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FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/06
 LAST UPDATED 2/13/06 HB _____

SPONSOR Sanchez M

SHORT TITLE Railroad Car Company Tax Act Rate Changes SB 315

ANALYST Francis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$427.7	Recurring	Railroad Crossing Maintenance Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	\$427.7	689.8	Recurring	Railroad Crossing Maintenance Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
 Department of Transportation (DOT)

Responses Received From
 Department of Transportation (DOT)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 315 appropriates \$690 thousand from the general fund to the “Railroad Crossing Maintenance Fund” for the purpose of maintaining and upgrading railroad crossings. SB315 amends the Tax Administration Act by creating a new fund called the “Railroad Crossing Maintenance Fund.” SB 315 increases the ad valorem tax on private railroad cars to 3.5 percent.

FISCAL IMPLICATIONS

SB 315 has a net fiscal impact on the general fund of zero due to the rate increase combined with the new distribution to the railroad crossing fund. The increase in the rate from 1.5 percent to 3.5 percent is matched by the distribution of four sevenths of the fund to the railroad crossing fund.

The taxable base in 2007 is estimated to be \$34.448 million. At the current rate, this would yield revenue of \$517 thousand. At the new rate of 3.5 percent, the revenue would be \$1.2 million. Four-sevenths of that, or \$690 thousand, would go to the railroad crossing maintenance fund leaving the general fund with \$517 thousand or no different from the current law. Because the tax accrues on a calendar basis and is paid in March of the following year, only the May 17 through December 31, 2006, tax is counted. This makes the FY07 impact 62 percent of a full year or \$427.7 thousand.

SIGNIFICANT ISSUES

TRD:

In 1976 Congress passed the Railroad Revitalization and Recovery Act (the 4R Act). The 4R prohibited states from imposing discriminatory taxes on railroads. In 1995 Congress amended the anti-discrimination statute, 49 USCA Sec. 11501, and made it even more stringent in what the states could tax. In 1996, several railroads threatened to challenge New Mexico's Railroad Car Tax Act. Department representatives suspected the firms would win the prospective litigation, since the Act is facially discriminatory against railroads. As a compromise, the state agreed to reduce the tax from 3.5% down to 1.5%. The lawsuits were avoided. This bill would renew the conflict initiated in 1996, and threaten the entire statute.

The 4R act provides that a state cannot pass a tax which:

- Assesses railroad property at a higher ratio to true value than other industrial property;
- Levy taxes at a higher rate than other industrial property;
- Discriminates against Railroad property.

Because the tax treats railroads differently from all other transportation, the burden would be on the state to prove (in federal court) that the statute nonetheless imposes a lesser burden on railroads than other types of property. Non-discrimination on a statute like this is very difficult to show from a factual basis, requiring complex property tax burdens analysis. Some cases simply say these statutes are always discriminatory and strike them down. Other cases have looked to expected hypothetical property tax burdens. *Trailer Train Co. v. Bair*, 60 F.3d 410 (8th Cir. 1995)(upholding similar 3% apportioned earnings tax—but note Iowa may have had much higher property taxes than NM). The fact that the proceeds will be used for Railroad safety purposes does not save a discriminatory statute. *Trailer Train Co. v. State Tax Commission*, 929 F.2d 1300 (8th Cir. 1991).

NF/nt;mt