Department of Finance and Administration

Legislative Impact Statement

Bill: SB643 Amendment Number: S1
Bill Subtitle: TO AMEND THE AUTHORITY OF MUNICIPALITIES TO TAX ARKANSAS WINERIES.

Basic Change :

Sponsor: Senators G. Stubblefield and Standridge

Engrossment 03/27/17 --- Senate Amendment 1 to SB673 would provide for the use of existing tax revenues from wine excise taxes to promote research concerning the production and marketing of Arkansas wine and wine grapes.

The amended bill amends the requirements for eligibility to receive a Native Wine Incentive Grant from the Arkansas Agricultural Marketing Grants fund. Native Wine Grant funds are appropriated each year by the Arkansas General Assembly. The current appropriation bill is HB1247 of 2017 which would appropriate three hundred seventy-five thousand dollars for the Arkansas Agricultural Marketing Grants fund and is currently pending before the House.

SB673-S1 provides that the Department of Finance and Administration (DFA) may adopt rules for Arkansas wineries to follow in order to make application for the grant subsidy payments and to prevent abuse. The recommended rule language provides for a certification that the applicant is actively involved in the sale of wine as an Arkansas-bonded winery and has been for a minimum of five (5) years or has a federal license and has been licensed by the State of Arkansas as of January 1, 2016. The applicant would also certify that the winery grows two (2) or more acres of grapes and produced a minimum of one thousand gallons (1,000 gal.) of wine by fermentation on the winery premises in the previous calendar year. Only applicants receiving certification of compliance of eligibility requirements from the Arkansas Wine Producers Council would be eligible to receive grants. By signing the application for a grant, the applicant would be providing authority for DFA to receive the applicants TTB forms 5000.24 regarding federal excise taxes paid on wine and information that reports the excise taxes that were paid to other states for the previous fiscal year in an effort to prevent theft by deception of grant funds.

The bill also would change the deposit of wine excise taxes reported on wines, other than the taxes reported on Arkansas wines. Beginning in FY2018, the wine excise taxes reported on the non-Arkansas wines that are received in excess of the amount of such taxes received by DFA in FY2016 would be deposited as Special Revenues to the Arkansas Agricultural Marketing Grants Fund. In FY2016 DFA collected approximately two million five-hundred ninety-three thousand dollars ($2.593 million) in wine excise taxes on out-of-state wines and beginning in FY2018, all wine excise tax collected that exceeds the FY2016 amount would be credited Arkansas Agricultural Marketing Grants Fund. The funds deposited would be divided as follows:

1. Twenty percent (20%) to the Arkansas Wine Producers Council Fund; and
2. Eighty percent (80%) to eligible Arkansas wineries under the grant program.

The bill also amends current code provisions regarding the levy of local taxes in municipalities having wine producers and facilities within the city's jurisdiction. The bill would change the authority for levying a three percent (3%) city tax to only be authorized in those cities having producers with production capacities of one million gallons (1,000,000 gal.) per year. Under current law, the tax may be levied in cities with a producer with a four hundred thousand gallons (400,000 gal.) production capacity per year. The bill would also authorize an eligible city to levy a one percent (1%) tax on sales receipts of beer when sold at the retail outlet or restaurant of the small farm wine producer.

Revenue Impact :

Beginning in FY2018, the amount of wine excise tax collected on non-Arkansas wines that is credited to General Revenue would be capped at the amount collected on non-Arkansas wines in FY2016. The FY2016 wine excise tax on non-Arkansas wine was $2,593,026. All wine excise tax collected on non-Arkansas wines in excess of this amount will be special revenue and credited to the Arkansas Agricultural Marketing Grants Fund for disbursement to the Arkansas Wine Producers Council Fund and grant eligible wineries.

At present, wine excise taxes are growing at a rate of 1.6% over the FY2016 amount. At this rate of growth, the anticipated change in the tax distribution would be as follows:

FY2018

-$84,000 Reduction is State General Revenue
+$84,000 Increased Deposits to the Arkansas Agricultural Marketing Grants Fund

The $84,000 in increased deposits to the Arkansas Agricultural Marketing Grants Fund would be divided with 20% ($16,800) to the Arkansas Wine Producers Council Fund and 80% ($67,200) to eligible Arkansas wineries.

Taxpayer Impact :

No impact on state taxes paid on wine sold in Arkansas. Arkansas wineries may receive increased state grant payments.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Amendments to the procedure for the approval of wineries eligible for the Native Wine Incentive grants.

Other Comments :

Page 3 --- Lines 16 through 19 --- If the intent of the bill is to deposit in FY2018 and the years thereafter to state General Revenue the same amount of wine excise tax that was collected in FY2016 ($2.593 million), the language of the bill requires amendment. As drafted, the FY2018 tax collections that equal the $2.593 million are to be deposited as provided in the amended § 3-7-108(a). The amended subsection (a) does not have a distribution for wine excise taxes as the bill is deleting that

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provision. The bill requires amendment to correctly reflect the tax distribution.

Page 3 --- Lines 25 through 30 --- Revenues exceeding the FY2016 wine excise tax amounts are to be deposited to the Arkansas Agricultural Marketing Grants Fund with 80% to be provided to eligible Arkansas wineries. The bill does not provide a mechanism, procedure, or calculation to be used in making a distribution of the revenue to the various Arkansas wineries. The existing law that distributes grant funds provided by the Arkansas General Assembly through appropriation of state funds only applies to the appropriated funds. If the intent of the bill is to distribute the excise taxes deposited into the Arkansas Agricultural Marketing Grants Fund in the same manner, the bill requires amendment to specify this method of calculation for the distribution.

Legal Analysis :

SB643-S1 modifies the Alcoholic Beverages Title of the Arkansas Code. S643-S1 as engrossed is constitutionally suspect and likely to be challenged as an unconstitutional bill. Article 5, § 21 of the Arkansas Constitution provides in pertinent part "no bill shall be so altered or amended on its passage through either house, as to change its original purpose." As described by the Arkansas Supreme Court, Article 5, § 21 is intended to "forbid amendments which should not be germane to the subject expressed by the title of the act." E.g., *Cone v. Garner*, 175 Ark. 860, 3 S.W.2d 1 (1927). As originally introduced, the title of the bill read, "AN ACT TO AMEND THE AUTHORITY OF MUNICIPALITIES TO TAX ARKANSAS WINERIES; AND FOR OTHER PURPOSES." To the extent that any of the provisions of the amendment engrossed are not germane to the topic of the authority of municipalities to tax Arkansas wineries, the Amendment may run afoul of Article 5, § 21.

First, the amendment prescribes a form for wineries to seek grant payments under § 3-5-901, *et. seq.* This provision is constitutionally suspect as it does not relate in a germane way to the authority of a municipality to tax a winery.

Second, The amendment then removes the taxes, penalties and costs related to the sale of vinous liquors collected under § 3-7-104(4) from general revenue and transfers those revenues to the Arkansas Agricultural Marketing Grants Fund collected after June 30, 2017. The amendment further clarifies that these revenues will be directed 20% to the Arkansas Wine Producers Council Fund and 80% to the eligible Arkansas wineries. The provisions contained in this portion of the amendment is inconsistent with other wine grant fund appropriation legislation. This provision is constitutionally suspect as it does not relate in a germane way to the authority of a municipality to tax a winery.

Furthermore, it is unclear whether this provision comports with the revenue designations required to identify appropriate special revenue, determine the breakdown of funding for the different potential grant recipients, and appears to remove § 3-7-104(4) from the general distribution of funds in § 3-5-903(a) but still specifies that § 3-5-903(a) is to be used to determine distribution of those funds. Finally, the amendment expands the abilities of municipalities in which a small farm wine producer is located to levy an additional tax of 1% on the sale of beer at any retail outlets and restaurants of small farm wine producers.
