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FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/15

SPONSOR SJC LAST UPDATED _____ HB _____

SHORT TITLE Beer & Wine Delivery Licenses SB 503/SJCS

ANALYST Elkins

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	TBD	TBD	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$80.0	\$70.0	\$150.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

Senate Judiciary Committee Substitute for Senate Bill 503 creates beer and wine delivery licenses for issuance to a restaurant or a food delivery company. To allow the issuance of beer and wine delivery licenses, each local option district would be required to hold an election and the measure would have to be approved by a majority of qualified voters. The delivery of beer or wine would be in conjunction with the delivery of prepared foods. The amount permitted to be delivered to an adult buyer with prepared foods is two six-packs of beer and two bottles of wine.

To qualify for this license type, an applicant must have a valid food service establishment permit with a restaurant beer and wine license, a current business license and contracts to deliver prepared food for at least six permitted food service establishments, a valid food establishment permit with a full dispenser's license, or a valid food establishment permit and a full retailer license.

Senate Bill 503 also requires that the primary source of revenue from the operation of the restaurant or the delivery company be derived from meals. Renewal is conditioned upon at least 70 percent of gross receipts from the preceding twelve months being derived from the sale of meals. License holders are required to provide an annual report indicating the annual gross receipts from the sale of ready-to-eat foods and from the sale of beer or wine and that prepared ready-to-eat meals were of a minimum restaurant menu value of \$20.

Sales of beer and wine authorized by the bill shall cease at the time meals sales and delivery services cease or at 10:00 pm whichever is earlier and at 9:00 pm on Sundays in local option districts that allow Sunday sales.

A beer and wine delivery license is non-transferrable from person to person or from location to location. The license shall be limited to the local option district in which the delivery service is located. Deliveries from one local option district to another are not permitted.

The bill restricts alcohol deliveries to residential addresses or to licensed lodging facilities and requires transfers to the responsible party take place on private property. Deliveries to public property, public rights of way, and commercially zoned property except for lodging facilities are prohibited. Deliveries are prohibited to locations three hundred feet from schools, youth centers, academic campuses and dormitories. Each local option district may designate other zoning or geographic restrictions.

Property owners and residents may designate their property as a "do not deliver" property that will be restricted from alcoholic beverage deliveries. Local option districts may also place properties deemed nuisances on the "do not deliver" list. Penalties, enforcement, and processes for the "do not deliver" lists shall be set and administered by the local option district and reported to the Alcohol and Gaming Division annually as part of the license renewal process.

Delivery persons are required to be alcohol server certified and license holders are required to use best practices. The Alcohol and Gaming Division is required to adopt rules to guide best practices and those best practices are required to be reviewed every five years to update technology, health and safety information. Sales and delivery are required to be via credit card, debit card, or electronic means. Cash sales are prohibited. Sales records are to be available for review by the director for five years.

Licensed delivery companies shall obtain beer and wine inventory only from licensed package retail locations in New Mexico and licensed New Mexico manufacturers of beer and wine.

Beer and wine delivery licenses are not subject to the quota limitations and may be issued regardless of the number of licenses in any local option district.

FISCAL IMPLICATIONS

In the bill, the annual fee for a beer and wine delivery license is \$1,300. The license fee will generate revenue but the number of delivery licenses that will be issued is unknown.

According to RLD, the Alcohol and Gaming Division (AGD) would be required to audit records from restaurant and food delivery companies to ensure that at least 70 percent of gross receipts came from the sale of food and to determine whether each order had at least a \$20 restaurant menu value. At least one additional FTE would be required to complete audits. AGD is also required to create rules to guide best practices, increasing the estimated operating budget impact in FY16. Also, AGD is required to review best practices every five years to keep current with technology, health, and safety. The division could use current staff review best practices and recommend rule changes every five years.

SIGNIFICANT ISSUES

RLD offers the following commentary:

Senate Bill 503 allows the delivery of up to two six-packs of beer and two bottles of wine at the same time. The bill does not limit the delivery to one type of alcoholic beverage or allow for a combination of both types with a limit of one six-pack and one bottle of wine but allows for delivery of a significant quantity of alcohol at one time.

In addition to standard restrictions on deliveries, Senate Bill 503 allows each local option district to designate zoning or geographic restrictions on delivery, allows for fines or temporary loss of delivery privileges and places enforcement for violations of those restrictions with the local governing body. There are no guidelines for local governments in penalty amounts or regarding length of time for loss of delivery privileges which may result in unequal enforcement.

The legal hours for delivery of alcohol are unclear. It is not clear whether the bill would allow delivery of alcohol orders that were placed prior to 10:00 PM or 9:00 PM on Sundays, but actual delivery is made after 10:00 PM or after 9:00 PM on Sundays or if orders must be placed at least half an hour prior to cessation to allow for delivery time.

However, the bill states AGD shall adopt rules to guide the best practices. The division could write rules addressing whether the order must be placed before cessation or if the delivery must be made before cessation.

According to EDD, New Mexico's liquor quota system has driven up the price of licenses creating a demand for more and more affordable license types. Current license holders, playing by the rules, have seen license values escalate to where some retailer licenses have sold for over \$900 thousand. While, more licenses allow more restaurants and businesses to open in our state and allow mom and pop type restaurants and businesses to be competitive with franchise operators, just issuing more licenses potentially drives down values and hurts existing license holders. New Mexico's quota system, which limits the number of retailer and dispenser licenses to one license per every 2,000 people, has been described as nothing short of arbitrary. New Mexico has a DWI issue that must be considered.