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FISCAL IMPACT REPORT

SPONSOR Jennings DATE TYPED 3/17/2005 HB _____
SHORT TITLE Restaurant Sunday Liquor Sale Petitions SB 862/aSPAC/aSJC
ANALYST McSherry

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	Minimal	Indeterminate	Recurring	General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Regulations and Licensing Department (RLD)
Economic Development Department (EDD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendments to Senate Bill 862 strike a provision proposed in the Senate Public Affairs Committee, and replace it with new language. The new provision provides that class B counties with greater than 25 thousand people with previous vote of prohibition of Sunday sales of alcohol would be required to have an election within 75 days of the bill's effective date (July 1, 2005) regarding the question: "Shall Sunday sales of alcoholic beverages by the drink for consumption on the licensed premises of licensees be allowed in this local option district?" The provision provides that the results of the said election would determine whether Sunday sales would be permitted and that the question could not be raised again for two years if a petition, as is described in the bill synopsis, is submitted.

Synopsis of SPAC Amendment

Senate Public Affairs amendment to Senate Bill 862 provides that one restaurant may submit a "request" to the governing body in a city having a population over 5000, or in a county, for permission for *all* restaurants in that jurisdiction to apply for restaurant liquor licenses even if those jurisdictions have not adopted local option for restaurant liquor licenses. The amendments differ from the original bill because they provide that if such a request is granted, *any* restaurant in that area would be allowed to apply for a restaurant liquor license.

The amendments also eliminate the authority granted by the original bill to a liquor *retailer* or *dispenser* to submit a “petition” to certain local governing bodies for permission to apply for a permit to sell *package* liquor on Sundays in any local option district that has voted to prohibit those sales. Instead, the amendments substitute language allowing a *dispenser*, *restaurant*, or *club* licensee to submit a “request” to the governing body of a city having a population over 5000 or of any county which has voted to prohibit Sunday sales, seeking permission to obtain a permit to sell liquor *by the drink* on Sundays. The amendments also differ from the original bill because they provide that if permission is granted to one such licensee, then all restaurant, dispenser, and club licensees in the affected area may apply for Sunday sales permits.

The amendments also delete references to “petitions” submitted to the local governing body, and substitute “requests”.

These amendments, according to the AG, broaden the effect of the original bill and would allow certain city and county commissions to disregard local option district elections disapproving restaurant licenses and/or Sunday liquor sales by the drink. The AG notes, if voters in those areas have voted to disapprove those licenses and/or Sunday liquor sales, the city or county commission can override that vote by granting one request from one restaurant or licensee.

The amendments broaden the application of any individual request to include all affected restaurants, and all affected dispenser, restaurant, and club liquor licensees. In other words, if one restaurant is granted permission to apply for a liquor license, then all restaurants within the city (having population over 5000) or county are automatically granted the same permission. This broad effect also applies to Sunday liquor sales by the drink when a request is submitted by any dispenser, restaurant, or club licensee. The original bill allowed the city or county commission to consider requests on an individual case-by-case basis.

By substituting “request” for “petition” throughout the bill, the amendments imply that a less formal method of asking the local governing body for permission to sell liquor in restaurants, or on Sunday, would be appropriate.

RLD is concerned that there is no specific criteria set forth on what the requirements are to be submitted by each restaurant other than a letter and/or from the restaurant on its position of why it should be allowed to apply for a restaurant liquor license, and, because it appears that the local option district is to make its decision on a case by case basis, it may result in arbitrary and capricious decisions made by the local governing body. This same result could occur with Sunday sales.

RLD indicates that it is unclear if the local governing body, once it approves a request for a restaurant or for Sunday package sales, whether its decision can be reversed. For example, once a new city council or county commission is elected, can a decision made by a previous city council or county commission be reversed?

Synopsis of Original Bill

Senate Bill 862 proposes to amend the Liquor Control Act by adding new subsections allowing:

1. restaurants to apply for restaurant liquor licenses if they are located within cities with populations over 5000, or in counties, even if those local option districts have not authorized the licenses. The restaurant would have to file a petition with the city council or county commission.

If the petition is granted, the restaurant would then be able to apply for a liquor license to the Alcohol and Gaming Division of the Regulation and Licensing Department.

2. liquor retailers and dispensers in local option districts that have voted not to allow Sunday liquor sales to file similar petitions for the right to obtain permits to sell packaged liquor on Sundays. The SJC amendment provides that before excepting petitions, the local option district (if a class B county with greater than 25 thousand people) would hold elections regarding Sunday sales and that petitions would not be accepted for two years following the elections.

Significant Issues

Restaurant liquor licenses are commonly referred to as “beer and wine” licenses; liquor retailers are liquor stores and liquor dispensers are bars.

According to the Attorney General’s Office (AGO), NMSA Section 60-6A-4 sets forth procedures for elections to approve restaurant licenses and NMSA Section 60-7A-1 sets forth procedures for elections to approve Sunday sales. Both of those sections would be amended by this bill. AGO continues that the bill would allow certain city councils and county commissions to supercede the desires of the voters within local option districts who have voted to disapprove restaurant licenses or Sunday sales.

NMSA Section 60-3A-3N defines “local option district” as “a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or any incorporated municipality that falls within a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or any incorporated municipality of over five thousand population that has independently voted to approve the sale, serving or public consumption of alcoholic beverages under the terms of the Liquor Control Act or any former act”

AGO points out that racetracks and resorts are authorized to sell liquor on Sunday pursuant to NMSA Section 60-7A-2, regardless of whether they are within a local option district that has not authorized such sales.

PERFORMANCE IMPLICATIONS

The Alcohol and Gaming Division would have to determine whether an applicant for a restaurant license or Sunday sales permit in a local option district that does not permit those licenses has obtained approval from the local governing body.

City and county governing bodies would have to consider petitions for licenses and permits, and decide each on a case-by-case basis or decide upon a standard strategy for determination of individual petition merits.

FISCAL IMPLICATIONS

Additional alcohol license fees and Sunday package sale permit fees would likely be collected by the Alcohol and Gaming Division for restaurant licenses authorized by this bill. The amount of revenue collected would depend on how many applications for restaurant licenses and Sunday package sales are submitted if the bill is enacted. According to RLD, it is not apparent how greatly the change would affect alcohol application rates and approvals.

ADMINISTRATIVE IMPLICATIONS

Some additional administrative responsibilities may be incurred by the local governing body, but should not pose a significant work load

Administrative duties of the Alcohol and Gaming Division may increase in determining the approval of applications for licenses and permits under this proposed bill.

OTHER SUBSTANTIVE ISSUES

RLD asserts that because there is no specific criteria set forth regarding requirements to be submitted by each restaurant other than a letter from the restaurant on its position for the reasons it should be allowed to apply for a restaurant liquor license, and, because it appears that the local option district is to make its decision on a case by case basis, it may result in arbitrary and capricious decisions made by the local governing body. According to the Department, the same result could occur with Sunday Package sales.

It is unclear if the local governing body, once it approves a petition for a restaurant or for Sunday package sales, can reverse or amend its decisions. Once a new city council or county commission is elected, can a decision made by a previous city council or county commission be reversed?

The proposed bill does not include specific requirements pertaining to the petition granting by counties or cities, nor does it include specifics regarding the types of "positions" that would be appropriate to receive permission to apply despite the lack of a local option allowing the alcohol sales.

ALTERNATIVES

Amendments to the bill could be considered to specify petition requirements, to clarify the permanency of local government decisions on petitions and to clarify whether and how the decision of local governments could be reversed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Restaurants and liquor retailers and dispensers within local option districts that have voted to prohibit restaurant licenses or Sunday package sales, or have not held elections to consider the issues, will not be allowed to apply for alcohol licenses.

If this bill is not enacted, licensing of restaurants for alcohol consumption could take more time.

POSSIBLE QUESTIONS

1. What is the intent of the bill regarding the ability of local governments to reverse decisions regarding local establishments' petition for right to apply to restaurant licenses and Sunday sales?

EM/lg:njw