

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/16

SPONSOR Soules LAST UPDATED _____ HB _____

SHORT TITLE Local Option District Spirit Sales Elections SB 94

ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate But Minimal				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 47, SB 147, SB 163, SB 175, SB 193

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Department of Finance and Administration (DFA)
 Department of Public Safety (DPS)
 New Mexico Municipal League

SUMMARY

Senate Bill 94 would amend the Liquor Control Act to allow restaurant licensees to also serve New Mexico-produced distilled spirits. Currently, restaurant licensees can serve beer and wine in establishments that serve full meals. This bill will allow any local option district to hold an election to add distilled spirits produced in New Mexico to what restaurant licensees are currently allowed to sell and serve. A local option district electorate's approval of the issuance of restaurant licenses that allow the sale of beer and wine and New Mexico produced distilled spirits would apply to all restaurant licenses within the local option district.

FISCAL IMPLICATIONS

According to RLD, this bill could increase the profitability of a restaurant license and may increase the number of restaurant license applications processed by RLD. National trends indicate growth in the distilled spirits industry, with the volume of U.S. spirits increasing 2.2 percent in 2014 according to the Distilled Spirits Council. Although spirits only represented 5 percent of alcohol volume consumed, the industry represented 36 percent of retail dollar sales in 2012. According to the U.S. Beverage Alcohol Forum, between 2007 and 2012, spirits consumption grew 13.3 percent compared to wine (9.0 percent) and beer (-4.3 percent).

In 2009, total spirits consumption in New Mexico reached 2.9 million gallons and grew to 3.5 million gallons by 2013. Fiscal implications of this bill would only apply to New Mexico-produced distilled spirits, which currently applies to only six licensees (according to RLD). Even with increased spirits consumption, declining trends in beer consumption may offset gains in revenue. As such, this bill's fiscal impact to revenues are indeterminate.

SIGNIFICANT ISSUES

Unlike dispenser licenses (e.g. bars and package liquor stores) restaurant licenses are not included in the liquor license quota system. The New Mexico Liquor Control Act "quota" currently allows one license per 2,000 population in a local option district. This bill would make restaurant licenses similar to dispenser licenses but would not include restaurant licenses as part of a local option district's quota.

DFA provided the following:

This bill may limit community and state ability to regulate alcohol outlet density (i.e., the number of alcohol outlets in a given area). Local option districts allow local political jurisdictions, typically counties or municipalities, to allow decisions on certain controversial issues to be based on popular vote of the electorate within their borders. In practice, local option districts are usually used to decide issues related to alcoholic beverage sales.

Any county or municipality containing a population over 5,000 may form a local option district by voting to approve the sale of alcoholic beverages pursuant to 60-5A-1 NMSA. According to RLD, there are currently 33 county local option districts with two dry counties. There are currently 95 municipal local option districts. Statewide, the total number of allowable liquor licenses by quota is 1,047; however, there are 1,411 licenses in operation.

<http://www.rld.state.nm.us/uploads/files/Liquor%20License%20Quota%20List%2007-13-15%202010.pdf>

RLD provided the following:

This bill may impact the economic value of all transferrable dispenser licenses, which obtain much of their current value by allowing the license holder to sell spirits by the drink in a restaurant setting.

Section 30-7-3 NMSA 1978 prohibits concealed-carry firearms in any licensed establishment that sells spirits by the drink, but allows restaurants that sell beer and wine only to opt for allowing concealed-carry firearms.

The "Commerce Clause" of the United States Constitution (Clause 3, Section 8, Article 1) gives Congress the power to regulate commerce with foreign nations, the states, and Indian tribes. Prohibiting the sale of non-New Mexico produced spirits with a license that otherwise allows the sale of non-New Mexico beer and wine could be seen as discriminatory and an undue burden on interstate commerce.

RELATIONSHIP

HB 47, SB 147, SB 163, SB 175, SB 193, and this bill all relate to liquor control. HB 47 allows governmental liquor licenses to be leased and operated at certain qualifying facilities not owned or operated by governmental entities. SB 147 allows for governmental licenses to be issued to the Spaceport Authority. SB 163 proposes rulemaking that allows segregated sales of beer, wine, or cider packaged in growlers and establishes procedures related to refilling growlers. SB 175 allows a dispenser licensee to lease certain license rights. And SB 193 allows the sale, service, delivery, or consumption of alcoholic beverages on the grounds of ski areas.

SL/jo