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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/13

SPONSOR Griggs LAST UPDATED _____ HB _____

SHORT TITLE New Liquor License Types and Changes SB 351

ANALYST Weber

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	Minimal Increase			

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 351 (SB 351) is an act proposing to amend certain sections of the Liquor Control Act so as to authorize new license types and making changes to existing licenses. Specifically, SB 351 would create the new license categories of food service license, limited dispenser and limited retailer

A "food service license" is defined to mean a license issued to a person under the Liquor Control Act permitting that person to sell, offer for sale or have in the person's possession with the intent to sell alcoholic beverages by the drink for consumption on the licensed premises that is a restaurant.

A “limited dispenser” is defined to mean a person licensed as a dispenser prior to July 1, 2013 that has elected to be issued a separate retailers license under Section 60-6A-3 NMSA 1978, thus limiting the person’s authority under the original license to the sale, offer for sale or possession with the intent to sell alcoholic beverages by the drink for consumption on the licensed premises. Prior to becoming a limited dispenser, under the person’s previous dispenser’s license, such a person would have had the authority to sell package liquor, but will lose this authority under new limited dispenser license.

A “limited retailer” is a person licensed under the Liquor Control Act authorized to sell, offer for sale or have in their possession with the intent to sell alcoholic beverages in unbroken packages for consumption and not for resale of the licensed premises subject to certain limitations. Thus, a limited retailer would be limited to package sales only.

Next, SB 351 amends NMSA 1978, Section 60-5A-1, relating to elections for local options. First, SB 351 strikes much of the existing procedures by which a municipality or county may adopt the local option provisions of the Liquor Control Act and replaces them with a new procedure. A new subsection (A) clarifies that alcoholic beverages may not be sold, served or consumed in public in a county or municipality that has not become a local option district pursuant to the Liquor Control Act or any former act and authorizing any county or municipality that had not become a local option district prior to July 1, 2013 to hold an election for this purpose.

New subsection B establishes the procedures by which a county or municipality that had not become a local option district prior to July 1, 2013 may do so, including: requiring that the registered qualified electors of any proposed local option district petition the governing body to hold an election for the purpose of determining whether the county or municipality shall become a local option district under the Liquor Control Act; specifying that such an election be held pursuant to new subsection D of this section. SB 351, at new Subsection C, would grant local option districts created pursuant to the Liquor Control Act to limit the number of licenses in the local option district to those issued prior to July 1, 2013 or to allow additional licenses in a certain number over a period of time if the license allotment method in Section 60-6A-18 provides for additional licenses in that local option district. In order to impose such limitations, the registered qualified electors of the local option district would need to file one or more petitions in the appropriate clerk’s office to hold an election for this purpose.

SB 351 further adds a new Sub-section (D) to Section 60-5A-1 that establishes the procedures by which an election on the questions of becoming a local option district or limiting the number of licenses are to be held. These procedures largely track the process elaborated under the prior language of this section, but making grammatical, numbering and other necessary changes to accommodate the changes described above.

One substantive change to this Section proposed by SB 351 is the elimination of former subsection H, which previously authorized a local option district to vote to discontinue the sale, service or public consumption of alcoholic beverages in the district. Thus, under the amended language, it appears that once a county or municipality elects to become a local option district, it will lack the power to cease to become a local option district in which alcoholic beverages may be sold or consumed.

Next, SB 351 seeks to amend NMSA 1978, Section 60-5A-2, relating to the resubmission of the local option question. The amendments would allow a county or municipality in which the local option provisions of the Liquor Control Act or former act have been rejected to reconsider whether to become a local option district no sooner than two years from the date of the election in which these proposals were rejected. An election in which such proposals are reconsidered would be required to follow the procedure established at Section 60-5A-1. The amendment eliminates the possibility for a local option election for the purpose of submitting to the voters of the district in question of permitting the sale of alcoholic beverages by retailers only in the district. Proposed Subsection B to this Section would allow the electors a local option district that imposed a limitation on the number of licenses that can be issued in the local option district to submit the question of raising the limitation on the number of licenses permitted no sooner than five years following the election that imposed the original limitation. The procedures for election established in Section 60-5A-1 would govern. Under this Subsection, no election reducing to the number of licenses permitted in the local option district prior to the election would be permitted

Next, SB 351 would amend NMSA 1978, Section 60-6A-2, relating to Retailer's Licenses, by deleting the prior Subsection A which authorized a person qualified under the Liquor Control Act to apply for and be issued a retailer's license for the retail sale of alcoholic beverages in any local option district. The amendments would replace the previous Subsection A with a new Subsection A permitting a retailer's license issued prior to July 1, 2013 to be transferred to any local option district location in New Mexico and exempting such transferred licenses from the license quota established at Section 60-6A-18, but making them subject to a local option district limitation election described above and approval by the local option district's governing body under Section 60-6B-4. New Subsection A exempts rural retailer's licenses from its provisions, thereby requiring that such licenses be transferred only pursuant to Section 60-6B-12. A new Subsection B would be enacted specifying that beginning July 1, 2013, if the license quota provisions of Section 60-6A-18 indicate that a new license is available and there has been no local option district election to limit the number of licenses that would prevent a new license, a person may apply for and receive a limited retailer's license, provided that application is appropriately made and the governing body approves such application, with several conditions. The conditions on limited retailer's license include: (1) the license is used for a specific licensed premises; (2) the license is not transferable from person to person or from one location to another; (3) when a licensee ceases to operate at the licensed premises, the director shall cancel the license; and (4) except as otherwise specifically provided for limited retailer's licenses, the license is subject to the Liquor Control Act in the same manner as a retailer's license. SB 351 would add another new Subsection (C) clarifying that nothing in this section shall prevent a retailer or limited retailer from receiving other licenses under the Liquor Control Act

Further, SB 351 proposes to amend NMSA 1978, Section 60-6A-3, relating to dispenser's licenses, providing for separate retailer's licenses, limited dispenser's licenses, transfer of licenses issued prior to July 1, 2013 and food service licenses. First, SB 351 would strike, in its entirety, prior Subsection A, which authorized qualified person to obtain a dispenser's license for the sale of alcoholic beverages. In its place, SB 351 adds a new Subsection A, allowing a dispenser whose license was issued prior to July 1, 2013 to elect to convert the dispenser's license to a limited dispenser's license and to be issued a separate retailer's license under the Liquor Control Act. Such licenses are exempted from any limitation on the number of licenses that may be issued. Licenses (limited dispenser's and retailers) issued pursuant to this new Subsection would be deemed to have been issued prior to July 1, 2013 for purposes of the Liquor

Control Act. A limited dispenser's license is subject to the Liquor Control Act in the same manner as a dispenser's license, unless otherwise specifically provided for. New Subsection B authorizes a limited dispenser's license (issued prior to July 1, 2013) and a limited dispenser's license to be transferred to any local option district in the state, so long as it is not a dispenser's license created by Section 60-6B-16, and exempts such licenses from the Section 60-6A-18 license quota, but subjects them to a local option district limitation by election under Section 60-5A-1 and approval by the local option district's governing body. Rural dispenser's licenses are exempt from the provisions of this subsection and may only be transferred in accordance with Section 60-6B-12. New Subsection C would allow, beginning on July 1, 2013, person to apply for and receive a food service license permitting the sale, service and consumption of alcoholic beverages by the drink in a restaurant, so long as the Section 60-6A-18 license quota permits its issuance and no local option district election to limit the number of licenses that would otherwise prevent a new license has occurred, the person has submitted an application as prescribed by the director and meeting the requirements of the Liquor Control Act. Such food service licenses would be subject to the following conditions: (1) the person shall submit evidence to the director that the person has a current valid food service establishment permit; (2) the person satisfies the director that the primary source of revenue from the operation of the restaurant will be derived from meals and not from the sale of alcoholic beverages; (3) the person may renew the license annually, and the director shall condition renewal upon a requirement that no less than sixty percent of gross receipts from the preceding twelve months' operation of the restaurant was derived from the sale of meals; (4) upon application for renewal, the person shall submit an annual report to the director indicating the annual gross receipts from the sale of meals and from the sale of alcoholic beverages; (5) the license does not permit the sale of alcoholic beverages, whether in unbroken packages or not, for consumption off the licensed premises, except as provided in Section 60-3A-12; (6) the license does not permit the sale, service and consumption of alcoholic beverages after the earlier of the time that meal service ceases or 11:00 p.m.; (7) where Sunday sales have been approved in the local option district, the license permits the sale, service and consumption of alcoholic beverages on Sundays until the earlier of the time that meal sales and service ceases or 11:00 p.m., and subject to the provisions of Section 60-7A-1; (8) the license is not transferable from person to person or from one location to another, and whenever a licensee ceases to operate a restaurant at the licensed premises, the director shall cancel the license; and (9) a food service license is subject to the Liquor Control Act in the same manner as a dispenser's license, except as otherwise specifically provided for a food service license. New Subsection D establishes that nothing in this section will prevent a dispenser, limited dispenser or food service licensee from receiving other licenses under the Liquor Control Act and providing that a food service license shall not be used to apply for or receive a special dispenser's permit under Section 60-6A-12. New Subsection E, largely retaining prior language found in this section, clarifies that a dispenser's license or a limited dispenser's license or food service license are to be used only by the person to whom the license is issued and shall only be used within the licensed premises.

Next, SB 351 proposes to amend NMSA 1978, Section 60-6A-15, pertaining to license fees by adding two new Subsections (K and M) and renumbering previously existing subsections to retain their alphabetical order. New Subsection K provides that a limited retailer's license shall carry a fee of \$250,000 for issuance, and a fee of \$1,300 for reissuance. New Subsection M provides that a food service license shall carry a fee of \$75,000 for issuance and a renewal fee of \$1,300. SB 351 amends subsection J to specify that the renewal fee for a retailer's license is \$1,300. Former Subsection K, New Subsection L adds the phrase "or limited dispenser's license, for renewal" to make clear that a dispensers license or limited dispenser's license will carry a

\$1,300 renewal fee.

Next, SB 351 proposed to amend NMSA 1978, Section 60-6A-18, relating to the limitation on number of licenses to be issued and exceptions, by deleting paragraphs (1) and (2) of subsection A in their entirety. Prior quotas are replaced by a new quota system, which allocates the maximum number of licenses to be issued under Sections 60-6A-2, 3 as follows: one retailer's, dispenser's, limited retailer's or food service license for each one thousand five hundred residents or major fraction thereof, in each county, including incorporated areas, subject to a local option district limitation set by election. A new Subsection B provides that a license to be transferred pursuant to Section 60-6B-12 will not count toward the quota set above, but will be subject to a local option district limitation set by election, as described above. New Subsection C specifies that the limited dispenser's license and the retailer's license created under Subsection A of Section 60-6A-3, as amended, shall be counted together as one license for the purposes of the quota under this section. D changes the annual population estimates from that of the local option district to that of the county.

Next, SB 351 proposes to amend NMSA 1978, Section 60-6B-12, relating to inter-local option district transfers. As amended, this section would add permit dispenser's, limited dispenser's and retailer's licenses originally issued before July 1, 2013 to be transferred to any location within New Mexico regardless to the license quota system described above. Rural dispenser's and rural retailer's licenses and canopy licenses that were replaced by dispenser's licenses are excluded from this section. If SB 351 is enacted, transfers under this section would not be permitted to: (1) class B counties having a population of between 71,000 and 72,000 according to the 2010 federal census (McKinley County) and municipalities located within those counties; (2) a municipality or county that is not a local option district; (3) a local option district that has limited the number of licenses under Section 60-5A-1 to a number that would not permit such a transfer; (4) a local option district that prohibited by election, prior to July 1, 2013, the transfer of a license from another local option district. SB 351 eliminates the prior conditions placed on such transfers, and adds new ones and amends others. If enacted, SB 351 would set the following conditions on transfers under this section: (1) the transfer is not contrary to law; (2) the governing body of the receiving local option district has approved the transfer; (3) the requirements of the liquor control act and department rules for the transfer of license are fulfilled; (4) the dispenser's, limited dispenser's or retailers licenses shall be operated or leased by the person who transfers the license to the local option district for at least a period of one year from the date of the approval of the transfer by the department. SB 351 would eliminate previously existing procedures regarding such transfers including a provision preventing the effectiveness of such a transfer upon the approval of the local governing body, unless a petition requesting an election on the question of approval of statewide transfers of liquor licenses into that local option district is filed with the clerk within one hundred twenty days and the petition is signed by at least five percent of the number of registered voters of the district. Upon verification of signatures and votes, and election on the question of approving statewide transfers of liquor licenses into that district would be held. As amended the governing body of the district would need to approve the transfer, but an election to decide whether statewide transfers into the district would no longer be permitted. Also, the sections prior requirement that a dispenser's license transferred under this section outside its local option district would only entitle the licensee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises is eliminated.

FISCAL IMPLICATIONS

There will be limited fiscal impact especially related to the creation and issuance of the limited retailer's license with an initial fee of \$250,000. This is of course essentially non-recurring but the annual renewal of \$1,300 is a new recurring revenue. There is no projection of how frequently these fees may accrue.

The Department of Public Safety (DPS) speculates that for their agency the "unknown" is how many new liquor licenses might come into existence should this law go into effect. With over 3000 licensed premises currently being monitored by the limited manpower resources of the Special Investigations Division, should a significant number of new licenses come into being, these resources could be further stretched. However, if new licenses come into existence as old licenses are terminated, the impact could be negligible.

SIGNIFICANT ISSUES

The Regulation and Licensing Department (RLD) makes the following comments and questions related the changes initiated by the bill:

- Does the bill allow sales without a license in private clubs or at private events without a license in municipalities and counties that are not local option districts?
- Can a retailer license created due to conversion from a dispenser to a limited dispenser be transferred from person to person or from location to location even though it will be counted as one license (along with the new limited dispenser)?
- Is there a fee for the issuance of the new retailer license created as a result of converting a dispenser license?
- Is there any time limitation for converting a dispenser license?
- Are the new license types – food service, limited retailer, limited dispenser – prohibited from holding a wholesaler license or a manufacturer license?
- Can new licenses be created without regard to population by moving out a quota license from an area below quota and then requesting a new one?

Section 60-5A-1 states that alcoholic beverages shall not be sold, served or consumed in public in a county or municipality that has not become a local option district. It is unclear if this language would allow the sale, service and consumption of alcoholic beverages in private clubs or at private events without a license in those counties or municipalities that are not local option districts. This section takes away the ability of a local option district to vote to prohibit alcohol sales entirely as Curry and Roosevelt counties have done. The amendment to 60-5A-2 removes the option for a local option district to limit alcohol sales to retailers only.

The bill provides a dispenser license holder with an option to split the license into two separate and distinct licenses. There are no time limitations for making this election but a limited dispenser license or a retailer license issued pursuant to the amendment shall be considered issued prior to July 1, 2013 with the result that a dispenser license holder may elect to split the license twenty years from now but the newly created license would be considered issued prior to July 1, 2013. There are no limitations placed on the transferability of a retailer license created pursuant to Section 60-6A-3 from one local option district to another or from person to person, yet Section 60-6A-18 C would count the two separate and distinct licenses as one for the

purposes of the quota although they may be located in different local option districts. Additionally, there is no initial license fee for the issuance of the new retailer license resulting in lost revenue for the State. A dispenser license holder would have two licenses that may be sold for a significant amount of money, used to operate two separate and distinct businesses with no monetary benefit to the State other than gross receipts taxes generated from the operation of the business. The language on page 18, line 25 is unclear as to intent.

The creation of a food service license would allow the issuance of a license that allows the sale of beer, wine and spirits in a restaurant environment with restrictions similar to those under the current restaurant license. A food service license would count toward the quota limitation and would only be available for issuance in those local option districts that are below quota or have not voted to limit the allowable number of licenses. They would not be available in all local option districts.

Section 60-7A-12 prohibits certain license holders from also holding a wholesaler or manufacturer license. SB 351 does not amend this section to prohibit limited retailers, limited dispensers or food service license holders from also holding a wholesaler or manufacturer license.

Section 60-6A-18 changes the calculation of allowable number of licenses from local option district based to county based but does not provide any guidance on how those licenses should be distributed in order to allow for the issuance of new licenses in each local option district. Licenses are allowed to transfer from one local option district to another, and local option districts may vote to limit the number of licenses allowed in their district so arriving at a number allowable based on local option district is critical.

The amendment of Section 60-6B-12 A (2) is also unclear. By definition, a local option district is a county that has voted to approve the sale, service and consumption of alcoholic beverages or an incorporated municipality that falls within a county that has voted to approve alcohol sales or an incorporated municipality of over 5,000 in population that has independently voted to approve alcohol sales. The bill also removes the prohibition against transferring licenses out of local option districts that are below quota possibly resulting in creation of new licenses when overall populations do not support the increase (ex. License issued prior to 2013 moves out of LOD, triggering request for issuance of a new license. Populations have not increased to support the new license, licenses have merely been redistributed.)

The Department of Health (DOH) offers comments on alcohol related health issues and the likelihood of increased density of alcohol sales outlets resulting from changes proposed in the bill:

By many measures, New Mexico's alcohol-related problems are among the worst in the nation. New Mexico had the highest alcohol-related death rate in the nation from 1997 through 2007 (the most recent year for which other state rates are available). In 2009, New Mexico's alcohol-related death rate was 1.8 times the U.S. rate. Large disparities in the burden of alcohol-related problems exist in New Mexico. For example, in 2007-2011, average annual alcohol-related death rates in Rio Arriba and McKinley counties were more than twice the New Mexico rate, and roughly four times the U.S. rate.

Regulating alcohol outlet density to reduce or to limit the increase of alcoholic beverage outlet density has been recommended as an approach to reducing alcohol-related problems, by several

expert bodies that have systematically reviewed the available scientific evidence. The World Health Organization recommends restrictions on outlet density, based on evidence for the “moderate effectiveness” of these restrictions in reducing both alcohol consumption and alcohol-related problems (Babor et al, 2010). The Community Preventive Services Task Force “recommends the use of regulatory authority (e.g., through licensing and zoning) to limit alcohol outlet density on the basis of sufficient evidence of a positive association between outlet density and excessive alcohol consumption and related harms” (Community Guide, 2007). The National Institute on Alcoholism and Alcohol Abuse (NIAAA) recommends restrictions on alcohol retail outlet density based on “studies of the number of alcohol licenses or outlets per population size [that] have found a relationship between the density of alcohol outlets, consumption, and related problems such as violence, other crime, and health problems” (NIAAA, 2002).

Based on analysis of the most recent available report on alcohol outlet density in New Mexico (New Mexico Regulation and Licensing Department, 2012), almost half (46 percent) of New Mexico’s 128 local option districts have outlet density allowed under current statute. Some of the municipalities with the heaviest burden of alcohol-related problems also have the highest excess outlet density (e.g., Espanola, with 21 licenses compared to an allowed maximum of 5, is 320 percent above the allowed outlet density; Gallup, with 34 licenses compared to an allowed maximum of 11, is 209 percent above allowed.) (DOH epidemiological analysis of RLD data, 2013).

SB 351 proposed reduction in the population denominator used for defining the maximum allowed outlet density (i.e., from ‘one...for each 2,000 residents’ to ‘one...for each 1,500 residents’) would effectively increase by 33 percent the allowed number of licenses in New Mexico. SB 351 proposes the elimination of maximum limits for incorporated municipalities would obscure the extent to which some municipalities are burdened by excess outlet density. For example, under SB 351, Gallup (currently 209 percent above quota) would be combined with the rest of McKinley County (which is 52 percent under quota) when calculating the maximum allowed county-level outlet density for McKinley County. Based on this new definition, McKinley County would be 3 percent below the allowed maximum, despite the fact that Gallup would continue to have very high outlet density. By obscuring the extent of outlet density issues in high-density municipalities, these proposed changes to the definition of maximum number of allowed licenses is an important goal of the liquor control act – to protect public health and public safety by limiting alcohol outlet density.

SB 351 proposes increased authority for local option districts in regulating outlet density: it enables the local option districts to vote “to limit the number of licenses in the local option district to those issued prior to July 1, 2013 or to allow additional licenses in a certain number over a period of time”. However, the limited value of this local authority is suggested by the bill’s additional provision that “In no case shall a [local option district] election reduce the number of licenses permitted in the local option district.” In other words, SB 351 allows a cap on current outlet density, but prevents local option districts from using local license limitation authority to actually reduce outlet density. The bill’s mixed intentions with regard to local liquor control authority are also suggested by its elimination of two current local options: (1) the option to discontinue alcohol sales (currently exercised by two local option districts); and (2) the option to prohibit inter-local license transfers (currently exercised by 10 local option districts).

SB 351 will permit Alcohol outlet density, associated public health and public safety problems to likely increase. At the same time, the state’s ability to monitor and regulate outlet density in

support of public health and public safety is decreased by the bill's weakening of the maximum limit on alcohol outlet density. Given New Mexico's status as the state with the heaviest burden of alcohol-related problems in the U.S., the changes proposed by this bill are not supportive of public health and welfare.

MW/svb:blm