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FISCAL IMPACT REPORT

SPONSOR: Duran DATE TYPED: 02/16/01 HB _____
 SHORT TITLE: Exception to the Open Container Law SB 229
 ANALYST: Trujillo

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	\$ 3,000.0	See Narrative	Recurring	Federal Funds

(Parenthesis () Indicate Revenue Decreases)

DUPLICATION

Duplicates HB380 Relates to SB246

SOURCES OF INFORMATION

LFC Files
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Taxation and Revenue Department
 Children Youth and Families Department (CYFD)
 Corrections Department (CD)
 NM Highway and Transportation Department (NMHTD)

SUMMARY

Synopsis of Bill

SB 229 eliminates the exception to the statute that allows any person employed by a person licensed by the Liquor Control Act, while discharging his duties as an employee, to consume or possess alcoholic beverages in open containers while in a motor vehicle. These employees will be subject to all requirements of the Act if this bill is passed. If enacted, these employees will be prohibited from possessing any open alcoholic beverage container or consuming any alcoholic beverage in the passenger areas of any motor vehicle located on a public highway or right-of-way of a public highway.

Significant Issues

NMHTD reports passage of SB229 will put New Mexico in compliance with federal regulations and stop transfer of approximately \$3.0 million of federal funds in FY02 from highway construction projects in New Mexico because of federal sanctions.

FISCAL IMPLICATIONS

NMHTD reports passage of SB229 brings New Mexico into compliance with federal criteria by October 1, 2001 as required in 23 U.S.C. Section 157. Failure to pass this bill will result in sanctions of federal construction dollars of approximately \$3.0 million in FY 02 and \$6.0 million in FY03. Sanctions will require that these funds be transferred to hazard elimination or traffic safety programs.

CD reports there is no appropriation in the bill to cover the possible minor increase in costs to the Department. The number of new offenders is likely to be small and the offender would likely be sentenced to probation.

Also, the cost per client in Probation and Parole for a standard supervision program is \$1,536 per year. The cost per client in Intensive Supervision programs is \$3,922 per year. The cost per client in department-operated community corrections programs is \$5,519 per year. The cost per client in privately-operated community corrections programs is \$10,724 per year.

AOC reports any fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the court, thus requiring additional resources to handle the increase.

ADMINISTRATIVE IMPLICATIONS

CD reports in both the short-term and the long-term, SB229 could result in a minor increase in the administrative burden on probation personnel if the small increase in the number of offenders results in more persons being sentenced to probationary supervision by the department.

DUPLICATION/RELATIONSHIP

Duplicates HB380.

The change in SB229 differs from SB246 in that it does not include an effective date of July 1, 2001. Otherwise, SB229 is identical to HB380.

TECHNICAL ISSUES

According to CYFD, although it is not the intent of the statute to allow a person who carries alcoholic beverages for medicinal purposes, a clergyman or a clergyman's agent to drink alcohol while in a motor vehicle, the language used in Subsection D would seem to allow such a result.

Subsection D could be changed to read, "The provisions of Subsections B and C do not apply to..." to clarify the intent of the statute. Alternatively, the entire exception section (Subsection D) could be deleted and all persons would be required to transport alcoholic beverages pursuant to Subsection C.

OTHER SUBSTANTIVE ISSUES

Senate Bill 229 -- Page 3

According to NMHTD, failure to pass SB 229 will decrease funding available for highway construction projects in New Mexico. It would also increase the risk of New Mexican drivers experiencing the consequences of encountering a driver who's consumed or possessed alcoholic beverages in their motor vehicle while driving. These consequences are death or serious injury from an alcohol involved crash.

Also, if New Mexico fails to meet federal requirements by Oct. 1, 2001. This will result in sanctions against the State's federal highway construction funds of approximately \$3.0 million dollars. Funds will be transferred to the State's hazard elimination or traffic safety programs. This transfer will reduce the amount of available funds for highway construction projects.

AODA reports employees may consume alcohol or have open containers of alcohol in their vehicles as long as they are working and employed by a person licensed by the Liquor Control Act. There are not that many instances of employees consuming or having open containers of alcohol in vehicles while they are working, but the current statute immunizes them for prosecution for this conduct.

LT/ar/njw