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

ORIGINAL DATE 02/07/12
SPONSOR Jeff **LAST UPDATED** **HB** 272

SHORT TITLE RAISE GAS TAXES FOR HWY 491 PROJECT **SB**

ANALYST Walker-Moran

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	See Fiscal Impact		Department of Transportation

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14	FY15	FY16		
0.0	**$14,060.0**	**$14,220.0**	**$14,470.0**	**$14,740.0**	Recurring	Highway 491 Project Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB-202, HB-205, and SB-264. Conflicts with HB 205.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Transportation (DOT)
Taxation and Revenue Department (TRD)
New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

House Bill 272 amends section 7-1-6.10 NMSA 1978 to add an additional distribution to the highway 491 project fund in an amount equal to the net receipts attributable to the highway 491 gasoline and special fuel surtaxes. This bill adds a $.01 per gallon surtax on to the gasoline tax and the special fuel (diesel) tax that will go to the Highway 491 project fund.

The Highway 491 Project Fund revenues are to be used for debt service of bonds issued for the completion of reconstruction and improvement of U.S. highway 491. Any balances in the fund remaining at the end of a fiscal year shall revert to the road fund after all required debt service. Reverting revenues shall be used for the acquisition of rights of way, planning, design, engineering, construction, improvement and maintenance for state highway projects.

The bill also creates section 67-3-59.6 specifically to address the issuance of Highway 491 Project Bonds. In order to provide funds for the Project, the New Mexico Finance Authority, when directed by the state transportation commission ("Commission"), may issue Highway 491 Project Bonds ("Bonds") in an amount not to exceed one hundred twenty-three million dollars ($123,000,000). The proceeds from the sale of the bonds are appropriated to the Department for the purpose of completing the Project.

The effective date of this bill is July 1, 2012. The sunset date of this bill is June 30, 2027 or 15 years.

FISCAL IMPLICATIONS

Appropriation:
Revenue from the U.S. Highway 491 project surtaxes may be used to issue bonds of up to $123 million. The proceeds from the sale of these bonds are appropriated to NMDOT for the reconstruction and improvement of U.S. highway 491.

Revenue:
According to DOT, the one cent surtax on gasoline is expected to raise approximately $8.9 million and the one cent surtax on special fuels (diesel) is expected to raise approximately $5.2 million in FY13. This forecast is based on the January 2012 Road Fund Forecast volumes and it assumes that any elasticity effects of a one cent price increase are negligible.

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

NMFA reports no fiscal impact to them, assuming the level of gasoline consumption does not decrease from its current levels. However, the Public Project Revolving Fund ("PPRF") program administered by the NMFA currently has thirteen (13) loans with municipalities and counties for which the repayments of these loans are secured by gasoline tax revenues. The total of these loans outstanding are approximately $20.3 million, with the final maturity of all of these loans occurring in June 2027. These thirteen (13) loans are secured by gasoline tax revenues, with a minimum revenue to debt coverage of 1.25 times; meaning that for every dollar of annual debt repayment required on the loan, the gasoline tax revenue generated by the borrowing entity is required to be one dollar and twenty-five cents. This helps to ensure that slight declines in the revenue securing the repayment of the loan should not impact the repayment of the loan.

SIGNIFICANT ISSUES

New Mexico's current gasoline tax of $0.17/gallon has not changed since July of 1995 and the current combined total tax on gasoline (including the petroleum products loading fee) of 18.875 cents per gallon has remained unchanged since 2002. The current combined rate of taxation on diesel fuel of 22.875 cents per gallon has remained unchanged since 2004.

New Mexico currently has the 8th lowest tax on gasoline and the 17th lowest tax on diesel among the 50 states. In real (inflation adjusted) terms New Mexico's rate of tax on diesel and gasoline has fallen significantly over time. The tables in DOT's FIR show the history of New Mexico's motor fuel tax rates and a comparison among states.

According to the TRD, U.S. Highway 491 travels from Gallup north to Shiprock, crossing into Colorado just south of Cortez. This highway is the primary artery through the eastern half of the Navajo Nation to commercial centers in the Four Corners region. A high fatality rate helped the Navajo Nation to secure a $31 million grant from the U.S. Department of Transportation in 2010 to upgrade a 69-mile section north of Gallup. Earmarking of a tax imposed statewide for a particular road project is an unusual feature of the bill.

As reported by NMFA, any increase in a tax for a good or service will generally affect its consumption. It is difficult to determine what the true impact of a one cent per gallon increase in tax will have on gasoline consumption, especially during a time when gasoline prices are predicted to increase greatly over the remainder of this calendar year. Ignoring the impact on the entities receiving the gasoline tax, in general, to have a fiscal impact on the PPRF program and its borrowing entities utilizing the gasoline tax revenue as a source of debt repayment, gasoline consumption would have to decline 25%, which could happen with the continual increase in gasoline prices.

ADMINISTRATIVE IMPLICATIONS

The TRD reports moderate administrative impacts would result from tax rate changes, changes to revenue distribution calculations, and monitoring of tribal-imposed tax rates, including distributor notification for the proper treatment of the gasoline tax deduction for volumes delivered to each tribal jurisdiction for retail sale within the reservation. Moderate ITD-GenTax computer system impact (610 hours).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB-202, HB-205, and SB-264 also adjust gasoline and special fuel tax rates. HB-202 and SB-264 do not directly conflict with HB-272 since they amend different sections of law. HB-205 conflicts with HB-272 in that both amend Section 7-1-6.10 NMSA 1978.

OTHER SUBSTANTIVE ISSUES

Per TRD:

- The change to the gasoline tax rate will have an impact on the qualifying tribal tax rates imposed by tribal entities on gasoline retailed within tribal reservation boundaries. Section 7-13-4, Subsection E, Paragraph (3) provides that the state tax deduction for gasoline sold by tribal retailers is equal to the rate of tribal tax divided by the state tax rate and multiplied by the number of tribal retail gallons. Tribes would have to increase the rate of their tribal tax to match the state tax rate in order to receive a 100% deduction against state tax.

  Tribal revenue from the tribal-imposed gasoline taxes would probably increase by about $600 thousand per year for all tribes during the fifteen (15) year period, assuming a $0.01 per gallon increase in all tribal gasoline tax rates.

- As a separately imposed surtax, the Highway 491 Gasoline Surtax has no effect on the Gasoline Tax Sharing Agreements between the NM-DOT and Nambe and Kewa (Santo Domingo) Pueblos.
- The current gasoline tax rate is $0.17 per gallon, and that rate has been in effect since July 1995, (the tax rate on gasoline has not been lower than $0.17 since July 1993). The current special fuels tax rate is $0.21 per gallon, and that rate has been in effect since July 2004. An illustration of current state tax rates on gasoline and special fuel are included in the following pages.
- If bonds are issued up to the authorized amount of $123 million, assuming a 3.75% interest rate, total annual debt service will be approximately $11 million. As estimated, the revenue generated from the surtax would be enough to cover the debt service. However, if increases in gasoline prices or a deep recessionary period were to impact demand for gasoline and special fuels, the state could risk default on the bonds unless the payments are secured through other revenue sources.

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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