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HOUSE BILL 259

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MIGUEL P. GARCIA

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; AMENDING THE LIQUOR CONTROL ACT  
TO PROVIDE A PETITION METHOD FOR DENIAL OF A TRANSFER OF A  
LICENSE TO A LOCATION IN A HISTORIC COMMUNITY.

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

Section 1. Section 60-6B-4 NMSA 1978 (being Laws 1981,  
Chapter 39, Section 40) is amended to read:

"60-6B-4. ISSUANCE OR TRANSFER OF LICENSE--APPROVAL OF  
APPROPRIATE GOVERNING BODY.--

A. Prior to the approval of the issuance of a new  
license, and prior to the approval of any transfer permitted by  
Section [~~39 or 113 of the Liquor Control Act~~] 60-6B-3 or  
60-6B-12 NMSA 1978, the director shall notify the governing body  
of his preliminary approval of the issuance or transfer of the  
license. Notice to the governing body shall be by certified

1 mail.

2 B. A governing body which has received a notice of  
3 preliminary approval of the issuance or transfer of a license  
4 from the department may approve or disapprove the issuance or  
5 transfer of the license in accordance with the provisions of  
6 this section.

7 C. Within forty-five days after receipt of a notice  
8 of preliminary approval from the department, the governing body  
9 shall hold a public hearing on the question of whether the  
10 department should approve the proposed issuance or transfer.

11 D. Notice of the public hearing required by  
12 Subsection C of this section shall be given by the governing  
13 body by:

14 (1) publishing a notice of the date, time and  
15 place of the hearing at least once a week for two consecutive  
16 weeks in a newspaper of general circulation within the  
17 territorial limits of the governing body. The notice shall set  
18 forth:

19 (a) the name and address of the licensee;

20 (b) the action proposed to be taken by  
21 the department;

22 (c) the location of the licensee's  
23 premises; and

24 (d) such other information as may be  
25 required by the department; and

1 (2) sending a notice by certified mail to the  
2 applicant of the date, time and place of the public hearing.

3 E. The governing body may designate a hearing  
4 officer to conduct the hearing. A record shall be made of the  
5 hearing.

6 F. The governing body may disapprove the issuance or  
7 transfer of the license if:

8 (1) the proposed location is within an area  
9 where the sale of alcoholic beverages is prohibited by the laws  
10 of New Mexico;

11 (2) the issuance or transfer would be in  
12 violation of a zoning or other ordinance of the governing body;  
13 or

14 (3) the issuance or transfer would be  
15 detrimental to the public health, safety or morals of the  
16 residents of the local option district.

17 G. Within thirty days after the public hearing, the  
18 governing body shall notify the department as to whether the  
19 governing body has approved or disapproved the proposed issuance  
20 or transfer of the license. If the governing body approves the  
21 proposed issuance or transfer of the license or fails to either  
22 approve or disapprove the issuance or transfer of the license  
23 within thirty days after the public hearing, the director may  
24 give final approval to the issuance or transfer of the license,  
25 unless the issuance or transfer has been disapproved as provided

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1 in Section 60-6B-4.1 NMSA 1978.

2 H. If the governing body disapproves the issuance or  
3 transfer of the license, it shall notify the department within  
4 the time required by Subsection G of this section setting forth  
5 the reasons for the disapproval. A copy of the minutes of the  
6 public hearing shall be submitted to the department by the  
7 governing body with the notice of disapproval. If the governing  
8 body disapproves of the issuance or transfer of the license, the  
9 director shall disapprove the issuance or transfer of the  
10 license.

11 I. If the governing body approves the issuance or  
12 transfer of the license, it shall notify the department within  
13 the time required by Subsection G of this section of its  
14 approval. If the governing body approves of the issuance or  
15 transfer of the license, the director shall approve the issuance  
16 or transfer of the license. "

17 Section 2. A new section of the Liquor Control Act,  
18 Section 60-6B-4.1 NMSA 1978, is enacted to read:

19 "60-6B-4.1. [NEW MATERIAL] DENIAL OF APPLICATION FOR  
20 LICENSE TO BE LOCATED IN A HISTORIC COMMUNITY--PETITION  
21 REQUIREMENTS. --

22 A. The director shall disapprove the issuance or  
23 transfer of a license to a location within a historic community  
24 if:

25 (1) the property owners in the historic

1 community present their findings showing by a preponderance of  
2 evidence that the issuance or transfer would be detrimental to  
3 the health, safety or morals of the community and petition the  
4 director based on those findings to disapprove the issuance or  
5 transfer of the license to that location;

6 (2) the petition is submitted to the director  
7 and to the governing body of the local option district within  
8 forty-five days after the governing body of the local option  
9 district has received notice from the director of preliminary  
10 approval of the issuance or transfer of a license to a location  
11 in the historic community; and

12 (3) the petition contains the signatures of at  
13 least seventy-five percent of the owners of property located  
14 wholly within one thousand feet of the exterior boundaries of  
15 the proposed licensed premises.

16 B. The petitioners must present to the director with  
17 the petition signatures:

18 (1) a survey showing the location of the  
19 proposed licensed premises and the properties located wholly  
20 within one thousand feet of the exterior boundaries of that  
21 proposed licensed premises;

22 (2) a letter from the county assessor  
23 certifying the names and addresses of the owners of the  
24 properties in Paragraph (1) of this subsection;

25 (3) documentation certifying that the community

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1 is a historic community; and

2 (4) the findings of the property owners in the  
3 historic community showing by a preponderance of evidence that  
4 the issuance or transfer of the license to the proposed location  
5 would be detrimental to the health, safety or morals of the  
6 community.

7 C. The county assessor of the county in which the  
8 historic neighborhood is located, upon the request of property  
9 owners proposing to petition the director pursuant to Subsection  
10 A of this section, shall certify in writing the names and  
11 addresses of the property owners of property located wholly  
12 within one thousand feet of the proposed licensed premises that  
13 is the subject of the petition.

14 D. The director shall determine within thirty days  
15 of receipt of a petition pursuant to Subsection A of this  
16 section whether the petition meets the requirements of  
17 Subsections A and B of this section. If the petition meets the  
18 requirements of Subsections A and B of this section, the  
19 director shall disapprove the issuance or transfer of a license  
20 to the licensed premises within the historic community,  
21 notwithstanding the approval of the governing body of the local  
22 option district pursuant to Subsection 60-6B-4 NMSA 1978.

23 E. As used in this section, "historic community"  
24 means a community or town established prior to 1848 that was  
25 acknowledged as being part of a grant of land made by the

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1 government of Spain or the government of Mexico that was  
2 confirmed by the United States congress, recognized by the 1891  
3 court of private land claims or recorded under United States  
4 patent laws as described in Section 49-1-2 NMSA 1978. "

5 Section 3. A new section of the Liquor Control Act is  
6 enacted to read:

7 "[NEW MATERIAL] INTERFERENCE WITH HISTORIC COMMUNITY  
8 PETITION.--It is a violation of the Liquor Control Act for a  
9 person to interfere with or influence the petition process  
10 undertaken by property owners in a historic community pursuant  
11 to Section 60-6B-4.1 NMSA 1978. "