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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 182 (Substitute S-3 as reported)

Sponsor: Senator Jack Welborn

Committee: Regulatory Affairs

Mich. State Law Library

Date Completed: 5-2-89

RATIONALE

Currently, the Liquor Control Act provides for a five-member Liquor Control Commission (LCC) appointed by the Governor with the advice and consent of the Senate. The Act requires that two of the commissioners be appointed as hearing commissioners to hear violations cases and recommend action on the cases. The remaining three commissioners are designated as administrative commissioners and have responsibility for administering the licensing, purchasing, enforcement, merchandising, and distribution provisions of the Act, and act as an appeal board for decisions rendered by the hearing commissioners. The Act also allows the LCC chairperson to appoint up to two administrative law examiners to hear violations cases; this provision has rarely been used, however, because the LCC has apparently preferred to use commissioners for violations cases. It has been argued that the hiring of administrative law examiners to hear violations cases would be a more professional way to handle violations of the Act, since administrative law examiners are attorneys trained in administrative law while a commissioner may be a political appointee with little or no legal background. (When the LCC hires an administrative law examiner to hear cases it must hire a person classified under Civil Service as an Administrative Law Examiner II.) Some people feel that since the LCC has been operating since July 1988 with only three members, this would be a good opportunity to reduce the size of the Commission permanently, leaving only one commissioner to hear violations cases and thus encouraging greater use of administrative law examiners.

CONTENT

The bill would amend the Liquor Control Act to reduce the membership of the Liquor Control Commission from five to three members, and provide that on the effective date of the bill only the three members with the longest time of service would remain as commissioners. The bill provides that one commissioner would be designated as a hearing commissioner, with the two remaining commissioners designated as administrative commissioners.

Further, the bill would allow the Commission chairperson to designate not more than four attorneys, instead of two, as hearing officers to hear and preside over contested cases involving a violation of the Act.

MCL 436.5 and 436.20

FISCAL IMPACT

The bill would have a fiscal impact of approximately \$80,000 in savings to State government and no fiscal impact on local government.

The total cost to the State of the two commissioners who would be eliminated is approximately \$150,000 per year. The cost of replacing one hearing commissioner with an administrative law judge would be approximately \$70,000 per year.

Currently, the Act allows not more than two hearing officers in addition to the two hearing commissioners. This provision is not used unless the Commission is lacking one of the hearing commissioners; therefore, the fiscal impact due to increasing this provision from two to four hearing officers would be minimal.

S.B. 182 (5-2-89)

ARGUMENTS

Supporting Argument

By reducing the LCC from five members to three, and leaving only one member to hear violations cases, the bill would streamline the Commission and encourage good government by making the hearings process more professional. The Act now allows two of the LCC commissioners to hold violations hearings; by reducing that number to one, the bill would require the LCC more frequently to employ administrative law examiners to hold hearings. While some commissioners may be qualified to hold hearings, there is no requirement that a commissioner, as a political appointee, be capable of doing so. The bill would ensure a greater use of administrative law examiners, and thus increase the chances that a hearing was held by a person trained in administrative law. Further, it would ensure that decisions in violations hearings were rendered based upon law and not based upon politics.

Opposing Argument

It is questionable whether the public would be better served by having a Commission with only three members. If, as proposed under the bill, there were only two administrative commissioners, the operation of the LCC could be hampered if one of them were sick or had to be away from his or her post for an extended period of time. Further, while it can be argued that administrative law examiners may be better prepared to hear violations cases, if instituted, this proposal could harm the operation of the LCC. By having two commissioners hold hearings, the current system affords those commissioners the chance of daily contact with licensees. The commissioners get to hear the problems and concerns of licensees through this steady contact and thus bring to the full Commission a wealth of experience. This is important not only when the LCC meets to make decisions, but also when it is in the process of formulating rules.

Further, moving to a system in which there was more frequent use of administrative law examiners could reduce the accountability of the hearings process. An administrative law examiner, in rendering decisions, would not be accountable to anyone, while an appointed

commissioner who holds hearings must answer not only to the rest of the commissioners but to the Governor as well.

Response: Reducing the membership of the Commission from five to three should not adversely affect the Commission's operation. There are many states that control the distribution and sale of liquor with less than five commissioners. In addition, many commissions in the State that are required to render decisions on extremely complex issues, such as the Public Service Commission and the Tax Tribunal, do so with only three members.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.