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FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/09

SPONSOR Martinez LAST UPDATED HB

SHORT TITLE Smoking in Bars Prohibition Exemption SB 329

ANALYST Chabot

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Related to SB 44, Prohibit Smoking in Vehicles with Minors

SOURCES OF INFORMATION

LFC Files

Responses Received From

Aging and Long-Term Services Department (ALTSD)
 Attorney General's Office (AGO)
 Department of Finance and Administration (DFA)
 Department of Health (DFA)
 Economic Development Department (EDD)
 General Services Department (GSD)
 Human Services Department (HSD)
 New Mexico Health Policy Commission (HPC)
 Public Schools Insurance Authority (PSIA)
 Regulation and Licensing Department (RLD)
 Retiree Health Care Authority (RHCA)

SUMMARY

Synopsis of Bill

Senate Bill 329, Smoking in Bars Prohibition Exemption, adds an exemption for "a bar" to the Dee Johnson Clean Air Act.

FISCAL IMPLICATIONS

This bill has no direct fiscal impact.

SIGNIFICANT ISSUES

LFC notes most agencies responding were concerned with effects of smoking on the health of individuals which is a personal choice. Bar owners supporting this bill should be given the opportunity to express their opinion on this issue. This bill represents a policy decision and debated as such.

The AGO states the most significant issue is that “bar” is added to the list of smoking-permitted areas. “This is a policy decision. The expansion of the areas where smoking is permitted is significant given the definition of bar under 24-16-3.”

Section 24-16-3A NMSA 1978 states "bar" means an establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets.

DOH, DFA and HSD quote a January 2009 Research and Polling, Inc. survey that 85 percent of New Mexico voters reported they were in favor of the current Dee Johnson Clean Indoor Air Act and believe it should remain as written or strengthened. It also states the act has not adversely affected bar sales according to gross receipts records comparing sales before the law was enacted and afterward. According to the UNM Bureau of Business and Economic Research, in the first two quarters of 2008, bars have rebounded to their highest gross quarterly sales to date.

DOH assesses one of the purposes of the Dee Johnson Clean Air Act was to protect individuals from second-hand smoke which the US Surgeon General reports is the third leading cause of preventable death in the United States. Restaurant and bar workers exposed to second-hand smoke have higher rates of lung cancer (US Surgeon General, 2006)

PSIA expresses the following: “Along with tax measures, cessation measures, and education, smoking ban policy is currently viewed as an important element in lowering smoking rates and promoting public health. When correctly and strictly implemented it is seen as one important policy agenda goal to change human behavior away from unhealthy behavior and towards a health lifestyle.”

ALTSD assesses “the passage of SB 329 to include bars as smoking-permitted areas could cause a hardship for non-smoking employees who want clean air in their work environment and are concerned with their ability to obtain other employment.”

HSD and DOH summarize an American Legacy Foundation, 2003 report that smoking in bars might create additional health disparities by eroding the equal protection provided by smoking bans. Comprehensive smoke-free laws offer equal protection to workers, including the blue collar/services workers who are most often not protected by voluntary workplace policies.

HPC cites the federal Centers for Disease Control and Prevention as reporting bars are typically smoky workplaces and bar workers have a 50 percent greater risk of developing lung cancer than the general population. Secondhand smoke levels in bars are 400 to 600 percent higher than in office workplaces. Secondhand smoke has a wide range of effects on bar and restaurant workers, from illnesses and infections to potentially fatal diseases like heart disease and lung cancer.

RHCA assess it incurs costs of approximately \$9.9 million annually as a result of the negative impact of smoking on the health of its members.

EDD states “owners of bars have reported adverse effects of their sales since smoking has been banned in bars....In the end a bar is not a place one is *required* to be like a public building, health care facility or retail center.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

In Section 24-16-1 NMSA 1978 “The legislature further declares its intention to protect the public health from such hazards in public places and places of employment without imposing exorbitant costs on persons in management and control of the places subject to the Clean Indoor Air Act [[24-16-1](#) NMSA 1978].” Bars are public places and places of employment for New Mexicans.

TECHNICAL ISSUES

AGO suggests the definition of and exemption for “cigar bar” would be redundant if “bar” is added as a smoking-permitted area. In addition, PSIA suggests references to “bars” on page 2, line 25 and “bar” on page 3, line 16 should be removed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

POSSIBLE QUESTIONS

1. If the exemption is enacted, what would be the status of workers currently employed in bars that object to being exposed to second-hand smoke?
2. What is the estimated economic gain to “bars” if smoking is permitted?

GAC/mc