

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 3/5/15

SPONSOR Brandt LAST UPDATED _____ HB _____

SHORT TITLE Create DWI and DUI Code & DWI Fund Uses SB 586

ANALYST Malone

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	\$1,500.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			(\$18,800.0)	(\$18,800.0)	Recurring	Lottery Scholarship Fund
			\$18,800.0	\$18,800.0	Recurring	DUI Treatment Fund
	\$8.5	\$0.0	\$0.0	\$8.5	Nonrecurring	TRD-ITD Budget

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)
 Law Offices of the Public Defender (PDD)
 Department of Transportation (NMDOT)
 Administrative Office of the DA (AODA)
 Attorney General's Office (AGO)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

SB 586 recompiles and restructures existing DWI statute, specifically Sections 66-8-102 through 66-8-112 and Sections 66-5-501 through 66-5-504, into the 40-section “Driving Under the Influence Code.” It creates the “DUI treatment fund” as a nonreverting fund in the state treasury, which is appropriated to AOC to provide for the treatment programs referred to in the Driving Under the Influence Code.

The bill the bill authorizes a court, in lieu of incarceration, to order an offender to wear an alcohol monitoring ankle bracelet for no more than 50 percent of the prescribed sentence of incarceration. All costs associated with placing, removing, monitoring and maintaining an alcohol monitoring ankle bracelet will be paid by the Traffic Safety Division of NMDOT.

The bill increases the term of imprisonment from 7 to 30 consecutive days for a person driving a motor vehicle while the person’s license has been revoked for DUI.

SB 586 makes an appropriation of \$1.5 million from the general fund to the DUI treatment fund for expenditure in fiscal year 2016, to establish administrative procedures and treatment programs pursuant to the Driving Under the Influence Code. SB586 specifies that beginning July 1, 2017, 39 percent of the liquor excise tax collected shall be distributed to the DUI treatment fund, rather than to the lottery scholarship fund as set by current statute. The bill also amends statute to reflect 2014 legislative action to increase the distribution to the local DWI fund from 41.5 percent to 46 percent for FY16 through FY18. See attachment 1 for consensus liquor excise projections from December.

SB 586 repeals Laws 2014, Chapter 54, Section 1; as well as Sections 66-5-502 and 66-8-102.

FISCAL IMPLICATIONS

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

The appropriation of \$1.5 million contained in this bill is a nonrecurring expense to the general fund.

The funding source for the DUI treatment fund would require changing the distribution from the Lottery Tuition Fund to the DUI treatment fund.

TRD estimates that costs of implementing required changes of the bill to be \$8.5 thousand in FY15.

A revenue source to cover the costs associated with implementing ankle-monitoring is not identified and NMDOT would have to absorb the cost.

SIGNIFICANT ISSUES

1. The bill primarily reorganizes the current Motor Vehicle Code into a unified code

specific to DUI, but substantive changes include:

- The creation and funding of the DUI treatment fund;
 - The increase in the term of imprisonment from 7 to 30 days;
 - The classification of a DUI offense as an aggravated DUI if the offender had a blood or breath alcohol test result of at least .08 and a prior DWI or DUI conviction;
 - First time offenders being required to participate in a 28-day inpatient, residential, in-custody or outpatient treatment program approved by the court;
 - Increases treatment requirements for subsequent offences; and,
 - The creation of the alternative sentencing option of an alcohol monitoring bracelet.
2. The bill does not change the criminal penalties for felony DWI convictions, meaning that it does not increase the incarceration periods that felony DUI or DWI offenders could serve in NMCD prisons. However, since the bill also authorizes a sentencing court to impose any sentence originally authorized upon an DWI/DUI offender (originally given a suspended or deferred sentence for DWI/DUI) who violates any condition of probation and requires that the court must not give any credit for any time served by the offender on probation, certain DWI offenders who violate their conditions of probation could end up serving substantial incarceration periods. This would be especially true if the offender violated his probation conditions after having been on probation for a substantial period of time.

According to NMCD, the average cost to incarcerate a male inmate is \$43,603 per year in a state-owned and operated prison, and the average annual cost in a privately operated prison is \$29,489 (where primarily only level III or medium custody inmates are housed).

3. The Local Government Division of the DFA administers the local DWI (LDWI) grant fund. Per Section 11-6A-3.C, \$5.6 million is carved out of the LDWI fund annually and used for the following purposes: funding of alcohol detoxification and treatment centers in six counties, \$300 thousand for the ignition interlock fund, no more than \$600 thousand for LDWI program administration at DFA, and the remainder available to county programs on a competitive grant basis.

SB 586 could be interpreted as appropriating an additional 39 percent of liquor excise taxes collected to fund many of the same treatment programs already funded through the LDWI fund. Clarification would be needed to specify what programs the DUI treatment fund administered by the administrative office of the courts should support as opposed to the programs supported through the LDWI fund administered by local government division of DFA.

4. AGO observes that proposed Sections 16 and 20 incorporate language from *State v. Lewis*, 144 N.M. 156, 184 P.3d 1050. While this case holds that out-of-state convictions count as prior convictions under Section 66-8-102, this bill would make this an explicit statutory requirement. Further, as Section 16 requires that any plea agreement negotiated by a prosecutor must take out-of-state convictions into account, prosecutors will be placed on notice to seek out such prior convictions. This will also create an expectation that prosecutors will be duty-bound to incorporate out-of-state convictions, which may prevent offenders from circumventing the law.

PERFORMANCE IMPLICATIONS

One of NMDOT’s safety goals is to reduce motor vehicle related DWI crashes, injuries and deaths. Increasing penalties for repeat DWI offenders would likely reduce recidivism and thus have a positive impact on the NMDOT’s safety goal.

ADMINISTRATIVE IMPLICATIONS

NMDOT will have new responsibilities associated with establishing the program for alcohol monitoring ankle bracelets.

DPS and NMCD may have increased responsibilities because in some cases, SB 586 expands on existing criminal charges. For example, in Section 7, the bill adds driving a vehicle with a .08 BAC while the person’s privilege to drive was revoked for DUI as a fourth category of aggravated DUI.

The courts will have increased administrative burdens if the changes result in greater caseloads.

RELATIONSHIP

Related to HB 86, HB 120, HB 131, HB 355, HB 359, HB 404, and SB 511.

TECHNICAL ISSUES

1. NMDOT notes that Section 27 of the bill establishes a new section of the DUI code related to blood alcohol tests but does not repeal NMSA 1978, Section 66-8-103.
2. TRD identifies the following technical issues:
 - a. Section 66-5-29(B) and (C) should be amended to reference the DUI Act.
 - b. On page 6, ¶ W, the definition needs to be amended to include that a revocation action is also taken against a person’s driving privileges. For instance, a person may only have an ID card in which case only the driving privilege can be revoked, not a license.
 - c. Page 23, lines 19-20 imply that a person must plead guilty to all sections of the DUI Act. Amend line 19 by deleting the second “the” and put “a” in its place and on line 20 delete the “s” on the word “sections.”
 - d. The bill contains a definition of hazardous material, page 4, ¶ N. The definition is not needed. If the definition is included because of the definition of a commercial vehicle on page 7, the bill should be amended to refer to hazardous material as defined in federal law and regulations.
 - e. Page 20, lines 9-11 require that the traffic safety bureau pay for the alcohol-monitoring ankle bracelet. As the bracelet is imposed in lieu of incarceration when the person is sentenced, its monitoring and payment should fall under probation/parole services.
3. DPS identifies the following technical issues, and suggests changes to strengthen the bill:
 - a. In Section 2(H)(1)(c), the definition of “conviction” includes “an un-vacated forfeiture of bail or collateral deposited...” It is not clear that this actually constitutes a conviction at law. A finding of guilt or similar plea clearly

constitute a conviction, but the fact that an offender skipped bail (while it may constitute another crime) does not constitute a conviction as to the original DUI charge.

- b. Section 15 requires alcohol or drug abuse screening upon a DUI conviction. Such a screening is entirely appropriate, of course, but it is unclear from this Section and other provisions within the bill when, in what manner, and for how long a court can order an offender’s participation in a treatment program. This section states that an offender “shall be required to participate in and complete...*if necessary*, a treatment program approved by the court.” (Emphasis added). “[I]f necessary” is somewhat broad and there is no other language in the bill that would appear to specifically guide the sentencing judge as to whether a treatment program is “necessary” or what its duration and conditions should be. (Note: page 18, line 19 refers to a treatment program selected by “the department of finance and administration[.]” We believe that may be an editing error, as DFA ordinarily is not in the business of selecting drug/alcohol treatment providers). For a first time offender, and depending on the screening, for example, a judge can select mandatory inpatient, residential, in-custody or outpatient treatment for up to twenty-eight days. Residential programs plainly differ from outpatient programs in terms of restraint on freedom/movement, time commitment required, possible effects on employment, etc. If this provision becomes law and is subsequently challenged by an offender, a reviewing court may conclude that the language in Section 15, coupled with ambiguous language in other sections (e.g., Section 8(C)(3), Section 9(B)(1)(d), etc.—all stating that an offender shall be sentenced to participate in a range of quite different types of treatment programs “in accordance with the results and recommendations of the screening”), give inadequate consideration to offenders’ due process rights. Simply stated, more specificity may be helpful with regard to treatment program sentencing options in the bill.
- c. Section 16 may inadvertently contain an ambiguity that could be eliminated by a simple revision to the second half of this Section to read “a prosecutor shall not enter into or negotiate a plea agreement with an offender that includes a provision that inaccurately...”

ALTERNATIVES

AOC suggests that the goal of this bill could be accomplished by specifying creation of the DWI treatment fund, making an appropriation, and making changes to the liquor excise tax distribution.

CEM/bb/je

Beer

ACTUAL VOLUME

FY 2003	50,966,875	3.92%
FY 2004	49,706,655	-2.47%
FY 2005	51,805,587	4.22%
FY 2006	49,827,240	-3.82%
FY 2007	48,709,234	-2.24%
FY 2008	49,208,645	1.03%
FY 2009	48,128,205	-2.20%
FY 2010	47,433,904	-1.44%
FY 2011	48,941,830	3.18%
FY 2012	46,771,945	-4.43%
FY 2013	46,736,361	-0.08%
FY 2014	43,023,939	-7.94%
FY2015		

Forecast

	Model 1	Model 2	Model 3			
		NM Nonagricultural Employment, Personal Income, Quarters, Lags	Consumer Spending On Food And Bev. For Off-Premises Consumption, Labor Force, Qs, Lags			
Adj R2	0.61	0.57	0.62			
Durbin-Watson	2.69	1.97	2.03			
100%	40%	20%	40%			
FY 14	44,111,358	45,244,414	44,356,821	43,023,939		
FY 15	42,601,192	47,708,011	44,312,529	44,307,091	2.98%	\$17,639,815
FY 16	41,759,790	47,975,248	44,187,408	43,973,929	-0.75%	\$18,029,311
FY 17	40,918,389	48,209,464	44,184,763	43,683,154	-0.66%	\$17,910,093
FY 18	40,076,987	48,412,045	44,231,624	43,405,853	-0.63%	\$17,796,400
FY 19	39,235,585	48,614,359	44,304,649	43,138,965	-0.61%	\$17,686,976

Spirituous Liquor

ACTUAL VOLUME

FY 2003	8,421,608	4.18%
FY 2004	8,780,270	4.26%
FY 2005	9,621,248	9.58%
FY 2006	9,758,915	1.43%
FY 2007	10,202,118	4.54%
FY 2008	10,589,261	3.79%
FY 2009	11,023,686	4.10%
FY 2010	11,138,014	1.04%
FY 2011	11,393,555	2.29%
FY 2012	11,815,095	3.70%
FY 2013	12,388,216	4.85%
FY 2014	12,492,881	0.84%
FY2015		

Forecast

	Model 1	Model 2	Model 3			
		NM Nonagricultural Employment, Construction Employ, NMReal Disp Income Wage&Salary, Qs, Lags	NM Labor Force, Personal Income, Qs, Lags			
Adj R2	0.89	0.93	0.93			
Durbin-Watson	2.33	1.99	1.99			
100%	20%	40%	40%			
FY 14	13,044,478	12,686,609	12,870,404	12,751,701		
FY 15	13,378,577	12,934,691	13,058,010	13,072,796	2.52%	\$20,402,721
FY 16	13,918,588	13,361,632	13,502,035	13,529,184	3.49%	\$21,646,695
FY 17	14,366,738	13,793,566	14,028,850	14,002,314	3.50%	\$22,403,702
FY 18	14,894,673	14,314,226	14,580,072	14,536,654	3.82%	\$23,258,646
FY 19	15,404,396	14,862,814	15,130,558	15,078,228	3.73%	\$24,125,165

Wine

ACTUAL VOLUME

FY 2003	10,459,766	5.93%
FY 2004	10,871,385	3.94%
FY 2005	12,519,514	15.16%
FY 2006	12,389,174	-1.04%
FY 2007	13,039,144	5.25%
FY 2008	13,467,514	3.29%
FY 2009	13,806,073	2.51%
FY 2010	13,965,012	1.15%
FY 2011	14,195,338	1.65%
FY 2012	14,715,571	3.66%
FY 2013	15,023,532	2.09%
FY 2014	14,538,735	-3.23%
FY2015		

Forecast

	Model 1	Model 2	Model 3			
		NM Nonagricultural Employment, Wage&Salary, Qs & Lags	Consumer Spending On Food And Bev. For Off-Premises Consumption, Qs, & Lags			
Adj R2	0.90	0.92	0.92			
Durbin-Watson	2.25	1.96	2.01			
100%	40%	20%	40%			
FY 14	14,488,761	12,533,558	14,469,455	14,089,998		
FY 15	14,593,421	12,745,040	15,461,572	14,571,005	3.41%	\$6,340,499
FY 16	14,629,749	13,160,567	15,797,654	14,803,086	1.59%	\$6,556,952
FY 17	14,666,167	13,659,883	16,688,908	15,274,006	3.18%	\$6,661,389
FY 18	14,702,675	14,196,229	17,152,514	15,581,321	2.01%	\$6,873,303
FY 19	14,739,275	14,770,959	17,915,992	16,016,299	2.79%	\$7,011,595

Fiscal Year	Calculated Fiscal Year Revenue								Small Winery	Calculated Revenue	General Fund Disbursed	DWI Grant	Farmington Dis
	Beer	Micro Beer	Cider	Spirituos	Wine	Fort. Wine	NM Wine	Revenue Growth Rate					
FY2003	3.92%	10.56%	51.58%	4.18%	5.93%	70.58%	24.04%						
FY2004	-2.47%	-1.55%	-43.37%	4.26%	3.94%	-28.35%	10.22%						
FY2005	4.22%	18.59%	6.37%	9.58%	15.16%	-21.15%	23.12%		0.35%				
FY2006	-3.82%	10.57%	6.66%	1.43%	-1.04%	-13.66%	8.72%		7.34%				
FY2007	-2.24%	15.30%	6.36%	4.54%	5.25%	-3.10%	-14.92%		-1.56%				
FY2008	1.03%	11.92%	-10.37%	3.79%	3.29%	-8.35%	-14.05%	6.93%	1.43%				
FY2009	-2.20%	22.53%	-3.49%	4.10%	2.51%	-7.58%	16.71%	7.23%	2.35%				
FY2010	-1.44%	12.38%	12.78%	1.04%	1.15%	-14.90%	4.65%	25.47%	0.96%				
FY2011	3.18%	32.04%	164.96%	2.29%	1.65%	-44.35%	-1.79%	-3.20%	-0.05%				
FY2012	-4.43%	1.87%	53.90%	3.70%	3.72%	-28.43%	1.60%	37.04%	2.45%				
FY2013	-0.08%	19.35%	17.47%	4.85%	2.03%	79.16%	4.04%	-1.91%	2.55%				
FY2014	-7.94%	8.68%	26.27%	0.84%	-3.23%	-15.86%	-3.62%	-6.68%	-3.26%				
Average Growth	forecast	13.52%	16.09%	forecast	forecast	-10.47%	3.60%	9.27%					

FY2003	20,896,419	24,644	9,955	13,474,573	4,706,895	371,294	67,463	0	39,551,243				
FY2004	\$20,379,729	\$24,262	\$5,638	\$14,048,432	\$4,892,123	\$266,041	\$74,359	\$0	39,690,583				
FY2005	\$21,240,291	\$28,773	\$5,997	\$15,393,997	\$5,633,781	\$209,781	\$91,552	\$0	42,604,171				
FY2006	\$20,429,168	\$31,813	\$6,397	\$15,614,265	\$5,575,128	\$181,120	\$99,531	\$85	41,937,507				
FY2007	\$19,970,786	\$36,680	\$6,804	\$16,323,389	\$5,867,615	\$175,507	\$84,676	\$73,395	42,538,851	25,100,990	18,100,947	0	
FY2008	\$20,175,544	\$41,052	\$6,098	\$16,942,818	\$6,060,381	\$160,844	\$72,778	\$78,481	43,537,996	26,249,385	17,954,491	0	
FY2009	\$19,732,564	\$50,301	\$5,885	\$17,637,898	\$6,212,733	\$148,658	\$84,939	\$84,151	43,957,129	25,696,661	18,332,118	145,250	
FY2010	\$19,447,901	\$56,529	\$6,637	\$17,820,823	\$6,284,255	\$126,503	\$88,888	\$105,586	43,937,123	25,672,061	18,388,404	249,000	
FY2011	\$20,066,150	\$74,639	\$17,586	\$18,229,688	\$6,387,902	\$70,403	\$87,301	\$102,203	45,035,872	26,001,275	18,617,409	249,000	
FY2012	\$19,176,498	\$76,032	\$27,065	\$18,904,152	\$6,625,800	\$50,389	\$88,701	\$140,060	46,107,248	26,726,974	19,131,274	249,000	
FY2013	\$19,161,908	\$90,743	\$31,794	\$19,821,146	\$6,760,589	\$90,279	\$92,287	\$137,392	46,186,138	26,265,887	18,804,350	249,000	
FY2014	\$17,639,815	\$98,619	\$40,146	\$19,988,610	\$6,542,431	\$75,960	\$88,946	\$128,211	44,602,738	26,102,897	18,694,048	249,000	

FORECAST (60 Day Accrual)

	Model forecast	Growth rate estimate	Model forecast	Model forecast	Growth rate estimate	Volume Models Forecast	Growth			
FY2014	\$17,639,815	\$98,619	\$40,146	\$19,988,610	\$6,542,431	\$75,960	\$88,946	\$128,211	\$44,602,738	
FY2015	\$18,165,907	\$111,952	\$46,607	\$20,916,474	\$6,556,952	\$68,009	\$92,148	\$140,094	\$46,100,000	3.36%
FY2016	\$18,029,311	\$127,087	\$54,107	\$21,646,695	\$6,661,389	\$60,890	\$95,466	\$153,078	\$46,800,000	1.52%
FY2017	\$17,910,093	\$144,269	\$62,814	\$22,403,702	\$6,873,303	\$54,516	\$98,902	\$167,265	\$47,700,000	1.92%
FY2018	\$17,796,400	\$163,773	\$72,923	\$23,258,646	\$7,011,595	\$48,810	\$102,463	\$182,767	\$48,600,000	1.89%
FY2019	\$17,686,976	\$185,914	\$84,659	\$24,125,165	\$7,207,334	\$43,700	\$106,152	\$199,706	\$49,600,000	2.06%

General Fund	DWI Grant & Farmington Dis	Lottery Tuition
25,843,602	18,759,136	0
26,719,500	19,380,500	0
6,771,000	21,777,000	18,252,000
6,906,000	22,191,000	18,603,000
25,995,000	22,605,000	0
28,767,000	20,833,000	0

Revenue Forecast:

	LiqRev1_ExpSmoothing Forecast	LiqRev2 NM W&S	NM_LaborForce, RealCSpendFoodBevOffPre m, Qs	Weighted Average	General Fund	DWI Grant	Farmington Dis	Lottery Tuition
r2	0.73	0.76	0.69					
D.W	1.81	1.86	1.95					
	33%	33%	33%					
FY2014	44,602,738	44,602,738	44,602,738	44,602,738	25,843,602	18,510,136	249,000	0
FY2015	46,498,773	45,936,779	45,971,014	46,100,000	26,719,500	19,131,500	249,000	0
FY2016	42,005,764	46,889,532	47,353,324	45,400,000	6,561,000	20,884,000	249,000	17,706,000
FY2017	47,841,966	47,892,342	48,589,078	48,100,000	6,966,000	22,126,000	249,000	18,759,000
FY2018	48,513,563	48,898,921	49,695,681	49,000,000	26,211,000	22,540,000	249,000	0
FY2019	49,185,160	49,957,367	50,505,894	49,900,000	28,942,500	20,708,500	249,000	0

DWI grant distribution is 41.5%
DWI grant distribution is 46% starting in FY16, ending in FY18
DWI grant distribution reverts back to 41.5%

Recommend: Average Volume and Revenue Forecast Results

FY	Aug 2014 GF Concensus Forecast	Dec 2014 GF Forecast	Growth Rate	Diff	FY2014 Legislative Change		Final Dec 2014 Forecast
					HB-16 FIR (\$ thousand)	SB-347 FIR (\$ thousand)	
FY 2014	26.4	26.4		-	-	-	26.4
FY 2015	27.2	26.7	1.21%	(0.5)	-	-	26.7
FY 2016	27.7	26.7	0.00%	(1.0)	(2.1)	(18.0)	6.7
FY 2017	28.3	27.8	3.94%	(0.5)	(2.2)	(18.7)	6.9
FY 2018	28.9	28.3	1.90%	(0.6)	(2.2)	-	26.1
FY 2019	29.4	28.9	1.96%	(0.5)	-	-	28.9

SB-347 impacts FY16 & FY17
HB-16 impacts FY16 - FY18