F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	02/04/10		
SPONSOR	Ortiz y Pino	**LAST UPDATED**	02/04/10	**HB**	
SHORT TITLE	Sweetened Beverage Excise Tax			**SB**	243
				ANALYST	Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
	$1,231.0	$2,475.0	Recurring	Child Obesity Prevention Fund
	$23,398.0	$47,030.0	Recurring	County-supported Medicaid Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB31.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$131.5	$135	$266.5	Recurring	TRD

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Health (DOH)
New Mexico Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

Senate Bill 243 imposes a sweetened beverage excise tax of $0.005 per ounce on distributors of sweetened beverages. This bill also creates the child obesity prevention fund. Revenues from the excise tax will be distributed to the county-supported Medicaid fund and the child obesity prevention fund, 95 percent and 5 percent respectively. The money in the county-supported

Medicaid fund shall be used for Medicaid services and the money in the child obesity prevention fund shall be appropriated to DOH to support child obesity prevention.

The effective date of this bill's provisions is January 1, 2011.

FISCAL IMPLICATIONS

This estimate uses data from Yale University's Rudd Center for Food Policy and Obesity (www.yaleruddcenter.org). According to their data, 1.26 12 ounce sweetened beverages are consumed per day per person in New Mexico and a total of 86.4 million gallons in a year. This estimate assumes an elasticity of -1.2. By adjusting for those fruit beverages which are exempted from this excise tax, TRD calculated an annual revenue of $49.3 million in CY11. Because of this bill's effective date, there will be a half year impact in FY11. This estimate does not adjust for New Mexico specific consumption patterns but rather is based on US population and adjusted on a per capita basis.

This bill creates a new fund and 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.

This bill could have a lower fiscal impact depending upon the difficulty of imposing and enforcing this bill's provisions and the accuracy of the estimates' assumptions.

SIGNIFICANT ISSUES

The bill may discourage consumption of soft drinks by increasing their price relative to other beverages.

This bill imposes a larger tax on a much larger base than other "soft drink" bills (SB31). This bill imposes the tax on all sweetened beverages regardless of where the beverage is bought. Because this bill does not restrict the sales to retailer sales, the base is much larger allowing an inclusion of fountain drinks sold at restaurants, gas stations, bars, etc.

TRD:

> Because electronic filing is mandated for this new tax, electronic payments should also be mandated in order to insure timely distribution of revenue and to further reduce costs of administration.

DOH:

> Studies among adults and children have found an association between high consumption of sugar-sweetened beverages and overweight status. (*Lancet, 2001; NHANES III, 2000; Journal of the American Dietetic Association, 1997*) The Centers for Disease Control and Prevention (CDC) has identified the decrease of soft drinks and sweetened beverages in diets as a promising strategy for weight management (*CDC Division of Nutrition and Physical Activity Progress Monitoring Report, January 2006*). Key nutrition recommendations from the *2005 Dietary Guidelines for Americans* state that Americans should avoid excessive amounts of calories from added sugars.

ADMINISTRATIVE IMPLICATIONS

TRD:

This bill will create a new tax program that will require an additional option on the current registration form or development of a new registration form. Filing instructions and forms will need to be developed with taxpayer education required. Anticipate additional 3 FTE to process/administer returns and bond administration. Mandated electronic filing of returns does minimize the number of FTE that would otherwise be required. Due to the complexity of the record keeping required, this tax would be very difficult for taxpayers to track and for the Department to audit.

This bill will have a Moderate IT impact from adding a new Tax Program to GenTax as follows:

1) Changes to the pipeline for Wausau capture for the new tax program – 160 hours (Note: No change necessary to E-DCR because the bill states that all returns must be filed electronically.)
2) Changes to configuration for the new tax program – 160 hours
3) Changes to revenue accounting – 80 hours
4) Changes to TAP and NMWebFile – 160 hours
5) Testing – 80 hours

Total 640 hours

TECHNICAL ISSUES

TRD:

1) It is not clear whether the bill intends to tax the syrup or powder that is used in making sweetened beverages only when that syrup or powder or other base is used by a retailer to make a sweetened drink or any powder or syrup that is used by a consumer to make sweetened beverages. If the latter, then it is assumed that manufacturers give instructions on how much sweetened beverage can be made by the syrup or powder or that retailers use the syrup or powder, as well as consumers.

2) The tax is imposed on distributors, not retailers. How does a distributor know the volume of sweetened drink produced by the retailer so that the distributor knows how much tax to pay under Section 4A(1)-(3)? How does a distributor know when a bottled beverage is sold by a retailer for resale outside New Mexico and thus exempted?

3) The exemption in Section 5 C is unclear. In this exemption, if the tax is included on the sale by a retailer, who by definition is not a distributor, to a consumer, who is remitting the tax to the Department?

4) Section 6 C requires a person in the business of selling sweetened beverages to register as a distributor. The definition of sweetened beverages in Section 2 does not include syrups. So a distributor of only syrups would not be required to register.

The bill also requires that this tax be administered pursuant to the Tax Administration Act, but does not amend the Tax Administration Act in Section 7-1-2 NMSA 1978 to include the new tax in the Act.

RELATIONSHIP

This bill relates to SB31 which exempts soft drinks from the food tax deduction.

BLG/mew

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc