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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/12
 LAST UPDATED 02/02/12 HB 38

SPONSOR O'Neill

SHORT TITLE Liquor Excise Tax To Drug Courts SB Walker-Moran /
 ANALYST Jorgensen

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14	FY15	FY16		
	(\$14.0)	(\$14.0)	(\$14.0)	(\$16.0)	Recurring	DWI Fund
	\$1,581.0	\$1,612.0	\$1,640.0	\$1,679.0	Recurring	Drug Courts Supplement Fund
	(\$1,567.0)	(\$1,598.0)	(\$1,626.0)	(\$1,664.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Duplicates HB 36

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Human Services Department, Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)
 New Mexico Association of Counties (NMAC)

SUMMARY

Synopsis of Bill

House Bill 38 amends section 7-1-6.40 NMSA 1978. The liquor excise tax is currently distributed to the DWI Grant Fund and municipalities. The DWI Grant Fund will receive a lower distribution with penalties and interest excluded from the liquor excise tax. The statute is amended to include a new distribution to the drug courts of 3.5 percent of new receipts attributable to the liquor excise tax, exclusive of penalties and interest, to supplement funding of drug courts. This new distribution will decrease the distribution to the general fund.

HB 38 is endorsed by the Courts, Corrections and Justice Committee and the Revenue Stabilization and Tax Policy Committee.

The effective date of this bill is July 1, 2012.

FISCAL IMPLICATIONS

The Administrative Office of the Courts has received about \$800 thousand in funding through the local government division of DFA in recent years. This funding is in the LFC and Executive recommendations for the General Appropriations Act of 2012. HB38 would have the effect of tripling the current appropriation to the AOC's drug court program in FY13.

Continuing to fund drug courts at the current level (\$800 thousand) level would require the distribution from liquor excise tax receipts to be about one and three-quarter percent, rather than the three and one-half percent recommended in the bill.

This bill may be counter to the LFC tax policy principle of adequacy. According to the LFC staff General Fund Recurring Appropriation Outlook for FY14 and FY15, December 2011 forecasted revenues will be insufficient to cover growing recurring appropriations.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

TRD: These proposed changes would only have impacts on revenue distributions. The penalties and interest are very small pieces of the total liquor revenue, about 0.073% according to the last three fiscal year historical data. So the local DWI fund is estimated to decrease slightly by approximately \$14,000 annually if penalties and interest are excluded from the liquor excise tax. The new distributions to drug courts supplement fund is approximate $3.5\% * (1 - 0.073\%) = 3.497\%$ of net liquor excise tax. The state general fund would decrease by about 3.467% or \$1.7 million per year.

AOC Justifications: The New Mexico Judiciary has suffered a 13% cut to its overall state funding from 2009 to 2011, from \$154 million down to \$134 million. Since 90% to 95% of most New Mexico courts' budgets are for personnel costs, the only way most courts could absorb such budget cuts without resorting to staff furloughs or layoffs was to cut operational costs and special programs, such as drug courts. As a result, the judiciary's drug court programs have suffered a 33% cut (\$3.5 million) in overall funding since FY09. Three programs have closed completely while others continue to scale back the number of participants they work with in keeping with their reduced funding. At least nine of the remaining 43 drug court programs are at risk of shutting down as well if they cannot get the additional funding they need in FY13 to keep their doors open. The loss of nine programs would return the state to FY07 program levels, when there were just 34 total programs statewide. (For more detail on the AOC justifications refer to the AOC FIR).

SIGNIFICANT ISSUES

DFA: Since FY09, AOC reports that drug courts in New Mexico have suffered a 31% cut in overall funding. These cuts have resulted in a significant reduction in the number of participants that can be served by these courts (from 1,200 in FY09 to 960 in FY11.) In FY10, FY11 and FY12, AOC has received Local DWI Grant Funds to mitigate the loss of funding for drug courts.

The Legislative Finance Committee and HB 7 both recommend that \$800,000 be transferred from the Local DWI Grant Fund in FY13. The Department of Finance and Administration does

not recommend this transfer because it goes against the intent of the Local DWI Grant Program Statute, (Sections 11-6A-1 through 11-6A NMSA 1978) which states that funds “are appropriated to the division to make grants to municipalities and counties.” Although the statute does provide that money can be used to fund drug courts, DFA believes that this funding should be made at the discretion of municipalities and counties receiving Local DWI Grants, and not through the direct transfer of funds between state agencies. HB36 would resolve this issue by providing AOC with an independent distribution from the liquor excise tax, thus eliminating the need for AOC to look to the Local DWI Grant Program for additional funding.

AOC Summary: National studies have shown that 60 to 80 percent of prison and jail inmates, parolees, probationers, and arrestees are under the influence of drugs or alcohol during the commission of their offense, committed the offense to support a drug addiction, were charged with a drug- or alcohol-related crime, or are regular substance abusers. Incarceration on its own has not resolved the problem; court-mandated treatment on its own is also insufficient. By combining treatment with the coercive power of the judiciary, the drug court model has repeatedly shown through national studies that it outperforms virtually all other intervention strategies for drug involved offenders

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting and provide drug court specific performance measures to the LFC on a regular basis.

ADMINISTRATIVE IMPLICATIONS

There would be a small impact (120 hours) on the staffing resources of the Taxation and Revenue Department’s information systems team.

Per the AOC, the New Mexico Supreme Court has created a permanent committee to provide oversight of the state’s drug court programs: the Drug Court Advisory Committee (DCAC). If HB38 is passed into law, DCAC will be responsible for advising the Supreme Court as to how the liquor excise tax funds distributed to the AOC would in turn be distributed to the state’s drug courts. DCAC has an established process for determining distribution of such funds, as the judiciary has received federal and state funds in the form of block grants in the past. DCAC solicits applications from the courts for shares of the available funding, and reviews those applications in a competitive grant process, making recommendations for distribution based on program need and outcome performance measures. The process ensures the funds are distributed to programs in the best position to use them effectively in support of their participants and communities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 36 and HB 38 are the same except for endorsement. HB 38 is endorsed by the Courts, Corrections and Justice Committee and the Revenue Stabilization and Tax Policy Committee. HB 36 is endorsed by the Revenue Stabilization and Tax Policy Committee.

TECHNICAL ISSUES

This bill is exactly the same bill as HB-36 with the same sponsor, but different endorsement. It may violate the house rule prohibiting duplication of proposed bills.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the AOC, without supplemental funding, such as would be made available through this bill, nine drug court programs are likely to close in FY13. Given the success of these programs, the loss of existing programs will lead to increased problems with substance abuse in the affected areas, including increased workload for law enforcement, caseload for the judiciary, and need for beds in detention and corrections facilities.

As drug courts successfully treat their participants for substance abuse, they often find participants suffering from a co-occurring disorder that had previously been masked by the participant's substance abuse. Identification of the participant's schizophrenia, bipolar disorder, severe depression or any other mental health issue allows the drug court to refer to, and in some cases provide, the treatment necessary to provide the participant their first chance of full recovery. An ancillary consequence of not enacting this bill is the continued substance abuse by those with co-occurring disorders who will remain doubly afflicted, often unaware of their own underlying mental health issue.

TECHNICAL ISSUES

In order to not over fund the AOC the appropriation to the AOC in HB2 should be reduced.

POSSIBLE QUESTIONS

The 3.5 percent earmark effectively doubles the current drug court funding. The AOC budget request for FY13 was \$800 thousand. What circumstances have necessitated the dramatic increase in funding?

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate