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SENATE BILL 551

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO LIQUOR EXCISE TAXES; INCREASING THE PRODUCTION  
CAPACITY ALLOWED FOR CLASSIFICATION AS A SMALL WINERY;  
AUTHORIZING COUNTIES TO IMPOSE A LOCAL LIQUOR EXCISE TAX;  
LIMITING RATES OF LOCAL LIQUOR EXCISE TAXES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 7-17-2 NMSA 1978 (being Laws 1966,  
Chapter 49, Section 2, as amended) is amended to read:

"7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax  
Act:

A. "alcoholic beverages" means distilled or  
rectified spirits, potable alcohol, brandy, whiskey, rum, gin,  
aromatic bitters or any similar beverage, including blended or  
fermented beverages, dilutions or mixtures of one or more of  
the foregoing containing more than one-half of one percent

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1 alcohol by volume, but "alcoholic beverages" does not include  
2 medicinal bitters;

3 B. "beer" means an alcoholic beverage obtained by  
4 the fermentation of any infusion or decoction of barley, malt  
5 and hops or other cereals in water and includes porter, beer,  
6 ale and stout;

7 C. "cider" means an alcoholic beverage made from  
8 the normal alcoholic fermentation of the juice of sound, ripe  
9 apples that contains not less than one-half of one percent of  
10 alcohol by volume and not more than seven percent of alcohol by  
11 volume;

12 D. "department" means the taxation and revenue  
13 department, the secretary of taxation and revenue or any  
14 employee of the department exercising authority lawfully  
15 delegated to that employee by the secretary;

16 E. "fortified wine" means wine containing more than  
17 fourteen percent alcohol by volume when bottled or packaged by  
18 the manufacturer, but "fortified wine" does not include:

19 (1) wine that is sealed or capped by cork  
20 closure and aged two years or more;

21 (2) wine that contains more than fourteen  
22 percent alcohol by volume solely as a result of the natural  
23 fermentation process and that has not been produced with the  
24 addition of wine spirits, brandy or alcohol; or

25 (3) vermouth and sherry;

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1 F. "microbrewer" means a person who produces fewer  
2 than five thousand barrels of beer in a year;

3 G. "person" includes, to the extent permitted by  
4 law, a federal, state or other governmental unit or subdivision  
5 or an agency, department, institution or instrumentality  
6 thereof;

7 H. "small winegrower" means a winegrower who  
8 produces fewer than [~~nine hundred fifty~~] one million two  
9 hundred thousand liters of wine in a year;

10 I. "spirituous liquor" means alcoholic beverages,  
11 except fermented beverages such as wine, beer, cider and ale;

12 J. "wholesaler" means a person holding a license  
13 issued under Section 60-6A-1 NMSA 1978 or a person selling  
14 alcoholic beverages that were not purchased from a person  
15 holding a license issued under Section 60-6A-1 NMSA 1978;

16 K. "wine" means an alcoholic beverage other than  
17 cider that is obtained by the fermentation of the natural sugar  
18 contained in fruit or other agricultural products, with or  
19 without the addition of sugar or other products, and that does  
20 not contain more than twenty-one percent alcohol by volume; and

21 L. "winegrower" means a person licensed pursuant to  
22 Section 60-6A-11 NMSA 1978."

23 SECTION 2. Section 7-17-5 NMSA 1978 (being Laws 1993,  
24 Chapter 65, Section 8, as amended) is amended to read:

25 "7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX.--

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1           A. There is imposed on a wholesaler who sells  
2 alcoholic beverages on which the tax imposed by this section  
3 has not been paid an excise tax, to be referred to as the  
4 "liquor excise tax", at the following rates on alcoholic  
5 beverages sold:

6                   (1) on spirituous liquors, one dollar sixty  
7 cents (\$1.60) per liter;

8                   (2) on beer, except as provided in Paragraph  
9 (5) of this subsection, forty-one cents (\$.41) per gallon;

10                   (3) on wine, except as provided in Paragraphs  
11 (4) and (6) of this subsection, forty-five cents (\$.45) per  
12 liter;

13                   (4) on fortified wine, one dollar fifty cents  
14 (\$1.50) per liter;

15                   (5) on beer manufactured or produced by a  
16 microbrewer and sold in this state, provided that proof is  
17 furnished to the department that the beer was manufactured or  
18 produced by a microbrewer, eight cents (\$.08) per gallon;

19                   (6) on wine manufactured or produced by a  
20 small winegrower and sold in this state, provided that proof is  
21 furnished to the department that the wine was manufactured or  
22 produced by a small winegrower, ten cents (\$.10) per liter on  
23 the first eighty thousand liters sold and twenty cents (\$.20)  
24 per liter on all liters sold over eighty thousand liters but  
25 less than [~~nine hundred fifty~~] one million two hundred thousand

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1       liters; and

2                               (7)   on cider, forty-one cents (\$.41) per  
3       gallon.

4                       B.   The volume of wine transferred from one  
5       winegrower to another winegrower for processing, bottling or  
6       storage and subsequent return to the transferor shall be  
7       excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable  
8       volume of wine of the transferee.   Wine transferred from an  
9       initial winegrower to a second winegrower remains a tax  
10      liability of the transferor, provided that if the wine is  
11      transferred to the transferee for the transferee's use or for  
12      resale, the transferee then assumes the liability for the tax  
13      due pursuant to this section.

14                      C.   A transfer of wine from a winegrower to a  
15      wholesaler for distribution of the wine transfers the liability  
16      for payment of the liquor excise tax to the wholesaler upon the  
17      sale of the wine by the wholesaler."

18                      SECTION 3.   Section 7-24-9 NMSA 1978 (being Laws 1989,  
19      Chapter 326, Section 2) is amended to read:

20                      "7-24-9.   DEFINITIONS.--As used in the Local Liquor Excise  
21      Tax Act:

22                      A.   "alcoholic beverages" means distilled or  
23      rectified spirits, potable alcohol, brandy, whiskey, rum, gin  
24      and aromatic bitters or any similar alcoholic beverage,  
25      including blended or fermented beverages, dilutions or mixtures

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1 of one or more of the foregoing containing more than one-half  
2 of one percent alcohol, but excluding medicinal bitters;

3 B. "county" means:

4 (1) a class B county having a population of  
5 more than fifty-six thousand but less than seventy-five  
6 thousand, according to the most recent federal decennial census  
7 or any subsequent decennial census, and having a net taxable  
8 value for rate-setting purposes for the 1988 or any subsequent  
9 property tax year of more than five hundred million dollars  
10 (\$500,000,000) but less than seven hundred million dollars  
11 (\$700,000,000); or

12 (2) a county other than a class B county  
13 defined in Paragraph (1) of this subsection;

14 C. "department" means the taxation and revenue  
15 department, the secretary of taxation and revenue or any  
16 employee of the department exercising authority lawfully  
17 delegated to that employee by the secretary;

18 D. "governing body" means the board of county  
19 commissioners of a county;

20 E. "microbrewer" means a person who is licensed as  
21 a small brewer pursuant to Section 60-6A-26.1 NMSA 1978 to  
22 produce beer in New Mexico and who produces less than five  
23 thousand barrels of beer in a calendar year;

24 [~~E.~~] F. "person" means any individual, estate,  
25 trust, receiver, cooperative association, club, corporation,

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1 company, firm, partnership, joint venture, syndicate or other  
2 association; "person" also means, to the extent permitted by  
3 law, any federal, state or other governmental unit or  
4 subdivision or agency, department or instrumentality thereof;

5 ~~[F.]~~ G. "price" means the total amount of money or  
6 the reasonable value of other consideration or both paid for  
7 alcoholic beverages, inclusive of the amount of any tax paid  
8 pursuant to the Liquor Excise Tax Act; ~~[and~~

9 ~~G.]~~ H. "retailer" means any person having a place  
10 of business within the county who sells, offers for sale or  
11 possesses for the purpose of selling alcoholic beverages within  
12 the county;

13 I. "small winegrower" means a winegrower who is  
14 licensed pursuant to Section 60-6A-11 NMSA 1978 and who  
15 produces fewer than one million two hundred thousand liters of  
16 wine in a year; and

17 J. "tribe" means a federally recognized Indian  
18 nation, tribe or pueblo that is located wholly or partly within  
19 New Mexico."

20 SECTION 4. Section 7-24-10 NMSA 1978 (being Laws 1989,  
21 Chapter 326, Section 3) is amended to read:

22 "7-24-10. AUTHORIZATION TO IMPOSE LOCAL LIQUOR EXCISE  
23 TAX--RATE--USE OF PROCEEDS--ELECTION REQUIRED.--

24 A. The majority of the members elected to the  
25 governing body of a county identified in Paragraph (1) of

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1 Subsection B of Section 7-24-9 NMSA 1978 may enact an ordinance  
2 imposing on any retailer an excise tax on the price paid by the  
3 retailer for alcoholic beverages purchased by the retailer upon  
4 which the tax imposed by this section has not been paid. The  
5 tax may be imposed at a rate not to exceed five percent,  
6 provided that any lower rate shall be an even multiple of one  
7 percent. The tax imposed under this [~~section~~] subsection may  
8 be referred to as the "local liquor excise tax". Any tax  
9 imposed under this [~~section~~] subsection shall be imposed for a  
10 period of not more than three years from the effective date of  
11 the ordinance imposing the tax. Beginning with the general  
12 election in 2012, a local liquor excise tax imposed or  
13 reimposed in a county identified in Paragraph (1) of Subsection  
14 B of Section 7-24-9 NMSA 1978 shall be imposed for a four-year  
15 period. An ordinance imposing a local liquor excise tax  
16 pursuant to this subsection shall become effective only if  
17 approved by the voters in an election held pursuant to  
18 Subsection F of this section.

19 B. The majority of the members elected to the  
20 governing body of a county described in Paragraph (2) of  
21 Subsection B of Section 7-24-9 NMSA 1978 may enact an  
22 ordinance, to become effective only if approved by the voters  
23 in an election held pursuant to Subsection F of this section,  
24 that imposes on all wholesalers distributing alcoholic  
25 beverages to retailers in that county, including tribes or

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1 tribally licensed retailers seeking a state license to purchase  
2 alcoholic beverages for resale on the tribe's land, a tax that  
3 may be referred to as a "local liquor excise tax" at a rate not  
4 to exceed:

5 (1) on spirituous liquors, ninety-nine cents  
6 (\$.99) per liter;

7 (2) on beer, except as provided in Paragraph  
8 (5) of this subsection, twenty-five cents (\$.25) per gallon;

9 (3) on wine, except as provided in Paragraphs  
10 (4) and (6) of this subsection, twenty-eight cents (\$.28) per  
11 liter;

12 (4) on fortified wine, ninety-three cents  
13 (\$.93) per liter;

14 (5) on beer manufactured or produced by a  
15 microbrewer, provided that the beer is sold in this state and  
16 that proof is furnished to the county governing body and the  
17 department that the beer was manufactured or produced by a  
18 microbrewer, five cents (\$.05) per gallon;

19 (6) on wine manufactured or produced by a  
20 small winegrower, provided that the wine is sold in this state  
21 and that proof is furnished to the county governing body and  
22 the department that the wine was manufactured or produced by a  
23 small winegrower, no local liquor excise tax may be imposed;

24 and

25 (7) on cider, twenty-five cents (\$.25) per

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1 gallon.

2 C. A tax imposed pursuant to Subsection B of this  
3 section shall be imposed for a period of not more than four  
4 years from the effective date of the tax.

5 D. Within the final year that a local liquor excise  
6 tax is in effect pursuant to either Subsection A or B of this  
7 section, the governing body may enact an ordinance to extend  
8 the term of the tax, to begin immediately following the  
9 termination of the tax currently in effect, and submit the  
10 question of the tax to the voters of the county in the same  
11 manner as required by Subsection F of this section to approve  
12 the original tax. The governing body may impose a local liquor  
13 excise tax pursuant to this section for a period of up to four  
14 years. The question submitted to the voters shall include the  
15 proposed term of the local liquor excise tax.

16 ~~[B.—The]~~ E. A governing body at the time of  
17 enacting an ordinance imposing [the] a tax authorized in  
18 [Subsection A of] this section shall dedicate the revenue to  
19 fund [educational programs and] direct program services,  
20 excluding indirect costs, for the prevention and treatment of  
21 alcoholism and drug abuse within the county and for no other  
22 purpose. After approval of the imposition of a local liquor  
23 excise tax by the voters but before the effective date of the  
24 ordinance, the governing body shall hold a public meeting for  
25 the purpose of inviting comment on and suggestions for the most

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1 appropriate programs on which to expend the revenue produced by  
2 the tax. The governing body shall invite representatives from  
3 the appropriate [~~Indian~~] tribes [~~nations and pueblos~~] located  
4 in that county to the meeting. If the governing body awards  
5 [~~any~~] a contract using funds derived from the local liquor  
6 excise tax, it shall do so only through a selection process  
7 requiring submission of sealed bids or proposals after public  
8 notice of the opportunity to submit the sealed bids or  
9 proposals.

10 [~~G.~~] F. The governing body enacting an ordinance  
11 imposing [~~the~~] a local liquor excise tax shall submit the  
12 question of imposing the tax to the qualified voters of the  
13 county at a [~~regular or special~~] general election.

14 [~~D. Only those voters who are registered within the~~  
15 ~~county shall be permitted to vote.~~]

16 G. In a county that has, within the county:

17 (1) no incorporated municipality that extends  
18 across the county boundary into a second county in New Mexico,  
19 only the voters registered within the county shall vote on the  
20 question of imposing a local liquor excise tax; or

21 (2) at least one incorporated municipality  
22 that extends across the county's exterior boundaries into a  
23 second county in New Mexico, all of the voters of that  
24 municipality shall be allowed to vote on the question of  
25 imposing a local liquor excise tax in the first county;

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1 provided that, once the first county implements a local liquor  
2 excise tax that the voters of the incorporated municipality  
3 that extends across the county boundary have approved, that  
4 local liquor excise tax shall be imposed in the entire  
5 municipality and the municipality shall be excluded from the  
6 imposition of an additional local liquor excise tax that the  
7 second county in which the municipality is located may  
8 subsequently impose. All voters of the municipality that  
9 extends across the county boundary would be ineligible to vote  
10 on the question of imposing a local liquor excise tax adopted  
11 by the governing body of the second county.

12 H. Two counties that share a municipality that  
13 extends across the counties' common boundary may enter into a  
14 joint powers agreement to share the revenue from a local liquor  
15 excise tax imposed within the shared municipality.

16 I. The election shall be called, conducted and  
17 canvassed in substantially the same manner as provided by law  
18 for general elections.

19 ~~[E.]~~ J. If at an election called pursuant to this  
20 section a majority of the voters voting on the question [~~vote~~]  
21 votes in the affirmative on the question, then the ordinance  
22 imposing the local liquor excise tax shall be approved. If at  
23 such an election a majority of the voters voting on the  
24 question [~~fail~~] fails to approve the question, then the  
25 ordinance shall be disapproved and the question required to be

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1 submitted by [~~Subsection B of~~] this section shall not be  
2 submitted to the voters for a period of at least [~~one year~~] two  
3 years from the date of the election.

4 [~~F. Any~~] K. An ordinance enacted under the  
5 provisions of this section [~~which~~] that imposes a local liquor  
6 excise tax or changes the rate of tax imposed shall include an  
7 effective date [~~which~~] that is the first day of any month  
8 [~~which~~] that begins no earlier than ninety days after the date  
9 of the election. A certified copy of [~~any~~] an ordinance  
10 imposing a local liquor excise tax shall be mailed or  
11 personally delivered to the department within five days after  
12 the ordinance is certified to have been approved by the voters.

13 [~~G. Any~~] L. An ordinance repealing the imposition  
14 of a tax under the provisions of this section shall contain an  
15 effective date [~~which~~] that is the first day of any month  
16 beginning no earlier than sixty days from the date the  
17 ordinance repealing the tax is adopted by the governing body.  
18 A certified copy of [~~any~~] an ordinance repealing a local liquor  
19 excise tax shall be mailed or personally delivered to the  
20 department within five days of the date the ordinance is  
21 adopted."

22 SECTION 5. Section 7-24-15 NMSA 1978 (being Laws 1989,  
23 Chapter 326, Section 8) is amended to read:

24 "7-24-15. [~~ADMINISTRATIVE CHARGE~~] ADMINISTRATION.--The  
25 department [~~may deduct an amount not to exceed five percent of~~

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1 ~~the proceeds of a local liquor excise tax as a charge for the~~  
2 ~~administrative costs of collection, which amount shall be~~  
3 ~~retained by the department for use in administration of]~~ shall  
4 collect the net proceeds of the taxes imposed pursuant to the  
5 Local Liquor Excise Tax Act and distribute those receipts  
6 pursuant to Section 7-1-6.1 NMSA 1978 to the county from which  
7 the local liquor excise tax revenue was remitted."

8 SECTION 6. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2011.

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