

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Hurt DATE TYPED: 2/25/03 HB _____
 SHORT TITLE: Local Approval of Liquor License Transfers SB 685
 ANALYST: Maloy

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	(See Narrative)	(See Narrative)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Responses Received From

Alcohol and Gaming Division, Regulation and Licensing Department
 Office of the Attorney General

SUMMARY

Synopsis of Bill

Senate Bill 685 amends §60-6B-4(F) of the Liquor Control Act to expand the grounds for a local governing body to disapprove the transfer of a liquor license. The current statute provides three (3) bases for the local governing body to disapprove a transfer application:

1. sale of alcoholic beverages at the proposed location is prohibited by law;
2. the transfer would violate a zoning or other ordinance of the governing body;
3. the transfer would be detrimental to the public health, safety or morals of the residents of the local option district.

This bill would add a fourth option as a basis for denial by the local option district:

The negative impact of the transfer on public health and safety of the local option district residents would be greater than at the prior location of the license.

Significant Issues

1. If the local governing body disapproves transfer of a license, the Alcohol and Gaming Director is to deny the transfer.
2. A standard for determining the effect on public health and safety is needed. What is the criteria by which the (negative) effect is to be determined? Is this established in the Alcohol and Gaming Division Rules and Regulations? Is this established in the courts and have, denials of this nature been challenged in District Court in the past?
3. The AG reports that if the amendment is intended to eliminate some of the legal barriers faced by subsection(3), this may not be achieved given the current state of the law. The New Mexico Supreme Court has determined that the Alcohol & Gaming Director must approve the transfer of a liquor license despite local disapproval "...if, on its face, the governing body's decision is not based on [substantial] evidence pertaining to the specific prospective transferee or location." Southland Corp. v. Manzagol, 118 N.M. 423, 424 (1994). Thus, in order to uphold the local option district's decision to deny the transfer would be detrimental to their community. This may not be simply eliminated by the proposed amendment. Further, the amendment would require that the local option district make a finding as to impact on another, separate community.

FISCAL IMPLICATIONS

The additional grounds for which a license transfer may be denied may result in a greater number of denials, which will result in fewer licensing fees, renewals, and the like. This will mean less revenue to the general fund. The Alcohol and Gaming Division was unable to estimate the number of potential denials that may arise under this added grounds.

Additional denials may result in numerous appeals to the courts. These appeals are costly to the Division, both in FTE time and in attorneys fees.

POSSIBLE QUESTIONS

Are appeals of denials being handled by the Office of the Attorney General, or are they handled by contract counsel?

SJM/sb