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FISCAL IMPACT REPORT

SPONSOR SPAC **ORIGINAL DATE** 2/15/16 **LAST UPDATED** 2/17/16 **HB** _____

SHORT TITLE PPHSW-Liquor Tax for Treatment & DWI Penalties **SB** 332/SPACS

ANALYST Liu

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	\$0.0 - \$27,500.0	\$0.0 - \$28,000.0	Recurring	County Governments

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$77.0	\$7.0	\$84.0	Recurring	TRD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 74, HB 81, HB 82, HB 83, HB 273, HB 305, HB 329, SB 45, SB 118, SB 194, SB 212, SB 230

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Administrative Office of the Courts (AOC)

Department of Health (DOH)

SUMMARY

Synopsis of SPAC Substitute

The Senate Public Affairs Committee Substitute for House Bill 332 amends Section 7-24-9 NMSA 1978 to include “any county,” other than class B counties having a population between 56 thousand and 75 thousand, as a subsection under the definition of “county” and adds definitions for “microbrewer” and “small winegrower.” The bill amends Section 7-24-10 NMSA 1978 allowing “any county” to impose a local liquor excise tax on all wholesalers distributing

alcoholic beverages to retailers not to exceed:

- 99 cents per liter on spirituous liquors,
- 25 cents per gallon on beer (not manufactured or produced by microbrewers and sold in New Mexico),
- 28 cents per liter on wine (not fortified wine nor wine manufactured or produced by a small winegrower and sold in New Mexico),
- 93 cents per liter on fortified wine,
- 5 cents per gallon on beer manufactured or produced by a microbrewer and sold in New Mexico for all gallons sold between 12 thousand and 155 thousand gallons,
- 12 cents per liter on wine manufactured or produced by a small winegrower and sold in New Mexico for all liters sold between 80 thousand and 950 thousand liters, and
- 25 cents per gallon on cider.

This local liquor excise tax can be in effect for a maximum of three years, renewable for another three years through the same public process as the original tax. The bill amends Section 7-24-10.1 NMSA 1978 allowing proceeds of the local liquor excise tax to be used for local programs that provide direct services for the prevention and treatment of alcoholism and drug abuse within the county.

This bill amends Section 66-8-101 NMSA 1978 to change homicide by vehicle or great bodily harm by vehicle while under the influence of any drug or intoxicating liquor to a second degree felony. The bill also amends Section 66-8-102 NMSA 1978 to add that upon an eighth or subsequent conviction, an offender is guilty of a second degree felony and shall be sentenced to a term of imprisonment of twelve years, ten years of which shall not be suspended, deferred, or taken under advisement.

FISCAL IMPLICATIONS

According to TRD, counties will generate about 61 percent of the tax revenue generated from the state liquor excise tax. The proposed tax rates are about 39 percent below the state tax rates which will cause a 61 percent tax increase on taxpayers in the counties where the tax is imposed. TRD has only analyzed the impact of the tax portions of this bill. Estimates use the current liquor tax forecast to determine the impact of adding a local liquor excise tax on existing volumes. It is unclear which counties will impose the proposed local liquor tax. The revenue estimate assumes the maximum imposition by each eligible county.

Current State Liquor Tax Rates								
Beer	Micro Beer	Cider	Spirits	Wine	Fort. Wine	Sm Wine-10	Sm Wine-20	Sm Wine-30
\$0.41	\$0.08	\$0.41	\$1.60	\$0.45	\$1.50	\$0.10	\$0.20	\$0.30
SB-332S Proposed Local Liquor Excise Tax for all counties								
Beer	Micro Beer	Cider	Spirits	Wine	Fort. Wine	Sm Wine-10	Sm Wine-20	Sm Wine-30
\$0.25	\$0.05	\$0.25	\$0.99	\$0.28	\$0.93	\$0.00	\$0.12	\$0

FY15 Revenues as a percent of total revenues								
Beer	Micro Beer	Cider	Spirits	Wine	Fort. Wine	Sm Wine-10	Sm Wine-20	Sm Wine-30
38.7%	0.3%	0.1%	45.4%	14.7%	0.2%	0.2%	0.3%	0.0%

Upon county election, TRD will need to revise the local liquor excise tax for the electing locality. Because of the possible variations of local liquor excise tax by a locality, TRD may

need to develop a return specialized for each county. Specialization will necessitate a new tax program within GenTax, which will add costs to the process of development of forms and instructions per county. The cost of creating new forms and instructions is \$7,000 each time a county imposes a local liquor excise tax. Each time a local liquor excise tax is imposed, TRD will need to analyze the new program, which may require additional FTE.

SIGNIFICANT ISSUES

According to TRD, this bill impacts county revenue adequacy and simplicity. It is designed to allow counties, other than Class B counties that meet narrow population and property taxable value criteria, to impose a liquor excise tax at the wholesale level. Current statute allows Class B counties that meet the population and property taxable value criteria to impose a tax at the retail level. Only McKinley County currently imposes this tax. TRD believes program administration functions better at the wholesale level. From a simplicity perspective, however, TRD is concerned with having different tax regimes apply to different counties, especially if revenue is greater by volume sold under either regime. If the proposed bill creates disparity between counties, there may be lawsuits to address the inequity or further legislation. Additionally, imposing tax under two different regimes may create confusion for wholesalers (or owners of retail establishments) that operate in more than one county. As such, consideration should be given to converting all counties to a wholesale regime, rather than two separate regimes depending on the imposing county.

AOC provided the following:

The Local Government Division of the Department of Finance and Administration administers the local DWI (LDWI) grant fund. Per Section 11-6A-3 NMSA 1978, \$5.6 million is carved out of the LDWI annually, which provides:

- \$2.8 million to fund alcohol detoxification and treatment centers in qualifying counties, including \$300 thousand for the interlock device fund;
- \$600 thousand for LDWI program administration; and
- the remainder available to county programs on a competitive grant basis.

After the \$5.6 million carveout, the money remaining in the LDWI fund is distributed to the counties each year through an algorithm based on gross receipts taxes and alcohol-related injury crashes. The funds are used primarily for county-run programs and services “to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse, drug addiction or drug abuse.” The counties use LDWI funds for educational, preventive, and treatment programs, with a statutory mandate to spend at least 65 percent of the total fund each year on alcohol-related treatment and detoxification programs.

This bill would increase the funding available for such programs in qualifying counties and, while specifying the use of those funds for “direct services” in lieu of “educational programs.” This will allow counties to expand the reach of LDWI-funded programs and increase the types of programs and the range of services to substance abusing offenders.

DOH provided the following:

New Mexico’s rate of alcohol-related death is the highest in the nation and is nearly twice the national rate. Alcohol-related motor vehicle traffic crash deaths currently account for

approximately 9 percent of alcohol-related deaths in New Mexico. In 2014, 116 people were killed in alcohol-impaired driving crashes, accounting for almost one-third of all traffic-related deaths in New Mexico.

(www.cdc.gov/pcd/issues/2014/13_0293.htm)

(www.nmhealth.org/data/view/substance/1478/)

(www.nrd.nhtsa.dot.gov/Pubs/812231.pdf)

This bill proposes to make several changes which are related to alcohol. One change would be to allow counties other than McKinley County to levy the local liquor excise tax. Pricing policies are considered to be the most effective at reducing alcohol-impaired driving and binge drinking

(<http://www.ncbi.nlm.nih.gov/pubmed/23790985>).

The bill would also increase penalties for homicide or great bodily harm due to DWI and for eighth or subsequent DWI offenses. In 2014, 35 people were convicted of an eighth or subsequent DWI offense in New Mexico.

ADMINISTRATIVE IMPLICATIONS

According to TRD, a new local liquor excise tax (LLQ) rate on wholesalers distributing alcoholic beverages to retailers will require additional GenTax return and TAP documents to be created under the LLQ tax program with new tax rates. Configurations and distributions will also need to be modified in GenTax. TRD estimates an additional 1,000 hours will be required for the Information Technology Division to implement provisions of this bill.

RELATIONSHIP

This bill relates to HB 74, HB 81, HB 82, HB 83, HB 273, HB 305, HB 329, SB 45, SB 118, SB 194, SB 212, and SB 230. HB 83 and SB 118 increases the penalty for DWI homicide or great bodily harm from a third degree felony to a second degree felony and sets a sentence of 12 years, 10 years of which shall not be deferred or taken under advisement. HB 74 increases interlock penalties for DWI. HB 81 increases penalties for DWI with a revoked license. HB 82 increases penalties for felony DWI convictions. HB 273 amends the Tax Administration Act to change the distribution of net receipts from the liquor excise tax. HB 305 increases time in prison for DWI homicide or great bodily harm to a pregnant woman. HB 329 limits driver license privileges for people convicted of DWI. SB 45 makes DWI with a minor in the car a misdemeanor. SB 194 seeks to redistribute \$41,667 per month from the net receipts attributable to the liquor excise tax to McKinley County. SB 212 extends the sunset of the liquor excise tax distribution to the lottery tuition fund from July 1, 2015, through June 30, 2019. SB 230 creates new liquor excise tax distributions to the lottery tuition fund between July 1, 2017, and June 30, 2020, with declining distribution rates.

TECHNICAL ISSUES

According to TRD, the current local liquor excise tax law imposes the tax on retailers. The bill imposes the expanded tax on wholesalers. The imposition of the tax on wholesalers is similar to the state liquor excise tax, and can be managed more easily than the imposition on retailers.