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FISCAL IMPACT REPORT

ORIGINAL DATE 2/14/17
LAST UPDATED _____ **HB** 296
SPONSOR Little
SHORT TITLE Liquor License Changes **SB** _____
ANALYST Amacher

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	Indeterminate	Indeterminate		See Fiscal Impacts

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate			See Fiscal Impacts

(Parenthesis () Indicate Expenditure Decreases)

Relates to: SB 58, SB 124, SB 201, HB 39, HB 51, HB 56, HB 162, HB 262

Conflicts with: SB 37, SB 57, and SB 211

SOURCES OF INFORMATION

LFC Files

Responses Received From

Economic Development Division (EDD)
 Gaming Control Board (GCB)
 Office of the Attorney General (OAG)
 Public Regulation Commission (PRC)
 Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 296 amends the Liquor Control Act by amending provisions for dispenser's and retailer's license provisions, repealing limitations on the number of dispenser's and retailer's license; repealing canopy, restaurant, and club licenses; and amending other sections of the Liquor Control Act accordingly. If enacted, this bill is effective June 16, 2017.

FISCAL IMPLICATIONS

The Regulation and Licensing Department (RLD) suggests additional operating budget funds will be needed, if HB 296 is enacted. The RLD proposes \$116,600 per year is the estimated combined salary and benefits cost of hiring an additional hearing officer plus a licensing clerk. Additional administrative costs may also be incurred on behalf of the local governing bodies due to the required hearing procedures for the dispenser and retailer licensure. There is a potential of a higher frequency of hearings as there is no quota, no cap, and no limit to the dispenser and retailer licensure that could generate more applications. It is possible that any revenue generated would be used to offset program costs.

Aside from the administrative costs, there is a significant change to the revenues generated from application fees that was not addressed by RLD. HB 296 eliminates three types of licenses and the option to lease and transfer. It is unclear what the fiscal impact may be by eliminating these types of licenses. It is also difficult to estimate the number by which applications for a dispenser's or retailer's license would actually increase.

Below is a snapshot of the liquor license application fees:

License Type	Current Application Fee	As Proposed in HB 296
Canopy	\$ 1,300	\$ -
Restaurant	\$ 1,050	\$ -
Club (with less than 250 members)	\$ 250	\$ -
Club (with more than 250 members)	\$ 1,250	\$ -
Retailer	\$ 1,300	\$ 1,300
Dispenser	\$ 1,300	\$ 1,300

The provisions outlined effectively changes the entire industry and business models for those selling liquor. In an undefined timeline the majority of those in the liquor business would be required to change licensure and business models if HB 296 is enacted. This transition may impact revenues generated from liquor taxes, gross receipts, and other fees as these businesses adapt to the new changes proposed. It is possible that many liquor sales would cease provided that the canopy, club and restaurant licenses are repealed. The same may be true for all lease and transfer agreements. The bill does not discuss how to transition current licenses, transfers, or lease agreements.

SIGNIFICANT ISSUES

House Bill 296 significantly amends the Liquor Control Act (Act) by amending provisions for dispenser's and retailer's license provisions. The provisions no longer allow for licenses to transfer from one person to another or a license to be leased and operated by another. Transfers from one district to another are no longer permitted. However, a transfer within the same local option district is allowed. HB 296 removes from dispenser's license the ability to sell packaged liquor for off-premise consumption; *a dispenser may only sell by the drink*. This bill permits the holder of a dispenser's license to also hold a retailer's license. This bill makes it an offense for a license holder to employ a non-certified alcohol server.

HB 296 repeals the limitation on the number of dispenser's and retailer's licenses thereby removing the quota system in place. As outlined the canopy, restaurant, and club licenses are repealed in whole from the Act. HB 296 amends the application process to include a sworn affidavit of debt clearances from wholesalers and again at time of renewal. HB 296 requires more participation on behalf of the local governing bodies in approving or disapproving licenses in public hearings.

HB 296 entitles the holder of a retailer's license to sell only alcoholic beverages in unbroken packages on the licensed premises. A business that holds a retailer's license shall not serve or permit the consumption of alcoholic beverages *by the drink* on the license premises unless they also hold a dispenser's license. The retailer's license is not transferable from person to person, and shall not be leased. Furthermore, the retailer's license is not transferable from one location to another, except within the local option district in which the retailer is licensed. As outlined, licensed premises no longer includes rural dispenser licenses located in the unincorporated areas of a county with a population of less than thirty thousand.

As proposed in HB 296, an applicant for license or transfer of allocation must submit a written application under oath with payment for a \$200 application fee. Floor plans, a description of the proposed license premises, forms of identification, and a sworn affidavit for any previous or current liquor licenses are required at time of application. This affidavit must address that all wholesalers who are or were creditors of the applicants have been paid.

HB 296 provides for a penalty for those who remove or deface the five foot by five foot notice of application attached to the licensed premises. A punishment is allowed for in the form of a fine of three hundred dollars (\$300), or imprisonment in the county jail for not more than 120 days, or by both.

Uniquely, the amendments require the director to submit notification to the governing body of new applications, renewals, and transfers in which the license will be located. It is then up to the governing body to approve or disapprove within 45 days of receipt of notice from the director. The governing body shall hold a public hearing on the question.

HB 296 appears to put the responsibility of due diligence on the governing body in ensuring the application does not conflict with: 1) current New Mexico laws regarding location of sale of alcoholic beverages; 2) violation of zoning or other ordinances of the governing body; and 3) issuance would be deemed detrimental to the public health, safety or morals of those in the local option district. A person aggrieved by approval or disapproval of the license may appeal to the district court. If the disapproval is based upon the local option district's disapproval, the governing body is then party to an appeal.

HB 296 repeals the following from the Liquor Control Act:

- Restaurant License (Chapter 60-6A-4 NMSA 1978);
- Club License (Chapter 60-6A-5 NMSA 1978);
- Limitation on Number of Licensees (Chapter 60-6A-18 NMSA 1978);
- Wholesaler's Lien (Chapter 60A-6B-3 NMSA 1978);
- Inter-local Option District and Inter-County Transfers (Chapter 60-6B-12 NMSA 1978);
- Canopy License (Chapter 60-6B-14 through 60-6B-16 NMSA 1978); and,
- Sales by Clubs (Chapter 60-7A-13 NMSA 1978).

ADMINISTRATIVE IMPLICATIONS

RLD indicates that within the Alcohol & Gamin Division additional personnel would be required if HB 296 is enacted. It is estimated that there would be an increase in the number of license applications, with an annual renewal process of the applications, which would require funding and reclassification of two vacant FTE. These positions are authorized but currently unfunded. RLD notes that one of the licensing clerk FTEs would need to be funded and a second FTE would need to be reclassified to a hearing officer position and funded.

CONFLICT, RELATIONSHIP

SB 37 conflicts with HB 296. SB 37 amends the Restaurant License, of the Liquor Control Act to allow for the sale of beer, wine and spirituous liquors distilled and bottled in New Mexico. HB 296 would effectively repeal these proposed amendments by repealing the restaurant license.

SB 57 and SB 211 conflict with HB 296. Both bills amend the Liquor Control Act to allow for the partial lease of license. HB 296 does not permit leasing, either whole or in part, of a dispenser's or retailer's license.

HB 296 relates to SB 58, SB 124, SB 201, HB 39, HB 51, HB 56, HB 162, and HB 262 in that they amend the Liquor Control Act.

OTHER SUBSTANTIVE ISSUES

The provisions outlined effectively changes the entire industry and business models for those selling liquor. In an undefined timeline the majority of those in the liquor business would be required to change licensure and business models if HB 296 is enacted. This transition may impact revenue generated from liquor taxes, gross receipts, and other fees as these businesses adapt to the new changes proposed. It is possible that many liquor sales would cease provided that the canopy, club and restaurant licenses are repealed. The bill does not discuss grandfathering in current licenses until expiration or any other transition language. Chain restaurants and stores that operate under a lease agreement for certain dispenser privileges to sell by the drink or the package may also cease.

It is difficult to say how long it may take for the necessary rule promulgation to take place by the Alcohol and Gaming Division to incorporate the changes proposed. Until such rules are in place, businesses may not be in the position to apply for the retailer's or dispenser's licenses proposed in this bill. For example, chain stores such as a Smith's or Albertson's would have to seek out their own retailer's license to sell by the package. This would also include ensuring their premises become licensed premises to sell liquor. The same may be true for chain restaurant's, such as a Chili's or Applebee's', would need to ensure their premises are licensed in addition to seeking their own application to sell by the drink versus relying on existing lease agreements to sell liquor.

The effect of the provisions outlined in HB 296 may require those businesses selling liquor to address higher liability insurance costs, an increase in server trainings and certifications, and other fees. Those licensed must ensure there is no debt to the wholesalers at time of application or application renewal. As outlined in HB 296, the wholesalers may put a lien on the license if debt exists. This has the potential to change the transactions between wholesaler and the retailer to cash based system.

Interestingly, as permitted under HB 296, there is no distinction made from selling only beer and wine to selling all types of alcohol.

Concerning corporations, limited liability companies, and trusts the application process is relatively unchanged under HB 296. However, because chain stores can no longer lease privileges and must seek out a license directly the application process presents other unique challenges. Currently, a corporation that applies for a liquor license must submit the articles of incorporation; identification of all officers, directors and those stockholders owning ten percent or more; and full disclosure of the corporation's structure and financial responsibilities. In addition, fingerprinting in certain instances must be submitted at time of application.

The RLD indicates that under current law, certain types of licenses (dispenser, retailer and canopy) are limited to 1 license per 2,000 inhabitants; resulting in a current total number of 1,411 total quota liquor licenses statewide. Each such quota license currently has a market value since these licenses are transferable. Removal of the quota system may change accessibility and market value. Furthermore, RLD expresses concern that this bill may impede the ability of governmental license holders to lease their licenses. The utility of such licenses is greatly reduced since governmental entities do not typically operate their own liquor license.

The Office of Attorney General (OAG) notes it is unclear what becomes of current and valid canopy licenses, restaurant licenses and club licenses. Would these licensees be provided the option to be grandfathered in such a way that the licensee could timely reapply for other licenses upon expiration of the current license? Or does the license extinguish upon expiration?

The OAG indicates it is noteworthy that if a governing body approves the license, the director "shall" disapprove the issuance of license. Likewise, if a governing body disapproves the license, the director "shall" disapprove the issuance of a license as well. This process applies to the transfer of licenses within a local option district as well.

With such swift action in repealing all language related to restaurant, club and canopy type licenses, it may be of value to those with current licenses to seek out an option for due process such as the one currently available for an appeal of a application for license in district court. As drafted HB 296, offers no recourse, no timeline, and no instruction as to how to transition for those who currently hold restaurant, canopy, and club licenses.

The Economic Development Department (EDD) notes the passage of this bill may increase the number of economic opportunities in the non-urban portion of the state since it appears the cost of acquiring and maintaining a liquor license may be diminished. EDD suggests keeping the apportionment (quota) for package sales and providing a reasonable time frame for existing dispenser license holders to recoup their investment before the license loses value. EDD further suggests amending the law to keep existing provisions in place for all communities over 80,000 and adopting the proposed changes for all other communities; again providing license holders in a reasonable time frame to sell, transfer or recoup their investment in their current license. As EDD points out this bill does not address how to handle collateralized license under the current law.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Not enacting this bill will protect the investment for existing license holders. The quota system for dispenser's licenses will remain in place allowing for sales of alcoholic beverages either by the drink or by the package. Chain stores may continue to lease privileges of a dispenser's license.

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