outdoor spaces or public sidewalks, as appropriate. The zoning officer is required to approve an application that is compliant with the bill's provisions within 15 business days of the submission of the application. The bill also prohibits municipalities from charging fees for the filing of the application or issuing the approval.

Under the bill, a municipality may require an applicant to provide one or more of the following: (1) written consent of the owner of the premises, if other than the applicant; (2) an insurance certificate naming the municipality as an additional insured, with general liability on an occurrence with a limit of liability of at least \$1,000,000, with respect to losses arising solely from the operation of the outdoor dining facility; or (3) an indemnification agreement with the municipality with respect to losses arising solely from the operation of the outdoor dining facility.

Establishments operating under the provisions of the bill are required to follow, maintain, and enforce protocols promulgated by the Commissioner of Health or the Governor in response to the COVID-19 public health emergency, concerning social distancing and use of personal protective equipment during the period those protocols are in effect. The bill also provides for the operation of "bring your own bottle" privileges in applicable outdoor spaces and on public sidewalks.

Nothing in the bill permits the use of State-owned right of way for the purposes of outdoor dining. Permits for the use of the State right of way for outdoor dining will be issued upon application and approval of the New Jersey Department of Transportation.

The bill also permits municipalities to control the days and hours of certain activities, including the outdoor service of food and beverages, including alcoholic beverages if so licensed, and live performances, as well as to deny, revoke, or suspend, the outdoor dining activity of any establishment that violates the provisions of the bill.

The bill also would allow the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety to issue to the holder of a limited brewery license, restricted brewery license, craft distillery license, plenary winery license, farm winery license, or cidery and meadery license, a daily or annual permit to sell any of the licensee's products at a seasonal farm market for consumption off the premises of the seasonal farm market. The bill would require the director to issue a separate permit for each seasonal farm market at which the licensee's products are intended to be sold. Creating these permits will provide these businesses with additional opportunities to sell their products and increased revenue from those sales.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates the bill will nominally increase administrative expenses for the State while the provisions of the bill are in effect and result in an indeterminate impact in State revenues due to the bill's prohibition on collecting license fees from certain restaurants, bars, distilleries, and breweries that expand their premises, while also allowing the division to collect permit fees for vendors wishing to sell alcoholic beverages at a seasonal farm market. The bill will also nominally increase administrative and enforcement expenses for municipalities and may lead to a potential indeterminate reduction in local revenues due to the bill prohibiting zoning officers from collecting application fees. However, a municipality may, via resolution, waive this restriction. Any fiscal impact on the State or local governments would be in effect no longer than the bill's expiration date, January 2, 2023.

The bill will nominally increase administrative expenses for the State while the provisions of the bill are in effect. The Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety would issue a special ruling within 10 calendar days of the effective date of the bill entitling certain license holders to expand their premises. The New Jersey Department of Transportation would review, approve, and issue permits for the State right of way. In addition to these potential administrative expenses, the bill would not require licensees to submit an application to, receive approval from, or pay a fee to the division to extend their licensed premises. On June 3, 2020, Special Ruling 2020-10 issued by the division allowed businesses to apply, for a \$75 fee, for the "COVID-19 Expansion of Premises Permit," to enable licensees and permittees to expand their licensed premises into outdoor areas. All permits issued are set to expire on November 30, 2020.

On October 19, 2020, Special Ruling 2020-21 issued by the division allowed for over 2,300 permits to be extended to March 31, 2021 for a fee of \$10. According to the Special Ruling, if a permit holder fails to renew their license they must cease alcohol sales in the permitted area and

apply for a new permit before resuming sales in that area – which the OLS believes to mean that a \$75 fee would be required, in accordance with Special Ruling 2020-10. The bill appears to preempt the division from charging the \$75 application fee, as well as the \$10 renewal. Separately, the bills allows the director to establish a fee not to exceed \$25 for a daily permit and not to exceed \$75 for an annual permit for the issuance and renewal of a permit to sell any of the licensee’s alcoholic products at a seasonal farm market for consumption off the premises of the seasonal farm market. The director would be required to issue a separate permit for each seasonal farm market at which the licensee’s products are intended to be sold. As a result, the OLS concludes that the bill’s impact would result in an indeterminate impact in revenues for the State.

Additionally, the bill requires a zoning officer to approve a compliant application, along with other documentation as may be required by the municipality, within 15 business days of being submitted, but is forbidden from charging a fee for accepting the application or issuing the approval. However, there is a provision in the bill that permits municipalities, via resolution, to waive all requirements under the bill, except for the provision regarding COVID-19 safety protocols.

The OLS is not aware of how many municipalities were or were not already charging application fees for this purpose. Due to the fact that it is unknown whether zoning officers were or were not intending on charging a fee for this purpose, the OLS concludes that the bill could result in a potential indeterminate reduction in revenues for municipalities if municipalities do not pass an ordinance allowing application fees to be charged. Local Governments may also incur nominal additional costs to ensure that health protocols are being adhered to at restaurants, bars, distilleries, and breweries with expanded premises.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).