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F I S C A L   I M P A C T   R E P O R T

SPONSOR: Silva DATE TYPED: 3/03/03 HB 690/a HTC

SHORT TITLE: Create State Transit Fund SB

ANALYST: Reynolds-Forte

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	**FY04**	**FY03**	**FY04**		
	$2,080.0		$2,650.0	Recurring	State Transit Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring Or Non-Rec	Fund Affected
FY03	**FY04**			
	$2,080.0	$2,650.0	Recurring	New-State Transit Fund
	($2,080.0)	($2650.0)	Recurring	State General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

The estimated impact assumes that 47 million gallons of fuel was sold through the deduction in calendar year 2002. The full-year impact shows the effect if 60 million gallons are sold, the maximum amount allowed under law. The annual average price is assumed to be $1.35 per gallon.

SOURCES OF INFORMATION

Responses Received From
Highway and Transportation Department
Taxation and Revenue Department

SUMMARY

Synopsis of HTC Amendment

The distribution calculation is modified by the House Transportation Committee Amendment. Instead of basing the total distribution on the 5% state gross receipts tax rate, the "effective general fund gross receipts tax rate" is defined, to equal the 5% rate less the 0.5% credit allowed for municipal taxes paid and less the 1.225% distribution to municipalities from the state's share of gross receipts tax. The result is a rate of 3.275%.

TRD makes the following comments related to the amendment:

- The nature of gasoline distribution and the gross receipts tax program is such that the department has great difficulty in tracing deductible gallons as they make their way through the chain of commerce. Gasoline sales are not separately stated on the Combined Revenue System ("CRS") tax return. Thus, the only way the department can identify the gross receipts tax attributable to gasoline gallons that were sold with the Indian distributor deduction is through audit. The retailer who is liable for the tax may have received gasoline through an intermediary other than the Indian distributor. This intermediary may not provide the retailer with documentation indicating whether the excise tax has been paid and hence whether the gross receipts tax should apply. Under these circumstances, it is unrealistic to think that we are achieving 100% compliance with the gross receipts tax on this gasoline. At least a portion of the distribution required by the proposal represents revenue that is not being received by the general fund.

Synopsis of Original Bill

HB 690 creates a new "*State Transit Fund*" administered by the State Highway and Transportation Department. A once-a-year revenue distribution to the fund is proposed in an amount approximating the annual net receipts attributable to the gross receipts tax imposed on the sales of gasoline during the previous calendar year that were exempt from gasoline excise tax pursuant to Section 7-13-4, Subsection F (untaxed Native American gasoline sold outside the reservation).

These funds are appropriated to the State Highway and Transportation Department to be "*used to pay the costs of planning, design, construction, operation, maintenance or administration of any public mass transportation program or system in this state and to match federal allotments under federal-aid transportation laws*".

The bill has a July 1, 2003.

Significant Issues

The bill does not alter the Native American gasoline tax deduction in any way.

The bill does not affect local government gross receipts tax revenue in any way.

The Highway and Transportation Department notes that the inevitable increasing importance of transit issues in the state will require program initiatives and funding for those transit programs. Separation of the state's Road Fund and Transit Fund, as is done at the federal level, should enhance the ability to forecast and plan for the use of resources. Separation of the state's Road Fund and Transit Fund allow the Legislature and Executive to be assured that earmarked or dedicated money will be used for the intended purpose, possibly facilitating initiatives to direct additional, much needed resources to transportation enhancements. The separation of these two funds may also serve to assure the public that funding for both highways and transit programs are being spent in a manner consistent with Legislative and Executive policy decisions.

The 60 million gallons of gasoline that is exempt from gasoline excise tax pursuant to Section 7-13-4, Subsection F NMSA 1978 (untaxed Native American gasoline sold outside the reservation), automatically becomes subject to the gross receipts tax since the gasoline excise tax was not paid on that fuel. When granting this Native American tax deduction, the Legislature may not have been aware of the fact that, not only did the State Road Fund lose revenue, but also the State General Fund *gained* revenue through the gross receipts tax. This bill proposes to return this possibly unintentional revenue diversion back to transportation purposes.

FISCAL IMPLICATIONS

HB 690 creates the state transit fund. Beginning on or before August 15, 2003, the Taxation and Revenue Department is to distribute an amount equal to the annual net receipts attributable to the gross receipts tax imposed on the calculated sales of tax-exempt gasoline during the previous calendar year. The money to make the distribution to the state Transit Fund in August of each year would come out of the General Fund's distribution of July gross receipts tax revenue. The General Fund will continue to receive the *actual* gross receipts tax attributable to the sale of this gasoline throughout the year, but a once-a-year distribution would be made in an amount approximating the prior calendar year gross receipts tax revenue attributable to Native American gasoline sold outside reservation boundaries.

Continuing Appropriations

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

ADMINISTRATIVE IMPLICATIONS

The Taxation and Revenue Department (TRD) would undoubtedly find it difficult to track and document the actual gross receipts tax paid on the particular gallons of Native American gasoline sold outside reservation boundaries, so the bill proposes an approximation of the gross receipts tax imposed on that fuel. The TRD does track the volume of gasoline reported as deductible by the two authorized Indian tribal distributors. By using a statewide average gasoline price multiplied by the reported volume of gasoline and multiplied by the tax rate, the net receipts attributable to the gross receipts tax may be closely approximated.

RELATIONSHIP

HB691 relates to SB34 and SB 102 which create regional transit districts and to SB666, SB420 and HB583 which all provide some type of local funding options for regional transit or rail systems.

PRF/njw:sb:yr