

Fla. Restaurants Need To Prep For Liquor License Changes

By **Grace Yang** (April 6, 2023)

Changes may be coming for restaurant operators in Florida interested in special food service liquor licenses, also known as 4COP-SFS liquor licenses.

H.B. 639, by Florida Rep. Tiffany Esposito, and related S.B. 1262[1] by Florida Sen. Jonathan Martin, propose to amend Section 561.20 of the Florida Statutes.



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What Florida Restaurant Operators Should Know About H.B. 639 and S.B. 1262

If passed and adopted, the legislation would change two key conditions in the general law[2] that 4COP-SFS licensees and license applicants currently need to meet.

The first condition relates to minimum square footage requirements. Currently, 4COP-SFS licensees must demonstrate a minimum of 2,500 square feet of service area in licensed premises.

An administrative rule currently states that the "required square footage shall include only the food service establishment's buildings and other contiguous outside areas which are under the management and control of the licensed food service establishment." [3]

State law defines a licensed premise as

not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law. [4]

H.B. 639, as currently amended, would reduce the square footage requirement from 2,500 to 2,000 square feet of service area.

4COP-SFS liquor license applicants must include a floor plan or sketch in the license application package to show the proposed area the liquor license will cover.

The second condition currently requires licensees to maintain the ability to serve meals to at least 150 people at a time. The proposed amendment lowers the requirement from 150 to 120 persons at one time.

What These Changes to Florida Law Mean for Restaurant Operators

Changing these two conditions potentially allows a greater number of food service establishments — those that fall between 2,000 square feet and 2,499 square feet and those that could accommodate service to 120 to 149 persons at a time — to apply for a special food service license.

The legislation maintains the percentage of sales requirement: A 4COP-SFS liquor license holder must derive "at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day operating period and the first 12-month operating period thereafter."

Subsequent audit time frames must be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows:

- Level 1, 51% to 60%, every year;
- Level 2, 61% to 75%, every two years;
- Level 3, 76% to 90%, every three years; and
- Level 4, 91% to 100%, every four years.[5]

Food service establishments that do not meet current 4COP-SFS conditions would still have the options of buying a quota liquor license, trying to win one in the occasional lottery, or applying for beer-and-wine-only licenses.

Quota liquor licenses and beer-and-wine licenses do not have minimum square footage, minimum persons or minimum 51% revenue requirements.

During a hearing before the Florida House Regulatory Reform and Economic Development Subcommittee on March 28, Esposito stated that she wanted to make these liquor licenses more accessible for businesses, specifically restaurants in her area in southwest Florida after Hurricane Ian.

"We're seeing restaurants have smaller square footage and smaller seating requirements, so we want to make sure they can continue to be successful," Esposito said.[6]

While no one appeared in the March 28 hearing to speak in opposition, the Florida Restaurant and Lodging Association has expressed that changes to the issuance of special food service liquor licenses were among its 2023 legislative priorities.[7]

The legislation is still making its way through the Florida House and Senate committee process.

It is important to note that the potential change in the general law would not apply statewide to food service establishments though. Twenty special acts[8] in Florida set conditions for food service establishments to qualify for 4COP-SFS liquor licenses in defined geographic areas covered by the special acts.

If the general law conditions change, then jurisdictions where a special act governs 4COP-SFS licenses and not Section 561.20(2)(a)(4)'s conditions will need to consider if there should be a change to the local act's conditions for 4COP-SFS liquor licenses or if they should continue to maintain the conditions as is.

The square footage requirement for 4COP-SFS licenses issued through a special act currently ranges from a minimum of 1,500 square feet to 4,000 square feet. The minimum requirement for the number of persons to be served ranges from 65 to 250.[9]

If the general law conditions change, it is likely there will be a wave of changes in the laws, rules and regulations governing food service establishments.

Current local zoning and land development laws and rules might define restaurants or other food service establishments partly on square footage and seating or accommodation of persons language.

There may be a mismatch in the numbers going forward. All 4COP-SFS liquor license applicants must obtain a zoning clearance approval signature on new alcohol beverage license applications.

Applicants should take care to ensure that their local zoning office will be able to issue clearance based on lower numbers if the proposed changes to Section 561.20(2)(a)(4) become law.

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Disclosure: The author's firm has advocated on behalf of clients regarding the policies discussed in this article, however the views expressed here are the author's own, and the author has not been retained to advocate these positions.

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[1] <https://www.flsenate.gov/Session/Bill/2023/639>.

[2] Section 561.20(2)(a)(4), Fla. Stat. (2022).

[3] Rule 61A-3.0141(1), Fla. Admin. Code (2022).

[4] Section 561.01(11), Fla. Stat. (2022).

[5] Section 561.20(2)(a)(4), Fla. Stat. (2022).

[6] <https://thefloridachannel.org/videos/3-28-23-house-regulatory-reform-economic-development-subcommittee/>.

[7] <https://frla.org/government-relations/legislative-priorities/>.

[8] http://www.myfloridalicense.com/dbpr/abt/documents/General_Laws_and_Special_Acts_for_Food_Service_Establishments.pdf.

[9] Id.