

Senate Commerce Committee

Aaron Jones 271-2609

SB 137-FN, relative to nano brewery licenses and beverage manufacturers licenses.

Hearing Date: January 31, 2023

Time Opened: 10:37 a.m.

Time Closed: 11:10 a.m.

Members of the Committee Present: Senators Gannon, Ricciardi, Innis and Chandley

Members of the Committee Absent : Senator Soucy

Bill Analysis: This bill repeals the nano brewery license and creates a 4 tiered beverage manufacturers license.

Sponsors:

Sen. Lang

Sen. Pearl

Rep. Moffett

Who supports the bill: Senator Tim Lang, Stephen Nass (Free State Food Network), CJ Haines (NH Brewers Association), Erika Rosenfeld (NH Brewers Association & Post and Beam Brewing), Donald Milbrand (The Travelers Rest), Patricia Anastasia, Kirsten Neves (Tuckerman Brewing), Thomas Albright (Out.Haus Ales), Sharon Woodman, Barry Woodman, Ash Fischbein (Hobbs Tavern & Brewing Co.), Eric Johnson (West LA Beer Co.), William Domenico, Sean Kelly (Stripe Nine Brewing Co.), Chris Waldron, Steve O'Brien, Michael Fairbrother, Andrew Lewis, Jason Harrington (Vulgar Brewing Co.), James Currier, Chris Glenn (Oddball Brewing), Michelle Oeser, Christopher Prost, Frank Zagami (Deciduous Brewing Co.), Bill Alleman, Alex McDonald (Earth Eagle Brewings)

Who opposes the bill: Scott Schaier (NH Beer Distributors Association), Kevin Daigle (NH Grocers Association), Peter Brenna (N.E. Convenience Stores)

Who is neutral on the bill: Drew Cline (Josiah Bartlett Center), Aidan Moore (NH Liquor Commission)

Summary of testimony presented in support:

Daley Frenette, On behalf of Senator Tim Lang

- At the request of the NH Craft Brewers Association, this bill would repeal the nano brewery license and it would create a four tier licensing and fee structure.
 - Domestic sales under 500 barrels per year would be \$240.
 - Domestic sales of 501 to 2,500 barrels per year would be \$480.

- Domestic sales of 2,501 to 15,000 barrels per year would be \$1,200.
 - Domestic sales of more than 15,000 per year would be \$1,692.
- Transitioning to an introductory beverage manufacturing tier would likely generate revenue because licensees would have an option to pay an additional restaurant or satellite fee.
- From an enforcement perspective, this bill would help to simplify RSAs and allow for better communication between brewers and the NH Liquor Commission (NHLC).
- The new license structure would allow for small businesses to operate under a standard set of rules and regulations, while having them pay a larger fee as they grow and increase their sales.
- This legislation would help bring greater parity to the licensing structure as well as provide a consistent experience for customers going from one location to another.

Erika Rosenfeld, Executive Board Member, NH Brewers Association

- This bill would put everyone under one license, and fees would be based on production. This had been the original intent of the nano license; however, it had not developed that way in NH.
- Structuring licenses based on production would streamline the process, address confusion, and ensure everyone is playing by the same rules and regulations.
- The Association does receive calls from members who are trying to figure out what they are can do and how they can do it under existing RSAs. Often the NHLC must research RSAs and how they apply to specific cases to help resolve issues.
- Even for consumers, confusion has been created by existing RSAs.
 - For example, Ms. Rosenfeld has had to explain why she cannot provide gluten free beverages under a nano plus license, while a smaller venue can since they have a beverage manufacturing license.
- When crafting the legislation, the Association tried to include as many stakeholders from the trade industries as possible. Ms. Rosenfeld emphasized they were not reinventing the wheel; instead, they were trying to “smooth its edges.”
- Nano breweries were intended to be start-ups; however, they have not evolved that way because there are some that are producing up to 2,500 barrels.
- Ms. Rosenfeld has a nano plus license, produces about 500 barrels a year, and she supported paying more for the clarification and opportunities it would provide.
- With the passage of SB 125, opportunities were provided to beverage manufacturers, such as the ability to open satellite locations, that were not given to nano breweries. These opportunities would allow nano breweries to grow and bring vitality to small communities across the state. Without a satellite location, it is cost prohibitive for a nano brewery because they would have to build a second production facility or obtain a retail space.

- While she could upgrade to a beverage manufacturing license, it would constrain what she does.
- If they were able to pay more, and move up a tier under the same licensing structure, it would save time for businesses as they grow. In addition, the NHLHC would not have to review new license applications or facilities.

Donald Milbrand, Owner, The Travelers Rest

- Due to the complicated RSAs, Mr. Milbrand switched from a brew pub license to a beverage manufacturer license. By switching, he was able to obtain a beer and wine license since he had a restaurant on-site.
- This was not about the money for licenses; instead, it was about getting the complications out of the RSAs. Currently, there are different laws and requirements for each license, which this bill would help to streamline.
- Craft breweries provide a social experience, and Mr. Milbrand said nano breweries limit it because they are more geared towards producing.
- Mr. Milbrand concluded that this bill would help breweries, the NHLHC, and distributors alike.

CJ Haines, Executive Director, NH Brewers Association

- This bill would be a continuation of the efforts began by the Association in SB 125 (2020).
- Some brewers produce under 50 barrels annually, yet they are forced to have a beverage manufacturing license which is \$1,200. These brewers do not meet the definition of a nano brewer since they are on private property.
- Currently, there are at least 6 to 8 breweries that are paying \$1,200 instead of \$240. The NHLHC had been willing to re-evaluate them to place them under the nano license; however, the Association felt legislation would be an easier solution.
- To ensure consistency among licenses, the limit of 2,500 mirrored the limit held by brew pubs.

Summary of testimony presented in opposition:

Scott Schaier, NH Beer Distributors Association

- This bill would benefit a small minority without considering the needs or implications created for the rest of the industry.
- When satellite retail locations were introduced, they were controversial.
 - Mr. Schaier said these locations were not intended for craft brewers because a vast majority of licensees – 108 of 138– make under 500 barrels annually.
- As defined by the national Brewers Association, the craft brewing industry represents less than 3 percent of the total industry.

- In 2022, the NHLC collected approximately \$13 million in beer taxes. \$379,000 had been paid directly by craft brewers; whereas, beer distributors paid an average of \$3.5 million.
- In 2011, the first nano brewery license was created. The nano brewer, or incubator, license had been intended to get people started, so they could be moved into different license types. As a result of this license, NH received a lot of interest. As nano breweries have grown, they have advanced into beverage manufacturers with expanded locations, tasting rooms, and expanded production facilities for off-premises sales.
- As others have stated, nano breweries are allowed to produce up to 2,500 barrels.
- Mr. Schaier wondered if nano breweries supported this change because 17 out of 31 or 32 would see their fees increased. If they wanted, these brewers could obtain a nano plus license or do food.
- Mr. Schaier did not understand the intent of this bill. If a brewery decided they would like to invest in a facility, for example, they could transition from a nano brewery license to a beverage manufacturer license. Under the latter license, they could have a restaurant or satellite location.
- Everyone else has to invest in their business, build capital, and pay fees; therefore, Mr. Schaier felt it did not make sense for nano breweries to buy a coach ticket and get all the benefits of a first class seat.
- While the Association supported craft brewers, they did not want to jeopardize the industry, the regulatory system, or the way business is conducted.
- Mr. Schaier stated that they discussed this legislation in theory; however, they did not have a chance to review the legislation in advance.
- The nano brewery license has continued to fulfill its intent by serving as an incubatory. If someone would like to get to the next level, they are able to for about \$1,000 a year.
- If the Committee proceeded with this bill, Mr. Schaier said it would be complicated and controversial. For example, satellite locations do not belong in a start-up situation nor should ghost brewers, or proprietor brewers, have the same rights as people who own property and pay taxes.
- Mr. Schaier urged the Committee to adopt a motion of ITL.
- When **Senator Ricciardi** reviewed the bill, she said there were so many RSAs. She asked what the intent had been, and she wanted clarification on whether the sponsors had reached out to industry stakeholders.
 - **Mr. Schaier** knew they had contacted the NHLC. In the summer, he had conversations with CJ Haines; however, they did not see the bill until it had been made public.
- **Senator Ricciardi** asked if Mr. Schaier could clarify the intent of the legislation.
 - **Mr. Schaier** replied he could not. The alcohol statutes are like a giant ball of twine and it is not known what is connected with what. One change may have unintended consequences that can affect someone's

license type, ownership, commercial matters, or more. He concluded that RSAs are complex, and they are like a labyrinth inside of a maze inside of a snow globe.

Neutral Information Presented:

Drew Cline, Josiah Bartlett Center

- Over the last several years, the biggest complaints from the brewing industry have been how licenses are segregated and categorized.
- Sometimes licensees want to grow, yet they have to stop growing until they have applied for a new license.
- This bill would change the fee and remove rigid categories to allow beverage manufacturer licensees to grow or shrink.

Aidan Moore, Legal Coordinator, NH Liquor Commission

- The Commission anticipated that 17 nano breweries would see an annual production fee increase from \$240 to \$480. If this bill were passed, the Commission did not anticipate additional costs or revenues.
- **Senator Chandley** tried to do the mathematical calculations, but the costs for beverage manufacturers based on barrels seemed unusual.
 - To provide context, **Attorney Moore** said the nano brewery provisions were created to provide a mechanism for a start-up business to get their license, enter the marketplace, and produce products. For a nano brewery license, the cap has been up to 2,000 barrels for \$240. If that has been exceeded, the NHLHC requests they receive a beverage manufacturer license. Taxation would not be changed in this bill, and it would remain the same across all licenses. This bill would place fees into four categories. The Commission had been consulted by the industry, and they made some changes that had been requested. If this passed, the Commission would enjoy some of the efficiencies brought about by it.

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Date Hearing Report completed: February 3, 2023