

**JOINT MEETING**  
**OF THE**  
**SPECIAL SUBCOMMITTEES**  
**OF THE**  
**HOUSE COMMITTEE ON GENERAL LAWS**  
**AND THE**  
**SENATE COMMITTEE ON REHABILITATION AND SOCIAL**  
**SERVICES**  
**STUDYING CERTAIN ABC ISSUES**

*Friday, November 14, 2008      10:00 a.m.*  
*House Room C                      General Assembly Building*

***MEETING SUMMARY***

Call to order.

Delegate Albo called the meeting to order and provided a quick review of the three main study priorities identified at the start of the 2008 Interim:

1. Characterizing the proliferation of new classes of retail licenses;
2. Determining the need for a bar vs. restaurant distinction for mixed beverage licensees;  
and
3. Studying certain issues associated with the food ratio for mixed beverage retail licensees

Review of the work of the subcommittee to date; Maria Everett,  
Subcommittee Staff.

Staff reviewed the committees' discussion of the proliferation of non-restaurant retail licenses. Although the committee discussed the possibility of creating a "limited service" or "personal service" license with a new food sale requirement, the committee determined that the best approach was to limit the creation of any new classes of retail licenses.

Staff reviewed the committees' ongoing discussion on the potential for distinguishing between a bar and restaurant in the Code. There was ultimately very little support for this concept.

Staff also reviewed potential alternatives to the food/beverage ratio and discussed one option that would permit licensees to petition the ABC Board for leniency if the licensee has had difficulty meeting the food/beverage ratio due to increased purchases of high-end mixed beverages. This potential regulatory fix was ultimately rejected by the committees as well.

Staff also discussed the option of creating Class A, B, and C licenses that would allow greater flexibility in distinguishing between bars and restaurants. Delegate Albo noted that the restaurant industry opposed creating a bar license. Staff discussed some of the problems associated with limiting the Class C licenses, which would essentially be bar licenses. Staff discussed how the committee eventually began to focus on the idea of moving to a volume based ratio calculation for mixed beverage restaurant licensees.

### Presentation by Curtis Coleburn, ABC Board: results of sampling of mixed-beverage restaurant licensees'; compliance with 45 percent food-beverage ratio.

Curtis Coleburn discussed his study of licensees and potential problems meeting the food/beverage ratio requirements. Mr. Coleburn randomly sampled 4% of mixed beverage restaurant licensees. Mr. Coleburn revealed that the average ratio for each region was between 77% and 92%. Mr. Coleburn pointed out that many of the restaurants in the sample were family restaurants. Mr. Coleburn then looked at a region with a high concentration of entertainment-type establishments.

Del. Gear asked whether it was simple to separate entertainment type establishments. Mr. Coleburn responded that the only way to do that would be to select establishments by names they recognize. Mr. Coleburn was able to identify the area of Shockoe Bottom, which had 32 licensees with an average ratio of 71.4 %.; six reported a ratio below 50%; and one did not meet the ratio requirements.

Del. Dance asked if Mr. Coleburn had an outside review of this information. Mr. Coleburn stated that by law he is prohibited from sharing information related to the licensees outside of the Department. Del. Dance stated that she had a problem using a 4% sample size and whether the sample size was statistically significant.

Mr. Coleburn also spoke about potential trends in eating and drinking habits. Mr. Coleburn examined about half of the licensees in the sample and looked at the past five years of records and for the Richmond region actually noticed a declining trend in mixed beverage sales. Mr. Coleburn also looked at specific licensees and noticed that where food sales have dropped, mixed beverage sales have not increased.

### Public Comment.

**William Baldwin, President of the Virginia Nightlife Association and restaurant owner,** stated that he has worked hard to make the food sale ratio. The problem is that he has to open for lunch to meet the food requirement because no one wants to eat dinner next to a dance floor. He says he is just breaking even on food sales and actually loses money when he takes into account the cost of keeping his establishment open for lunch.

Del. Bulova asked if there was any benefit in going from a dollar ratio to a volume ratio. Mr. Baldwin responded that he supported any effort to reduce the burden on restaurant owners.

Delegate Albo asked Mr. Baldwin if a business model existed to open a high-end whiskey bar. Mr. Baldwin responded that the food sales would have to be extremely high to support an establishment that wanted to serve very expensive mixed beverages.

Delegate Albo stated that he would like to reserve the remainder of the meeting to discuss the feasibility of a change to a volume ratio.

**Peter Fulge, restaurant owner in Arlington, VA**, stated that a change to a volume-based ratio would help his business. Mr. Fulge stated that although he makes some money on his food sales, the majority of his profits come from the sale of mixed beverages and alcohol.

**Tom Lisk, representing the Virginia Hospitality and Travel Association**, voiced his concern of the accuracy of the reporting by licensees and any subsequent reliance on self-reported data. Mr. Lisk stated that the VHTA supports the committees' effort to examine the possibility of a volume-based ratio.

### Review of draft creating pilot project for alternative methods to determine the 45 percent food-beverage ratio.

Staff reviewed draft legislation that would create a two-year pilot project for certain mixed beverage restaurant licensees of the Alcoholic Beverage Control Board to provide an alternative method for calculating the 45 percent food-to-beverage ratio based on (i) the volume of mixed beverages, expressed as food sales compared to proof gallon of spirits purchased from the Board or (ii) food sales as compared to dollar sales of mixed beverages. A complete draft of the legislation is available on the committees' website.

### Final Recommendations.

After a brief discussion, members of the committee discussed potential problems with voting on legislation that requires ABC to define major portions of the pilot project. Senator Miller asked if it would be better if potential volunteers were made aware of the details of the pilot project prior to volunteering. The committees voted to delay the deadline for volunteers until after the parameters of the pilot project were defined by ABC.

Delegate Albo requested ABC to calculate the dollar amount of a proof gallon and the dollar amount of food sales assigned to each proof gallon that shall be sold by each mixed beverage restaurant licensee participating in the project. The goal should be to maintain the 45 percent food-to-beverage ratio so that any currently compliant licensees would remain compliant under the new volume-based ratio. Delegate Albo requested that ABC report back to the committees prior to the start of the 2009 Session so that the committees could make a final vote on whether to approve and introduce the pilot project.

### Adjournment.

#

### **House Membership**

Delegate Dave Albo, Chair  
Delegate Tommy Wright  
Delegate Watkins Abbitt  
Delegate Charles Carrico  
Delegate Jackson Miller  
Delegate David Bulova

Delegate Tom Gear, Vice-chair  
Delegate John Cosgrove  
Delegate Danny Bowling  
Delegate Edward Scott  
Delegate Rosalyn Dance

### **Senate Membership**

Senator Toddy Puller, Chair  
Senator Frank Wagner  
Senator Robert Hurt

Senator Y.B. Miller  
Senator Mark Herring

### **Staff**

Maria J.K. Everett, Senior Attorney,  
Patrick Cushing, Staff Attorney  
Division of Legislative Services  
Christine McCormick, House Committee Operations

To assist us in providing Internet dissemination of materials, presenters to the special subcommittee are requested to submit written comments and handouts in electronic format by (i) e-mail to staff prior to meetings or (ii) diskette furnished to staff at meetings. Presenters are also requested to bring 20 copies of their remarks or handouts to meetings. These copies will be provided to special subcommittee members and the public.  
E-mail: [meverett@leg.state.va.us](mailto:meverett@leg.state.va.us) or [pcushing@leg.state.va.us](mailto:pcushing@leg.state.va.us).