

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

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**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** 1/30/2024

**Bill No:** HB213

**Sponsor:** M.Cadena; D.Lente; C.Parajon;  
J.Hernandez  
**Short Title:** Amending the Liquor Excise Tax Act;  
Repealing the Local DWI Grant  
Program Act

**Agency Name and Code Number:** DFA-Local Government Division:  
341  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NA	NA	NA	NA

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue					Recurring	Fund
FY24	FY25	FY26	FY27	FY28	or Nonrecurring	Affected
		(\$25,249)	(\$25,462)	(\$25,673)	Recurring	General Fund
		(\$13,225)	(\$13,331)	(\$13,437)	Recurring	Local DWI Grant Fund
		\$475.06	\$453.80	\$432.65	Recurring	Drug Court Fund
		\$23,749	\$23,962	\$24,173	Recurring	Alcohol Harms Alleviation Fund
		\$23,749	\$23,962	\$24,173	Recurring	Medicaid Program

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

House Health and Human Services Committee (**HHHS**) **HB213 as amended** adds to the title “making appropriations”; redistributes approximately \$25 million from the General Fund, and then distributes the balance of tax revenues, after allocating \$250,000 monthly for the drug court fund, to the Alcohol and Substance Use Harms Alleviation Fund in the following allocations:

- 50% to the state Medicaid program to directly support and provide match dollars for federal funds that support alcohol and substance use harms prevention, treatment and recovery services. Funding is subject to appropriation by the legislature. \$500,000 is appropriated to the Indian Affairs Department to contract for a five-year study on the effects of tax policy on alcohol and substance use across demographics in NM.
- 40% to the DFA local government division for distribution to counties based on an updated formula using a ten-year average of alcohol-related injuries and deaths in each county. The division shall determine the amount of each distribution at the end of a fiscal year and shall make distributions on or before November 1 of each year.
- 10% to the Indian Affairs Department for distribution to municipalities, counties and Indian nations, tribes, and pueblos.

House Bill 213 (HB213) eliminates the distribution of liquor excise tax to the Local DWI Grant Fund and creates the Alcohol and Substance Use Harms Alleviation Fund (ASUHAF). HB213 also eliminates the monthly distribution to the City of Farmington which supports their ability to provide alcohol treatment and rehabilitation services for street inebriates; it also changes the distribution to the Drug Court fund from a percentage to a flat monthly distribution; it also distributes approximately \$25 Million to the general fund with the remainder of liquor excise tax being distributed to the newly created ASUHAF.

HB213 creates definitions for “barrel” and “retailer”. The bill deletes the definition of “fortified wine” and “wholesaler”. HB213 moves the imposition of the liquor excise tax from the wholesaler to the retailer and for the tax to be paid on the price of the alcoholic beverages sold by the retailer. HB 213 is unique compared to other laws as it grants exemptions from liquor excise taxes to microbrewers, small winegrowers, and craft distillers. Additionally, the law offers exemptions if a retailer produces or manufactures the alcoholic beverage themselves and sells it on their premises. The tax structure on alcohol sold by the retailer will be based on a percentage of each serving and not based on volume as it is currently paid by the wholesaler. HB213 does not define a serving but does exempt the retailer from paying the tax if the retailer is a microbrewer, a small winegrower or a craft distiller, or if the alcoholic beverage is manufactured or produced by the retailer and the alcoholic beverage is sold on the retailer’s premises.

The Department of Finance and Administration (DFA) will administer the ASUHAF, subject to appropriation by the legislature for alcohol and substance use harms prevention, treatment, and recovery services to individuals throughout New Mexico, including on lands of Indian nations, tribes and pueblos.

The effective date of the bill is July 1, 2025.

### **FISCAL IMPLICATIONS**

**HHHS HB213 as amended** removes the monthly \$2,084,000 carve out for the general fund; distributes 50% of the revenue to Medicaid, 40% to counties through LGD and 10% to Indian Affairs Department. There is no administrative fees in the bill for LGD or IAD to administer the fund distributions.

Under current statute, the liquor excise tax generates approximately \$50 million according to the latest revenue estimate for FY25. The current statute stipulates 50% of the collected revenue is distributed to the general fund, 45% of the revenue is distributed to the Local DWI Grant Fund, 5% of the revenue is distributed to the Drug Court fund and \$249,000 is distribution to the city of Farmington which supports their ability to provide alcohol treatment and rehabilitation services for street inebriates.

The Department of Finance and Administration used the liquor excise tax revenue forecast from the Consensus Revenue Estimating Group (CREG) in December 2023 to forecast the fiscal impact of HB 213. The proposed legislation makes additional changes to the liquor excise tax distributions in Section 7-15-5 NMSA 1978 by converting the Drug Court distribution from a percentage to a fixed monthly amount of \$250 thousand. The entire liquor excise tax revenue would be distributed to the newly created ASUHAF.

The general fund would experience a decrease of approximately \$25 million and the Local DWI Grant Fund would see an estimated \$13 million reduction of its liquor excise tax revenue from an estimated \$22 million to about \$9 million per fiscal year.

Enacting HB 213 would eliminate the municipality in a class A county distribution resulting in a decrease in revenue of \$250 thousand for the City of Farmington to fund programs such as the Jail-Based Treatment & Aftercare program, and Adult Misdemeanor Compliance Program (MCP). Whereas, HB 213 would increase the liquor excise tax revenue distribution to the Drug Court by \$475 thousand in FY26 to \$433 thousand in FY28.

## **SIGNIFICANT ISSUES**

**HHHS HB213 as amended** removes lines 8 – 11 on page 13, which contained the general and overarching guidelines for use of the fund are now eliminated. Unlike section B of the amendment that specifies use of the funds to “provide alcohol and substance use harms prevention, treatment, and recovery services to individuals throughout New Mexico,” section C of the amendment includes no guidelines whatsoever. This would leave the 40% distribution to the counties open for uses outside the previous intent of the bill and potentially estranged from the current uses established within the structure of the local DWI program act. It should also be noted that the 40% allocated to the counties is 5% less than the current allocation of 45%.

With no codified expectations for program purposes or goals and minus the provisions currently in place through the Local DWI Grant Program Act (11-6A-1 through 11-6A-6), it further raises concerns that prevention, treatment, law enforcement, misdemeanor compliance programs, screening and tracking, alcohol-related domestic violence, alternative sentencing, coordination, planning, and evaluation could all go away. This would be in addition to the 10% to 30% match from local governments currently required to receive such funding.

**HB213 as amended** states that the distributions shall be made by November 1 of each year. The tax revenue is collected monthly and there is a two-month lag from the reporting by the retailer, the payment to the Taxation and Revenue Department and then the transfer to the agency overseeing the fund. By November 1, the ASUHAF will only have two months of revenue received and therefore the agency will not have the funds to distribute. Currently, the LDWI Distributions are made quarterly to the counties, after the revenue has been received by the fund.

### **Local Government Programs, including DWI and Domestic Violence programs, will be cut off from funding:**

If HB213 were to pass and become law, beginning in FY26 or on July 1, 2025, the county DWI Programs would not be able to provide the treatment, prevention, and community compliance monitoring for clients that are court-ordered DWI, Domestic Violence or other alcohol-related convictions to receive services such as alcohol or substance abuse treatment, the ability to coordinate their community service work, provide them with life skills to include obtaining their GED or attend higher education classes to improve their education which may improve their self-esteem and guide them towards becoming a productive citizen in their community.

### **LDWI Grants for Local Government eliminated:**

Without LDWI Grant and Distribution funding, the Local DWI Programs would be dissolved since the county budgets could not absorb the amount of funding needed and currently provided through the grant and distribution allocations. Repealing the Local DWI Grant Act and Fund would be detrimental to the years of progress that has been made toward reducing the incidents of DWI in local communities across the state.

## **Loss of funding growth for Local Governments**

The Local DWI Grant Program Act (11-6A NMSA 1978) was enacted in the 1993 legislative session. Several updates to the Act have occurred in subsequent years, with the last update occurring in 2003. The mission of the act is to reduce the incidence of DWI, alcoholism, alcohol abuse and alcohol-related domestic violence. In FY25, the LDWI Grant Program Fund is projected to receive \$22.8 million. The statute provides a formula through which each of the 33 counties in the state receives a minimum distribution for the operation of their Local DWI Program. The statute also allows for six counties to receive a total of \$2.8 million in Detoxification Grants and it sets aside \$1.9 million for DWI Grants. The funding streams are awarded by the DWI Grant Council to county programs for treatment, prevention, compliance monitoring, and alternative sentencing programs.

The statute sets aside for DFA to receive \$600,000 for administration of the program and the Department of Transportation receives \$300,000 to support the Indigent Ignition Interlock Fund. The attached shows the estimated distribution and the formula as set in statute for FY25.

The Local DWI Programs fill a gap and provide needed services in their community. They collaborate with their Magistrate, District and Municipal courts by providing services and guidance for individuals who have been convicted of alcohol-related crimes in their community.

The Local DWI Programs offer substance abuse-related treatment, compliance monitoring, LifeSkills, and prevention services for members of their community. Evidence-based treatment modalities include Moral Reconciliation Therapy (MRT), MATRIX Model, Community Reinforcement and Family Training (CRAFT), Motivational Interviewing (MI), Cognitive Behavioral Therapy.

The Local DWI Programs also support law enforcement efforts in their community to keep our streets safer by funding activities such as directed patrols, DWI Checkpoints and underage drinking operations.

The Local DWI Programs collaborate with Teen Court programs which help our youth who may have discipline issues in school or have received a traffic ticket, stay off the court's juvenile docket and provide them with alternative options like attending life skills classes, counseling, and develop self-esteem building skills.

The Local DWI Programs will partner with local cab or UBER services to offer safe rides home for individuals who may have had too much to drink especially during the holidays.

One specific example of services that are offered in San Juan County:

“The San Juan County DWI Program utilizes 100% of funding received through the LDWI Grant to operate its Jail-Based Treatment & Aftercare program, which has been the priority for LDWI grant funding in San Juan since 1995 after the law was enacted. The program is modeled after evidence-based programming and protocols for effective treatment and has been shown to be more effective than other DWI sentencing milieus. The program serves, on average, 350-400 individuals annually. Additionally, nearly 80% of the population served by the jail-based treatment program are Native American individuals, represented by public defenders due to indigence. This historically underserved population would otherwise just be sitting in jail, serving a sentence for DWI and receiving no treatment or aftercare services, ultimately being turned back out into the same environments from which they came. The San Juan Program

experiences a recidivism rate of less than 10%. In addition to this, the program provides weekly programming, using the Community Reinforcement Approach Family Training, CRAFT, for family members and other loved ones (Concerned Significant Others, CSOs) who are supporting participants in the jail-based treatment program. On average, ten (10) CSOs are served through CRAFT programming each week, for a total of 520 CSO encounters annually.

Additionally, LDWI Distribution Grant funding provides support for our Adult Misdemeanor Compliance Program (MCP), providing community supervision for individuals involved in the Magistrate Court system in San Juan County. The MCP program provides community supervision services for an average of 500 individuals annually. Without the MCP program, individuals would otherwise be held in jail or be released, unsupervised, into the community, potentially negatively impacting public safety in the community”.

## **PERFORMANCE IMPLICATIONS**

### **ADMINISTRATIVE IMPLICATIONS**

There is no appropriation in this bill for DFA to administer the new fund. To set up and administer a new program would need four FTEs at range 70 and one supervisor at range 85.

The department could potentially leverage the expertise of current staff administering the Local DWI Grant Program Fund to implement the proposed Alcohol and Substance Use Harms Alleviation Fund. In the event a new program must be established to implement the legislative intent of HB 212, the estimated cost to staff the program is \$560.8 thousand.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB213 conflicts with HB112, HB179, HB213, HB217, and SB147.

Furthermore, HB 213 contradicts the increased distributions outlined in SB 144 from the Local DWI Grant Program Fund, which is replaced with a new fund in HB 212/HB213.

### **TECHNICAL ISSUES**

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

### **AMENDMENTS**