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FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/11

SPONSOR Egolf LAST UPDATED _____ HB 361

SHORT TITLE Point-of-Sale Surtax on Retail Alcohol Sales SB _____

ANALYST Burrows

REVENUE (dollars in thousands)

Estimated Revenue Impact			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$38,260.0	\$39,345.0	Recurring	Public School Fund
	**	**	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to SB258, HB23, HB421, and SB551

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
\$180.0	\$0.0	\$0.0	\$180.0	Non-Recurring	TRD Operating Budget
0	\$84.0	\$84.0	\$84.0	Recurring	TRD Audit & Compliance

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 361 proposes to impose a 2.5 percent surtax on the retail price on the sale of alcoholic beverages at the point of sale. The bill requires the alcohol sales licensee to submit the tax along

with gross receipts tax and compensating tax by the twenty-fifth day of the month following the month of sale. The net proceeds from the surtax would be distributed to the public school fund. The distribution applies to net receipts on transactions that occur on or after July 1, 2011.

For purposes of this bill, “licensee” means a person licensed pursuant to the Liquor Control Act to sell alcoholic beverages at retail for consumption on the licensee’s licensed premises or in unbroken packages for consumption off the licensee’s licensed premises. Because of this definition, it is assumed that this surtax applies to both retail package sales and restaurant and bar by-the-drink sales.

The effective date of the provisions of this bill is July 1, 2011.

FISCAL IMPLICATIONS

TRD reports the estimate of revenue to the public school fund should be considered to be an approximate, order of magnitude forecast. TRD has limited information on the value of alcoholic beverages sold, particularly those sold by-the-drink in restaurants and bars. The general fund would receive the revenue attributable to penalties and interest associated with the surtax.

This bill 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.

SIGNIFICANT ISSUES

TRD notes the economic rationale for alcohol taxation has traditionally been three-fold: 1) excise taxes collected from wholesalers are relatively easy to collect because of the small number of taxpayers; 2) alcohol excise taxes have a positive impact on reducing the use and abuse of alcohol; and 3) alcohol excise tax revenue helps cover the economic and social costs of alcohol use and abuse. After accounting for the effects of inflation, state alcohol taxes have eroded over time. Also, economic theory supports that young adults are more sensitive to price changes.

New Mexico’s liquor excise tax is already fairly high in comparison to other states’ tax rates (see Attachment 1).

According to PED, the State Equalization Guarantee (SEG) is the allocation school districts and charter schools receive through the public school funding formula. SEG accounts for approximately 94% of the Public School Fund. SEG is the primary source of funding for school districts’ and charter schools’ operational budgets. Recent reductions to the SEG appropriation are currently being offset by the American Recovery and Reinvestment Act (ARRA) appropriations. PED does not anticipate ARRA appropriations will be awarded in fiscal year 2012.

ADMINISTRATIVE IMPLICATIONS

According to TRD, the CRS-1 Form would need to be revised to incorporate the new surtax. The GenTax computer system would need to be programmed to include the new tax. Taxpayer education and department employee education would be needed which may include a special mail-out, press releases and other advertising activities. Gross receipts tax audits would become more complicated, and gross receipts audit coverage may be adversely affected unless additional audit

staff were added. TRD estimates an additional 2 FTE auditors may be needed to maintain current audit coverage. The Sunshine Portal lists the midpoint annual salary for accountant-auditors at \$42,000.

RELATIONSHIP

Senate Bill 258 proposes to increase the liquor excise tax and add a distribution of 25.26 percent of the net revenue to the mental health and substance abuse treatment fund.

House Bill 23 proposes to increase the liquor excise tax and add a distribution of 63.16 percent to the public school fund.

House Bill 421 proposes to increase the liquor excise tax, but would not create an additional distribution.

Senate Bill 551 proposes to increase the production capacity threshold on the definition of “small winegrower” to no more than 1.2 million liters of wine production, and would extend the local option liquor excise tax to all counties, but at limited rates.

TECHNICAL ISSUES

TRD suggests amending Section 7-9-3.5, subsection A, paragraph (3), subparagraph (b) to exclude the “liquor surtax” from the definition of gross receipts.

The bill requires TRD to collect the tax as part of the gross receipts tax form (CRS-1). TRD questions whether a separate tax reporting form would be more cost effective.

OTHER SUBSTANTIVE ISSUES

TRD states imposition of a “liquor surtax” on the retail sale of alcoholic beverages would impose reporting burdens on businesses and some administrative costs to TRD that could be avoided if the same revenue were raised through the liquor excise tax.

Current law imposes a liquor excise tax on all alcoholic beverage distributors and wholesalers. TRD notes there also exists a local option county excise tax on the retailers in McKinley County. This bill would add an additional retail-level tax on those McKinley County retailers.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A liquor surtax will not be imposed on retail sales of alcoholic beverages. Other sources of revenue or spending cuts may be needed to offset the loss of federal funds to the public school fund.

State Beer Excise Tax Rates, As of February 1, 2010

(Dollars Per Gallon)

State	Tax Rate	Rank	State	Tax Rate	Rank
Ala. (a)	\$1.05	2	Alaska	\$1.07	1
Alaska	\$1.07	1	Ala. (a)	\$1.05	2
Ariz.	\$0.16	30	Ga. (b)	\$1.01	3
Ark.	\$0.21	21	N.C.	\$1.00	4
Calif.	\$0.20	22	Hawaii	\$0.93	5
Colo.	\$0.08	45	S.C.	\$0.770	6
Conn.	\$0.20	22	Fla.	\$0.48	7
Del.	\$0.16	30	Miss.	\$0.43	8
Fla.	\$0.48	7	<u>N.M.</u>	<u>\$0.41</u>	<u>9</u>
Ga. (b)	\$1.01	3	Utah	\$0.41	9
Hawaii	\$0.93	5	Okla.	\$0.40	11
Idaho	\$0.15	34	Maine	\$0.3500	12
Ill.	\$0.231	20	La.	\$0.32	13
Ind.	\$0.115	40	Nebr.	\$0.31	14
Iowa	\$0.19	26	N.H.	\$0.30	15
Kans.	\$0.18	27	S.D.	\$0.27	16
Ky.	\$0.08	45	Vt.	\$0.2650	17
La.	\$0.32	13	Wash.	\$0.26	18
Maine	\$0.35	12	Va.	\$0.26	19
Md.	\$0.09	43	Ill.	\$0.23	20
Mass.	\$0.11	41	Ark.	\$0.2100	21
Mich.	\$0.20	22	Calif.	\$0.20	22
Minn.	\$0.15	34	Conn.	\$0.200	22
Miss.	\$0.427	8	Mich.	\$0.20	22
Mo.	\$0.06	48	Tex.	\$0.20	22
Mont.	\$0.14	36	Iowa	\$0.19	26
Nebr.	\$0.31	14	Kans.	\$0.18	27
Nev.	\$0.16	30	Ohio	\$0.18	27
N.H.	\$0.30	15	W. Va.	\$0.18	27
N.J.	\$0.12	39	Ariz.	\$0.16	30
<u>N.M.</u>	<u>\$0.41</u>	<u>9</u>	Del.	\$0.16	30
N.Y.	\$0.14	36	Nev.	\$0.16	30
N.C.	\$0.9971	4	N.D.	\$0.16	30
N.D.	\$0.16	30	Idaho	\$0.15	34
Ohio	\$0.18	27	Minn.	\$0.15	34
Okla.	\$0.40	11	Mont.	\$0.14	36
Ore.	\$0.0839	44	N.Y.	\$0.14	36
Pa.	\$0.08	45	Tenn.	\$0.14	36
R.I.	\$0.11	41	N.J.	\$0.12	39
S.C.	\$0.77	6	Ind.	\$0.12	40
S.D.	\$0.27	16	Mass.	\$0.11	41
Tenn.	\$0.14	36	R.I.	\$0.11	41
Tex.	\$0.20	22	Md.	\$0.090	43
Utah	\$0.41	9	Ore.	\$0.08	44
Vt.	\$0.265	17	Colo.	\$0.08	45
Va.	\$0.2565	19	Ky.	\$0.080	45
Wash.	\$0.26	18	Pa.	\$0.08	45
W. Va.	\$0.18	27	Mo.	\$0.06	48
Wis.	\$0.06	48	Wis.	\$0.06	48
Wyo.	\$0.019	50	Wyo.	\$0.019	50
D.C.	\$0.09	-	D.C.	\$0.09	-

Note: Local excise taxes excluded unless they are uniform and statewide.

(a) Includes a local rate of \$0.52 per gallon statewide.

(b) Includes a local rate of \$0.53 per gallon statewide.

Source: The Tax Foundation- Using Data from State Revenue Departments; Beer Institute.

Source: Dept of Taxation and Revenue

State Spirits Excise Tax Rates, As of February 1, 2010						
(Dollars Per Gallon)						
State	Tax Rate	Rank		State	Tax Rate	Rank
Ala. (a)	\$18.78	4		Wash. (a)	\$26.45	1
Alaska	\$12.80	6		Ore. (a)	\$24.63	2
Ariz.	\$3.00	36		Va. (a)	\$20.13	3
Ark.	\$2.58	38		Ala. (a)	\$18.78	4
Calif.	\$3.30	34		N.C. (a)	\$13.39	5
Colo.	\$2.28	43		Alaska	\$12.80	6
Conn.	\$4.50	26		Iowa (a)	\$12.47	7
Del.	\$5.46	22		Utah (a)	\$11.41	8
Fla.	\$6.50	16		Idaho (a)	\$10.96	9
Ga.	\$3.79	30		Mich. (a)	\$10.91	10
Hawaii	\$5.98	19		Ohio (a)	\$9.04	11
Idaho (a)	\$10.96	9		Mont. (a)	\$8.62	12
Ill.	\$8.55	13		Ill.	\$8.55	13
Ind.	\$2.68	37		Miss. (a)	\$6.75	14
Iowa (a)	\$12.47	7		Pa. (a)	\$6.54	15
Kans.	\$2.50	39		Fla.	\$6.50	16
Ky.	\$1.92	45		N.Y.	\$6.44	17
La.	\$2.50	39		N.M.	\$6.06	18
Maine (a)	\$5.21	24		Hawaii	\$5.98	19
Md.	\$1.50	47		Okla.	\$5.56	20
Mass.	\$4.05	28		N.J.	\$5.50	21
Mich. (a)	\$10.91	10		Del.	\$5.46	22
Minn.	\$5.03	25		S.C. (b)	\$5.42	23
Miss. (a)	\$6.75	14		Maine (a)	\$5.21	24
Mo.	\$2.00	44		Minn.	\$5.03	25
Mont. (a)	\$8.62	12		Conn.	\$4.50	26
Nebr.	\$3.75	31		Tenn.	\$4.40	27
Nev.	\$3.60	33		Mass.	\$4.05	28
N.H. (a)	\$0.00	–		S.D.	\$3.93	29
N.J.	\$5.50	21		Ga.	\$3.79	30
N.M.	\$6.06	18		Nebr.	\$3.75	31
N.Y.	\$6.44	17		R.I.	\$3.75	31
N.C. (a)	\$13.39	5		Nev.	\$3.60	33
N.D.	\$2.50	39		Calif.	\$3.30	34
Ohio (a)	\$9.04	11		Wis.	\$3.25	35
Okla.	\$5.56	20		Ariz.	\$3.00	36
Ore. (a)	\$24.63	2		Ind.	\$2.68	37
Pa. (a)	\$6.54	15		Ark.	\$2.58	38
R.I.	\$3.75	31		Kans.	\$2.50	39
S.C. (b)	\$5.42	23		La.	\$2.50	39
S.D.	\$3.93	29		N.D.	\$2.50	39
Tenn.	\$4.40	27		Tex.	\$2.40	42
Tex.	\$2.40	42		Colo.	\$2.28	43
Utah (a)	\$11.41	8		Mo.	\$2.00	44
Vt. (a)	\$0.68	48		Ky.	\$1.92	45
Va. (a)	\$20.13	3		W.Va. (a)	\$1.85	46
Wash. (a)	\$26.45	1		Md.	\$1.50	47
W.Va. (a)	\$1.85	46		Vt. (a)	\$0.68	48
Wis.	\$3.25	35		N.H. (a)	\$0.00	–
Wyo. (a)	\$0.00	–		Wyo. (a)	\$0.00	–
D.C.	\$1.50	–		D.C.	\$1.50	–

(a) States where the government controls sales. In control states, products are subject to ad valorem mark-up and excise taxes. The excise tax rate is calculated using methodology developed by the Distilled Spirits Council of the United States.

(b) Includes a wholesale tax of \$5.36 per case.

Source: The Tax Foundation using information from State revenue departments, Distilled Spirits Council of the United States (DISCUS); Note: Local excise taxes excluded.

Source: Dept of Taxation and Revenue