

LFC Requester:	Brendon Gray
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 01/24/2024
Bill No: HB 212

Sponsor: Micaela Lara Cadena and Derrick J. Lente and Cristina Parajón
Short Title: LIQUOR TAX RATE & FUND
Agency Name and Code Number: AOC 218
Person Writing: Robert Mitchell
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
		\$25.008	Recurring	General
		(\$25.000)	Recurring	Local DWI Grant
		\$22.000	Recurring	Alcohol and Substance Use Harms Alleviation Fund
		\$3.000	Recurring	Drug Court Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

- Relates to HB179 (Joanne J. Ferrary and D. Wonda Johnson and Shannon D. Pinto) which addresses liquor tax changes and uses.
- Conflicts with HB213 (Micaela Lara Cadena and Derrick J. Lente and Cristina Parajón) primarily in attributing the responsibility for collecting alcohol taxes to the *retailer* rather than the provisions in current law which require this of the wholesaler. Both bills restructure the alcohol taxes, repeal the Local DWI Grant Program Act, and add the definition of “barrel” while removing “fortified wine.” HB213 also removes sections of the Liquor Excise Tax Act.
- Relates to HB217 (Jason C. Harper and Dayan Hochman-Vigil) which also addresses liquor excise tax distribution percentages and receiving funds.
- Relates SB144 (Roberto "Bobby" J. Gonzales) which modifies the amount available to the DFA to administer the Local DWI Grant Fund and related programs; HB212 repeals the Local DWI Grant Fund.
- Relates to SB147 (Antoinette Sedillo Lopez and Bill Tallman and Shannon D. Pinto) which addresses liquor tax changes and uses.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB212 eliminates liquor excise tax distribution to the LDWI grant fund altogether and creates a fixed amount for distribution to the general fund as well as treatment courts.

HB212 stipulates that after distributions are made to the drug court fund and, presumably, the general fund, all other revenue from the liquor excise tax will go into the nonreverting alcohol and substance use harms alleviation fund.

The new alcohol and substance use harms alleviation fund will be administered by the DFA to be used for a generalized and wide range of expenditures, including: Prevention; Treatment; and Recovery services. The bill specifies that the fund may be used to support all these services with Indian nations, tribes, and pueblos.

HB212 restructures the tax on various alcohol types attributable to the wholesaler, adds “Barrel” to definitions and removes “fortified wine.”

Under HB212 the Local DWI Grant Program Act will be repealed and any unencumbered or unexpended balance in the LDWI grant fund will be moved to the alcohol and substance use harms alleviation fund.

The effective date of the legislation is delayed one year to July 1, 2025.

FISCAL IMPLICATIONS

HB212 eliminates liquor excise tax distribution to the LDWI grant fund and creates fixed amount for distribution to the general fund (and treatment courts). The general fund would receive \$2,084,000 monthly (\$25,008,000 annually). With the liquor excise tax producing approximately \$50 million in annual revenue, this would reflect a 50% transfer to the general fund. The general fund is currently receiving 50% of the liquor excise tax revenue; however, establishing a fixed amount for general fund distributions limits any general fund growth while the distribution to the newly created alcohol and substance use harms alleviation fund grows as tax rates and/or sales increase.

SIGNIFICANT ISSUES

Treatment courts, currently receiving 5% of the liquor excise tax revenues (approximately \$2.5 million annually), would receive \$250,000 monthly (\$3 million annually, an increase of approximately \$500,000). Increasing the amount of the distribution to treatment courts would alleviate a fund balance deficit projected for as early as FY26 and would allow for strategic program expansion. The fixed amount, while making the fund more stable, also eliminates positive growth with the amount of liquor sold or with the built-in CPI increases.

HB212 eliminates all liquor excise tax distribution to the LDWI grant fund, transfers any unencumbered or unexpended balance in the LDWI grant fund to the alcohol and substance use harms alleviation fund, and repeals the Local DWI Grant Program Act.

There is currently no explanation for how the funds in the alcohol and substance use harms alleviation fund will be allocated or what particular initiatives will be supported. There is no requirement in the bill for the DFA, who would manage the fund, to establish these details. The current law provides for direct distribution of formula-based amounts to local communities, local community grant council recommendations for awards from a statewide grant council, and guidance from the DFA for requesting, and expending funds.

With no provision established to manage the many and various longstanding programs maintained through the Local DWI Grant Program Act (11-6A-1 through 11-6A-6, which is the LDWI Grant Program, the fund, the grant council, administration of the fund, distribution guidelines, etc.), it raises concerns that prevention, treatment, law enforcement, misdemeanor compliance programs, screening and tracking, alcohol-related domestic violence, alternative sentencing, coordination, planning, and evaluation may all go away. Along with the 10% to 30% match from local governments to support the programs.

The courts would be especially impacted by the loss of misdemeanor compliance programs, screening and tracking services, treatment court support, Risk-Needs-Responsivity Framework collaboration, and treatment services access. Loss of any of these collaborative efforts would be extremely detrimental to justice-involved individuals and the courts in local jurisdictions.

Misdemeanor compliance programs provide probation-type community supervision services for NM magistrate court probationers and in most cases, exist as the only post-adjudication supervision structure available to magistrate judges and justice-involved individuals. The impact of not having such services would be detrimental to public safety and to the support of those on probation. Adult Probation and Parole distanced themselves from providing supervision services to convicted misdemeanants about two decades ago, so if the local misdemeanor compliance programs were lost, judges would be left to choose between jail or unsupervised probation. Further, probationers, about 60% of whom are High-Medium or High Risk, would be left without a support structure for finding help and health.

Screening provides information to court entities for decision-making in assigning conditions of probation with DWI and DV cases, and tracking services create a record of when those conditions are completed. The Impaired Driving Assessment (IDA) is a validated screening instrument and was used 4,719 times in FY23 and 9,764 DWI/DV offenders were monitored/tracked.

Human and fiscal resources support treatment court programs by assisting with contingency management items, supervising participants through the misdemeanor compliance programs, and serving as multidisciplinary team members alongside judges, program coordinators, law enforcement officers, treatment providers, defenders, prosecutors, and other community professionals.

The Risk-Needs-Responsivity Framework Pilot Project requires close collaboration with the misdemeanor compliance programs. Treatment courts target the High Risk / High Need population, but not everyone who needs the treatment court can get in and there are three other quadrants of justice-involved individuals who need the right dosage and duration of supervision and treatment services, performed in the right way, to successfully complete probation and get healthy in the process.

By current statute, sixty-five percent (65%) of LDWI grant funds must be spent on treatment and in FY23, 68% was allocated for treatment services.¹ The DFA report also indicates that in FY23, \$7,347,793.75 was spent on treatment services. Many of these treatment dollars provide access to services for justice-involved individuals who are court-ordered to attend.

Unlike HB179, there is no stipulation to prioritize “community-based initiatives that address the needs of populations and communities that are disproportionately impacted by excessive alcohol use and are working to reduce health disparities.” Without this requirement, many of the specialized programs and services already underway, including those serving the courts and justice-involved individuals, may be in jeopardy.

The removal of the Local DWI Grant Fund without a plan to continue and expand the valuable services in local jurisdictions, would drastically impair the court’s ability to reduce recidivism and positively impact public safety for convicted individuals.

¹ <https://realfile60151d4795ce4d11abc799080b50384f.s3.amazonaws.com/42357473-f0a7-4c51-a273-c13a450f2383?AWSAccessKeyId=AKIAJBKPT2UF7EZ6B7YA&Expires=1706194109&Signature=kfNu%2F1XhAAeVEs1vam8cKHse1V0%3D&response-content-disposition=inline%3B%20filename%3D%22FY23%20LDWI%20Grant%20Program%20Annual%20Report%20Final.pdf%22&response-content-type=application%2Fpdf>

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS