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FISCAL IMPACT REPORT

ORIGINAL DATE 2/09/17
 SPONSOR Munoz LAST UPDATED 3/07/17 HB _____
 SHORT TITLE Liquor Tax & County Definition SB 247/aSFC
 ANALYST Iglesias

REVENUE (dollars in thousands)

Appropriation					Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19	FY20	FY21		
\$0.0	\$500.0	\$500.0	\$500.0	\$500.0	Recurring	McKinley County Local Liquor Excise Tax Fund

Parenthesis () indicate expenditure decreases. ** R = recurring; NR = non-recurring

Relates to SB314, HB55, HB237, and SB124.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Office of the Attorney General (OAG)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amended SB274 to include “extending the time the tax can be imposed; providing that certain reports to the Department of Finance and Administration (DFA) be made by fiscal year” to the bill description. The amendment also changes Section 7-24-10 NMSA 1978 to change the time period of the tax imposed from a maximum of three years to eight years. This also adds a new section to the bill amending Section 7-24-10.1 NMSA 1978 to changing the month the governing body of a county or municipality that has entered into the agreement must report to the DFA from April to October and from calendar to fiscal year. It also removes a requirement for DFA to perform an audit of that report.

Synopsis of Original Bill

Senate Bill 247 amends Section 7-24-9 NMSA 1978 to amend the definition of “county”. That definition is amended to increase the population limits from the previous range of between 56 thousand and 75 thousand, to a new range of between 70 and 80 thousand. The net taxable value

for rate setting purposes is changed from the 1988 to 2016 property tax year, and is increased from the previous range of between five hundred million and seven hundred million dollars, to a new range of between eight hundred million and nine hundred million dollars. The bill also amends Section 7-24-10 NMSA 1978 to increase the rate allowed to be imposed to a rate not to exceed 9 percent, up from a rate not to exceed 6 percent.

The effective date of this bill is July 1, 2017.

FISCAL IMPLICATIONS

The fiscal impact of the original bill provided by the Taxation and Revenue Department (TRD) uses the average revenue from this tax over the last several years and then adjusted assuming the maximum value of a 9 percent tax is adopted. TRD notes the bill as written such that only McKinley county can levy the tax.

ADMINISTRATIVE IMPLICATIONS

TRD updated their analysis of the bill's administrative impact, foreseeing a low impact to the Financial Distributions Bureau, Information Technology Division, and Revenue Processing Division.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to House Bill 55, which temporarily increases the distribution of the state liquor excise tax to the local DWI grant fund and makes a distribution of the tax for drug courts.

Related to Senate Bill 124, which provides for certain local option districts to restrict the hours of sale of alcoholic beverages for consumption off a licensed premises.

Related to Senate Bill 314, which raises the state liquor excise tax rate for certain types of alcoholic beverages and indexes the rate to inflation.

TECHNICAL ISSUES

TRD updated their analysis for the amended bill, stating:

“There is a risk that the bill violates New Mexico’s constitutional prohibition against special legislation. On page 2, line 4 of the bill, the term ‘most recent’ is used to define which census is to be used to determine which counties qualify. Typically, if counties can come in and out of the classification, as times changes, special rule violations do not occur.

In at least some other New Mexico statutes (e.g.: 3-61-1.1, 7-20E-13, 7-24B-2) ‘most recent census’ or ‘last census’ is followed by language indicating subsequent census’s are also to be followed, allowing counties that might not be included based on the most recent census data to come into the class based on subsequent census data. By using both the ‘most recent’ census and subsequent ones, the language implies that ‘most recent’ is a static phrase (at the time the legislation was passed). Under such an interpretation, the class would be limited and unchangeable, risking a constitutional violation. However, the term “most recent” is more properly construed fluidly, from census to census, thereby not restricting access to the

class in the future. Under this interpretation, there is significantly less risk of a constitutional violation. In short, but for the existence of language in other statutes that specifically reference following censuses, ‘most recent’ would ordinarily be construed to allow for counties to come into and out of the class. It should be noted that any class definition that is so narrow that it can only apply to one county can be suspect as a special law. It is also important to note that narrow classification alone does not render a violation as long as there is a legitimate, non-arbitrary, purpose for applying different rules to the narrow class member or members.”

The Office of the Attorney General (OAG) notes no significant issues with the bill as amended.

AMENDMENTS

OAG suggests it may be helpful to make clear the requirements for notice to the public for a public hearing. For example, publishing a notice in a local newspaper and publishing on the county or municipality’s website if there is a website prior to the public hearing. Additionally, it also may be helpful to indicate which members of the public should be invited to the public hearing in order to provide guidance as to the meaning of a “broad cross-section of community representatives”.

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

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