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FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/09

SPONSOR Gonzales LAST UPDATED _____ HB 555

SHORT TITLE Gift Shop Alcohol Sales SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 403
Related to HB 526 and HB 527.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$60.0 See Narrative	\$80.0	Recurring	General

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$52,000.0	\$52,000.0	\$104,000.0	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Tourism Department (TD)
Regulation and Licensing Department (RLD)
Department of Public Safety (DPS)

No Response

Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 555 creates a new type of liquor license for gift shops.

- The license limits sales to New Mexico beer and wine for off-premise consumption, but does allow a licensee to offer samples of the beer and wine in quantities less than 50 milliliters each but limits the number of samples to no more than twelve samples in a twelve hour period. Licensees may not charge for the samples and samples may not be taken off the licensed premises.
- The bill requires that local option districts approve gift shop licenses by holding an election on the question.
- Gift shop licenses would have the following restrictions:
 - the person granted the license shall not serve food or beverages except for limited food samples during beer and wine sampling;
 - shall not own, lease or manage another liquor license;
 - shall not sell gasoline from the premises;
 - the premises cannot be licensed under another license;
 - shall submit quarterly reports of total gross receipts and gross receipts from beer & wine sales, including internet sales, mail order sales and those purchased on the premise but shipped out of state;
 - sell only products produced in New Mexico by a licensed winegrower or small brewer;
 - hours of operation would be limited to 10:00 am to 8:00 pm Monday through Saturday and 12:00 pm to 8:00 pm on Sundays in those local options that have approved Sunday Sales;
 - the license would not be transferable from person to person or from location to location and would expire each July 1st;
 - the amount of liquor sold to one person in a twenty-four hour period would be limited to the equivalent of no more than four six packs of twelve-ounce containers or twelve 750 milliliter bottles of wine;
 - and the price of the beer or wine sold must be at least one hundred sixty percent of the cost at which it was purchased.
- The total annual gross receipts must be reported in the fourth quarter and the sales of beer and wine shall not exceed twenty percent of the total gross receipts, however the gross receipts from internet sales, mail order sales and sales made on the premises but shipped out of state are not included in the calculation of the twenty percent.

- The beer and wine sold on the premises must be at room temperature.
- The gift shop license would not be subject to the quota limitation or to the restriction on the Director not issuing licenses within 300-feet of a church or school without a waiver from the local option district.
- Employees of the gift shop licensee would be exempt from attending the alcohol server training class to oversee samplings or to sell the packaged alcohol.
- The fee to apply for a gift shop license is \$300 for the first year and \$400 for each renewal.

FISCAL IMPLICATIONS

The Alcohol and Gaming Division of the RLD currently charges an application filing fee of \$200 for new licenses and license transfers and an initial license fee or annual renewal fee based upon the schedules set forth in 60-6A-15 and 60-6A-27. House Bill 555 includes a fee to apply for a gift shop license of \$300 for the first year and \$400 for each renewal year. The language “fee to apply for a gift shop license” contained in House Bill 555 seems to indicate that the \$300 would cover both the application fee and the initial licensure fee with each subsequent renewal costing \$400 per year. This could cost the state \$200 per license of this type. It is unknown how many licenses would be issued. An estimate of 200 licenses at \$300 each for FY 10 would generate \$60,000. The same number of licenses in FY 11 would generate \$80,000. As the bill contains language regarding quarterly reporting, the Alcohol and Gaming Division estimates that it would need at least one FTE auditor to audit the reports and conduct on-site audits of the business records to ensure reporting compliance.

The RLD provided the estimates of additional operating budget impact in the table above.

SIGNIFICANT ISSUES

The Tourism Department supports legislation that promotes tourism to the state. New Mexico’s wine-growing and specialty beer-brewing industries are growing at a phenomenal rate, and their products are recognized around the country for quality and attention to detail. Giving local wineries and brewers the opportunity to sell their products to an appreciative out-of-state visitor who is unable to purchase them elsewhere would not only increase the income of those craftsmen and other local merchants; it would augment the already positive impact the tourism industry has on the state’s economy.

The RLD expressed the following concerns about House Bill 555.

House Bill 555 indicates special reporting requirements for internet sales and mail order sales. The Liquor Control Act does not currently address or authorize internet or mail order sales. This bill’s new language could be construed to grant that authority, however there would be disparity between this type of license and those currently authorized under the Liquor Control Act (LCA).

The hours of operation listed are more limited than those listed elsewhere in the Liquor Control Act and are earlier than closing time of most malls. Alcohol sales would be required to cease prior to normal business closing times of 9:00pm.

The gift shop license would not be subject to the restriction on the Director not issuing licenses within 300-feet of a church or school without a waiver from the local option district. This provision would be contrary to the current statutory mandate under the LCA to protect public health, safety and welfare.

The bill exempts gift shop servers from taking the alcohol server training class to oversee samplings or the sell the packaged alcohol. Again this is contrary to the intent and policy in the LCA to protect public health, safety and welfare.

RELATIONSHIP

House Bill 555 is related to House Bill 526 and House Bill 527. House Bill 526 proposes to prohibit the sale of alcohol at gas stations. House Bill 527 proposes to prohibit liquor licenses on any premises within one-half mile of an Interstate highway.

TECHNICAL ISSUES

The RLD notes that House Bill 555 creates a license expiration date of July 1. All other licenses issued by the Alcohol and Gaming Division expire on June 30. Having a different date for one type of license would cause additional administrative burdens and potential confusion.

OTHER SUBSTANTIVE ISSUES

The DPS recommends that alcohol server education training be required to oversee sampling of wine and beer in gift shop premises.

CH/mt