

1999-2000

**HOUSE
ALCOHOLIC BEVERAGE
CONTROL
COMMITTEE**

MINUTES

Official Minutes

**HOUSE COMMITTEE ON
Alcoholic Beverage Control**

1999-2000 Session

Rep. Bob Hensley, Chairman
Margie K. Penven, Committee Assistant

Official Minutes

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MEMBERSHIP
HOUSE COMMITTEE ON
ALCOHOLIC
BEVERAGE
CONTROL

1999-2000 SESSION

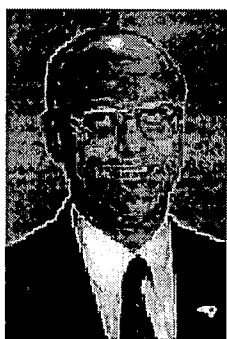


Rep. George Miller, Vice Chair

Members



Rep. Rex Baker



Rep. Michael Decker



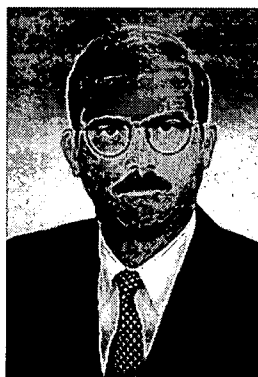
Rep. Pryor Gibson



Rep. Thomas Hardaway



Rep. Howard Hunter



Rep. Daniel McComas



Rep. Edgar Starnes



Rep. William Wainwright

Ex Officio Members



Rep. Joe Hackney



Rep. Philip Baddour



Rep. Andrew Dedmon



Rep. Beverly Earle



Rep. Pete Cunningham

**HOUSE COMMITTEE ON
Alcoholic Beverage Control
1999 SESSION**

Member	Assistant	Phone	Office	Seat
Hensley, Bob, Chairman	Margie Penven, Com. Asst.	733-5780	610 LOB	79
Miller, George, V-Chair	Betty Angell	733-5995	532 LOB	43
Baker, Rex	Dawn Ellis	733-5787	608 LOB	86
Decker, Michael	Joanne Walters	733-5904	1021 LB	40
Gibson, Pryor	Bonnie Trivette	715-3007	419A LOB	108
Hardaway, Thomas	Rita Harris	715-2530	634 LOB	60
Hunter, Howard	Barbara Phillips	733-2962	613 LOB	68
McComas, Daniel	Jayne Walton	733-5786	606 LOB	111
Starnes, Edgar	Pattie Fleming	715-9664	617 LOB	112
Wainwright, William	Denise Smith	733-5898	614 LOB	8
Hackney, Joe, Ex Officio	Emily Reynolds	733-5752	2207 LB	69
Baddour, Phillip, Ex Officio	Elizabeth Kirkland	715-0850	2301 LB	31
Dedmon, Andrew, Ex Officio	Donna Abu Harb	733-5732	2213 LB	12
Earle, Beverly, Ex Officio	Ann Raeford	733-5747	535 LOB	95
Cunningham, Pete, Ex Officio	Valerie Rustin	733-5778	541 LOB	7

Revised 2/19/99

1999-2000 SESSION

[illegible]

**MINUTES
HOUSE COMMITTEE ON
ALCOHOLIC BEVERAGE CONTROL**

February 16, 1999

The House Committee on Alcoholic Beverage Control met at 1:00 p.m. on Tuesday, February 16, 1999, in Room 415 of the Legislative Office Building. The agenda for the meeting is attached as Exhibit 1. The following members of the committee were present: Chairman Bob Hensley, Vice Chairman George Miller, and Representatives Baker, Decker, Gibson, McComas, and Starnes. A visitor registration sheet showing the guests present is attached as Exhibit 2.

Chairman Hensley called the meeting to order and introduced Ms. Brenda Carter and Ms. Jo McCants from the Research Division who will be serving as staff counselors to the committee. Rep. Hensley announced changes to the committee membership, including the addition of Rep. George Miller as Vice-Chairman and Rep. Danny McComas who replaced Rep. Mitch Setzer. He also recognized Ann Fulton, attorney to the Alcoholic Beverage Control Commission, who provided copies of the 1997 edition of the Alcoholic Beverage Control Law, updated from the 1993 edition by Ms. Fulton and Judge Bason, Chairman of the Commission. Ms. Fulton said the increased permit fees were not included in the 1997 edition, but she said she would furnish a supplement at a later meeting to reflect the new fees.

Chairman Hensley introduced Mr. Ben F. Loeb, Jr. from the Institute of Government in Chapel Hill to explain the history behind North Carolina's local option law.

Mr. Loeb said he served as staff to the House and Senate ABC Committees from the 1970s to early 1990s. He decided to write up the trends that he had seen developing, and his article was published in the Institute's *Popular Government* magazine in the Spring of 1993. He furnished committee members a copy of that article entitled, "ABC Law: The Rise and Fall of Local Option." A copy of the article is attached at Exhibit 3.

Mr. Loeb said all of the major ABC laws were on the books by 1993, when the article was written. All that has happened since then is fine tuning and local acts. As a historical background for how North Carolina got to where it is, Mr. Loeb said prohibition was repealed in the early 1930s. When the NC General Assembly met in 1935, it enacted some local acts authorizing ABC elections. The first real state-wide act was passed in 1937. It was called the Alcoholic Beverage Control Act of 1937, and it established the principle that is still in effect. That is, in order to establish ABC stores, you have an election. Originally there were just county elections, but more recently there have also been city elections. In 1939 a law was enacted concerning beer and wine that authorized its manufacture and sale. Again it provided for local option by election.

In 1941 the Fortified Wine Control Act was enacted that authorized much stronger wines than were authorized before. The earlier law covered wines made from natural fermentation, which would produce only about thirteen percent alcohol. Fortified wine allows alcohol to be added to fermented wine. This fortified wine act varied from local option for the first time because it permitted fortified wine in areas that already had ABC stores, and the fortified wines could be sold in restaurants and grocery stores. Mr. Loeb said that law began the fall of local option because people voted for one thing and they got something extra.

In 1967 the Brown Bagging Act established where whiskey could be taken and under what conditions. Then the next major piece of legislation put into law was the Liquor by the Drink bill in 1977. This law followed local option. If a city or county had an ABC store, they could vote in liquor by the drink. It provided that no city or county could have mixed beverages without an election on the question.

Mr. Loeb said North Carolina has become progressively more wet. There were some changes in the 1980s that chipped away at local option. G.S. 18B-603(c) provides that when there is a successful ABC store election, the ABC Commission may issue on and off-premise fortified and unfortified wine permits in that jurisdiction regardless of any wine election to the contrary. And subsection (g) of 18B-603 provides that in the event of a successful mixed beverage election, the Commission may issue on-premises malt beverage and wine permits for establishments with a mixed beverage permit regardless of any other election or local act concerning sales of those kinds of beverages. Those were major steps away from local option.

After the 1980s public acts came along that really had only local application. North Carolina has a constitutional provision that says you cannot have a local act regulating trade; they have to be public acts. An act affecting Bald Head Island, which was essentially a local act, was written as a public act authorizing all permits for Bald Head Island. Bald Head was classified as an off-shore resort, and Mr. Loeb said in a way it made sense because Bald Head had no permanent residents to hold an election. At that time all the people who lived there were registered to vote somewhere else because Bald Head was their vacation home. Mr. Loeb said he helped to draft that bill for a member of the General Assembly, but he had no idea that it would lead to other things. G.S. 18B600(e2) provides for ABC elections in certain ski resorts, which at the time was written for Sugar Mountain and Beech Mountain although there might be others that could qualify. These were places that could not qualify for an election under the general law in Chapter 18B. Another example is G.S. 18B-600(g), which provides for beautification district ABC elections in any county where ABC stores have been approved, if the beautification district was created after May 1984 and prior to June 30, 1990. G.S. 18B603(e) authorizes mixed beverages at airports located in dry counties when the airport is operated by a city that has mixed beverages and the airport services planes that board at least 150,000 passengers annually. Mr. Loeb said most of the laws passed now don't even require an election. They just authorize the permits.

In conclusion, Mr. Loeb said the Institute in writing such articles never takes sides on what should be done, but they lay out the alternatives. He laid out a few alternatives at the end of his article. He said it is obvious that local option is dying. There are some counties that have voted totally dry throughout their history and they still have some of these special districts in them that have alcohol. One of Mr. Loeb's proposals was to give cities and counties more power over who could serve alcoholic beverages. If the ABC Commission issues the permit, with very few exceptions, the city and county have to issue the license. So there is very little local control right now. It is mostly with the State ABC Commission. There are a couple of cases where cities or counties have tried to zone out ABC establishments or at least limit the number in a particular area, and the court held they couldn't do that. If the ABC Commission issued the permit, that was conclusive. He said another way to solve the problem is to make the whole state wet so you wouldn't need local acts. He emphasized that he does not advocate any particular change because his employer does not permit him to do so.

Chairman Hensley asked the committee members whether they had questions of Mr. Loeb.

Rep. Starnes asked for the alcoholic content of fortified wine, and Mr. Loeb said the current definition allows for up to twenty-four percent alcohol by volume.

Rep. Miller said for historical purposes, Mr. Loeb should give the committee the history of liquor by the drink from the day it failed until it later passed, and how someone made an astute observation about the content of a certain piece of local legislation. Mr. Loeb said that without getting too specific, a local act affecting tree disease passed both houses, had been signed, and was downstairs to be enrolled before it was determined that it was a liquor by the drink bill authorizing liquor by the drink in Mecklenburg County. The title of the bill indicated it was aimed at Dutch elm disease.

Rep. Baker said it would be helpful if the legislative staff would update Mr. Loeb's report as to what has happened since 1993, and Rep. Decker asked if it would be proper to ask Ann Fulton to do that.

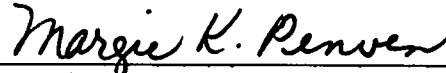
The chairman said he had spoken to Judge Bason, and he had indicated that he would like to come and speak to the committee. Chairman Hensley said it would also be helpful to have a presentation on what a cross section of other states in the country do on liquor laws, whether it be a local option, state supported, or whatever.

Rep. Starnes asked Mr. Loeb to estimate how many special acts have been passed by the General Assembly to provide liquor by the drink or alcoholic beverages without a vote of the people. Mr. Loeb said that there were probably about a dozen instances.

Ms. Fulton said there was a local act as early as 1935 that provided for the sale of liquor or the establishment of ABC stores in two townships of a county—Pinehurst and Southern Pines. There was no requirement for an election, and it provided that ABC stores could be established in those two towns on a petition of the voters.

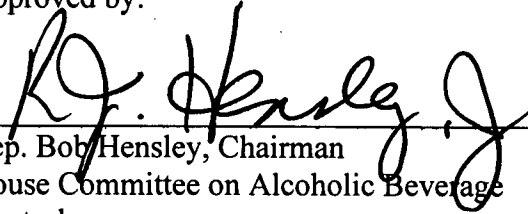
There being no further questions or business, the meeting was adjourned.

Respectfully submitted,



Margie K. Penven, Committee Assistant
House Committee on Alcoholic Beverage
Control

Approved by:



Rep. Bob Hensley, Chairman
House Committee on Alcoholic Beverage
Control

AGENDA
House Committee On
Alcoholic Beverage Control
February 16, 1999

**Introduction of Committee Members
and Staff**

Rep. Bob Hensley, Chairman

**Historical Perspective on North Carolina's
ABC Laws**

Mr. Ben Loeb, Institute of Government

ABC committee

Name of Committee

2/16/99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

John Kent	NC Family Policy Council
Amy Fullbright	Hutton & Williams
USA Today	THE INSIDER
John Jordan	N.C. Assoc. of ABC Boards
Anna Fulton	ABC Comm.
Mark Pearson	Capital Group
Debra Rossi	UNC-TV
Johnny Henderson	Chc-nc
FRID TAYLOR	WRAL-TV
Andy Ellen	NC Retail Merchants
Ann Case	NC Retail Merchants
Don Brown	The Capital Group

Popular Government

Spring 1993 Volume 58, Number 4

Feature Articles

S. Exum



Page 2

- 2 Balancing Work and Family Needs in Government Workplaces in North Carolina
Florence Glasser
- 16 Lead Poisoning in Young Children: What Is North Carolina Doing about the Problem?
Dumont Clarke IV
- 26 Zoning Hearings: Knowing Which Rules to Apply
David W. Owens
- 36 ABC Law: The Rise and Fall of Local Option
Ben F. Loeb, Jr.



Page 16

At the Institute

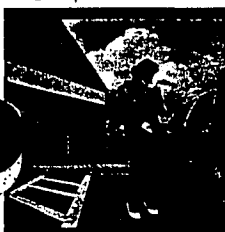
- 43 Institute Faculty Members Volunteer Time to Estonia's Young Democracy
- 43 Students in Environmental Teaching Honor Heath
- 43 Lynch Retires from Institute of Government
- 44 N.C. Bar Association Honors Mesibov

Charlotte-Mecklenburg Planning Comm.



Page 26

Popular Government



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On the cover At the end of her workday, Eva Womble, an employee at The University of North Carolina at Chapel Hill, picks up her son, Stephen, at a private day care center in Cary, N.C. A recent survey found public universities and state agencies more responsive to their employees' family needs than were other North Carolina government employers. Photograph by S. Exum.



Ben F. Loeb, Jr.

You cannot legally buy a beer, a fifth of vodka, or any other alcoholic beverage in Clay County. Who decided that? In Little River Township in Moore County, you can get a Scotch and soda at a bar, but there are parts of the county where you cannot order a glass of wine with dinner. Who decided that? You can buy a drink in a beautification district in the state—but only if it was created between May 1984 and June 1990. Who decided that?

Sixty years ago the law was clear. No alcohol could be sold in North Carolina. The Eighteenth Amendment to the United States Constitution prohibited the manufacture or sale of alcoholic beverages anywhere in the United States, and the Turlington Act¹ wrote that prohibition into state law.

The author is an Institute of Government faculty member whose specialties include alcoholic beverage control law.

But after Prohibition was repealed by the Twenty-first Amendment, effective December 5, 1933, North Carolina moved cautiously to reintroduce the legal sale of alcoholic beverages. The basic system in place today—known as local option—was devised and implemented between 1935 and 1977. In general, that system has provided that the voters of each county and town decide what alcoholic beverages legally may be sold there. What the voters approve, the drinkers may buy.

The local option system is becoming increasingly complex. It was at its purest form in the 1930s; since as early as 1941, however, it has been continually refined and modified in many ways. Today, in numerous locations across the state, alcoholic beverages of various types are available without a specific authorizing vote of the people.

The rise and fall of local option reflects a tension between state authority and local control that is played out

education, in taxation, in land-use controls, and in other issues. Devised in an era when a majority of citizens viewed alcohol consumption as immoral, the local option system has come under increasing pressure as that view has been modified. To contemplate the system's future, it is helpful to understand its past and its present.

1937 ABC Act

In 1935, in the first session of the North Carolina General Assembly after the repeal of Prohibition, the legislature authorized "liquor elections" in sixteen counties.² The Turlington Act, which was not repealed, remained in force except as modified by these local votes.

The first statewide act—appropriately named the Alcoholic Beverage Control Act of 1937 (the "1937 ABC Act")—became law approximately two years later.³ Setting up a pure local option system, it expressly provided that no liquor store could be established in any county until there was a vote "for county liquor control stores." These stores were limited to selling beverages containing more than 21 percent of alcohol—in other words, hard liquor and fortified wine (wine with brandy added). No provision was made for the sale of malt beverages and wines in ABC stores, and that remains the law to this day. Also, while a county could establish ABC stores inside cities, no provision was made for citywide elections or city-owned stores. That was to come later, at first by local acts concerning a single city.

1939 Beverage Act

The next major statewide legislation—the Beverage Control Act of 1939 (the "1939 Beverage Act")—provided for the manufacture and sale of malt beverages and wine.⁴ It authorized on-premises sales at such establishments as restaurants and hotels, and, for off-premises consumption, sales at grocery stores and other sites; city and county governing boards made the decisions as to the issuance of retail beer and wine licenses. But in 1947 the General Assembly added *election provisions*.⁵ Under the provisions of the 1947 act, county residents could vote for the retail sale of wine or beer or both. If the vote was successful, sales could be made anywhere in the county including within municipalities. However, if the county residents voted against the sale of beer or wine or both, then any city with a population of at least 1,000 residents could hold its own election on these questions. This explains how numerous "wet" municipalities were created in "dry" counties.

While the 1937 ABC Act dealt primarily with the sale of hard liquor, and the 1939 Beverage Act (as supplemented in 1947) dealt with the sale of wine and malt beverages, both acts were consistent in providing for local option elections. No community had to allow the sale of any beverage alcohol whatsoever if it did not elect to do so.

1941 Fortified Wine Control Act

A deviation from local option came as early as 1941 with the passage of the Fortified Wine Control Act.⁶ It provided for the sale of "sweet wines"—defined as having an alcohol content of 14 to 20 percent, a type of fortified wine—in hotels, Grade A restaurants, drugstores, and grocery stores in any county "in which the operation of alcoholic beverage control stores is authorized by law."⁷ Thus, retail sales of fortified wines by certain private businesses became legal in any county having ABC stores, even if the residents of that county had voted against the sale of wine.

1967 Brown-Bagging Act

The 1937 ABC Act authorized the purchase of alcoholic beverages at government-owned stores but did not specify where these beverages could be possessed or consumed. Initially most people limited their consumption to private residences, a practice allowed even under the Prohibition-era Turlington Act. Over the years people became somewhat bolder and began taking their alcoholic beverages with them to clubs, social events, and even restaurants. They often carried the beverages in a brown paper bag, and this practice gradually became known as "brown-bagging." Brown-bagging continued and spread until the mid-1960s, apparently unimpeded by state or local law enforcement agencies. On January 11, 1966, however, the North Carolina attorney general ruled that the Turlington Act was still in full force and effect in dry counties,⁸ and the possession of liquor outside the home in those counties was unlawful.

The General Assembly moved quickly to clarify the matter with what was referred to at the time as the Brown-Bagging Act.⁹ This act authorized the possession and consumption of alcoholic beverages in private residences and related places (such as a hotel or motel room), in social establishments (where members could have their own individual liquor lockers), and in such locations as restaurants. Social establishments and restaurants needed state-issued permits, but hotels, motels, and the like did not. Social establishments could qualify for a

permit wherever located, but permits could be issued only for those restaurants located in a county that had at least one ABC store. Thus, any county (or municipality) that had voted for ABC stores had also authorized brown-bagging in restaurants. In addition, brown-bagging in social establishments was permitted *statewide* even in a county that had voted against beer, wine, and ABC stores.

For better or worse, people were getting more than they had voted for.

1977 Liquor by the Drink

The brown-bagging law satisfied the public for a relatively short period of time. Soon there was a clamor for "liquor-by-the-drink"—that is, hard liquor to be sold one drink at a time in clubs, restaurants, and elsewhere. During the 1970s North Carolina had become an immigration state, with people coming here from all over the country (and the world). For most of these new arrivals the practice of carrying one's whiskey around in a brown paper bag appeared a bit antiquated. Also, the absence of liquor-by-the-drink put our travel industry at a competitive disadvantage with other coastal states. Thus, in 1977 the General Assembly passed "[a]n act to allow cities and counties with ABC stores to vote on the sale of mixed beverages."¹⁰ Henceforth, "in any county or city where ABC stores have been established, an election may be called on the question of whether the on-premises sale of mixed beverages should be allowed in social establishments and restaurants." While considerably liberalizing North Carolina's liquor laws, the liquor-by-the-drink act retained the principle of local option in the sense that no city or county could have mixed beverages without an election on the question. In other words, the voters were getting exactly what they had voted for or against.

Local Option at Work

With the passage of the liquor-by-the-drink law, North Carolina's local option system of beverage control was basically in place. (See Table 1, compiled by the state ABC commission in Raleigh, for a listing of which beverages can be sold in each county as of February 12, 1993, to see how the system works in practice.) Ashe County, for example, has never voted for the legal sale of any kind of alcoholic beverage. However, a municipality (West Jefferson) located in that county has voted for sales of malt beverages and unfortified wine for off-premises consumption.¹¹ Orange County presents a

completely different situation. There malt beverages, unfortified wine, ABC stores, and mixed beverages have all been voted in on a countywide basis. Therefore, there has never been an occasion for a municipal election on any of these questions.

Moore County presents an interesting exception to an otherwise fairly logical statewide system of local option based on city and county elections. In 1935 ABC stores were established in Pinehurst and Southern Pines by petition in the townships in which they were located—without an election of any kind.¹² Decades later the General Assembly authorized township elections in any county in which ABC stores had been established by petition.¹³ Since this authorization applied to Moore County (and only to Moore County) elections on beer, wine, and the like could be held on a township level rather than on a city or county basis.¹⁴ Thus, Little River Township has beer, wine, and mixed beverages although located in a county that has never voted for *any* alcoholic beverages. (See Table 1.)

Change in the 1980s

With a few exceptions, such as Moore County, the local option system based on city or county elections stayed basically intact until the 1980s. In 1981 the General Assembly rewrote the liquor control law as contained formerly in Chapter 18A of the General Statutes into a new Chapter 18B. While this rewrite was for the most part simply a recodification, significant provisions were added with respect to local option. For example, G.S. 18B-603(c) now provides that when there is a successful ABC store election the state ABC commission may issue on- and off-premises fortified and unfortified wine permits in that jurisdiction regardless of any wine election to the contrary.¹⁵ And subsection (d) of G.S. 18B-603 provides that, in the event of a successful mixed beverage election, the commission may issue on-premises malt beverage and wine permits (for establishments with a mixed-beverage permit) regardless of any other election or local act concerning sales of those kinds of beverages.

These provisions of G.S. 18B-603 have some interesting results (see Table 1). More than fifteen cities and at least one county (Cumberland) have on-premises sales of malt beverages because they have authorized the sale of mixed beverages even though apparently no successful on-premises malt beverage elections were ever held.¹⁶ More than fifty cities and a few counties have legal sales of unfortified wine because they voted for ABC stores. Thus, in Cherokee County, the towns of Andrews and

Why have on- and off-premises sales of unfortified beer because they voted for ABC stores, not because they had a successful unfortified wine election. In a way, this all makes sense. Why prohibit the sale of beer in a restaurant that sells hard liquor, or prohibit the sale of wine by stores and restaurants in a community that has voted to have ABC stores? Still, getting wine and beer when the vote is for mixed beverages is not consistent with the principle of local option. Of course, the matter easily could be resolved simply by rewording the ballot to make it clear that the vote is for beer and wine as well as mixed beverages (or for wine as well as ABC stores).

Local ABC Acts

The local option system has been modified in recent years by the General Assembly's increased willingness to write into the General Statutes provisions that have effect in only one or two particular locations. The practice of writing legislation of such local effect into the state's general law stems from Section 24, Article II, of the North Carolina Constitution, which prohibits *local acts regulating trade*. The North Carolina Supreme Court in two landmark decisions has held that while the operation of ABC stores is a governmental activity, the sale of alcoholic beverages by privately owned establishments constitutes "trade." The effect of these decisions is to uphold local acts concerning ABC stores but to find local acts regulating privately owned establishments to be unconstitutional,¹⁷ creating the necessity to put essentially local acts into the General Statutes. Examples of G.S. Chapter 18B provisions that are of very local application include the following:

- G.S. 18B-600(e2), which provides for ABC elections in certain generically described *ski resorts*. This statute probably was enacted originally for the benefit of Sugar Mountain and Beech Mountain but by now may include other ski resorts as well. (See Avery County in Table 1.)
- G.S. 18B-600(f), which provides for *township* elections, apparently in Moore County only.
- G.S. 18B-600(g), which provides for a *beautification district* ABC election in any county where ABC stores have been approved, if the beautification district was created after May 1984 and prior to June 30, 1990. This probably was passed for the benefit of a beautification district in Dare County.

G.S. 18B-600(e3), which provides for *small town mixed-beverage elections* in any town with at least 200 registered voters and located in a county bordering the Neuse River and Pamlico Sound that "has not

approved the sale of mixed beverages and that county has only one city that has approved the sale of mixed beverages." This probably describes Minnesott Beach in Pamlico County.

- G.S. 18B-603(e), which authorizes mixed beverages at *airports* located in dry counties when the airport is operated by a city that has mixed beverages, and the airport services planes that board at least 150,000 passengers annually. The intended beneficiary of this provision may have been the Asheville airport.
- G.S. 18B-603(f2), which, as amended and expanded in 1992, provides for ABC permits for certain *special ABC areas*. A special ABC area is defined by G.S. 18B-101(13a) to include an area that borders on another state, located in a county where ABC stores are permitted in one or more cities, and which meets certain other enumerated requirements. This provision was originally for the benefit of a private association in Alleghany County, but, as amended, might apply to numerous counties bordering other states.
- G.S. 18B-603(h), which authorizes ABC permits for *sports clubs* located (a) in any county in which the sale of malt beverages, wine, mixed beverages, and ABC stores have been allowed in at least six cities, or (b) in any county adjacent to that county in which an ABC system has been allowed and which borders on the Atlantic Ocean, or (c) in certain counties having a city with mixed beverages if bordering on another state. This subsection was originally intended to make it possible for golf clubs in Brunswick County to secure malt beverage, wine, and mixed-beverage permits, but now may apply to Pender and Rockingham counties as well.
- G.S. 18B-1006(K), which was added in 1992, to authorize ABC permits for private clubs in certain described dry counties (probably Montgomery and Randolph).

Cumulatively, these local-type acts add further complexity and variation to the basic local option system.

The Future of Local Option

While North Carolina's local option system of control (as conceived in the 1930s and 1940s) may not have totally outlived its usefulness, there are indications that the time may have come to consider other means of controlling the use and misuse of beverage alcohol. As the system has evolved, at least some alcoholic beverages are available in almost all areas of the state from Murphy to Manteo. (See Cherokee County and Dare County in

Continued on page 42

Table 1
Alcoholic Beverages Authorized for Sale
in North Carolina, by County and City

Legend

- X On- and off-premises sales are authorized.
- O Sales of that beverage are prohibited.
- X Off Sales for off-premises consumption only are authorized.
- * Off-premises sales only are authorized, except for hotels, motels, and restaurants (which can sell for on-premises consumption).
- † Sales of that beverage are allowed because the area has had a successful ABC store election. 18B-603(c)
- ‡ On-premises sales of that beverage are allowed because there has been a successful mixed beverage election. 18B-603(d)

Note: The letters "A," "B," and "C" apply only to the specialized situation in Moore County, and an explanation of their meaning is omitted for the sake of simplicity. "R" refers to on-premises sales of beer in restaurants and applies only to the city of Columbia in Tyrrell County.

Jurisdiction	Malt Beverages	Unfortified Wine	Fortified Wine	ABC Stores	Mixed Beverages
Alamance	X	X	O	O	O
Burlington	X	X	X	X	X
Gibsonville	X	X	X	X	X
Graham	X	X	X	X	O
Alexander	O	O	O	O	O
Taylorsville	X Off	X	X	X	O
Alleghany	X	X	O	O	O
Sparta	X	X	X	X	O
Anson	O	O	O	O	O
Ansonville	X Off	O	O	O	O
Morven	X Off	O	O	O	O
Polkton	X Off	X Off	O	O	O
Wadesboro	X	X †	X	X	O
Ashe	O	O	O	O	O
West Jefferson	X Off	X Off	O	O	O
Avery	O	O	O	O	O
Banner Elk	X * ‡	X †	X	X	X
Beech Mountain	X * ‡	X †	X †	O	X
Elk Park	X Off	O	O	O	O
Seven Devils	X *	X	X †	O	X
Sugar Mountain	X	X	X †	O	X
Beaufort	X	X	X	X	O
Belhaven	X	X	X	X	X
Washington	X	X	X	X	X
Bertie	X	X	X	X	O
Bladen	O	O	O	O	O
East Arcadia	X	X	O	O	O
Elizabethtown	X *	X †	X	X	O
White Lake	O	X †	X	O	O
Brunswick	X	X	X	X	X
Bald Head Island	X	X	X	O	X
Belville	X	X	X	X	O
Boiling Spring Lakes	X	X	X	X	O
Bolivia	O	O	O	O	O
Calabash	X	X	X	X	X
Caswell Beach	X	X *	O	O	O
Long Beach	X	X	X	X	X
Navassa	X	X	X	X	X
Ocean Isle Beach	X Off ‡	X †	X	X	X
Shallotte	X Off	O	X	X	O
Southport	X	X	X	X	X
Sunset Beach	X * ‡	X	X	X	X
Yaupon Beach	X Off ‡	X	X	X	X
Buncombe	X	X	O	O	O
Asheville	X	X	X	X	X
Black Mountain	X	X	X	X	O
Burke	O	O	O	O	O
Morganton	X *	X	X	X	O
Cabarrus	O	O	O	O	O
Concord	X Off	X †	X	X	O
Mount Pleasant	X Off	X †	X	X	O
Caldwell	O	O	O	O	O
Granite Falls	O	X †	X	X	O
Lenoir	X Off	X	X	X	O
Camden	X	X	X	X	O
Carteret	X	X	X	X	O
Atlantic Beach	X	X	X	X	X
Beaufort	X	X	X	X	X
Cape Carteret	X	X	X	X	X
Cedar Point	X	X	X	X	X
Emerald Isle	X	X	X	X	X
Indian Beach	X	X	X	X	X
Morehead City	X	X	X	X	X

Jurisdiction	Malt Beverages	Unfortified Wine	Fortified Wine	ABC Stores	Mixed Beverages
Pine Knoll Shores	X	X	X	X	X
Caswell	X	X	X	X	O
Catawba	X	X	X	X	O
Conover	X	X	X	X	X
Hickory	X	X	X	X	X
Newton	X	X	X	X	X
Chatham	X *	X †	X	X	O
Pittsboro	X	X	X	X	O
Siler City	X *	X †	X	X	O
Cherokee	O	O	O	O	O
Andrews	X Off	X †	X	X	O
Murphy	O	X †	X	X	O
Chowan	X	X	X	X	O
Clay	O	O	O	O	O
Cleveland	O	O	O	O	O
Kings Mountain	X *	X	X	X	O
Shelby	X Off	X	X	X	O
Columbus	O	O	O	O	O
Bolton	X	X	X	X	O
Brunswick	O	X †	X	X	O
Chadbourn	X *	X †	X	X	O
Fair Bluff	X Off	X †	X	X	O
Lake Waccamaw	X Off	X †	X	X	O
Tabor City	X *	X	X	X	O
Whiteville	X	X	X	X	O
Craven	X	X	X	X	X
Cumberland	X * ‡	X †	X	X	X
Fayetteville	X	X	X	X	X
Hope Mills	X Off ‡	X Off †	X	X	X
Spring Lake	X Off ‡	X Off †	X	X	X
Currituck	X	X	X	X	O
Dare	X	X	X	X	O
Duck	X	X	X	X	X
Kill Devil Hills	X	X	X	X	X
Kitty Hawk	X	X	X	X	X
Nags Head	X	X	X	X	X
Davidson	O	O	O	O	O
High Point	X	X	X	X	X
Lexington	X Off ‡	X †	X	X	X
Thomasville	X Off	X Off	O	O	O
Davie	O	O	O	O	O
Cooleemee	X *	X	X	X	O
Duplin	O	O	O	O	O
Faison	X Off	X †	X	X	O
Greenevers	X Off	X Off	O	O	O
Kenansville	X * ‡	X † ‡	X	X	X
Rose Hill	X *	X	O	O	O
Wallace	X	X †	X	X	O
Warsaw	X Off	X	X	X	O
Durham	X	X	X	X	X
Edgecombe	X	X	X	X	O
Rocky Mount	X	X	X	X	X
Tarboro	X	X	X	X	X
Forsyth	X	X	O	O	O
Clemmons	X	X	X	X	X
Kernersville	X	X	X	X	X
Winston-Salem	X	X	X	X	X
Franklin	X	X	O	O	O
Bunn	X	X	X	X	O
Franklinton	X	X	X	X	O
Louisburg	X	X	X	X	X
Youngsville	X	X	X	X	O

Jurisdiction	Malt Beverages	Unfortified Wine	Fortified Wine	ABC Stores	Mixed Beverages
Gaston	O	O	O	O	O
Bessemer City	X	X†	X	X	O
Cherryville	X Off	X†	X	X	O
Gastonia	X Off ‡	X	X	X	X
Gates	X	X	X	X	O
Graham	O	O	O	O	O
Granville	X	X	X	X	O
Greene	X	X	X	X	O
Guilford	X	X	X	X	X
Gibsonville	X	X	X	X	X
Greensboro	X	X	X	X	X
High Point	X	X	X	X	X
Jamestown	X	X	X	X	X
Halifax	X	X	X	X	O
Weldon	X	X	X	X	X
Harnett	O	O	O	O	O
Angier	X	X†	X	X	O
Coats	X Off	X	X	X	O
Dunn	X	X†	X	X	O
Erwin	X	X	O	O	O
Lillington	X Off	X	X	X	O
Haywood	O	O	O	O	O
Canton	X Off	X	X	X	O
Maggie Valley	X	X†	X	X	X
Waynesville	X	X†	X	X	O
Henderson	O	O	O	O	O
Ashe	X*†	X	X	X	X
Hendersonville	X*†	X Off†	X	X	X
Reef Park	X	X	X	X	X
Hertford	X	X	X	X	O
Ahoskie	X	X	X	X	X
Hoke	X Off	X†	X	X	O
Hyde	X	X	X	X	O
Iredell	X	X	O	O	O
Moorestville	X	X	X	X	O
Statesville	X	X	X	X	X
Jackson	O	O	O	O	O
Sylva	X*	X†	X	X	O
Johnston	O	X†	X	X	O
Benson	X	X	X	X	O
Clayton	X Off	X†	X	X	O
Four Oaks	X Off	X	X	X	O
Kenly	X Off	X†	X	X	O
Selma	X	X	X	X	O
Smithfield	X	X†	X	X	O
Jones	X	X	X	X	O
Lee	O	O	O	O	O
Broadway	X	X	O	O	O
Sanford	X	X†	X	X	X
Lenoir	X	X	X	X	O
Kinston	X	X	X	X	X
Lincoln	O	O	O	O	O
Lincolnton	X Off	X†	X	X	O
McDowell	O	O	O	O	O
Marion	X Off	X†	X	X	O
Macon	O	O	O	O	O
Highlands	X Off	X†	X	X	O
Madison	O	O	O	O	O
Spring	X Off	X Off	X	O	O
Weldon	X	X	X	X	O
Rockingham	X	X	X	X	X

Jurisdiction	Malt Beverages	Unfortified Wine	Fortified Wine	ABC Stores	Mixed Beverages
Mitchell	O	O	O	O	O
Montgomery	O	O	O	O	O
Biscoe	X Off	X†	X	X	O
Candor	X Off	X Off	O	O	O
Mount Gilead	X	X	X	X	O
Troy	X Off	X	O	O	O
Moore	O	O	O	O	O
Aberdeen	X	X	X	X	X
Cameron	X Off	X Off	O	O	O
Carthage	X*†	X†	X†	X	X
Country Club of North Carolina	B	B	B	O	X
Foxfire Village	X	X	X	O	X
Little River Tnsp	A B	A B	A B	O	A
McNeill Tnsp	B	B	B	O	X
Mineral Springs					
Tnsp	B	B	B	O	X
Pine Bluff	C	C	C	O	A
Pinehurst	X	X	X	X	X
Sandhills Tnsp	A B	A B	A B	O	A
Seven Lakes	B	B	B	O	X
Southern Pines	X	X	X	X	X
Vass	B	B	B	O	X
West End	B	B	B	O	X
Whispering Pines	X	X	X	O	X
Nash	X	X	X	X	O
Rocky Mount	X	X	X	X	X
New Hanover	X	X	X	X	X
Northampton	X	X	X	X	O
Onslow	X	X	X	X	X
Orange	X	X	X	X	X
Pamlico	X	X	X	X	O
Oriental	X	X	X	X	X
Pasquotank	X	X	X	X	O
Elizabeth City	X	X	X	X	X
Pender	X*	X	X	X	O
Perquimans	X	X	O	O	O
Hertford	X	X	X	X	O
Winfall	X	X	X	X	O
Person	X	X	X	X	O
Pitt	X	X	X	X	O
Greenville	X	X	X	X	X
Polk	O	O	O	O	O
Columbus	X*	X*	X*	X	X
Tryon	X	X	X	X	X
Randolph	O	O	O	O	O
High Point	X	X	X	X	X
Liberty	X	X	X	X	O
Randleman	X Off	X†	X	X	O
Richmond	X	O	O	O	O
Hamlet	X	X*	X	X	O
Rockingham	X	X	O	O	O
Robeson	O	O	O	O	O
Fairmont	X Off	X†	X	X	O
Lumberton	X*	X*	X	X	O
Maxton	X Off	X†	X	X	O
Pembroke	X Off	X†	X	X	O
Red Springs	X Off	X†	X	X	O
Rowland	X Off	X†	X	X	O
Saint Pauls	O	X†	X	X	O
Rockingham	X	X	O	O	O
Eden	X	X†	X	X	O

Jurisdiction	Malt Beverages	Unfortified Wine	Fortified Wine	ABC Stores	Mixed Beverages
Madison	X	X	X	X	O
Reidsville	X	X	X	X	X
Rowan	X	X	X	X	O
East Spencer	X	X	X	X	X
Salisbury	X	X	X	X	X
Rutherford	O	O	O	O	O
Lake Lure	X†	X†	X	X	X
Rutherfordton	X Off	X†	X	X	O
Sampson	O	O	O	O	O
Clinton	X Off	X†	X	X	O
Garland	X Off	X†	X	X	O
Newton Grove	X	X†	X	X	O
Roseboro	X Off	X†	X	X	O
Scotland	X Off	X†	X	X	O
Laurinburg	X Off ‡	X†	X	X	X
Stanly	O	O	O	O	O
Norwood	X Off	X Off	X	X	O
Stokes	X	X	O	O	O
Walnut Cove	X	X	X	X	O
Surry	X	X	O	O	O
Dobson	X	X	X	X	O
Elkin	X	X†	X	X	O
Mount Airy	X	X	X	X	O
Swain	O	O	O	O	O
Bryson City	X Off ‡	X†	X	X	X
Transylvania	O	O	O	O	O
Brevard	X Off	X	X	X	O
Rosman	X	X	X	O	O
Tyrrell	X	X	X	X	O
Columbia	X R	O	O	O	O
Union	O	O	O	O	O
Indian Trail	X Off	X Off	O	O	O
Marshville	X*	X	O	O	O
Monroe	X Off	X†	X	X	O
Stallings	X Off	X Off	O	O	O
Waxhaw	X Off	X†	X	X	O
Weddington	X Off	X Off	O	O	O
Wingate	X Off	X Off	O	O	O
Vance	X	X	X	X	O
Henderson	X	X	X	X	X
Wake	X	X	X	X	X
Warren	X	X	X	X	O
Washington	X	X	X	X	O
Watauga	O	O	O	O	O
Beech Mountain	X*†	X	X†	O	X
Blowing Rock	X*	X†	X	X	X
Boone	X*	X	X	X	O
Seven Devils	X*	X	O	O	X
Wayne	O	X†	X	X	O
Fremont	X	X†	X	X	O
Goldsboro	X	X	X	X	X
Walnut Creek	X	X	X	X	X
Wilkes	X	X	O	O	O
North Wilkesboro	X	X	X	X	X
Wilkesboro	X	X	X	X	X
Wilson	X	X	X	X	O
Wilson	X	X	X	X	X
Yadkin	O	O	O	O	O
Yancey	O	O	O	O	O

Source: Compiled by the Department of Commerce, North Carolina
Alcoholic Beverage Control Commission, Raleigh, N.C.

Continued from page 39

Table 1.) Only six small counties (Clay, Cleveland, Graham, Mitchell, Yadkin, and Yancey) prohibit all retail sales of alcoholic beverages. But even in those counties, there may very well be some areas where alcoholic beverages are available (as through "local-type" acts or otherwise, as described above). Numerous other counties have not approved the sale of any beverages on a countywide basis, but they are available in cities or elsewhere. Harnett County, for example, has never voted in favor of any alcoholic beverages, but beer and wine are available in five of its municipalities (four of which also have ABC stores). Ours is now a local option system with ever fewer local options.

One possibility for change would be to more closely scrutinize the types of establishments that can qualify for ABC permits. Under current provisions of G.S. Chapter 18B, most outlets of major hamburger chains could qualify for some kind of ABC permit. In fact, some of these outlets could qualify for a full range of ABC permits, including mixed beverages. Of especial concern are establishments that have a reputation for rowdiness, including intoxication, affrays, and the presence of illegal drugs.

Another possible change in the current local option system would be to grant to local governments greater power to use their zoning authority to control the location and number of retail ABC establishments. By current law, the General Assembly has delegated to the state the exclusive authority to determine the fitness of applicants and premises for ABC permits.¹⁸ As that law has been interpreted,¹⁹ local governments are severely restricted in regulating locations of ABC establishments through their zoning powers. A bill introduced in the 1993 General Assembly would increase local zoning authority in this regard.²⁰ Or, in the alternative, the statutes could be amended to give cities and counties more say with regard to who may obtain (or keep) an ABC permit. Currently local governments can object formally to the issuance of a permit, but the final decision rests with the state ABC commission.

A third alternative would be to eliminate local option, thus making the entire state wet for all beverages. Table 1 would not exist. The citizens of North Carolina may be perfectly content to rely primarily on regulation at the state level. When the local option system was implemented more than half a century ago, substance abuse was limited almost exclusively to alcohol. Today the public seems to be much more concerned about the health and crime problems associated with the illegal distribution and use of controlled substances. ♦

Notes

1. 1923 N.C. Pub. L. ch. 1.
2. Pasquotank, Pitt, Beaufort, Martin, Halifax, Edgecombe, Carteret, Craven, Onslow, Wilson, Greene, Lenoir, Warren, Vance, Franklin, and Nash. 1935 N.C. Pub. L. ch. 493.
3. 1937 N.C. Pub. L. ch. 49.
4. 1939 N.C. Pub. L. ch. 158, art. VI. An earlier attempt to deal with this subject was made by the 1937 General Assembly [1937 N.C. Pub. L. ch. 127].
5. 1947 N.C. Sess. Laws ch. 1084.
6. 1941 N.C. Pub. L. ch. 339.
7. 1941 N.C. Pub. L. ch. 339, sec. 6.
8. Letter to Sam Johnson, dated January 11, 1966.
9. 1967 N.C. Sess. Laws ch. 222.
10. 1977 N.C. Sess. Laws ch. 1138.
11. The maximum alcoholic content of unfortified wine is currently set at 17 percent, while fortified wine may consist of up to 24 percent of alcohol by volume. See G.S. 18B-101.
12. 1935 N.C. Pub. L. ch. 493, sec. A.
13. G.S. 18B-600(f).
14. As would otherwise be the case under G.S. 18B-600(f).
15. This provision was originally contained in G.S. 18A-38(F).
16. See, for example, the malt beverages column for Banner Elk and Beech Mountain in Avery County.
17. *Gardner v. Reidsville*, 269 N.C. 581, 153 S.E.2d 139 (1967); *Smith v. County of Mecklenburg*, 280 N.C. 497, 187 S.E.2d 67 (1972).
18. G.S. 18B-901.
19. *In re Application of Melkonian*, 85 N.C. App. 351, 355 S.E.2d 503 (1987), *cert. denied*, 320 N.C. 631, 360 S.E.2d 91 (1987).
20. SB 61, 1993 General Assembly, Reg. Sess.

**MINUTES
HOUSE COMMITTEE ON
ALCOHOLIC BEVERAGE CONTROL**

April 13, 1999

The House Committee on Alcoholic Beverage Control met at 1:00 p.m. on Tuesday, April 13, 1999, in Room 612 of the Legislative Office Building. The agenda for the meeting is attached as Exhibit 1. Committee members present were: Chairman Bob Hensley, Vice Chairman George Miller, and Representatives Baker, Decker, Gibson, and Hunter. Committee co-counsel present were Ms. Brenda Carter and Ms. Jo McCants. A visitor registration sheet is attached as Exhibit 2.

Chairman Hensley called the meeting to order and recognized Rep. Hunter who moved to consider the proposed Committee Substitute for House Bill 474, A BILL TO BE ENTITLED AN ACT TO REDUCE THE MEMBERSHIP OF THE BERTIE COUNTY ABC BOARD FROM FIVE TO THREE MEMBERS AND TO ALLOW THE APPOINTMENT OF A NEW BERTIE COUNTY ABC BOARD. The motion carried, thus putting the committee substitute bill properly before the committee. A copy of the bill is attached as Exhibit 3.

The Chairman recognized Rep. Gene Rogers to explain his bill.

Rep. Rogers said the bill was introduced at the request of the County Commissioners of Bertie County, and the committee substitute was needed to correctly change the name of the ABC "Commission" to "Board." He said he had heard of no opposition to the bill.

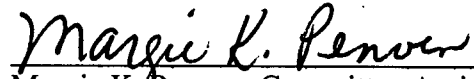
Rep. Howard asked whether anyone currently on the board would be taken off because of the bill or whether there were vacancies. Rep. Rogers said he didn't know. He said he did know they had been losing business down there, but he didn't know whether that had anything to do with the change or not.

Rep. Baker asked why they wanted to get rid of the people on the board. He asked whether they were bad managers. Rep. Rogers repeated that he didn't know if they were getting rid of two members or whether there were vacancies. All he knew was that the Bertie County Commissioners had voted unanimously to change the number on the Board to three from five.

Rep. Hunter moved for a favorable report for the House Committee Substitute for House Bill 474, unfavorable as to original bill. The motion carried unanimously.

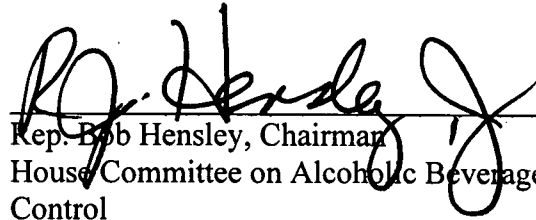
There being no further business, the meeting was adjourned at 1:09 p.m. upon a motion by Rep. Hunter. (A copy of the committee report filed on April 13, 1999, is attached as Exhibit 4.)

Respectfully submitted,



Margie K. Penven, Committee Assistant
House Committee on Alcoholic Beverage
Control

Approved by:



Rep. Bob Hensley, Chairman
House Committee on Alcoholic Beverage
Control

Exhibit 1

AGENDA
House Committee On
Alcoholic Beverage Control
April 13, 1999

HB 474, Bertie ABC Commission Change.

Introduced by Rep. Rogers

4-13-99

NAME

FIRM OR AGENCY AND ADDRESS

W.C. Benson & Son

ABC Comm.

ABC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

H

D

HOUSE BILL 474
Proposed Committee Substitute H474-PCS8070-RF

Short Title: Bertie ABC Board Change.

(Local)

Sponsors:

Referred to:

March 17, 1999

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE THE MEMBERSHIP OF THE BERTIE COUNTY ABC
3 BOARD FROM FIVE TO THREE MEMBERS AND TO ALLOW THE
4 APPOINTMENT OF A NEW BERTIE COUNTY ABC BOARD.
5 The General Assembly of North Carolina enacts:
6 Section 1. The terms of the current members of the Bertie County ABC
7 Board shall terminate on June 30, 1999.
8 Section 2. Section 1 of Chapter 888 of the 1987 Session Laws is repealed.
9 Section 3. Section 2 of this act applies only to Bertie County.
10 Section 4. This act is effective when it becomes law.

1999 COMMITTEE REPORT HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hensley** for the Committee on **Alcoholic Beverage Control**.

☐ Committee Substitute for

H.B. 474 A BILL TO BE ENTITLED AN ACT TO REDUCE THE MEMBERSHIP OF THE BERTIE COUNTY ABC COMMISSION FROM FIVE TO THREE MEMBERS AND TO ALLOW THE APPOINTMENT OF A NEW BERTIE COUNTY ABC COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☒ With a favorable report as to committee substitute bill (#), ☒ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

**MINUTES
HOUSE COMMITTEE ON
ALCOHOLIC BEVERAGE CONTROL**

April 20, 1999

The House Committee on Alcoholic Beverage Control met at 1:00 p.m. on Tuesday, April 20, 1999, in Room 612 of the Legislative Office Building. The agenda for the meeting is attached as Exhibit 1. Committee members present were: Chairman Bob Hensley, Vice Chairman George Miller, and Representatives Baker, Decker, Gibson, Hardaway, Hunter, McComas, and Starnes. Committee co-counsel present were Ms. Brenda Carter and Ms. Jo McCants. A visitor registration sheet is attached as Exhibit 2.

The Chairman called the meeting to order and turned the meeting over to the Vice Chair to preside since the Committee would be considering House Bill 1043, A BILL TO BE CONSIDERED AN ACT TO ELIMINATE BROWN-BAGGING PERMITS, introduced by Rep. Hensley. A copy of the bill is attached as Exhibit 3.

Vice Chairman Miller recognized Rep. Hensley to explain his bill. Rep. Hensley displayed a map showing that North Carolina is essentially a wet state. (A reproduction of the map is attached as Exhibit 4.) All thirteen counties colored red are liquor-by-the-drink counties. Every other county except for five has some form alcohol— mixed beverages, wines, beers, ABC stores, or a combination. Even the five dry counties are eligible for brown-bagging permits. He said there is a mish-mash of laws across the State of North Carolina that makes it almost impossible to determine what the law is in any given circumstance. He said his bill would eliminate brown-bagging, which generally encourages people to drink a whole lot more than other types of beverage services because a bottle carried into an establishment in a brown bag is usually drunk before its owner leaves the establishment. Therefore people are put on the road having drunk more than they would have under a controlled situation.

The Xs on the map show how the laws have been progressing in the state since 1972. With special provisions passed by the General Assembly, certain areas of the state have been issued permits to serve alcoholic beverages under certain types of situations. Rep. Hensley said that is wrong because (1) the Constitution of the State of North Carolina says there cannot be local bills relating to commerce, and (2) the provisions have not been looked at by local officials or voted on by the people.

Rep. Hensley went to say that in addition he felt the Committee should know that there is another reason for the bill: the State of North Carolina has been sued by a country club in Yancey County, one of the few counties dry except for brown-bagging permits. This country club has been denied liquor permits while establishments in the other counties with Xs have some form of special alcoholic beverage permit. He said the remedy asked for in the lawsuit is to make liquor laws uniform in the state or take away all the special provisions already granted by the General Assembly. Rep. Hensley said taking away those permits from country clubs, sports clubs, restaurants, and tourist

attractions will cause social and economic chaos. He said the state is very likely to lose the lawsuit unless something is done to change the situation. He maintained that it would be better to change the liquor law to make it uniform and to allow an opt-out provision so local county commissioners affected could opt out within 90 days, if they so desired, than to have the effect of the lawsuit mandate the liquor laws in North Carolina.

The Vice Chair asked for questions from the Committee.

Rep. Decker asked whether North Carolina didn't have a strict liability law making the server responsible if he serves someone drinks through brown bagging to intoxication and he harms someone. He said the dram shop law applied to bartenders, but he deferred to staff as to whether it would apply to the owners of establishments allowing brown bagging on its premises.

Staff said the dram shop law applied to selling or serving an alcoholic beverage to an under-age person. It would not apply to serving set-ups, however, which is the case in brown bagging since the brown bagger serves himself. And 18B305 says it shall be unlawful for a permittee or an employee of an ABC store to knowingly sell or give alcoholic beverages to any person who is intoxicated, and subsection (b) gives discretion to the seller to refuse to sell. In the case of brown bagging, they are not selling the alcoholic beverages; they are selling the setups. Ms. Fulghum, counsel to the ABC Commission, confirmed that serving setups did not make a party liable.

Rep. Decker said he wanted it noted that he had a request for a public hearing on the bill before Rep. Hensley, as Chairman of the Committee.

Rep. Starnes asked how wide spread brown bagging is in North Carolina. He asked how many brown-bagging permits there are. Rep. Hensley said he didn't know, but every county is eligible for brown-bagging permits. Ms. Fulton said she was not sure of the exact number, but there were 1,500 to 2,000 permits across all 100 counties. She said the number of permits tended to drop as the number of mixed beverages jurisdictions increased.

Rep. Miller asked how long a brown-bagging license was in force. Ms. Fulton said it was good for one year, and it was renewable every May 1st.

Rep. Starnes asked a follow-up questions regarding the opt-out provision. If a county opts out, he asked how it would affect brown-bagging permits in unincorporated areas and municipalities. Rep. Hensley said the bill would eliminate all brown bagging permits in all 100 counties for much the reason that Rep. Decker pointed out. There's no control over it. The bill would get rid of all the uncontrolled brown-bagging locations—1500 to 2000—and would also allow the county commission to decide what to do in each county. He said they could opt out now and opt back in down the road.

Rep. Starnes asked how many counties currently have some sort of liquor-by-the drink. Rep. Hensley said every county on the chart that had a red dot or was colored red, or in some cases had an X, had some sort of liquor-by-the-drink establishment. Thus almost every county was affected.

Rep. Starnes asked whether Rep. Hensley would entertain a later opt-out date, if they couldn't meet the October 1st deadline to opt out. Rep. Hensley said they would have 90 days or until October 1st to opt out.

Rep. Baker asked what effect there would be on a municipality with liquor-by-the drink if the county commissioners chose to opt out. Rep. Hensley said there would be none because the municipality would be grandfathered in. He said the bill would not take a business away.

Rep. Baker said he wished to send forward an amendment at the proper time.

Vice Chairman Miller asked whether the committee, staff, or ABC Commission had further questions or comments. He then asked whether members of the public present wished to be heard.

Mr. Johnny Henderson of the Christian Action League of North Carolina rose to speak in opposition to the bill saying it was a major rewrite of the current ABC laws of North Carolina, and it would greatly expand the number of potential alcohol sales outlets across the state. He said the key issue was that the local people should have the right and responsibility to vote on the kind of community they desire.

Ms. Dottie Griggs of the Hampton Inn Hotel in Asheboro spoke of the economic impact to her establishment and the inconvenience to customers because the City of Asheboro does not permit liquor-by-the-drink sales. She said forty-six percent of her check-in guests were women, and they did not wish to carry a bottle in a brown bag like the winos out on the street, nor did the corporate businessman wish to do that either. She said the local country club with a special permit was the only place to entertain business clients wishing a drink, and they were so busy they had stopped taking applications for membership.

Mr. Andrew Okpych of the Esmeralda Inn and Restaurant in Chimney Rock said they held a brown-bagging permit and depended in a large degree on tourism for their income. He said their guests complained all the time about the inconvenience of brown-bagging, and he said he could not control the consumption of alcohol when his guests brought in their own bottles. He also complained of the unfair competition due to liquor being allowed in the Town of Lake Lure only a mile and a half away and in surrounding counties. He said they had a major fire two years ago, and in the rebuilding process they are putting in a convention center for businesses. He said business interests like to have alcohol available and did not like to bring it in. He said the new bill would give everyone the opportunity to be on the same level.

John Burton, owner and manager of the Nantahala Village—a small resort in Swain County rose to speak in favor of the bill. He said he has been in business for fifty years and has a brown-bagging permit. He said the current situation is dangerous, unfair, and anti-competitive. He said he was not in a position to police alcohol consumption at all when customers brown bagged. He said Bryson City allowed liquor-by-the-drink and he was at an unfair disadvantage being located out in the county. He said the only way they could generate business outside of the tourist season was to try to attract corporate interests to their convention areas. He said it was a very tough sell, however, because they were close to Tennessee, South Carolina, and Georgia who could offer a full service only forty-five minutes away.

Robin Summerlin, operator of the Front Porch Restaurant in Elizabethtown in Bladen County—a large rural county of 29,000 in the southeastern part of North Carolina, spoke in favor of the bill. He said his business has struggled to be successful in a small town and part of that struggle has been the inconvenience and problems of having customers who have to brown bag when they can go to the surrounding cities of Fayetteville, Lumberton, and Wilmington to get a mixed drink. He said he thought the bill would improve economic development.

Next to speak in favor of the bill was **Earle B. Taylor, Sr., owner of the T&W Oyster Bar in Carteret County**, a 250-seat restaurant. He said he had a brown-bagging permit and a beer and wine permit. He said they could not serve anyone who brought their bottle in, and he said they would like to be able to “serve a drink instead of a drunk.” He said since it is illegal to carry an open bottle in the car, people most often finish the bottle before they leave. He said he has had to escort people out and get them rides home. He said it would be much more convenient to have liquor-by-the-drink so they could control the consumption of alcohol.

Mr. Alan Schabilion said he and his wife owned and operated the **Skyline Motel and Restaurant along the Blue Ridge Parkway in Little Switzerland**. He said they were one of the Xs on the map in that they hold a special permit. He said they were highly dependent upon the tourism business. He said with plants closing in their area, it was tourism that was running their economy. He said anything that undermines tourism directly affects the amount of tax money that is sent to Raleigh. He said he didn’t think getting their permit made one person start drinking; and if they lost their permit, he didn’t think it would stop one person from drinking. He encouraged the committee to consider passing the bill.

Mr. John Rustin, representing the North Carolina Family Policy Council, spoke in opposition to the bill. He objected to the way the law would circumvent what has been tradition for nearly twenty-five years in North Carolina, allowing local citizens to vote on whether they want liquor-by-the-drink in their communities. He said those who had spoken on the bill were catering to tourism to a great degree. While their focus may be to draw in more business from tourism in North Carolina, he asked what about the folks on the local level who have already voted on mixed drinks referenda and said we

don't want the sale of alcohol in our communities? He asked whether their wishes should come at the expense of what has been called economic development in North Carolina.

Mr. David Huskins, owner of a lodge and two restaurants in the North Carolina mountains, and Chairman of the North Carolina Restaurant Association Board of Directors, was recognized to speak on the bill. He said the bill was fully endorsed by the North Carolina Restaurant Association. He urged the committee to send the bill to the floor for a full airing in the public view rather than behind closed doors. He said the Restaurant Association was concerned about the whole issue of brown bagging. He said drinking in North Carolina is legal; it is not legal in certain places and under certain circumstances. He said the Association is asking the General Assembly to take a strong look at the whole brown bagging issue and replace it with controlled and monitored drinking. He said he had brown bagging permits in his restaurants, and he had no way of knowing whether or not brown bagging customers are passing their bottle or pouring under the table into the glasses of under-age persons.

Mr. Gary Godwin of Kritters Restaurant in Chimney Rock spoke in favor of the bill. He said Chimney Rock had a very tiny population year round, yet they had 800,000 to one million tourists a year. He said there were a lot of dollars coming into the area and consequently a lot of jobs. He said if they didn't provide for the tourists' wants, they were going to lose those tourists and jobs.

To bring the bill properly before the committee for discussion, Vice Chairman Miller recognized Rep. Hunter who moved that House Bill 1043 be given a favorable report.

Rep. McComas asked whether there would be a public hearing. Vice Chairman Miller said he had not made a ruling on that, and it was his prerogative. He said that was why he was making sure that everyone from the public side who wanted to be heard was given the opportunity.

Rep. Starnes sent forth an amendment and moved to amend the bill on page 2, line 5, by deleting the phrase "to opt out"; and on page 2, line 7 by deleting "opt out"; And on page 2, line 8, by inserting after the period the following: "Any existing mixed beverages permits issued solely on the basis of the board of commissioners prior vote shall not be renewed upon expiration." (See Exhibit 5.) Rep. Starnes said this amendment would allow any board of county commissioners to opt out after they or a prior board had opted out of the program so as not to bind any future boards.

Rep. Hensley said he would prefer that the amendment not go in, but he would not oppose it if it would make Rep. Starnes happy.

Rep. Hunter said he did not like the amendment because if a board of county commissioners opted in and businesses were set up, it would not be fair for those businesses to lose their licenses after the new board opted out.

Rep. Hensley said he thought those businesses would be grandfathered in, but staff pointed out that the amendment specifically stated that permits issued solely on the basis of the board of county commissioners prior vote would not be renewed upon expiration. Rep. Hensley withdrew his support.

Rep. McComas asked if there had ever been an election in a county for liquor by the drink and then another election to reverse that action. The answer provided by ABC Commission counsel was no.

The amendment failed.

Rep. Baker sent forth an amendment and moved its adoption. (See Exhibit 6.) Rep. Baker was recognized to explain his amendment. He said he drew the amendment to prevent an adverse action on some of his constituents who have brown-bag permits. He felt that his county commissioners would opt out of the program, if the bill passed, and that would leave many businesses with no license. He said his amendment would grandfather brown-bagging permits in counties that opt out.

Rep. Hensley said the proposal was reasonable.

The amendment passed.

Rep. Starnes sent forth another amendment and moved its adoption. (See Exhibit 7.) Under the amendment, if the county commissioners of a county failed to opt out, a petition signed by fifteen percent of the voters would put the issue before the vote of the people.

Rep. Baker said it would not be fair to businesses who had already been set up to take away their licenses after a vote of the people. Rep. Hensley agreed and opposed the amendment.

The amendment failed.

Rep. Decker said that before a vote was taken on the bill he wanted a ruling made on his request for a public hearing because the bill had state-wide implications and he felt the public ought to have an opportunity to be heard pursuant to Rule 29.1.

Rep. Hensley responded by saying he received a piece paper from Rep. Decker just prior to the meeting, which he assumed to be the request, but he had not had a chance to read it. He said anyone could derail legislation by handing in a piece of paper at the last minute. He pledged to Rep. Decker that if the chairman decided to go forward, and the bill received a favorable report, the bill would not be reported in that day so he could have his public hearing before the bill would be reported in to the floor.

Rep. Decker continued his request for a public hearing, demanded a ruling from the chair, and asked for a roll-call vote if the committee proceeded.

Rep. Miller said that since the public addressed the committee and everyone present had been given the opportunity to speak without restraint, and there had been representations both for and against the bill, the ruling of the chair was that the request for a public hearing was disallowed with Rep. Decker having the right to appeal his ruling.

The motion for a roll call vote needed twenty percent to pass, and there were two votes for it.

Rep. Baker said there was enough urgency to see the bill go forward and he was going to support the vote in committee, but he was going to reserve the right to vote against it on the floor after taking the counsel of his five counties back home.

Rep. Starnes sent forth another amendment and moved its adoption. (See Exhibit 8.) The amendment would change the effective date as well as the date by which the county commissioners could opt out. Rep. Starnes said he just wanted the county commissioners to have a little extra time before making their decision.

Rep. Hensley said he supported the amendment.

The amendment passed unanimously.

Rep. Starnes said he didn't think this bill would end special provisions.

The Chair announced that in light of one of the previous amendments, it was noted by staff that a curative amendment was needed. While staff prepared the amendment, Rep. Miller asked the pages to introduce themselves.

Rep. Decker wanted a clarification on whether it was the responsibility of the presiding chair or the regular chairman to rule on a public hearing. Rep. Miller said he was making the ruling as presiding chair.

The chair thanked the visitors who had traveled to the meeting to make their presentations.

The curative amendment having been drawn by staff, Rep. Hensley sent forth the amendment and moved its adoption. (See Exhibit 9.)

Mr. Ken Levenbook of the Bill Drafting staff said the amendment was necessary because chapter 18B-903, which was amended last year, states in (a) (5) that all other ABC permits shall be valid for one year from May 1 to April 30th. Without this curative amendment there would be no way for the ABC Commission to issue those permits that would start and end at the odd time.

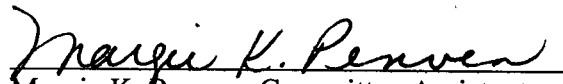
The amendment was adopted unanimously.

A substitute motion to the original Hunter motion was made by Rep. Hensley to roll the amendments into a House committee substitute, to give House Committee Substitute for House Bill 1043 a favorable report, and to give an unfavorable report to the original bill.

Rep. Decker insisted upon a roll call vote as voted on earlier, declaring that the two votes represented twenty percent. The committee assistant called the roll and the motion passed by a vote of 6 to 2. (A copy of the vote is attached as Exhibit 10.)

There being no further business, the meeting was adjourned. (A copy of the committee report is attached as Exhibit 11.)

Respectfully submitted,


Margie K. Penven, Committee Assistant
House Committee on Alcoholic Beverage
Control

Approved by:

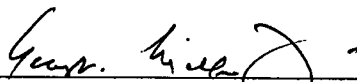

Rep. George Miller, Vice Chair, Presiding
House Committee on Alcoholic Beverage
Control

Exhibit 1

AGENDA
House Committee On
Alcoholic Beverage Control
April 20, 1999

Explanation of HB 1043
An Act to Eliminate Brown-Bagging Permits

Rep. Bob Hensley

VISITOR REGISTRATION SHEET

ABC Comm.

Name of Committee

4/20/99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

1 Dottie Griggs	Hampton Inn Hotel Asheboro NC
GARY GODIN	KRITTER'S RESTAURANT, CHIMNEY ROCK
Rodney Seymour	Front Rock Rest & Tour. NC
Dan Schallion	Shelby Motel & Restaurant ^{Little Switzerland} NC
Earl Layh	T & W apth Box Swansboro N.C.
John M	NCPA
Michael Galli	Rosenheim Inn 64/74A Betroun NC
Jolene Okpych	Esmeralda Inn + Restaurant ^{74A} Chimney Rock
Andrew Okpych	Esmeralda Inn + REST Hwy 74A ^{Chimney} Rock
Jim Hobbs	N.C. HOTEL & MOTEL ASSN
Amy Hobbs	NC Hotel & Motel Assoc.
John Rustin	NCFPC
Terry Kelen	CAI NC
Jon Carr	Jordan Price
Kirsti Mitchell	NYSRA

VISITOR REGISTRATION SHEET

ABC Comm

Name of Committee

4/20/99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Lyn. Danner

N 90

FRED TAYLOR

WRAL-TV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1043

Short Title: Eliminate Brown-Bagging Permits.

(Public)

Sponsors: Representatives Hensley and McMahan.

Referred to: Alcoholic Beverage Control.

April 14, 1999

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE BROWN-BAGGING PERMITS.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 18B-603(f) reads as rewritten:
5 "(f) Permits Not Dependent on Elections. -- The Commission may issue the
6 following kinds of permits without approval at an election:
7 (1) Special occasion permits;
8 (2) Limited special occasion permits;
9 (3) ~~Brown-bagging permits for private clubs and congressionally~~
10 ~~chartered veterans organizations; Mixed beverages permit for any~~
11 ~~establishment that qualifies for a permit under G.S. 18B-1001(10).~~
12 ~~However, the board of county commissioners in a county that does~~
13 ~~not allow the sale of mixed beverages may opt out and continue to~~
14 ~~prohibit the sale of mixed beverages if that action is taken before~~
15 ~~October 1, 1999.~~
16 (4) Culinary permits, except as restricted by subdivision (d)(5);
17 (5) Special one-time permits issued under G.S. 18B-1002;
18 (6) All permits listed in G.S. 18B-1100;
19 (7) On-premises malt beverage permits and on-premises unfortified
20 wine permits for a tourism ABC establishment."
21 Section 2. G.S. 18B-603(f1) reads as rewritten:
22 "(f1) ~~Reserved for future codification purposes. Mixed Beverages opt out. -- The~~
23 ~~board of county commissioners in a county that does not allow the sale of mixed~~
24 ~~beverages may opt out of the issuance of permits pursuant to G.S. 18B-603(f)(3) and~~

1 continue to prohibit the sale of mixed beverages if that action is taken before October
2 1, 1999. However, an opt out shall not affect permits previously issued within the
3 county pursuant to G.S. 18B-603(d), 18B-603(e), 18B-603(f), 18B-603(f2), 18B-603(g),
4 or 18B-603(h).

5 The same board of county commissioners voting to opt out as described in G.S.
6 18B-603(f)(3), or any subsequent board of county commissioners, may vote at any
7 time to reverse its opt out vote and to allow the mixed beverage permits authorized
8 by G.S. 18B-603(f)(3) to be issued."

9 Section 3. G.S. 18B-1001(10) reads as rewritten:

10 "**§ 18B-1001. Kinds of ABC permits; places eligible.**

11 When the issuance of the permit is lawful in the jurisdiction in which the premises
12 is located, the Commission may issue the following kinds of permits:

13 . . .

14 (10) Mixed Beverages Permit. -- A mixed beverages permit authorizes
15 the retail sale of mixed beverages for consumption on the premises.
16 The permit also authorizes a mixed beverages permittee to obtain
17 on-premises malt beverage and unfortified wine permits and to
18 obtain a purchase-transportation permit under G.S. 18B-403 and
19 18B-404, and to use for culinary purposes spirituous liquor lawfully
20 purchased for use in mixed beverages. The holder of this permit
21 shall buy spirituous liquor from the ABC system in their
22 jurisdiction, or if there is none, from the nearest ABC store
23 designated for sales to mixed beverages permittees. The permit
24 may be issued for any of the following:

- 25 a. Restaurants;
26 b. Hotels;
27 c. Private clubs;
28 d. Convention centers;
29 e. Community theatres;
30 f. Nonprofit ~~organizations; and organizations;~~
31 g. Political ~~organizations; organizations;~~
32 h. Congressionally chartered veterans organizations; and
33 i. Sports clubs."

34 Section 4. G.S. 18B-603(f) reads as rewritten:

35 "(f) Permits Not Dependent on Elections. -- The Commission may issue the
36 following kinds of permits without approval at an election:

- 37 (1) Special occasion permits;
38 (2) Limited special occasion permits;
39 (3) Brown-bagging permits for private clubs and congressionally
40 chartered veterans organizations;
41 (4) Culinary permits, except as restricted by subdivision (d)(5);
42 (5) Special one-time permits issued under G.S. 18B-1002;
43 (6) All permits listed in G.S. 18B-1100;

1 (7) On-premises malt beverage permits and on-premises unfortified
2 wine permits for a tourism ABC establishment.

3 (8) On-premises malt beverage permits and on-premises unfortified
4 wine permits for any business that holds a mixed beverages
5 permit."

6 Section 5. G.S. 18B-603(c)(3), 18B-603(d)(4), 18B-1001(7), 18B-1006(b),
7 and 18B-301(b)(3) are repealed.

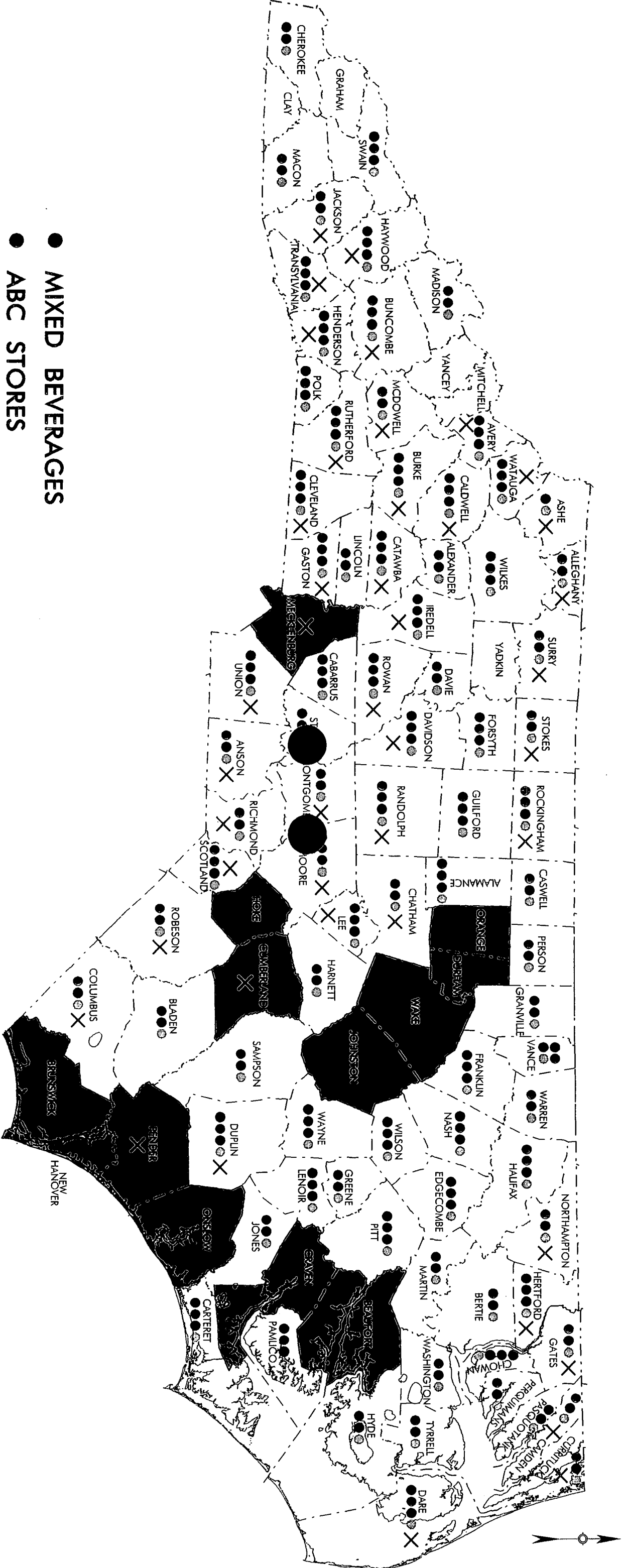
8 Section 6. Brown-bagging permits issued before the effective date of this
9 act shall be surrendered by the permittee upon receipt of a mixed beverages permit.
10 Otherwise, all brown-bagging permits shall expire on October 1, 1999. The
11 Commission shall no longer issue or renew brown-bagging permits after the effective
12 date of this act.

13 Applications for mixed beverages permits filed with the Alcoholic
14 Beverage Control Commission prior to the date of any opt out decision by the board
15 of county commissioners of the county in which the applicant is located may be
16 considered by the Commission and issued to qualified applicants.

17 Section 7. This act is effective when it becomes law. Any permits issued
18 pursuant to this act shall be effective on or after October 1, 1999.

NORTH CAROLINA COUNTIES

- MIXED BEVERAGES
- ABC STORES
- WINES
- MALT BEVERAGES
- ✕ SPECIAL STATUTE



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Exhibit 5

EDITION No. _____

H. B. No. _____

DATE

4-20-99

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

Starnes

1 moves to amend the bill on page 2, line 5

2 () WHICH CHANGES THE TITLE

3 by _____

4 deleting the phrase "to opt out"; and

5

6 on page 2, line 117 by deleting "~~the~~ opt out"8 and ~~and~~ on page 2, line 18,

9 by inserting after the period the following:

10 "Any existing mixed beverages permits issued

11 solely on the basis of the board of commissioners

12 prior ~~to~~ vote shall not be renewed upon

13 expiration."

14

15

16

17

18

19

SIGNED

E. V. Starnes

ADOPTED _____

FAILED _____

TABLED _____



HOUSE OF REPRESENTATIVES
GENERAL ASSEMBLY
ATMAN
March 11, 1953

REPORT

OF THE

COMMISSIONER OF THE

LAND REVENUE OFFICE

FOR THE YEAR 1952

1953

1953

1953

1953

REPORT OF THE COMMISSIONER

1. The Commission has the honor to acknowledge the receipt of the report of the Commissioner of the Land Revenue Office for the year 1952, and to express its appreciation for the thoroughness and accuracy of the same.
2. The Commission has also the honor to acknowledge the receipt of the report of the Commissioner of the Land Revenue Office for the year 1952, and to express its appreciation for the thoroughness and accuracy of the same.
3. The Commission has also the honor to acknowledge the receipt of the report of the Commissioner of the Land Revenue Office for the year 1952, and to express its appreciation for the thoroughness and accuracy of the same.
4. The Commission has also the honor to acknowledge the receipt of the report of the Commissioner of the Land Revenue Office for the year 1952, and to express its appreciation for the thoroughness and accuracy of the same.
5. The Commission has also the honor to acknowledge the receipt of the report of the Commissioner of the Land Revenue Office for the year 1952, and to express its appreciation for the thoroughness and accuracy of the same.
6. The Commission has also the honor to acknowledge the receipt of the report of the Commissioner of the Land Revenue Office for the year 1952, and to express its appreciation for the thoroughness and accuracy of the same.
7. The Commission has also the honor to acknowledge the receipt of the report of the Commissioner of the Land Revenue Office for the year 1952, and to express its appreciation for the thoroughness and accuracy of the same.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1043

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 2 of ____

H1043-ALK-2

- 1 and further moves to amend the bill on page 3, line 11,
2 by rewriting that line to read:
3 "Commission shall no longer issue new brown-bagging permits after
4 the effective".
5

SIGNED *R. H. Bohner*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____

TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Exhibit 7

EDITION No. _____

H. B. No. 1043DATE 4/20/99

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.) _____

) _____

Sen.) _____

1 moves to amend the bill on page 1, line 15

2 () WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4 _____

5 October 1, 1999. If the board of county6 commissioners fail to opt out, a7 petition may be submitted containing8 15% of the voting citizens of the9 County to put the question of10 allowing mixed beverages to a11 vote of the people.

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED

E.V. StarnesADOPTED _____ FAILED ☒ TABLED _____

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

(Rep.) Starnes
Sen.)

1 moves to amend the bill on page 1, line 15

2 () WHICH CHANGES THE TITLE

3 by rewriting the line to read:4 June 1, 2000; and on page 3, line 10
5
6 by substituting June 1, 2000 for
7 October 1, 1999; and on page 3, line 188 by rewriting the line to read:
9
1011 pursuant to this act shall be
12 effective on or after June 1, 2000.
13
14
15
16
17
18
19

SIGNED

E. V. StarnesADOPTED ✓ FAILED _____ TABLED _____

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.)

Sen.)

Hensley

1 moves to amend the bill on page 3, line 17

2 () WHICH CHANGES THE TITLE

3 by rewriting this line to read4 "Section 6.1. ~~Except as provided in~~ G.S. 18B-903 (5) reads5 as rewritten:6 "(5) Except as provided in G.S. 18B-603(f)(3a)7 and Sections 6 ~~and~~ of House Bill 1043, as ratified,8 ~~All~~ all".9 Section 7. This act is effective ~~upon~~ when it10 becomes law. Any permits issued".

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED

R. J. Hensley

ADOPTED ☒ FAILED ☐ TABLED ☐

COMMITTEE ON ALCOHOLIC BEVERAGE CONTROL

ROLL CALL VOTE

6 2 = 8 (TOTAL)
YES NO

Committee Subst. for
HB# 1043
SB#

HOUSE STANDING COMMITTEE ON ALCOHOLIC BEVERAGE CONTROL

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	BAKER			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DECKER			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	HARDAWAY			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	HUNTER			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCOMAS			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	MILLER			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	STARNES			
<input type="checkbox"/>	<input type="checkbox"/>	WAINWRIGHT			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	HENSLEY			
		Ex officio Members			
<input type="checkbox"/>	<input type="checkbox"/>	HACKNEY			
<input type="checkbox"/>	<input type="checkbox"/>	BADDOUR			
<input type="checkbox"/>	<input type="checkbox"/>	DEDMON			
<input type="checkbox"/>	<input type="checkbox"/>	EARLE			
<input type="checkbox"/>	<input type="checkbox"/>	CUNNINGHAM			

**1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hensley** for the Committee on **Alcoholic Beverage Control**.

☐ Committee Substitute for

H.B. 1043 A BILL TO BE ENTITLED AN ACT TO ELIMINATE BROWN-BAGGING PERMITS.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ .
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ .
- ☒ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

HOUSE BILL 1043
Proposed Committee Substitute H1043-PCS2307-SE

Short Title: Eliminate Brown-Bagging Permits.

(Public)

Sponsors:

Referred to:

April 14, 1999

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE BROWN-BAGGING PERMITS.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 18B-603(f) reads as rewritten:
5 "(f) Permits Not Dependent on Elections. -- The Commission may issue the
6 following kinds of permits without approval at an election:
7 (1) Special occasion permits;
8 (2) Limited special occasion permits;
9 (3) Brown-bagging permits for private clubs and congressionally
10 chartered veterans organizations;
11 (3a) Mixed beverages permit for any establishment that qualifies for a
12 permit under G.S. 18B-1001(10). However, the board of county
13 commissioners in a county that does not allow the sale of mixed
14 beverages may opt out and continue to prohibit the sale of mixed
15 beverages if that action is taken before June 1, 2000;
16 (4) Culinary permits, except as restricted by subdivision (d)(5);
17 (5) Special one-time permits issued under G.S. 18B-1002;
18 (6) All permits listed in G.S. 18B-1100;
19 (7) On-premises malt beverage permits and on-premises unfortified
20 wine permits for a tourism ABC establishment."
21 Section 2. G.S. 18B-603(f1) reads as rewritten:
22 "(f1) ~~Reserved for future codification purposes.~~ Mixed Beverages opt out. -- The
23 board of county commissioners in a county that does not allow the sale of mixed

1 beverages may opt out of the issuance of permits pursuant to G.S. 18B-603(f)(3a) and
2 continue to prohibit the sale of mixed beverages if that action is taken before June 1,
3 2000. However, an opt out shall not affect permits previously issued within the county
4 pursuant to G.S. 18B-603(d), 18B-603(e), 18B-603(f), 18B-603(f2), 18B-603(g), or 18B-
5 603(h).

6 The same board of county commissioners voting to opt out as described in G.S.
7 18B-603(f)(3a), or any subsequent board of county commissioners, may vote at any
8 time to reverse its opt out vote and to allow the mixed beverage permits authorized
9 by G.S. 18B-603(f)(3a) to be issued."

10 Section 3. G.S. 18B-1001(10) reads as rewritten:

11 "**§ 18B-1001. Kinds of ABC permits; places eligible.**

12 When the issuance of the permit is lawful in the jurisdiction in which the premises
13 is located, the Commission may issue the following kinds of permits:

14 . . .
15 (10) Mixed Beverages Permit. -- A mixed beverages permit authorizes
16 the retail sale of mixed beverages for consumption on the premises.
17 The permit also authorizes a mixed beverages permittee to obtain
18 on-premises malt beverage and unfortified wine permits and to
19 obtain a purchase-transportation permit under G.S. 18B-403 and
20 18B-404, and to use for culinary purposes spirituous liquor lawfully
21 purchased for use in mixed beverages. The holder of this permit
22 shall buy spirituous liquor from the ABC system in their
23 jurisdiction, or if there is none, from the nearest ABC store
24 designated for sales to mixed beverages permittees. The permit
25 may be issued for any of the following:

- 26 a. Restaurants;
- 27 b. Hotels;
- 28 c. Private clubs;
- 29 d. Convention centers;
- 30 e. Community theatres;
- 31 f. ~~Nonprofit organizations; and organizations;~~
- 32 g. ~~Political organizations; organizations;~~
- 33 h. Congressionally chartered veterans organizations; and
- 34 i. Sports clubs."

35 Section 4. G.S. 18B-603(f) reads as rewritten:

36 "(f) Permits Not Dependent on Elections. -- The Commission may issue the
37 following kinds of permits without approval at an election:

- 38 (1) Special occasion permits;
- 39 (2) Limited special occasion permits;
- 40 (3) Brown-bagging permits for private clubs and congressionally
41 chartered veterans organizations;
- 42 (4) Culinary permits, except as restricted by subdivision (d)(5);
- 43 (5) Special one-time permits issued under G.S. 18B-1002;
- 44 (6) All permits listed in G.S. 18B-1100;

1 (7) On-premises malt beverage permits and on-premises unfortified
2 wine permits for a tourism ABC establishment.

3 (8) On-premises malt beverage permits and on-premises unfortified
4 wine permits for any business that holds a mixed beverages
5 permit."

6 Section 5. G.S. 18B-603(c)(3), 18B-603(d)(4), 18B-1001(7), 18B-1006(b),
7 and 18B-301(b)(3) are repealed.

8 Section 6. Brown-bagging permits issued before the effective date of this
9 act shall be surrendered by the permittee upon receipt of a mixed beverages permit.
10 The Commission shall no longer issue new brown-bagging permits after the effective
11 date of this act.

12 Applications for mixed beverages permits filed with the Alcoholic
13 Beverage Control Commission prior to the date of any opt out decision by the board
14 of county commissioners of the county in which the applicant is located may be
15 considered by the Commission and issued to qualified applicants.

16 Section 6.1. G.S. 18B-903(5) reads as rewritten:

17 "(5) ~~All~~ Except as provided in G.S. 18B-603(f)(3a) and Section 6 of House
18 Bill 1043, as ratified, all other ABC permits shall be valid for one year, from May 1
19 to April 30."

20 Section 7. This act is effective when it becomes law. Any permits issued
21 pursuant to this act shall be effective on or after June 1, 2000.

**MINUTES
HOUSE COMMITTEE ON
ALCOHOLIC BEVERAGE CONTROL**

June 1, 1999

The House Committee on Alcoholic Beverage Control met at 1:00 p.m. on Tuesday, June 1, 1999, in Room 612 of the Legislative Office Building. The agenda for the meeting is attached as Exhibit 1. Committee members present were: Chairman Bob Hensley, Vice Chairman George Miller, and Representatives Baker, Decker, Gibson, Haradaway, McComas, and Starnes. Committee co-counsel present were Ms. Brenda Carter and Ms. Jo McCants. A visitor registration sheet is attached as Exhibit 2.

Chairman Hensley called the meeting to order and recognized Sen. Eric Reeves to explain Senate Bill 812, a bill to be entitled AN ACT TO REQUIRE THAT A FOOD OR RETAIL BUSINESS THAT HOLDS AN ABC PERMIT AND IS LOCATED IN AN URBAN REDEVELOPMENT AREA SHALL NOT HAVE ALCOHOLIC BEVERAGE SALES IN EXCESS OF FIFTY PERCENT OF THE BUSINESS'S TOTAL ANNUAL SALES. A copy of the bill is attached as Exhibit 3. A bill analysis prepared by the committee co-counsel is attached as Exhibit 4.

Sen. Reeves said he had introduced Senate Bill 812 on behalf of the communities in Southeast Raleigh, but the bill had attracted the attention of the League of Municipalities and mayors of other cities across the state. He said Charlotte and Durham were also interested in the bill.

The bill provides that a food business holding an ABC permit, such as a convenience store, located in an urban development, cannot have alcoholic beverage sales that exceed fifty percent of its total annual sales. Sen. Reeves said such establishments had caused Raleigh a lot of problems in its urban redevelopment areas with drinking on the premises and disruptive activity. He said the bill had a lot of support; but the convenience store, beer and wine, and restaurant associations had taken no position in regard to the bill. He asked for support in order to improve the quality of life for residents in areas that need special attention.

Chairman Hensley called for questions from the committee and recognized Rep. Decker.

Rep. Decker and Rep. Baker asked about the relevance of requiring businesses to maintain records and report on the quantity of alcohol purchased. Sen. Reeves said it was meant to give the municipalities the ability to trigger an investigation of what may be perceived as a problem facility; and when that trigger happens, the ABC people will go in and investigate and test the total sales. If the total sales are over fifty percent beer and wine, the commission shall report its summary findings to the city council that requested the investigation and then they shall revoke the ABC permit. In order to assure that there is due process, the investigations should not be haphazard across the state, hence the need

for requiring the records keeping. Sen. Reeves said the record keeping would facilitate the investigation and would also facilitate the ability of the owner to clear his or her name. He said it was similar to the record keeping set up for restaurants.

Rep. Baker maintained that he did not see the relevance of keeping records on purchases of alcohol because it was the sale of the alcohol that was relevant since they could be giving the alcohol away. He went on to ask whether the records were to be kept off premises. Additionally, he asked if there weren't some curative process so that a person who was just one dollar over wouldn't be put out of business.

Ms. Ann Fulton, General Counsel for the ABC Commission, addressed the questions. She said the records being kept for the specific amount expended for the purchase of alcohol came from a specific rule or statute under the Department of Revenue. She said alcohol was a high profit item for retailers and the the ABC Audit Division in investigating restaurants found very, very few businesses giving it away. If records are kept in compliance with the Revenue Department, she said a standard markup formula would accurately predict a business's sales.

In reply to the second part of Rep. Baker's questions, Ms. Fulton said this was an annual accounting not a monthly one so there would be an ebb and flow during the year, but a legitimate convenient store business should have no problem with the fifty percent of sales requirement. She said they could use magazines, gasoline, and anything else to make up the other fifty percent.

Rep. Baker said he thought that losing a permit for going over the limit was extremely harsh and there needed to be some curative measure for when that happened.

Sen. Reeves said he appreciated Rep. Baker's concerns, but he said the bill had already been compromised a lot over several years. He said he started out wanting a monthly test, but he compromised in making it annual. He wanted it to apply all over the city, but he compromised again, and the bill applies only to urban development areas. He wanted a radius requirement controlling alcohol sales near high schools, but people fought him on that requirement. Rep. Reeves said he thought the bill had been compromised enough and curative measures were not necessary.

Rep. Baker said the sale of beer and wine are legal products in this state and trying to place arbitrary controls was extremely anti business.

Rep. Starnes asked how many redevelopment areas there were in the state, which would be affected. Sen. Reeves did not know the number, but he said they were primarily in the larger metropolitan areas like Raleigh, Charlotte, and Greensboro.

Chairman Hensley said the bill could be held over until staff could get that information for Rep. Starnes, if he felt it were necessary. It was decided to proceed, and staff was directed to find out the number and report to the committee. (A copy of that report, which was furnished on June 11, is attached as Exhibit 5.)

Rep. Starnes asked Ms. Fulton how long an establishment would have to wait to reapply if it lost its ABC permit for going over the fifty percent limit. She said the Commission had discretion to only suspend a license for a small infraction, thus giving an establishment the opportunity to enhance its grocery or gasoline business. If, however, a permit were revoked, a business would be barred for three years from receiving a permit.

Rep. Decker made a motion that the Senate Committee Substitute for Senate Bill 812 be given a favorable report.

Rep. Miller asked Ms. Fulton if it were a defensible criteria to restrict commerce in a district that is labeled urban development. Ms. Fulton said she did not know because she was not a constitutional expert.

Sen. Reeves said he worked very hard with Gerry Cohen on the selection of the urban development zone language, and the reason why he felt that it would be a defensible criteria was because the Legislature had over time allowed these areas to have special treatment because of the heightened concern over trying to improve those areas.

Rep. Miller said he was just trying to get to the technical aspects of the bill; and if it wouldn't fly that way, then it wouldn't fly regardless of what the General Assembly's good intentions were. His second concern was that the bill would become effective upon enactment, but those folks in those areas would have a "free ride" for a year because there would be no accountability until after a year from the enactment of the law. Ms. Fulton said she thought that was the intent because otherwise they would not have been put upon notice.

Rep. Miller asked whether the bill would apply to businesses other than convenience or food stores such as pool halls or car washes. Ms. Fulton said yes, there was no food requirement in Wake or Durham Counties to get an off-premise beer permit.

Rep. Miller asked whether the breadth of the bill were wide enough to get to the depth of the problem. If there's a problem with this in areas other than urban development districts, he asked whether the General Assembly couldn't enact an ABC statute to say that if you're going to have an ABC permit and sell beer and wine, you've got to have fifty percent sales in other areas just like restaurants in the liquor-by-the-drink statute. Ms. Fulton said that could be done.

Rep. McComas asked why the ABC Commission couldn't regulate this without having a new law on the books. Ms. Fulton said that currently there was no food requirement or any type of sales requirement on a retail business.

Rep. McComas said the bill was setting up obstacles to businesses, but they would find ways to get around them.

Rep. Starnes asked about how many convenience stores would be affected in the Raleigh urban development areas.

The Chair recognized Southeast Raleigh community activist Ms. Octavia Rainey from the audience to answer the question. She said there were thirty-eight stores in Southeast Raleigh redevelopment area.

Rep. Starnes asked how many of the thirty-eight stores were out of compliance, and Sen. Reeves said he guessed that probably half of them would be immediate problems.

The Chairman recognized Ms. Rainey for additional comments. She said the stores were a drag on property values and neighborhood life. She said a great many of the stores did not fit into their neighborhood or respect the neighborhood. She said they were a drain on the neighborhood.

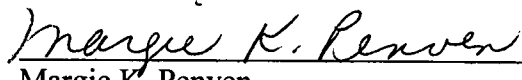
Rep. Baker said it was not a role of business to be the social fabric of the neighborhood. He said the businesses with ABC permits were not force-feeding alcohol into anybody in the neighborhoods. He said they were selling legal products. He said if you started with alcohol then you might turn to cigarettes and then fatty products. He said don't blame businesses for the social ills.

Mr. Harold Webb was recognized from the audience for comments. He said he lived in Southeast Raleigh in one of the urban areas, and he supported bill. He said he knew where the Raleigh Police Department had brought in a portable, mobile police station to try to control the conditions in three of the stores in his area.

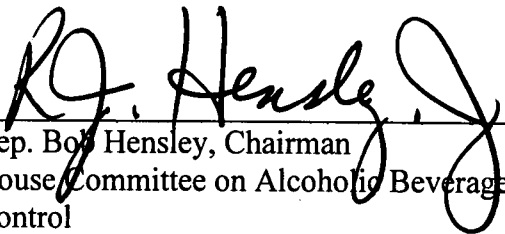
The committee voted on Rep. Decker's motion to give the bill a favorable report, and the Chair being unable to determine the result by a voice vote, asked for a show of hands. The motion carried 4-2 for a favorable report.

There being no further business, the committee was adjourned. (A copy of the Committee Report is attached as Exhibit 6.)

Respectfully submitted,


Margie K. Penven
Committee Assistant to the
House Committee on Alcoholic Beverage
Control

Approved by:


Rep. Bob Hensley, Chairman
House Committee on Alcoholic Beverage
Control

AGENDA
House Committee On
Alcoholic Beverage Control
June 1, 1999

**Committee Substitute for Senate Bill 812, Alcoholic Beverage Sales
(Original Bill Introduced by Sen. Eric Reeves)**

VISITOR REGISTRATION SHEET

ABC

Name of Committee

6/1/99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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2

SENATE BILL 812
Judiciary II Committee Substitute Adopted 4/22/99

Short Title: Alcoholic Beverage Sales.

(Public)

Sponsors:

Referred to:

April 12, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THAT A FOOD OR RETAIL BUSINESS THAT HOLDS
3 AN ABC PERMIT AND IS LOCATED IN AN URBAN REDEVELOPMENT
4 AREA SHALL NOT HAVE ALCOHOLIC BEVERAGE SALES IN EXCESS OF
5 FIFTY PERCENT OF THE BUSINESS'S TOTAL ANNUAL SALES.
6 The General Assembly of North Carolina enacts:
7 Section 1. Article 3 of Chapter 18B of the General Statutes is amended
8 by adding a new section to read:
9 **"§ 18B-309. Alcoholic beverage sales in Urban Redevelopment Areas.**
10 **A food business as defined in G.S. 18B-1000(3), a retail business as defined in G.S.**
11 **18B-1000(7), or an eating establishment as defined in G.S. 18B-1000(2) that holds an**
12 **ABC permit under this Chapter and is located in a part of a city that has been**
13 **designated as an Urban Redevelopment Area under Article 22 of Chapter 160A of**
14 **the General Statutes shall not have alcoholic beverage sales in excess of fifty percent**
15 **(50%) of the business's total annual sales. Upon request of a city, the Commission**
16 **shall investigate the total annual alcohol sales and total sales of a business as defined**
17 **in this section. The Commission shall report the results of such an investigation to**
18 **the city council, and the report shall contain only the percentage of annual alcohol**
19 **sales in proportion to the business's total annual sales. A city may request an**
20 **investigation of a particular business by the Commission only once in each calendar**
21 **year. These audits may be conducted by the Commission only upon the request of**
22 **the city council. Businesses covered by this section shall maintain full and accurate**
23 **monthly records of their finances, separately indicating each of the following:**

(1) Amounts expended by the business for the purchase of alcoholic beverages and the quantity of alcoholic beverages purchased;

(2) Amounts collected from the sale of alcoholic beverages sold; and

(3) Amounts collected from the sale of food, nonalcoholic beverages, and all other items sold by the business.

Records of purchases of alcoholic beverages and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises, and all records related to alcoholic beverages, including original invoices, shall be maintained on the premises for three years and shall be open for inspection and audit pursuant to G.S. 18B-502."

Section 2. G.S. 18B-904(e) reads as rewritten:

"(e) Business or Location No Longer Suitable. --

(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).

(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309."

Section 3. This act is effective when it becomes law.



BILL ANALYSIS

SENATE BILL 812: Alcoholic Beverage Sales

Committee:	House Committee on Alcoholic Beverages	Introduced by:	Senator Eric Reeves
Date:	June 1, 1999	Summary by:	Brenda J. Carter
Version:	2nd Edition		Committee Co-Counsel

SUMMARY: *Senate bill 812 provides that a food business that is located in an Urban Redevelopment Area and holds an ABC permit cannot have alcoholic beverage sales that exceed 50% of its total annual sales.*

BILL ANALYSIS: This bill adds a new section, §18B-309, to Chapter 18B of the General Statutes. This new section provides that food and retail businesses or eating establishments that are located in an "Urban Redevelopment Area" cannot have alcoholic beverage sales in excess of 50% of their total annual sales. The bill sets out the procedure for record-keeping and for investigations.

Under the statutes which set out urban development law, A "redevelopment area" is generally any area which a planning commission may find to be a blighted area because of conditions including deterioration, high density of population, conditions which endanger life or property, or any combination of factors detrimental to the public health, safety, moral or welfare, etc. The term also includes any area which a planning commission may find to be a nonresidential redevelopment area or a rehabilitation and reconditioning area.

The bill applies to the following types of businesses:

Eating establishment. - An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises. Eating establishments include businesses that are referred to as restaurants, cafeterias, or cafes, (*but that are not restaurants as defined in the ABC law - including a kitchen and an inside dining area with seating for at least 36 people.*) Eating establishments also include lunchstands, grills, snack bars, fast-food businesses, and other establishments, such as drugstores, which have a lunch counter or other section where food is sold to be eaten on the premises.

Food business. - An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten off the premises. Food businesses include grocery stores, convenience stores, and other establishments, such as variety stores or drugstores, where food is regularly sold, and also include establishments engaged primarily in selling unfortified or fortified wine or both, for consumption off the premises.

Retail business. - An establishment engaged in any retail business, regardless of whether food is sold on the premises.

The bill also amends G.S. 18B-904(e) by adding a new subdivision that requires the ABC Commission to suspend or revoke the ABC license of a business that violates the new section (§18B-309).

The bill would be effective when it becomes law.

List of Towns and Their Number of Urban Redevelopment Areas

<i>City or Town</i>	<i>Number of Redevelopment Areas</i>
Asheville	1
Burlington	3
Chapel Hill	0
Charlotte	6
Concord	1
Cumberland	6
Durham	1
Fayetteville	6
Gastonia	1
Goldsboro	0
Greensboro	14
Greenville	0
Hickory	2
High Point	2
Jacksonville	5
Kannapolis	1
Lenoir	3
Morganton	1
Raleigh	6
Rocky Mount	2
Salisbury	0
Wilmington	0
Winston-Salem	5
TOTAL NUMBER	66

1999 COMMITTEE REPORT HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hensley** for the Committee on **Alcoholic Beverage Control**.

☒ Committee Substitute for

S.B. 812 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT A FOOD OR RETAIL BUSINESS THAT HOLDS AN ABC PERMIT AND IS LOCATED IN AN URBAN REDEVELOPMENT AREA SHALL NOT HAVE ALCOHOLIC BEVERAGE SALES IN EXCESS OF FIFTY PERCENT OF THE BUSINESS'S TOTAL ANNUAL SALES.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

FOR JOURNAL USE ONLY

- ____ Pursuant to Rule 36(b), the bill is placed on the Calendar of ____.
- ____ The (committee substitute) bill/resolution (, as amended,) is (ordered engrossed and) re-referred to the Committee on ____.
- ____ The bill/resolution is re-referred to the Committee on ____.
- ____ On motion of (Rep. _____,) (the Chair,) the (committee substitute) bill/resolution is (ordered engrossed and) re-referred to the Committee on ____.
- ____ Pursuant to Rule 36(b), the (House)committee substitute bill (No. ____)/resolution is placed on the Calendar of _____. (The original bill) (House Committee Substitute Bill No. ____)/resolution is placed on the Unfavorable Calendar.
- ____ On motion of Rep. _____, (the rules are suspended) (Rule ____ is suspended) and the bill/resolution is placed on today's calendar. (for immediate consideration.)
- ____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV _____).
- ____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV _____).
- ____ Rep. _____ offers Amendment No. _____ which (is adopted.) (fails of adoption.) (by EV _____.) () This amendment changes the title.
- ____ The bill/resolution (, as amended,) passes its second reading (by following vote, _____ RC) (, by EV _____,) and (remains on the Calendar,) (and there being no objection is read a third time).
- ____ The bill/resolution (, as amended,) passes its third reading (by the following vote, _____ RC) (, by EV _____,) and is ordered
____ sent to the Senate.
____ without engrossment. _____ by Special message.
____ sent to the Senate for concurrence in
____ House amendment (s).
____ House committee substitute.
____ enrolled.
- ____ On motion of Rep. _____, the House concurs in the (material) Senate _____ (by the following vote, _____ RC) (, by EV _____,) and the bill is ordered enrolled.

**MINUTES
HOUSE COMMITTEE ON
ALCOHOLIC BEVERAGE CONTROL**

July 13, 1999

The House Committee on Alcoholic Beverage Control met at 1:00 p.m. on Tuesday, July 13, 1999, in Room 612 of the Legislative Office Building. The agenda for the meeting is attached as Exhibit 1.

Committee members present were: Chairman Bob Hensley, Vice Chairman George Miller, and Representatives Baker, Decker, Gibson, Hardaway, Hunter, McComas, Starnes, and Wainwright. Committee co-counsel present were Ms. Brenda Carter and Ms. Jo McCants. A visitor registration sheet is attached as Exhibit 2.

Chairman Hensley called the meeting to order and asked Ms. Carter to explain a proposed committee substitute for Senate Bill 173, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO SPORTS CLUBS. (See Exhibit 3.) Ms. Carter said the proposed committee substitute would allow the ABC Commission to issue on-premises malt beverage permits, fortified wine permits, and mixed beverage permits for sports clubs without approval by election.

Ms. Carter went on to say that sports clubs are currently defined in the General Statutes as having all of the following: an 18-hole golf course, two or more tennis courts, gross receipts for sales for club activities (including food) not to exceed the gross receipts for alcoholic beverages. She said the proposed committee substitute also included a provision that would prohibit discrimination based on race, religion, color, national origin, sex or disability.

Under current law the sports club ABC permits are issued in areas of the state that meet certain statutory guidelines. The proposed committee substitute would permit the issuance of ABC permits on a statewide basis.

Rep. Hunter moved that the Committee Substitute for SB 173 be adopted in order to be properly before the Committee. The motion carried.

Chairman Hensley recognized Rep. Wainwright who questioned the word "may" as opposed to "shall" on line 1, page 2, of the committee substitute in connection with the anti-discrimination paragraph. Staff was consulted and they felt that either word carried the same connotation in issuing a directive.

The chairman directed the committee's attention to a handout defining sports clubs as found in NCGS 18B-1000 (8). That handout is attached as Exhibit 4.

The chairman recognized Rep. Starnes who said he would like to offer an amendment to exclude Caldwell and Alexander Counties.

Ms. Ann Fulton, Legal Counsel to the Alcoholic Beverage Control Commission, was recognized. Ms. Fulton pointed out that Caldwell County had been authorized for sports clubs since 1993, and one sports club had been licensed in that county at Cedar Rock.

Rep. Starnes said he would proceed with his amendment since the Village of Cedar Rock is now incorporated and has all the authority needed to hold their own ABC referendum.

Rep. Wainwright asked if the existing sports club in Caldwell County would lose its license under the amendment, and Ms. Fulton acknowledged that it would.

Rep. Starnes said he wished to add Lincoln, McDowell and Yancey Counties to his amendment at the urging of Reps. Gillespie and Kiser.

Rep. Decker was recognized for a point of order. He inquired as to who was handling the bill and asked whether the chairman shouldn't excuse himself from presiding, if it were his bill. The chairman said that he had excused himself in the past when he was handling a bill, but Rep. Hunter was handling this bill.

In response to a question from Rep. Decker regarding the right of a bartender to refuse service to a person under the present statute, Ms. Carter said that even though the seller has the right in his discretion to refuse to sell to anyone, that refusal under the provisions of the proposed committee substitute could not be based on the person's race, religion, color, national origin, or disability.

Rep. McComas questioned the definition of disability and inquired as to whether liver problems or alcoholism might be a disability. Ms. Fulton said that question would require research, and they would have to be guided by case law and statutes on the books, both state and federal, such as the Americans with Disabilities Act.

Rep. Starnes' amendment having been drawn to exclude Alexander, Caldwell, Lincoln, McDowell and Yancey Counties from the bill before the committee, Rep. Starnes sent forward the amendment and moved for its adoption. See Exhibit 5.

Rep. Gillespie and Rep. Kiser were recognized from the audience to speak on the amendment and each asked that their wishes to exclude their counties be honored.

The motion to adopt the amendment passed.

Rep. Decker sent forth an amendment to exclude Edgecombe and Nash Counties from the bill.

Rep. Decker said he did not represent Rocky Mount, but he'd had a call from a friend of his in Rocky Mount who was upset about the bill. He said a referendum had been held recently and liquor by the drink had been voted down. He said the city council members in Rocky Mount had professed their opposition to liquor until after their election, but after their election they had switched. Rep. Decker moved for the adoption of his amendment.

Rep. Hardaway, who represents Rocky Mount, was recognized, and he said he took issue with Rep. Decker offering the amendment because he did not represent either Nash or Edgecomb Counties. Secondly, he said Rep. Decker's information was completely wrong because Rocky Mount already had liquor by the drink in place.

Rep. Decker's motion failed.

Rep. Decker asked whether this bill fell into the same category as those bills previously passed by the General Assembly that have been challenged in court as being unconstitutional. The Chairman recognized Ms. Fulton to comment, and she said that prior to the amendment she didn't believe the bill would fall into the same category.

Rep. Starnes was recognized to ask Ms. Fulton a question. Rep. Starnes asked whether the circumstances of a sports club would change depending on if it were inside of a municipality or an unincorporated area. She said the majority of sports clubs that have been issued permits thus far are in unincorporated areas.

Rep. Starnes said he had a situation in Granite Falls where there is an 18-hole golf course and tennis courts in an incorporated area. He asked whether that establishment would be able to apply for a liquor license under this bill even though they are in a city that has not voted on liquor by the drink. Ms. Fulton said they are already eligible to apply as a sports club in Caldwell County.

In a follow up question, Rep. Starnes said Cedar Rock County Club received their ABC permit under special provision before they were incorporated into a town. If Caldwell County were exempted from this bill, he asked whether they as a town could have their own election as to whether to have mixed drinks. Ms. Fulton said they would have to meet certain population requirements before they would be eligible to have an election—they would have to have at least 300 registered voters and be located in a county that already had a city that had approved the sale of mixed beverages.

Rep. Starnes asked whether Caldwell County could be excluded from the bill and at the same time grandfather Cedar Rock in. Ms. Fulton said she did not think so, constitutionally.

Rep. Hunter moved that the committee substitute and its amendment be rolled into a new committee substitute bill and be given a favorable report as to the committee substitute bill and unfavorable as to the original Senate committee substitute bill for SB 173.

Rep. Baker asked whether a favorable vote on the bill, as amended, would put the club in Caldwell County out of business? The consensus was yes.

Rep. Starnes said he wished to offer a new amendment to strike Caldwell from his original amendment. The chair said the rules would not allow that. He said Rep. Starnes would have to move to reconsider the vote by which the amendment was adopted and then offer a new amendment. Rep. Starnes made a substitute motion to Rep. Hunter's motion. Having voted with the prevailing side, he moved to reconsider amendment 1 to the proposed House Committee substitute for Senate Bill 173. Rep. Starnes' motion to reconsider passed.

Rep. Starnes sent forth a new amendment and moved to amend the bill on page 2, lines 16 and 17 by inserting between those lines the following: "Section 3. This act shall not apply to Alexander, Lincoln, McDowell or Yancey Counties."; and by renumbering the remaining sections. The motion failed.

Rep. Hunter made a new motion to give the proposed House Committee Substitute to Senate Bill 173 a favorable report. The motion carried.

The Committee moved on to the next bill on the agenda, a proposed House Committee Substitute for Senate Bill 17, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO TOURISM RESORTS ON A STATEWIDE BASIS. (See Exhibit 6.)

Chairman Hensley asked Ms. McCants to explain the bill. She said the proposed bill adds a definition to Section 18B to include "tourism resort." A tourism resort is considered any restaurant or lodging facility owned and operated as a resort property offering food, beverage, lodging, and meeting facilities to travelers and tourists and featuring one or more golf courses, two or more tennis courts, along with other recreational or sporting activities; or it can be any restaurant owned or operated as a resort property offering food and beverage to travelers and tourists and featuring an equestrian center and two or more tennis courts along with other recreational and sporting activities. In order for something to be considered a tourism resort it must also have at least twenty-five percent of its total gross receipts coming from sporting and recreational activities. And finally, this committee substitute would require a tourism resort to publish at least quarterly in a regional or national travel and sports industry publication or the State travel guide. This committee substitute would allow the Alcoholic Beverage Control Commission to issue certain permits, such as on-premises malt beverage permits, on-premises unfortified wine permits, and on-premises fortified wine and mixed beverage permits to a tourism resort without an election.

Rep. Hunter moved that the proposed committee substitute bill for Senate Bill 17 be properly before the committee for consideration and the motion carried.

The chairman called for questions and Rep. Starnes asked Ms. Fulton how many ABC permits had been issued in this state under this provision. Ms. Fulton said this was a new category so none had been issued.

Rep. Starnes asked whether Ms. Fulton had an estimate as to how many resorts would qualify. Ms. Fulton said she did not.

Rep. McComas asked why the lodging facility should have a golf course and two or more tennis courts...why not swimming pools, or croquet fields, or badminton courts, or pool tables? What was the reasoning? Ms. Fulton said any of those things mentioned would qualify as "recreational or sporting."

Rep. McComas asked whether twenty-five percent of the facility's revenues had to come from the golf course or the tennis courts. Ms. Fulton said all of the facility's sporting and recreational activities could be considered.

Rep. McComas asked what the committee hoped to accomplish with the legislation. He said if the object were to offer alcoholic beverages for their guests, perhaps the twenty-five percent should be deleted.

Rep. Starnes said he had been asked as a courtesy to again offer an amendment to delete Caldwell, Alexander, Yancey, McDowell and Lincoln Counties.

While Ms. McCants drew the amendment, the Chairman recognized Rep. Gillespie from the audience for comments. Rep. Gillespie asked for the committee's support of Rep. Starnes' amendment and said that even though there was a constitutional question, he could assure them that would be additional lawsuits in the State of North Carolina that would question whether or not special provision laws are constitutional, and whether this law passed or not would not stop that. He asked that the committee grant him the right to exclude his counties.

Rep. Hunter said if counties are left out the bill, they are setting themselves up for the law to be declared unconstitutional. He asked why the committee would set themselves up for that. He asked why the amendment would be allowed if they already knew that.

Rep. Hensley said as Chair of the committee, he would wait and reserve his opinion until he saw the amendment signed by Rep. Starnes. He said he would rule whether the amendment was properly before committee based on constitutional law. He said he had a memorandum from Mr. Gerry Cohen giving him those guidelines.

Rep. Starnes sent forth his amendment and moved to amend the bill on page two at lines 16 and 17 by inserting between those lines the words, " Section 3. This act does

not apply to Alexander, Caldwell, Lincoln, McDowell and Yancey Counties.”; and by renumbering the remaining sections accordingly. (See Exhibit 7.)

The Chairman said his memo from Mr. Cohen in Bill Drafting answered the question of whether an amendment to this particular bill to exclude specifically named counties would be constitutional. Mr. Cohen replied, “In my opinion it would be unconstitutional. Local acts regulating trade are banned by Article 2, Section 24, of the Constitution of North Carolina. Our Supreme Court has stated that trade within the meaning of that section is a business venture for profit and includes any employment or business embarked in for gain or profit. The purchase, sale, and serving of alcoholic beverages by a licensed restaurateur was held to constitute trade within the meaning of the present Article 2, Section 24, subsection (1), subsection (j).” The Chairman said that based on the memo from Mr. Cohen he would rule the amendment out of order. He said he wanted Rep. Starnes to understand that according to the chief of the bill drafting staff, taking counties out of a bill that is entitled, “an act to authorize the Alcoholic Beverage Control Commission to issue permits to tourism resorts on a statewide basis” violates the constitution and would be out of order.

Rep. Decker asked whether this bill would affect the lawsuit filed by Mountain Air. Rep. Hensley said Mountain Air was in charge of their own lawsuit and could dismiss it or prosecute it at their will. Rep. Hensley said he did not know whether the bill would satisfy them enough to dismiss their lawsuit.

Rep. Decker asked Ms. Fulton whether she thought the bill would affect their lawsuit, and she replied that she did not know—that she agreed with what Rep. Hensley said. She said they may choose to dismiss it if they find that they qualify under other provisions that are enacted, but they could also continue to prosecute their lawsuit and continue to challenge the provisions that have been previously enacted over the last twelve years.

Rep. Hunter made a motion to give the proposed committee substitute for Senate Bill 17 a favorable report, unfavorable as to original bill.

The Chairman pointed out to the committee that on page 2, line 15, there was an incorrect statutory cite, that being “18B-100.” He said that should read “18B-1001.” He said that could be corrected by either the technical corrections bill or by the reviser of statutes, according to Mr. Cohen.

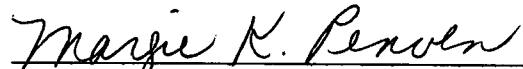
Rep. Starnes said he was disappointed that his amendment was not accepted, but he understood the Chair’s reasoning. He said this bill is the reverse of what the General Assembly has done in the past. Heretofore, he said the General Assembly had passed things like this on a county-by-county basis, which has come to light as being unconstitutional. Now the policy is being changed to allow special permits to be allowed on a statewide basis in North Carolina but still without a vote of the people. He said he strongly opposed alcohol going into a community without a vote of the people; and he said he was disappointed that they setting up a system where they were not recognizing

the right of local legislators to represent the wishes and the best interests of their people by exempting their counties. He said that was the down side to the change of State policy and because of that he would be voting against the bill.

Rep. Hunter's motion for a favorable report carried.

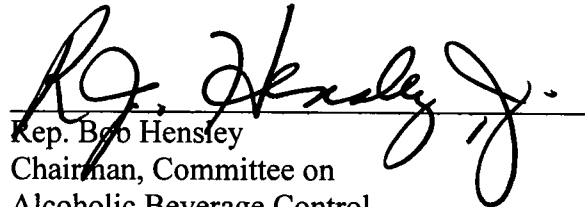
There being no time left to take up the final bill on the calendar, the meeting was adjourned. (Copies of the committee reports filed on July 13, 1999, are attached as Exhibits 8 and 9.)

Respectfully submitted,



Margie K. Penven
Committee Assistant, Committee on
Alcoholic Beverage Control

Approved by:



Rep. Bob Hensley
Chairman, Committee on
Alcoholic Beverage Control

AGENDA
House Committee On
Alcoholic Beverage Control
July 13, 1999

SB 173, National Landmark District Permits

SB 17, Economic Development Districts

HB 1382, Local Government ABC Permit Involvement

7-13-99
Date

NAME

FIRM OR AGENCY AND ADDRESS

HACIENDA Co.

17. 6

Halifax Co

Halifax

N.C. Beer & Wine

WC Beers Wine

UKC-TV

NC Beer Wines

NCRA

CAL NC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

S

D

SENATE BILL 173
Corrected Copy 3/2/99
Third Edition Engrossed 3/9/99
Fourth Edition Engrossed 3/10/99
Proposed Committee Substitute S173-PCSA666-RV

Short Title: Sports Club ABC Permits.

(Public)

Sponsors:

Referred to:

February 25, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL
3 COMMISSION TO ISSUE PERMITS TO SPORTS CLUBS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 18B-603(f) reads as rewritten:

6 "(f) Permits Not Dependent on Elections. -- The Commission may issue the
7 following kinds of permits without approval at an election:

8 (1) Special occasion permits;

9 (2) Limited special occasion permits;

10 (3) Brown-bagging permits for private clubs and congressionally
11 chartered veterans organizations;

12 (4) Culinary permits, except as restricted by subdivision (d)(5);

13 (5) Special one-time permits issued under G.S. 18B-1002;

14 (6) All permits listed in G.S. 18B-1100;

15 (7) On-premises malt beverage permits and on-premises unfortified
16 wine permits for a tourism ABC establishment. ~~establishment~~;

17 (8) The permits authorized by G.S. 18B-1001(1), (3), (5), and (10) for
18 sports clubs."

19 Section 2. G.S. 18B-305 is amended by adding a new subsection to read:

1 "(c) Notwithstanding subsection (b) of this section, no permittee may refuse to sell
2 alcoholic beverages to a person solely based on that person's race, religion, color,
3 national origin, sex, or disability."

4 Section 3. This act is effective when it becomes law.

NCGS 18B-1000 (8)

Sports Club—An establishment substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both. The sports club can either be open to the general public or to members and their guests.

To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Exhibit 5

EDITION No. _____

H. B. No. _____

S. B. No. _____

COMMITTEE SUBSTITUTE 173DATE 7/13/99Amendment No. 1A(to be filled in by
Principal Clerk)

(Rep.) Starnes
Sen.)

1 moves to amend the bill on page 2, line 3 and 4

2 () WHICH CHANGES THE TITLE

3 by inserting between those lines the
4 following:5
6 "Section 3. This act shall not apply
7 to Alexander, ~~Caldwell~~, Lincoln, McDowell,
8 or Yancey Counties."; and by9
10 renumbering the remaining section accordingly.

11

12
13 M by Rep Starnes to14
15 reconsider - passed16
17 New amendment by18
19 Rep Starnes taking out Caldwell
failedSIGNED Edgar Starnes

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

S

D

SENATE BILL 17
Finance Committee Substitute Adopted 2/10/99
House Committee Substitute Favorable 3/2/99
Proposed Committee Substitute S17-PCS8627-LK

Short Title: Statewide Tourism Resort Permits.

(Public)

Sponsors:

Referred to:

February 2, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL
3 COMMISSION TO ISSUE PERMITS TO TOURISM RESORTS ON A
4 STATEWIDE BASIS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 18B-101 is amended by adding a new subdivision to read:
7 '(14b) Tourism resort' means:
8 a. Any restaurant and lodging facility owned and operated as a
9 resort property offering food, beverage, lodging, and meeting
10 facilities to travelers and tourists and featuring one or more
11 golf courses and two or more tennis courts along with other
12 recreational and sporting activities, or
13 b. Any restaurant owned and operated as a resort property
14 offering food and beverage to travelers and tourists and
15 featuring an equestrian center and two or more tennis courts
16 along with other recreational and sporting activities.
17 Receipts from sporting and recreational activities of a tourism
18 resort shall be at least twenty-five percent (25%) of total gross
19 receipts. A tourism resort shall advertise at least quarterly in a
20 regional or national travel or sports industry publication, or in the

1 State travel guide published by the North Carolina Department of
2 Commerce."

3 Section 2. G.S. 18B-603(f) reads as rewritten:

4 "(f) Permits Not Dependent on Elections. -- The Commission may issue the
5 following kinds of permits without approval at an election:

6 (1) Special occasion permits;

7 (2) Limited special occasion permits;

8 (3) Brown-bagging permits for private clubs and congressionally
9 chartered veterans organizations;

10 (4) Culinary permits, except as restricted by subdivision (d)(5);

11 (5) Special one-time permits issued under G.S. 18B-1002;

12 (6) All permits listed in G.S. 18B-1100;

13 (7) On-premises malt beverage permits and on-premises unfortified
14 wine permits for a tourism ABC ~~establishment~~; establishment;

15 (8) The permits authorized by G.S. 18B-100(1), (3), (5), and (10) for
16 tourism resorts."

17 Section 3. This act is effective when it becomes law.

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE

7/13/99

S. B. No. _____

Amendment No. 1(to be filled in by
Principal Clerk)COMMITTEE SUBSTITUTE 17

Rep.)

Sen.)

Starnes

1 moves to amend the bill on page 2, lines 16 and 17

2 () WHICH CHANGES THE TITLE

3 by inserting between those lines:4
5 "Section 3. This act does not apply
6 to Alexander, Caldwell, Lincoln,
7 McDowell, and Yancey Counties." and8
9 by ~~insert~~ renumbering the remaining
10 section accordingly.11
12
13
14
15
16
17
18
19
Not accepted
by Chris McCreary
Edgar Starnes
SIGNED

ADOPTED _____ FAILED _____ TABLED _____

**1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hensley** for the Committee on **Alcoholic Beverage Control**.

- ☒ Committee Substitute for
S.B. 173 A BILL TO BE ENTITLED AN ACT TO ALLOW THE ISSUANCE OF
CERTAIN ABC PERMITS IN DESIGNATED NATIONAL HISTORIC LANDMARK
DISTRICTS AND TO INCREASE THE COVERAGE OF INTERSTATE INTERCHANGE
ECONOMIC DEVELOPMENT ZONES.
- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☒ With a favorable report as to House committee substitute bill (#), ☒ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

**1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hensley** for the Committee on **Alcoholic Beverage Control**.

☒ Committee Substitute for

S.B. 17 A BILL TO BE ENTITLED AN ACT TO MODIFY THE DEFINITION OF
"ECONOMIC DEVELOPMENT AND TOURIST DISTRICT."

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ .
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ .
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☒ With a favorable report as to House committee substitute bill (#), ☒ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99



Rep. Bob Hensley, Chairman

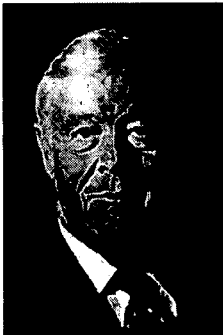
MEMBERSHIP
HOUSE COMMITTEE ON
ALCOHOLIC
BEVERAGE
CONTROL

1999-2000 SESSION



Rep. George Miller, Vice Chair

Members



Rep. Rex Baker



Rep. Michael Decker



Rep. Pryor Gibson



Rep. John Hall



Rep. Howard Hunter



Rep. Daniel McComas



Rep. Edgar Starnes



Rep. William Wainwright

Ex Officio Members



Rep. Joe Hackney



Rep. Philip Baddour



Rep. Andrew Dedmon



Rep. Beverly Earle



Rep. Pete Cunningham

2000 SESSION

[illegible]

**MINUTES
HOUSE COMMITTEE ON
ALCOHOLIC BEVERAGE CONTROL**

June 13, 2000

The House Committee on Alcoholic Beverage Control met at 1:00 p.m. on Tuesday, June 13, 2000, in Room 415 of the Legislative Office Building. The agenda for the meeting is attached as Exhibit 1. The following members of the committee were present: Rep. Bob Hensley, Chairman; Rep. George Miller, Vice Chairman; Rep. Pryor Gibson, Rep. Howard Hunter, Rep. Daniel McComas, Rep. Edgar Starnes; and ex officio member Rep. Pete Cunningham. Also present were Ms. Brenda Carter and Mr. Al Andrews, Legislative Counsel.

Rep. Hensley called the meeting to order and noted there were more legislative representatives present from outside the committee than on the committee. He said the program would be for information only. He went on to say that there has been a lawsuit filed in Wake County on a Lincoln County situation--Verdict Ridge County Club, Inc. vs. North Carolina Alcoholic Beverage Control Commission. He said the purpose of the meeting was to let the membership of the committee and other interested parties know what the progress of the lawsuit is and what the possible effects of the lawsuit could be.

Rep. Hensley called on Ms. Robin Pendergraft from the Attorney General's Office to speak on the background of the Verdict Ridge Country Club suit and what has happened in previous lawsuits.

Ms. Pendergraft said she didn't feel it would be appropriate to comment in detail on pending litigation, but she would give a summary and background. She said that since the end of 1998, there have been five lawsuits against the ABC Commission that have challenged alleged local acts enacted by the General Assembly. Two cases are pending. One of the closed cases was the Lumberton Act, which was Reeves vs. the ABC Commission. In August of 1999, a summary judgment was granted for the plaintiffs against the ABC Commission by Judge Gregory Weeks and basically found that the Lumberton Act was void and unenforceable because it violated the North Carolina Constitution. Subsequently mixed beverages were voted in for Lumberton, so that matter was resolved in that way.

Ms. Pendergraft went on to say that the Halifax Act was a case where Richard E. Frazier, et al vs. the ABC Commission. She said that case was resolved in December of 1999 when Judge Weeks again granted a summary judgment against the ABC Commission for the plaintiffs and again found that the Halifax Act was void and unenforceable since it violated the North Carolina Constitution.

Ms. Pendergraft commented on another closed case--the Mountain Air Development vs. the ABC Commission, filed in March of 1999. There was a voluntary dismissal in December of 1999 because the Legislature passed a state-wide law that

allowed mixed beverage licenses for tourism resorts and Mountain Air met the requirements.

One of the presently pending cases is Swain County vs. the ABC Commission. Ms. Pendergraft said that case is pending before the Court of Appeals and deals with recreation districts. Briefs have been filed by both sides, and they are awaiting oral arguments before the Court of Appeals. The lawsuit challenges 18B1006 (j)(4) "Recreation District" as it affects Swain County.

In other pending litigation, briefs have been filed by the plaintiffs in the Verdict Ridge County Club case, and the State will be filing briefs in a week or two. Verdict Ridge Country Club is a private club in Lincoln County, and it is in an area of Lincoln County where they have not approved the sale of alcoholic beverages by election. Therefore the club is unable to provide its members with alcoholic beverages unless it falls within a category where the legislature has allowed ABC permits without elections. The Verdict Ridge Country Club alleges in its brief that 18B1006(k) authorizes the issuance of ABC permits to sports clubs without the approval of local elections in certain circumstances. Unfortunately for them, they are not one of the specialized counties that are authorized under 1006(k).

The club went ahead in August of 1999 and applied for an on-premise malt beverage, unfortified wine, and fortified wine, mixed-beverage permit as a sports club. The ABC commission denied the permit in December of 1999. A contested case hearing was requested, which went through the Office of Administrative Hearings process. In January of 2000, the administrative law judge issued a recommended decision upholding the denial, but included a conclusion of law that said in essence that the country club raised legitimate questions about the constitutionality of GS18B1006(k). When the matter came before the ABC Commission in January of 2000, the Commission adopted the recommended decision, and then the country club filed a petition for judicial review which is the normal administrative process for a case to go through. In essence, what they have indicated is that the denial of their application in 18B1006(k) and 18B603 (h), both as written and applied, denies the county club's rights to equal protection under both the United States and North Carolina Constitutions. They also allege in their complaint and in their brief that local acts regulate trade in violation of the State Constitution. The first relief they want is for the court to sever what they call the arbitrary geographic locations that are set out in subsections (1) through (8) of 18B1006(k) leaving the remainder of the statute in force to allow all sports clubs in the state equal treatment. Barring the court doing that, then what they've asked in the alternative is that the court declare those provisions unconstitutional in their entirety. They go on to provide some facts and cite specifics in their findings of fact to support their allegations. They are, in essence, again challenging a local act as in violation of the North Carolina Constitution, which is similar to what has been happening with some of the other cases as well. The AG's office has filed a response and is getting ready to file a brief. Ms. Pendergraft said it would be inappropriate to comment further.

Rep. Hensley asked whether it were correct that the plaintiffs have won three suits so far at the trial level and one suit at the appeal level. Ms. Pendergraft said that was correct.

Rep. Hensley asked whether there were questions from members of the committee and or other legislators present.

Rep. Cunningham asked on what basis the appeal was made, and Ms. Pendergraft said the AG's office was appealing the Swain County case on procedural problems.

Rep. Gibson asked about the chronology--short term vs. long term--when will we be finished with this and a remedy....

Rep. Hensley said the problem keeps on until the Legislature does something in an affirmative way to change the problem. He said there would be a succession of suits until the Legislature does something to change the problem.

Rep. Gibson said he was looking at thirty counties being affected in the Verdict Ridge suits. He asked whether that number would expand with other suits.

Rep. Hensley said the next speaker, Ann Fulton, general counsel for the ABC Commission, could answer that.

There being no further questions of Ms. Pendergraft, Rep. Hensley introduced Ms. Fulton for her presentation on the possible effects of the pending lawsuit.

Ms. Fulton said she is general counsel for the State Alcoholic Beverage Control Commission, the defendant who is charged with defending the provisions that have been enacted by the General Assembly. She estimated that there are a total of approximately seventy counties in the state for which a special provision has been enacted--not just under the provisions of 18B1006(k). She pointed out that when she uses the term "special ABC provision," she doesn't necessarily mean it's a local act.

Giving a little history, Ms. Fulton said the first special provision she is aware of was enacted for Moore County back after the repeal of Prohibition in 1935. It set up local ABC boards, and it allowed the people in two townships of Moore County to sign a petition asking for ABC stores to be set up in Southern Pines and Pinehurst.

To put liquor by the drink into place, the General Assembly enacted a provision that applied for sure to Guilford County, but might also have applied to other counties. In counties where three or more towns had populations comprising somewhere around 75 or 80 percent of the total county population, the county commissioners were given the authority to provide for mixed beverage sales countywide without forcing the board of elections to have a county-wide election.

In between the mid 1930's and 1979, there were numerous local acts affecting the sale of alcohol. For example, one of them prohibited the sale of beer within one mile of

the bell tower of the Methodist College in Fayetteville. There was another that prohibited the sale of beer on Main Street in Blowing Rock. Ms. Fulton said for years the ABC commission sort of ignored such laws. Another law drew a line north to south down through Carteret County, and it prohibited the sale of beer and wine on the eastern side of that line. It didn't affect alcohol sales in Morehead City, Atlantic Beach, and Beaufort, but it did prohibit sales in the more rural parts of Carteret County. Ms. Fulton went on to say that there was a gentleman by the name of Rodney Gavin Nelson who decided when his permit was denied that he was going to challenge that provision. He did, and he won, and there was a declaration by the Court of Appeals that that provision was an unconstitutional local act regulating trade.

In 1985 a provision for Bald Head Island in Brunswick County was not codified, but was put into the session laws. It called Bald Head Island an off-shore resort and allowed Bald Head Island to vote on liquor by the drink, although Brunswick County had not yet voted on liquor by the drink.

Another provision called beautification district elections was passed in 1985 for Dare County. It had something to do with underground wires and utilities, and it had to have been created within a relatively short time frame in order for there to be an election in Dare County.

The real big provisions were started in 1987. The first one was for sports clubs in Brunswick County, and that law was subsequently amended in 1992, 1993, 1995, and 1999--each time to add additional counties to that provision.

There was also a provision enacted in 1987 for special ABC areas, which was initially passed for Alleghany County. It authorized the creation of a voting jurisdiction that had to be at least 500 acres and it had to have privately-owned land and land owned by a club or association. That law was subsequently amended in 1989, 1992, 1993, 1995 and 1999 to include additional counties. Ms. Fulton said that between the special ABC area provision and the sports area provision, about fifty counties were affected. There was a special provision within the special provision to not allow it to apply to another group of counties, one of which was repealed last year, and there have been four applications in the last two months from businesses up in Macon County.

Ms. Fulton said the Verdict Ridge suit will affect about seventy businesses--mostly golf clubs, country clubs, racquet clubs, or residential private clubs that have a homeowners' club house or something like that. Not all of them will be able to qualify under another provision, and most of them will lose their beer, wine, and mixed beverages permit, if the lawsuit is successful. Most of them would probably have to go back to brown bagging.

Rep. Hensley asked whether these clubs and businesses could possess liquor, if they lose their licenses to sell it.

Ms. Fulton said they could not.

Rep. Hensley asked if they could give the liquor away.

Ms. Fulton said no.

Rep. Hensley asked what businesses will do with their inventory when their licenses are yanked.

Ms. Fulton said the first draft of the order in the Lumberton lawsuit declared the mixed beverages permits null and void immediately, and there were twelve restaurants in Lumberton affected. Thanks to Ms. Pendergraft and her staff, they worked with the judge and he understood that as soon as those permits became null and void it put the permittees in violation of a number of other provisions because you can't possess liquor at a place that's used for commercial purposes. The ABC Commission was given the authority to allow a reasonable period of time for them to divest themselves of their inventory. They set about trying to find other businesses that would buy their inventory because local ABC boards don't want to buy the liquor back. Some of the bottles might have been partially used, and another business wouldn't have wanted to buy it. She said as she recalled the Lumberton businesses were given thirty days.

If the judge that hears the Verdict Ridge Club lawsuit is not as gracious as Judge Weeks, Rep. Hensley asked whether that time could be either cut down significantly or denied altogether.

Ms. Fulton answered that it was possible.

Rep. Hensley asked for questions from members of the committee.

Rep. Miller asked whether restaurants could become private clubs and then whether individual members of the club could possess liquor after the license was taken away. Ms. Fulton said they could, if the club possessed a brown bagging license.

Rep. Miller asked what the requirements would be to get a brown bagging permit. Ms. Fulton said the businesses would still have to qualify as a restaurant, a hotel, a private club or a Congressionally chartered veteran's organization.

Rep. Miller said the law would then permit them to drink all they want, whereas a restaurant would have to have food sales of at least forty percent.

Rep. Hensley called attention to the packet of documents handed out which show by counties the businesses that might be affected. This packet is attached as Exhibit 2.

Rep. called for questions and recognized Rep. Goodwin.

Rep. Goodwin asked whether there were any remedies available to the facilities who are indirectly affected by the Verdict Ridge suit.

Ms. Fulton said in the majority of the cases they would not have a remedy, and that was why they qualified as sports clubs in the first place. She said in a few cases the businesses could qualify under other statutes. For example, Linville Resort, Inc. in Avery County could apply as a tourism resort under the new 18B-101(14b) definition and will probably qualify because they have lodging. Most, however, will have no remedy.

Rep. Goodwin asked whether the clubs affected would have recourse against the state for taking their permit away since they would be losing a part of their livelihood.

Ms. Fulton said these clubs are in dry jurisdictions, mostly in dry counties or areas that have only beer and wine sales, so if the special provision is declared unconstitutional in a county that has no lawful sales of any kind in the county, then that club is not going to have any recourse.

Rep. Goodwin said many of these facilities have been operating under these provisions for a number of years and have justifiably relied upon these provisions presumably being constitutional until being declared otherwise. Consequently there are contracts that are involved, some that extend for perhaps more than a year or for periods of years. He said there are some constitutional questions about the state affecting contracts generally. He asked what is the effect on the contracts? And what about those in the facilities who have advertised that they have these services, for example in phone books that are out for a year. Are they going to be in violation of the false advertising statutes?

Ms. Fulton said he raised excellent questions. She said she was concerned from the Commission's standpoint, because they didn't seek these provisions--usually they were enacted after someone amended her agency's technical amendments bill--yet she's been afraid that the Commission might be sued and have someone claim impairment of contract. She said it has also created a substantial burden of work for the ABC Commission and for the Attorney General's Office.

Rep. Hensley asked whether it was fair to say that uniformity of law would prevent all the patchwork of provisions and would also reduce the litigation.

Ms. Fulton said she thought that a statewide provision that permitted sport clubs statewide to receive the beer, wine, and mixed beverages permits would put an end certainly to the Verdict Ridge lawsuit. It wouldn't put an end to the Swain County lawsuit.

Rep. Cunningham asked how to fix the problem.

Ms. Fulton said she had a personal opinion that was not necessarily the opinion of the Commission. She said every one of the provisions was enacted because the law did not permit the issuance of permits generally to private clubs, golf clubs, and residential developments that had a clubhouse. She said there is no provision for issuance of permits

on a statewide basis for those kinds of businesses, or for restaurants or hotels. The Halifax lawsuit involves a law that authorized a circle to be drawn around an interchange on the interstate in Halifax County so that that would bring in hotels and restaurants; however, one way to avoid the necessity for these provisions is to have statewide provisions that authorize the ABC Commission to issue permits to certain categories of businesses notwithstanding the fact that they may be located in a jurisdiction that has not voted to approve the sale.

Rep. Hensley thanked Ms. Fulton for her presentation and called on Ms. Brenda Carter of the Legislative Research staff to speak on the chances and likelihood of the lawsuits succeeding.

Ms. Carter said she believed the members of the committee might have already come to their own conclusions on the likelihood of the lawsuits succeeding. She said if anyone were to examine the legislative history or the minutes of various committee minutes to determine what may have been the intent regarding the application of the bills, there might be some difficulty.

On the list provided by the ABC Commission showing the various counties affected, Ms. Carter said the GS 18B-1006(k)(3) applying to sports clubs and residential private clubs would have the greatest likelihood of being upheld because that does apply to a large number of counties. She said an act in the Legislature is generally considered to be local if it applies to less than fifteen. She said it was, however, possible to enact a general law that has local applications, and that is the issue facing the General Assembly now. Given the history of the lawsuits that have been filed on this issue so far, she said it is safe to say that it is a justifiable issue, but there is no way to say which way the courts will hold.

Rep. Hensley called for questions from members and then from visitors.

Rep. Gillespie asked Ms. Carter to address the constitutionality of pulling a county out of a state-wide tourism bill.

Ms. Carter said she had no opinion.

Rep. Gillespie said Gerry Cohen in Bill Drafting had offered an opinion last year that it would be constitutional. Rep. Hensley said he agreed with Mr. Cohen's opinion.

Rep. McComas asked if the Committee had a bill to address the problem posed by the lawsuit, and he asked whether the General Assembly were likely to do something prior to adjournment.

Rep. Hensley said the answer was yes and no. There is a bill that would address it, but it would address it the way everything else had been addressed, i.e. incrementally in just this lawsuit, and it wouldn't affect potentially the other lawsuits listed. Therefore, it would be just a stopgap measure. The bill in committee could be classified as a state-

wide alcohol bill which members would probably not want to be concerned with in July before the elections in November. He said, however, if Rep. McComas wanted to, he could make a motion for the record.

Mr. Chris Valauri, President of North Carolina Beer and Wine Wholesaler's Association asked to be recognized. He said he felt that Ms. Fulton did an excellent job of recapping the series of legislation he'd seen in his 16 years of walking the halls of the General Assembly.

Mr. Valauri said the industry had the dubious distinction of having two of their very own amendments to the Constitution, the 19th and the 21st--being Prohibition and the Repeal of Prohibition. He said when Prohibition was repealed in 1933 under FDR, the whole country was tired of all the Canadian liquor coming in, and the country voted three to one to repeal Prohibition. Only two states in the United States voted to keep Prohibition, and those states were South Carolina by 1200 votes and North Carolina by a vote of three to one--just the opposite of the rest of the country. There was joking about the legendary affiliation between the bootleggers and the religious sect who got together to defeat the repeal.

Mr. Valauri pointed out the trend in recent years and months for approval of liquor by the drink in the communities who have held elections. Recently Lincolnton, Clarmont, Clinton, Albemarle and others have voted their approval. What is happening is these communities are seeing their infrastructure compromised. They are not getting economic development like hotels and restaurants. Lumberton voted 70-30 to put liquor by the drink back in for the entire city after the courts threw it out around the I-95 corridor.

Today the Beer and Wine Wholesalers estimate that ninety-five percent of the population of the state is within seven miles of an area where they can buy beer, wine, or spirits. Asheboro is the largest dry town, but Randleman is on the outskirts and ten retail outlets in Randleman sell 180,000 cases of beer--some of which is surely going to Asheboro.

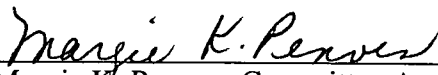
Mr. Valauri said while the state was voting only three percent turnout for the recent runoff elections, Lincolnton voted fifty-two percent because of the liquor-by-the-drink issue. He asked the committee to think of some of these things in coming to a decision about what to do.

John Rustin representing the North Carolina Family Policy Council said he didn't disagree with anything said so far, but he thought it was important to realize that one of the reasons these special provisions have been passed by the General Assembly is because the voters in many of these areas, in many of these counties, have voted not to authorize the sale of beer, wine, liquor by the drink, or ABC stores in their areas, whether it be a town or a county. He said they don't want it, and by acts of the General Assembly over the past several years, some of which have been found unconstitutional, beer, wine and liquor have been authorized in some of these areas against their wishes.

Mr. Rustin said he thought the members should remember that some of the areas of the state have made it clear that they don't want liquor. As the General Assembly thinks about enacting state-wide laws, he said members should keep that in mind because it would be a circumvention of what voters have said through the local referendums.

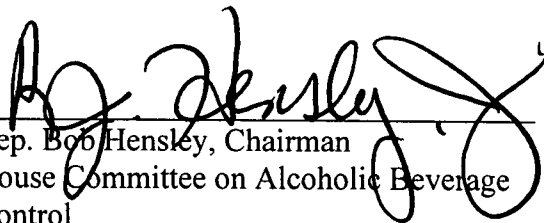
There being no further questions or business, the meeting was adjourned 1:50 p.m.

Respectfully submitted,



Margie K. Penven, Committee Assistant
House Committee on Alcoholic Beverage
Control

Approved by:



Rep. Bob Hensley, Chairman
House Committee on Alcoholic Beverage
Control

AGENDA
House Committee On
Alcoholic Beverage Control
June 13, 2000

Call to Order	Rep. Bob Hensley, Chairman
Background on Pending ABC Lawsuits	Ms. Robin Pendergraft, AG's Office
Possible Affect of Lawsuits	Ms. Ann Fulton, ABC Commission
Chances of Lawsuits Succeeding	Ms. Brenda Carter, GA Research Staff

The following excerpts from Chapter 18B of the General Statutes contain the definitions of key categories of businesses authorized by G.S. 18B-1006(k) to obtain beer, wine and mixed beverages permits, but only in those counties described by G.S. 18B-1006(k).

18B-1000. Definitions concerning establishments.

(5) Private club. -- An establishment that is organized and operated solely for a social, recreational, patriotic, or fraternal purpose and that is not open to the general public, but is open only to the members of the organization and their bona fide guests. This provision does not, however, prohibit such an establishment from being open to the general public for raffles and bingo games as required by G.S. 14-309.11(a) and G.S. 14-309.13. Except for bona fide religious organizations, no organization that discriminates in the selection of its membership on the basis of religion shall be eligible to receive any permit issued under this Chapter.

(5a) Residential private club. — A private club that is located in a privately owned, primarily residential and recreational development.

(8) Sports club. — An establishment substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both. The sports club can either be open to the general public or to members and their guests. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit a sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee.

18B-1006. Miscellaneous provisions on permits.

(k) Residential Private Club and Sports Club Permits. — The Commission may issue the permits listed in G.S. 18B-1001, without approval at an election, to a residential private club or a sports club that is located in a county that meets the requirements set in any of the following subdivisions:

(1) Has a population of less than 45,000 by the last federal census, has at least three but not more than four cities that have approved the sale of malt beverages or unfortified wine, has only one city that has approved the on-premises sale of malt beverages, and has at least two cities that approved the operation of ABC stores before July 10, 1992.

(2) Borders a county that has called elections pursuant to G.S. 18B-600(f), and:

a. Has not approved the issuance of permits, other than malt beverage permits, in unincorporated areas of the county, and has no more than three cities that approved the operation of ABC stores before July 10, 1992; or

b. Both the county and the two cities within the county have approved the operation of ABC stores.

(3) Is bordered by four counties that have not approved the issuance of permits and have at least one city that has approved the operation of an ABC store.

(4) Has not approved the issuance of permits, has at least three cities that have approved the issuance of only either off-premises malt beverage or both off-premises malt beverage and off-premises unfortified wine permits, and has only one city that, as of July 1, 1993, had approved the operation of an ABC store.

(5) Has not approved the issuance of any permits, borders one of the two largest counties in the State with more than 940 square miles, has an interstate highway running through it, and has at least six cities that have approved the sale of some malt beverages and unfortified wine and four of which have approved ABC systems.

(6) Borders a county that has approved the issuance of all permits and the operation of an ABC store, meets the county description of a special ABC area in G.S. 18B-101(13a)b., and, as of July 1, 1995, had at least five cities that had authorized the issuance of permits.

(7) Borders two states and, as of July 1, 1995, had only one city that had approved the issuance of permits.

(8) Has an 18-hole golf course; is in the coastal area as defined in G.S. 113A-103, but only because it is adjacent to, adjoining, intersected by, or bounded by a coastal sound; which does not allow countywide sales of mixed beverages; which does not border another state; with a population of less than 15,000 according to the most recent decennial federal census; which does not have a city which has authorized the sale of mixed beverages; and which has at least two cities with ABC systems.

The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county.

The following businesses qualified as Sports Clubs or Residential Private Clubs under G.S. 18B-1006(k) and will lose all or most of their ABC permits if that statute is declared unconstitutional. This list contains most of the businesses that will become disqualified if the statute is declared unconstitutional, but is not certified to be a complete list, and may contain a few omissions. Most businesses will lose all ABC permits, but a few of the listed businesses may be able to qualify as a restaurant, hotel or private club if the sports club statute is struck down, since some may be located in mixed beverage jurisdictions (such as Mecklenburg County, or a newly annexed area of a mixed beverage town). Note, however, that sports clubs are *not* required to be private and limit membership and guests (private clubs are), nor is there a food requirement for sports clubs such as for restaurants.

ASHE COUNTY [18B-1006(k)(7)]

Jefferson Landing Development Corp.
T/A Jefferson Landing
184 West Landing Drive
Jefferson, NC 28640

River House, Inc.
T/A River House
1896 Old Field Creek Road
Grassy Creek, NC 28631

AVERY COUNTY [18B-1006(k)(3)]

Linville Resorts, Inc.
T/A Eseeola Lodge
175 Linville Avenue
Linville, NC 28646

Note: They are applying for new permits as a "tourism resort" and will probably qualify under the new 18B-101(14b) definition.

BUNCOMBE [18B-1006(k)(3)]

Kenmure Enterprises, Inc.
T/A Reems Creek Golf Club
36 Pink Fox Cove Road
Weaverville, NC 28787

BURKE [18B-1006(k)(3)]

Mimosa Hills Golf Club, Inc.
T/A Mimosa Hills Golf Club
611 Golf Course Road
Morganton, NC 28680

Note: Is in city limits of Morganton, but would have to reapply and qualify as a private club in order to maintain beer, wine and mixed beverages permits.

Loyal Order of Moose
T/A Morganton Moose Lodge 193
2722 Moose Lodge Street
Morganton, NC 286880

Silver Creek Plantation, LLC
T/A Silver Creek Plantation Golf Course
4241 Plantation Drive
Morganton, NC 28655

South Mountain Resort and Spa, Inc.
T/A South Mountain Resort
8456 Wards Gap Road
Connelly Springs, NC 28612

CALDWELL [18B-1006(k)(3)]

Cedar Rock Country Club, Inc.
T/A Cedar Rock Country Club
450 Cedar Rock Estates Drive
Lenoir, NC 28645

Lenoir Golf Club, Inc.
T/A Lenoir Golf Club
701 Norwood Street SW
Lenoir, NC 28645

Note: Is in city limits of Lenoir, which has approved mixed beverages. Thus, this business would have to surrender sports club permits and qualify under another provision such as private club or restaurant.

Granite Falls American Legion Post 209
70 Lakeside Avenue
Granite Falls, NC 28630

CATAWBA [18B-1006(k)(3)]

Glen Oaks Golf Club, Inc.
T/A Glen Oaks Golf Club
245 Golf Course Road
Maiden, NC 28650

Rock Barn Properties, Inc.
T/A Rock Barn Club of Golf
3791 Golf Drive
Conover, NC 28613

Note: Is in the city limits of Conover, which has mixed beverages sales, but would have to reapply and qualify as a private club or restaurant.

CHATHAM [18B-1006(k)(3)]

Siler City Country Club, Inc.
Bennett Road
Siler City, NC 27344

(This is a "residential private club" which is a category also authorized by the statute being challenged).

CLEVELAND [18B-1006(k)(3)]

Kings Mountain Country Club, Inc.
5/A Kings Mountain Country Club
Country Club Road
Kings Mountain, NC 28086

Cleveland Country Club, Inc.
1360 East Marion Street
Shelby, NC 28150

Note: Is in city limits of Shelby, which has approved mixed beverages sales, but would have to reapply and qualify as a private club.

River Bend Acres, Inc.
River Bend Golf Club
3005 Longwood Drive
Shelby, NC 28152
Note: Outside city limits

DAVIDSON [18B-1006(k)(3)]

Albert Dale Floyd
T/A Boat Dock Beach Club (Residential Private Club)
339 North Shore Drive
Southmont, NC 27292

High Point Country Club
T/A Willow Creek Clubhouse
914 Abbotts Creek Church Road
High Point, NC 27262

DUPLIN [18B-1006(k)(5)]

River Landing Sports Club, Inc.
T/A River Landing Country Club
116 Paddle Wheel Drive
Wallace, NC 28466

HAYWOOD [18B-1006(k)(3)]

Piedmont Golf Development Corp.
T/A Laurel Ridge Country Club
630 Eagles Nest Road
Waynesville, NC 28786

Royal Oaks, Inc.
T/A Springdale Country Club
200 Golfwatch Road
Canton, NC 28716

HENDERSON [18B-1006(k)(3)]

Champion Hills club, Inc.
T/A Champion Hills Club
1 Hagen Drive
Hendersonville, NC 28739

Cummings Cove Properties LLC
T/A Cummings Cove Golf and Country Club
3000 Cummings Road
Hendersonville, NC 28739

High Vista Country Club, Inc.
T/A High Vista Country Club
88 Country Club Road
Arden, NC 28704

Highlands Conference Center, Inc.
T/A Highland Lake Inn & Conference Center
Highland Lake Road
Flat Rock, NC 28731

Kenmure Properties Limited
T/A Kenmure Country Club
100 Clubhouse Drive
Flat Rock, NC 28731

Innspired Management, Inc.
T/A Woodfield Inn
Hwy 25 South
Flat Rock, NC 28731

IREDELL [18B-1006(k)(3)]

Broken Arrow Golf Links, Inc.
T/A Broken Arrow Golf Links
1000 Broken Arrow Drive
Statesville, NC 28677

Point Lake and Golf Club, Inc.
T/A Point Lake and Golf Club

120 Meeting House Square
Mooreville, NC 28117

Lake Cruises Inc.
Saragonis Italian Restaurant
1459 River Hwy.
Mooreville, NC 28115

JACKSON [18B-1006(k)(3)]

Cedar Creek Racquet Club, Inc.
T/A Cedar Creek Racquet Club
Hwy. 64 East
Cashiers, NC 28717

Country Club of Sapphire Valley, Inc.
T/A Country Club of Sapphire Valley
110 Cherokee Trail
Sapphire, NC 28717

Helen O'Connell, Inc.
T/A Helen O'Connell's Sapphire Valley Club
4001 Hwy. 64 West
Sapphire, NC 28774

Chattooga Development Corp.
T/A Chattooga Club
Hwy 107 South
Cashiers, NC 28717

West Hampton Club LLC
T/A Headwaters Club
2572 Hwy 107 South
Cashiers, NC 28717

High Hampton, Inc.
T/A High Hampton Inn & Country Club
Hwy. 107 South
Cashiers, NC 28717

Landings at Trillium, Inc.
T/A Landings at Trillium

977 Signal Ridge Drive
Cashiers, NC 28717

Martines, Inc.
T/A Martines
Hwy 107 South
Cashiers, NC 28717

Wade Hampton Golf Club, Inc.
T/A Wade Hampton Golf Club
Hwy. 107 South
Cashiers, NC 28717

Library, Inc.
T/A Library of Sapphire Valley
184 Cherokee Trail
Sapphire, NC 28774

Sapphire Mountain Golf Club LLC
T/A Sapphire Mountain Golf Club
50 Slicers Avenue
Sapphire, NC 28774

LEE [18B-1006(k)(2)]

Carolina Trace Country Club, Inc.
T/A Carolina Trace Country Club
Hwy 87 South
Sanford, NC 27330

Par Nine, Inc.
T/A Quail Ridge Golf Course
5634 Quail Ridge Drive
Sanford, NC 27330

Tobacco Road Golf LLC
T/A Tobacco Road Golf
442 Tobacco Road
Sanford, NC 27330

MECKLENBURG [18B-1006(k)(3)]

Ballantyne Resort LLC
T/A Ballantyne Resort
10000 Ballantyne Commons Parkway
Charlotte, NC 28277

Note: This business is in a mixed beverages jurisdiction but would have to reapply, qualify, and operate as a private club, hotel or restaurant.

MONTGOMERY [18B-1006(k)(1, 3)]

Elusive Domain LLC
T/A Badin Lake Boat and Tennis Club
286 Badin Shores Circle
New London, NC 28127

Lake Badin Associates
T/A Old North State Club
201 Old North State Club Lane
New London, NC 28127

Montgomery County Country Club, Inc.
T/A Montgomery County Country Club
1235 NC Hwy 134
Troy, NC 27371

MOORE [18B-1006(k)(3)]

A Z Golf Club of NC LLC
T/A Hyland Hills Country Club
4100 US 1 North
Southern Pines, NC 28387

Note: Is in a mixed beverages jurisdiction, but would have to reapply, qualify and operate as a private club or restaurant.

Golfsouth Clubs LLC
T/A Foxfire Resort and Country Club
9 Foxfire Blvd.
Jackson Springs, NC 27281

PENDER [18B-1006(k)(3)]

Castle Bay Corp.
T/A Castle Bay Golf Course
2516 Hoover Road
Hampstead, NC 28443

PERQUIMANS [18B-1006(k)(8)]

Ralph G. Boshier, Elwood H. Perr
T/A Albemarle Plantation
101 Clubhouse Drive
Hertford, NC 27944

RANDOLPH [18B-1006(k)(2)]

Asheboro Country Club, Inc.
T/A Asheboro Country Club
5105 Old Lexington Road
Asheboro, NC 27203

Colonial Country Club, Inc.
T/A Colonial Country Club
7047 Colonial Club Drive
Thomasville, NC 27360

Klaussner Investment Corp.
T/A Pinewood Country Club
247 Pinewood Road
Asheboro, NC 27203

RICHMOND [18B-1006(k)(3)]

Ellerbe Springs Inn, Inc.
T/A Ellerbe Springs Inn
2537 North Hwy 220
Ellerbe, NC 28338

MFG Corp.
T/A Harringtons at Brookestone Racquet Club

164 Brookstone Drive
Rockingham, NC 28379

Richmond Pines Country Club, Inc.
T/A Richmond Pines Country Club
Route 2, US 1 North
Rockingham, NC 28379

ROWAN [18B-1006(k)(3)]

Daves Enterprises, Inc.
T/A High Rock Boat and Ski Club
2675 Providence Church Road
Salisbury, NC 28146

Atlantic American Properties, Inc.
T/A Kannapolis Country Club
1196 Fairway Drive
Kannapolis, NC 28082

RUTHERFORD [18B-1006(k)(3)]

D's Lounge, Inc.
T/A D's Lounge
900 Henry Jenkins Road
Mooresboro, NC 28114

Loyal Order of Moose
T/A Rutherford County Moose Lodge & Sports Club
548 US Hwy 74 East
Bostic, NC 28018

STANLY [18B-1006(k)(3)]

Piney Point Golf Club, Inc.
T/A Piney Point Golf Club
48688 Piney Point Road
Norwood, NC 28128

Stanly County Country Club LLC
T/A Stanly County Country Club
Pine Circle Drive
Badin, NC 28009

UNION [18B-1006(k)(6)]

Fairfield Investment Group, Inc.
T/A Eagle Chase Golf Club
3215 Brantley Road
Marshville, NC 28103

Carolina Golf Developers LLC
T/A Emerald Lake Golf Club
1 Tournament Drive
Matthews, NC 28105

Divide LLC
T/A Divide Golf Links
Stevens Mill Road
Mint Hill, NC 28249

Marvin Development Group II LLC
T/A Firethorne Country Club
1108 Firethorne Club Drive
Waxhaw, NC 28173

Stonebridge Golf LLC
T/A Stonebridge Golf
2721 Swilcan Burn Drive
Monroe, NC 28112

(k)(8) Perquimans 1999, c. 462, s. 14 (SB 607) (Effective August 21, 1999)