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Liquor bill nears passage

Delegates debate bid process and state financing

BY DAVID BEARD The Dominion Post

BILL LETS counties restrict strip clubs. Page 9-A.

A heavily debated bill to offer owners of standalone liquor stores special protections to keep their licenses squeaked through the House Judiciary Committee on Monday and passed its first reading without comment on the House of Delegates floor.

The debate focused on the possibility of creating property rights for license holders, and offering below-prime-rate financing to enable the holders to pay for their licenses.

The owners of Morgantown's Ashebrooke Liquor Outlet said they have a strong interest in the legislation, and attended House and Senate committee meetings and the afternoon House session to monitor the bill's progress.

Joseph Moser and his father, Joe Moser, owners of Ashebrooke, attended the meeting and said they were "very pleased" with the outcome.

They noted that they used to have two outlets — the one on Beechurst and another in Cheat Lake, but lost the Cheat Lake bid to a competitor.

In this case, it was another West Virginia company, BFS, which operates a chain of convenience stores and gas stations.

"We worked hard to build up and maintain our business," Joe Moser said, and they look forward to seeing the law pass.

The bill passed its first reading on the House floor without debate. The Senate version is with the Senate Finance Committee, awaiting the outcome of the House Version, said Chairman Walt Helmick, D-Pocahontas.

House Bill 105 would redefine the two types of retail liquor licenses — Class A and Class B. Class A licenses would be for standalone stores, such as Ashebrooke. Legislators said there are about 65 standalone stores in the state. Class B would be for "multi-use" facilities that include a liquor store — the stores inside the Cheat Lake BFS and the Green Bag Road Giant Eagle, for example.

Those who own Class A licenses would be allowed to either bid as usual on a 10-year license when the bidding period begins — July 1, 2010 — or buy the license at 10 percent above the minimum bid price determined by the state. Class A license buyers (only those who already hold licenses, not new bidders) who meet the credit criteria would be eligible to finance the purchase at 1 percent below prime rate, after making a 50-percent down payment on the amount due.

The original bill had passed the Senate during the regular session, but was amended in the House to permit Sunday liquor sales, and died when it returned to the Senate.

Jim Petrolo, the governor's legislative director, said the bill is designed to protect West Virginia small businesses by shielding license holders' investments. He said Gov. Joe Manchin feared that big box retailers, for example, could come into the state and use their deep pockets to outbid the current license holders.

No one would go on the record with a typical cost of a liquor license, but sources said the range is between \$50,000 and \$500,000 for the 10-year period.

Government loans

Two attempts to amend the bill failed in the House Judiciary Committee.

Delegate Barbara Evans Fleischauer, D-Monongalia, said she doesn't like the idea of the state giving loans to the license

holders. She moved to strike the financing provision from the bill. Her reasoning, she told The Dominion Post after the meeting, is that taking the license off the open market to protect the license holder creates a kind of limited monopoly.

She told her colleagues, "I have problems with the whole monopoly issue. This puts the state in the banking business — [in order to] secure a monopoly. We don't do that for any other industry in this state."

She told The Dominion Post the money devoted to financing the liquor stores could be better used for other purposes — health care or roads, for example. And the state could earn more money by keeping the bidding open and letting the market set the price.

She said she understands that this could be hard on an owner who has already invested in a liquor business for 10 or more years, but the state doesn't protect other businesses from competition.

Delegate John Overington, R-Berkeley, said he disapproves of the state giving a liquor store owner a better loan rate than a home buyer.

Two delegates opposed Fleischauer's amendment. Delegate Mike Caputo, D-Marion, said the governor mandated the financing when he put the bill on the call.

He also said, echoing Petrolo, that many liquor store owners don't have enough collateral within their store premises to obtain bank loans. The state owns the real collateral — the liquor license, which it can revoke and resell if the owner defaults on the financing.

"It gives small businesses an option to keep their operation without taking up resources," he said.

Delegate Clif Moore, D-McDowell, said, "We have a chance to do something for the little guy by protecting their investment in a state-owned business."

Several who spoke at the meeting said the process more resembles taxes and fees, where residents and businesses can pay in increments, and suffer penalties if they're late.

Fleischauer told The Dominion Post that it may be so, but those fees don't climb into the hundred's of thousands of dollars some bid for liquor licenses. She said she will not support the bill when it comes for a vote on the House floor.

The amendment went to voice vote, and was declared defeated. The no's were somewhat louder, and it seemed close, but no head count was taken.

Property rights

Delegate William R. Wooten, D-Raleigh, also proposed an amendment. He wanted to strike the provision to allow a license holder to renew it without bidding. He said this would give the 65 holders of standalone licenses the right to buy their licenses in perpetuity, essentially creating a property right.

Then, he said, if the state would decide to change the law again down the road, the action could be viewed as the state "taking" property, and lead to a lawsuit.

The committee's lawyer said that a lawsuit could come, but the court might rule that the state has "police authority" to regulate and de-regulate the liquor sales industry.

Wooten also wanted to know why the state would not provide financing for bidders seeking to keep their licenses, or for new bidders.

Petrolo said that winning bidders already can get a 10-percent discount based on the state's minimum price, and new buyers don't have an established investment — they're making a business choice to pay whatever they bid.

Delegate Tim Miley, D-Harrison, opposed the motion. "It's the governor's policy to cultivate local businesses and protect them from big corporations," he said.

This motion also failed in a voice vote, with the no's outnumbering the yes's a bit more obviously.

Liquor store information

There are seven liquor stores in the Morgantown area: Ashebrooke Liquor Outlet, Beechurst Avenue; Giant Eagle supermarket, Green Bag Road; Rite Aid Pharmacy, the Triangle in Westover; and BFS Foods, with four locations — Glenmark Centre, Cheat Lake, Westover and High Street in downtown Morgantown.

At one time, alcoholic beverages could only be purchased at state-owned liquor stores. The state took itself out of the private store business around 1990, setting up a process to auction off 10-year licenses for privately owned liquor stores.

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