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FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 10/7/05 HB _____

SHORT TITLE TEMPORARILY SUSPEND GASOLINE TAX SB 9

ANALYST Schardin

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY06	FY07	FY06	FY07		
		255,784.6		Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	153,585.6		Non-Recurring	Gas Tax Replacement Fund
	102,199.1		Non-Recurring	Special Fuel Replacement Fund
	-98,997.1	-48,794.5	Non-Recurring	Gas Tax Recipients
	-70,056.7	-32,084.3	Non-Recurring	Special Fuel Tax Recipients

(Parenthesis () Indicate Revenue Decreases)

Duplicates HB11

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Department of Transportation (DOT)
- New Mexico Finance Authority (NMFA)
- Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

SB9 creates a one-year exemption for the \$0.17 per gallon gasoline excise tax and the \$0.21 per gallon special fuels excise tax effective November 1, 2005 to October 31, 2006. The bill also ensures that these fuels will remain exempt from the gross receipts tax; under current law, fuel on which the gasoline excise or special fuels tax is imposed is exempt from gross receipts and compensating taxes.

The bill creates two new funds, the gasoline tax replacement fund and the special fuel tax replacement fund, which will receive monthly transfers from the General Fund which may only be used to make distributions to ordinary recipients of the gasoline and special fuels excise taxes. In each of the twelve months that the gasoline excise tax is exempt, the gasoline tax replacement fund will receive one twelfth of 101.225 percent of *total* FY05 gasoline tax collections. In each of the twelve months that the special fuels excise tax is exempt, the special fuel tax replacement fund will receive one twelfth of 103.13 percent of *total* FY05 special fuel tax collections. These two new funds will revert to the General Fund after the last distributions are made.

Significant Issues

The gasoline excise tax is imposed for the privilege of receiving gasoline in New Mexico. The tax liability is owed by the gasoline distributor or rack operator. As a rule, distributors pass the gasoline tax to consumers in the form of higher retail gasoline prices. The rate of the gas excise tax has fluctuated from as little as \$0.14 per gallon in FY89 to as much as \$0.22 per gallon in FY94. The last rate change to \$0.17 per gallon became effective in FY96.

Gasoline excise tax collections are distributed to the state road fund, the General Fund, tribal governments, and several different county and municipality funds. Local government distributions are earmarked for road-related expenditures. The table below summarizes preliminary figures on how gasoline excise tax collections were distributed in FY05.

Total Gasoline Excise Tax Distributions	
(\$ in Thousands)	
Fund	FY2005
State Aviation Fund	\$388.4
Motorboat Fuel Tax Fund	\$194.2
Counties and Municipalities	\$15,244.5
County Government Road Funds	\$8,604.5
Municipal Road Funds	\$8,604.5
Municipal Arterial Funds	\$2,151.1
General Fund	\$400.0
Tribal Revenue Sharing	\$4,080.0
State Road Fund	\$109,455.6
TOTAL	\$149,122.8

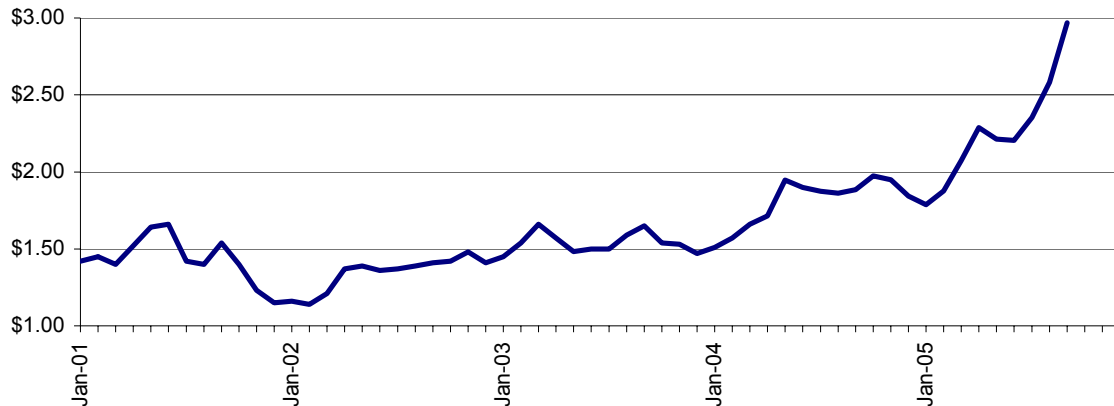
Source: Department of Transportation

Retail prices for gasoline crept upward over the last several years before starting to spike at the beginning of CY05. Hurricanes Katrina and Rita have exacerbated this trend. The table below shows the average price per gallon of gasoline in New Mexico. State economists expect retail gasoline prices to average \$2.65 in FY06 and \$2.35 in FY07, compared to \$1.90 in FY05.

Higher gasoline prices reduce the amount of disposable income New Mexicans have to spend on

other goods and services. At these forecast gasoline prices, disposable income would be reduced by about \$691.4 million in FY06 and \$433.2 million in FY07. Assuming this income would otherwise be spent on items that are subject to the Gross Receipts Tax, higher gasoline prices may reduce state GRT collections by about \$25.8 million in FY06 and \$16.2 million on FY07.

New Mexico Average Retail Gasoline Price per Gallon



Source: AAA Monthly Survey

The special fuels excise tax is imposed for the privilege of receiving or using special fuel in New Mexico. Special fuels include diesel and kerosene, and tax is collected on special fuel used in vehicles weighing over 26 thousand pounds. Under current law, 90.48 percent of the special fuels excise tax is distributed to the state road fund and the remaining 9.52 percent goes to the local governments road fund. The table below summarizes preliminary figures on how special fuels excise tax collections were distributed in FY05.

**Special Fuels Excise Tax Distributions
(\$ in Thousands)**

Fund	FY2005
Local Government Road Fund	\$ 9,200.0
State Road Fund	\$ 87,400.0
TOTAL	\$ 96,600.0

Source: Department of Transportation

DOT estimates that about 80 percent of special fuels excise tax is imposed on out-of-state trucking companies, meaning that about 80 percent of the tax exemption for special fuels would benefit non-New Mexicans.

Because the gasoline and special fuels excise taxes are imposed on businesses and passed along to consumers, there is no guarantee that the tax relief proposed in SB9 will completely trickle through to consumers. Michael F. Martin, Senior Economist at the American Road and Transportation Builders Association, estimates that recent gasoline tax suspensions in Illinois and Indiana resulted in a little over half of tax cut benefits going to consumers and the rest to gasoline suppliers.

While federal and state taxes represent about one-third of gasoline prices nationwide, this is a

very stable part of the price. Rather, gasoline price volatility is due to volatility in the price of crude oil.

Each year that gasoline and special fuel tax rates are not adjusted for inflation the real value of the tax decreases. Since the gasoline tax rate was set at \$0.17 per gallon in July 1995, the real value of the tax has fallen by 22 percent to \$0.133 per gallon when adjusted for inflation.

Gasoline and special fuels excise tax payments to the state road fund have already been pledged as debt service for transportation bonds. NMFA believes SB9 could adversely affect the GRIP bond program because it violates the state Constitution's non-impairment clause and statute that authorizes GRIP, Section 67-3-59(L) NMSA 1978.

By deviating from the promise to repay transportation bonds with money from the state road fund SB9 could pose a risk to the state's current and future bond ratings. NMFA notes that about \$900 million worth of GRIP bonds remain to be issued in the next few years. NMFA's financial advisors think rating agencies would react negatively to any action contrary to the non-impairment clause.

FISCAL IMPLICATIONS

Preliminary gasoline excise tax collections totaled about \$151.7 million in FY05. Multiplied by 101.225 percent, the General Fund transfer to the gasoline tax replacement fund will be about \$151.7 million. DOT estimates that this transfer will give recipients of the gasoline tax about \$3.4 million more than they would receive under current law in FY06 and about \$2.4 million more in FY07.

Preliminary special fuels tax collections totaled about \$99.1 million in. Multiplied by 103.13 percent, the General Fund transfer to the special fuel replacement fund will be about \$102.2 million. SB9 would transfer one-twelfth of this amount per month to the special fuel replacement fund. DOT estimates that this transfer will be \$1.9 million less than recipients of the special fuels tax would receive under current law in FY06 and \$2.0 million more in FY07.

ADMINISTRATIVE IMPLICATIONS

TRD notes the bill will require moderate changes to systems and changes in reporting procedures and that passage of the bill could delay implementation of a new program for tracking and reporting gasoline and special fuels excise taxes.

TECHNICAL ISSUES

On page 5, lines 3 and 13, the intent of the bill may be to use the word "net" instead of "total." Total receipts include interest, penalties and refunds, but under current law distributions of gasoline and special fuel taxes are sent to recipients net of these deductions.

Article IX, Section 16 of the New Mexico State Constitution states that, "The legislature shall not enact any law which will decrease the amount of the annual revenues pledged for the payment of state highway debentures or which will divert any of such revenues to any other purpose so long as any of the said debentures issued to anticipate the collection thereof remain unpaid."

In addition, Section 67-3-59.1(L) NMSA 1978 states that, “Any law authorizing the imposition or distribution of taxes or fees paid into the state road fund... or that affects those taxes and fees shall not be amended or repealed or otherwise directly or indirectly modified so as to impair outstanding bonds secured by a pledge of revenues from those taxes and fees paid into the state road fund..., unless the bonds have been discharged in full or provisions have been made for a full discharge.”

Due to these constitutional and statutory non-impairment provisions, NMFA reports they will need to notify bondholders of the change in dedicated revenue stream if SB9 is enacted into law. By circumventing constitutional and statutory provisions on state debt, NMFA predicts that bondholders and rating agencies may look negatively on SB9. If rating agencies choose to downgrade current transportation bonds or give the state a lower rating on future issuances, the state will be forced to spend more on bond issuance interest.

The gasoline and special fuels excise taxes both contain an “inventory tax” that is imposed on the amount of inventory a supplier possesses when the rate of the tax increases (Sections 7-13-3.1 and 7-16A-4 NMSA 1978). It is unclear whether or not suppliers will have to pay a full \$0.17 tax on all gasoline inventory and \$0.21 tax on all special fuel inventory when the exemption ends on October 31, 2006.

DOT notes that it is possible that an exemption of gasoline excise tax could cause problems for the International Fuel Tax Agreement between states. In this agreement, trucking companies report how many miles they’ve driven in each state and states make transfers to one another on a quarterly basis. The transfer system may not be equipped to handle a tax rate change in the middle of a quarter.

OTHER SUBSTANTIVE ISSUES

Exempting gasoline and special fuels from taxation for one year will leave alternative fuels as the only category subject to taxation. Alternative fuels, which include liquefied petroleum gas and compressed natural gas, are taxed at a rate of \$0.12 per gallon.

Elimination of the gasoline excise tax may be a disincentive to conserve fuel. Conservation helps bring prices down when gasoline supply is tight.

ALTERNATIVES

Governor Richardson’s proposal to create a one-time rebate to soften the impact of higher gasoline and home heating costs would put about \$75 million into the hands of New Mexicans. The governor proposes another \$20 million increase in funding for the Low Income Home Energy Assistance Program (LIHEAP). The governor’s proposal gives a smaller total tax benefit. However, the state could be confident that the tax benefit would reach consumers and not be kept by gas suppliers.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Gasoline and special fuels will be taxed from November 1, 2005 to October 31, 2006. Retail prices of these fuels will be somewhat higher than if the tax were exempt. Higher retail fuel prices will reduce consumer spending on other goods and services.

SS/yr