F I S C A L   I M P A C T   R E P O R T

SPONSOR Robinson **DATE TYPED** 2/4/05 **HB**

SHORT TITLE Carrying of New Mexico Wine by Vendors **SB** 133

ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
NFI	NFI	NFI	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files
New Mexico Department of Agriculture (NMDOA)
Regulations and Licensing Department (RLD)
Economic Development Department (EDD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 133 proposes a new section of the Procurement Code. The bill proposes language that, if enacted, would require any vendor who "does business with the state," and holds a liquor license or license to sell wine, to carry and sell New Mexico-made wine, made from New Mexico-grown grapes.

Significant Issues

The Attorney General's Office asserts that the bill does not define the phrase, "does business with the state." It is unclear, AGO continues, whether the intent of the bill is to impose requirements on entities selling liquor to state agencies, or on state facilities selling to members of the public, or both. The New Mexico State Fair, certain state museums, and other state facilities allow the sale of liquor on their premises during certain public and private functions. It is possible that other state agencies purchase alcoholic beverages directly from liquor licensees using state funds. It is also unclear what is meant by the term "the state", and whether that includes all state agencies and institutions, including educational institutions.

The bill does not define the use of the term “carry”. AGO states that It is unclear whether this term is intended to require a liquor licensee to offer New Mexico wine at state functions. As written, AGO continues, a liquor licensee could comply with its provisions by “carrying wine for sale” to the general public, without offering it for sale at state functions or at state facilities.

AGO asserts that the bill does not carry any penalties for failing to comply with its provisions.

PERFORMANCE IMPLICATIONS

New Mexican vineyards and wineries may increase their business and markets in the state.

FISCAL IMPLICATIONS

Vendors which sell NM wine may have an impact on the price of wine (increase/decrease) sold to or from state facilities.

ADMINISTRATIVE IMPLICATIONS

According to the Attorney General’s Office, the bill doesn’t prohibit state agencies from “doing business” with liquor licensees who don’t carry New Mexico wine for sale. It is unclear how state agencies will interpret its effect.

TECHNICAL ISSUES

The Regulations and Licensing Department (RLD) asserts that the proposed bill may authorize certain liquor license holders, whose licenses do not currently authorize the carrying and selling of wine, to practice in violation of the Liquor Control Act. This change, according to RLD, could effectively permit the expansion of the current rights for certain liquor license holders to carry and sell wine.

Potentially, RLD speculates, liquor license holders, such as holders of common carrier, small brewer’s, and certain wholesaler licensees who do business with the State Of New Mexico and whose license may not otherwise permit them to carry and sell wine would be permitted to do so.

Conflicts may also arise with the Franchise Laws according to RLD. The agency states that it is unclear whether wine sales would be limited to liquor license holders for on-premises consumption, off-premises consumption, or both, or for sales to the general public. RLD asserts that by requiring a licensee vendor to sell New Mexico wine, who is not otherwise permitted to sell any type of wine, the bill would effectively change what is not permitted under the Liquor Control Act.

OTHER SUBSTANTIVE ISSUES

The Department of Agriculture states that by allowing the state an additional avenue for purchasing New Mexico wines, and additional market for New Mexico wines, and a significant promotional opportunity of these wines to local, national, and international consumers would be established.

According to the Attorney General's Office (AGO), if this bill were enacted and viewed as a prohibition against a liquor licensee "doing business", in any fashion, with any state agency unless that licensee carries New Mexico wine for sale, the bill could be subject to challenge as restraining trade. If viewed as a prohibition against a state agency "doing business," with a liquor licensee who does not carry New Mexico wine for sale, AGO continues, the bill could be subject to challenge as requiring an unfair procurement factor.

The Economic Development Department (EDD) relates that, as sales increase for New Mexican wines, so would the demand for additional grapes, processing supplies, and distribution. The Department relates that local economies would be stimulated through manufacturing as well as tourism. Further EDD cites that many NM wineries are located in rural areas, and any type of economic stimulation will have significant impacts on local residents.

ALTERNATIVES

AGO suggests that the bill be re-drafted to conform to the Procurement Code and its requirement of fair and equitable procurement. AGO states that a preference to those offering to furnish New Mexico wine at a state function in response to a state procurement could potentially accomplish the objective perceived by the proposed bill.

RLD proposes that the Liquor Control Act may need amending should the bill be enacted so that there would not be conflicting language between the Code and the Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The New Mexico Department of Agriculture asserts that avenues to promote and sell New Mexico wines, and economic opportunities within the industry would not be expanded should the bill not be enacted.

The Attorney General's Office predicts that state agencies who do engage in business with liquor licensees will continue to do so without regard to whether the licensee carries New Mexico wine for sale.

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