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

SPONSOR Sen. John Pinto **ORIGINAL DATE** 01/29/14 **LAST UPDATED** **HB**

SHORT TITLE Gas Tax For U.S. Highway 491 Project **SB** 147

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY14	**FY15**	**FY16**	**FY17**	**FY18**		
$0.0	$13,700.0	$13,867.0	$14,006.0	$14,133.0	Recurring(1)	Highway 491 Project Fund
	***	***	***	***	Recurring	Reversion to State Road Fund
	~$700.0**	~$700.0**	~$700.0**	~$700.0**	Recurring	Tribal Governments Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Revenue from the gasoline tax would amount to approximately $8.7 million in FY2015.
Revenue from the special fuel tax would amount to approximately $5.0 million in FY2015.

(1) Recurring impact for 15 years – FY2015 through FY2029 – see Fiscal Implications.

*** State Road Fund impact from the annual reversion provision for the Highway 491 Project Fund balance would effectively be zero in FY2015 due to timing issues. In general, the debt service requirement would be expected to amount to approximately $11.3 million per year, allowing an annual build-up of fund balance of about $2.5 million per year. After a prudent amount is built-up into a reserve (to accommodate unexpected revenue shortfalls), annual reversions to the State Road Fund of $2.5 to $3 million could be expected. However, those reversions might not occur for the first few years while building the appropriate reserve.

** DOT reports this increase in Tribal Governments gasoline taxes would be about $700 thousand annually, while TRD reports the amount would be $240 thousand.

SOURCES OF INFORMATION
LFC Files

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

SUMMARY

Synopsis of Bill

Senate Bill 147 imposes two new taxes: the Highway 491 Gasoline Surtax and the Highway 492 Special Fuels Surtax. Both new taxes are 1¢ per gallon of fuel. The new taxes mirror all of the provisions of the Gasoline Tax Act and Special Fuels Tax Act, including the provisions for numerous exemptions and deductions before gasoline tax revenues reach the State Road Fund. NMDOT estimates that 76 percent of the 17 cent gasoline tax and 19 cents of the 21 cent Special Fuels tax reach the State Road Fund. Given NMDOT estimates of State Road Fund gas tax revenues of $108,100,000 in 2014, a tax of .17 yields $6.4 million in revenue for each .01 of tax. Given NMDOT estimates of State Road Fund special fuels tax of $93,700,000 in 2014, a tax of .21 yields $4.9 million in revenue for each .01 of tax. $6.4 million plus $4.9 million would project to new revenue of $11,290,000 per fiscal year from 2015 through fiscal year 2029 (assuming no increase or decrease in total gallons used over time).

The bill creates the "Highway 491 Project Fund" in the state treasury. The proceeds of the Highway 491 Gasoline Surtax and the Highway 491 Special Fuels Surtax are to be transferred to the Highway 491 Project Fund and balances in the fund will be used to amortize up to $123 million in project bonds to be used to complete construction of a four-lane Highway 491 from Gallup to Shiprock. The Department of Transportation is also authorized in the bill to use unencumbered and unobligated federal funds, all other taxes and fees otherwise accruing to the State Road Fund and the proceeds of the Highway 491 surtaxes to back the project bonds. The project bonds are tax exempt and are not a general obligation of the state.

Balances in the Highway 491 Project Fund would revert to the State Road Fund at the end of each fiscal year "*after all required debt service payments and other required debt service and reserve fund deposits have been made*".

EFFECTIVE DATE July 1, 2014

FISCAL IMPLICATIONS

ILLUSTRATION OF POTENTIAL REVENUE TO HIGHWAY 491 PROJECT FUND (thousands of dollars)						
FY15	**FY16**	**FY17**	**FY18**	**FY19**	**FY20**	**FY21**
13,700	13,867	14,006	14,133	14,214	14,260	14,285
FY22	**FY23**	**FY24**	**FY25**	**FY26**	**FY27**	**FY28**
14,298	14,298	14,298	14,298	14,298	14,298	14,298

DOT reports that the estimated revenue impact for fiscal years 2015 through 2018 is based on the estimated gasoline and special fuel gallons from the January 2014 Road Fund Forecast. Annual debt service on the Highway 491 project bonds would probably be about $11.3 million per year (assuming an interest rate of about 4.25 percent).

Issuance costs for a small revenue bond are likely to be as much as 5 percent of the overall issue.

See “Technical Issues” below for a suggestion.

NMFA provides the following perspective on the bonding provisions:

> The NMFA estimates that it could, in the current municipal bond market, issue $123,000,000 of equal annual debt service fixed rate bonds with a 15 year final maturity at an annual debt service cost of between $10,400,000 (senior lien) and $10,500,000 (subordinate lien). Therefore, there is sufficient projected revenue from the new surtaxes on gasoline and special fuels to enable $123,000,000 of new debt to be issued to fund the Highway 491 project.
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> However, NMDOT, when issuing bonds through the NMFA, must meet certain coverage requirements established in the bond master indenture. The rating agencies also monitor coverage closely. Coverage is the amount by which all State Road Fund revenues augmented by eligible federal highway revenues exceed debt service obligations as calculated by dividing annual debt service into annual revenue. Adding new revenues and new expenses of about equal amounts will result in a decrease in overall NMDOT bond program coverage.
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> The required senior lien coverage is 3.0x for State Road Fund revenues relative to senior lien debt service, and 3.5x from all state and federal pledged revenues. The required subordinate lien coverage is 3.0x of combined state and federal revenues relative to combined senior lien and subordinate lien debt service. Assuming that NMDOT issues $80 million in new bonds in February 2014 as planned, the projected coverage in 2015 for the above three measures would be: 3.39x, 6.30x, and 4.66x. Assuming the NMDOT issues both the $80 million in new bonds and the $123 million in designated Highway 491 bonds as senior lien bonds, the coverage in 2015 for the above three measures would be: 3.09x, 5.76x, and 4.36x. Assuming the NMDOT issues both the $80 million in new bonds and the $123 million in designated Highway 491 bonds as subordinate lien bonds, the coverage in 2015 for the above three measures would be: 3.39x, 6.30x, and 4.36x. In other words, there is sufficient capacity under the required indenture coverage tests to issue the $123 million in new money bonds as anticipated though coverage levels fall. Most likely, the $123 million would be issued as subordinate lien debt given that coverage of 3.09x for senior lien relative to state revenues could raise rating concerns. Similar concerns are less likely for subordinate lien debt given the still very strong coverage of 4.36x.
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> Note that the $80 million expected to be issued by NMDOT through the NMFA in February leverages available Highway Infrastructure Fund (“HIF”) funds. HIF funds must be used on one of the 14 designated projects, among which is Highway 491. Should the gasoline surtax and special fuels surtax be enacted to create additional State Road Fund revenue for the purpose of completing the Highway 491 project, then the $80 million in new HIF debt would be available for other high priority highway projects around the State as designated in the HIF legislation. Indian tribes, which will be obligated under the provisions of this bill to increase the taxes collected on behalf of the tribe by the same 1¢ per gallon proposed in the bill. The Highway 491 Gasoline Surtax and the Highway 491 Special Fuels Surtax would be collected for the 15-year period from July 1, 2014 through June 30, 2029.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 74 and SB 288 also increase gasoline and special fuel tax rates.

HB 55 seeks to provide some funding for the Highway 491 project by transferring $5 million from the Tribal Infrastructure Fund and $5 million from the NMFA's Contingent Liquidity Account ("CLA") fund.

Passage of SB 147 should make the noted provisions in HB 55 redundant and unnecessary. The NMFA believes the CLA provision in HB 55 would adversely impact the NMFA, and the Tribal Infrastructure Fund is understood to be making similar arguments. Passage of SB 147 could resolve these conflicts.

SIGNIFICANT ISSUES

When the gasoline tax increases, tribes must also increase their tribal tax rates in order to continue qualifying for their deductions at 100 percent. If they do so, their taxes would be estimated to generate an additional $700 thousand annually (per DOT) or $240 thousand annually (per TRD).

The ultimate effect of this bill would be to impose taxes on all New Mexicans and Interstate trucking companies to provide a highway that will serve a small region of the state. The increased tax will have a 15-year life.

Ordinarily, building a primarily regional highway would be the responsibility of the State Highway Commission, using either federal road funding or severance tax bonds. This innovative financing of a regional road project may be poor precedent.

Including unentailed federal funds and all other unentailed taxes and fees accruing to the State Road Fund in the bond pledge and retaining those pledged revenues for 15 years is somewhat unusual. Per Constitutional provisions, this means that none of the pledged revenues can be decreased in rate for the duration of the bonds. See "Fiscal Issues" for a discussion of coverage ratios.

TRD points out some economic implications of the provisions of this bill:

> Given that the average price of a gallon of gas in New Mexico was $3.51 in 2013, and that the average household in NM spent a little over $4,000 on gas last year (which represents about 9% of the median household income), increasing the tax on gas represents a significant additional burden to the average New Mexican. Because the cost of gas and special fuels are part of the cost of transporting goods, raising the tax on these fuels has an inflationary impact on those goods transported within New Mexico making them more expensive
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> This would represent the first time that TRD is aware of in which a statewide tax was increased and that increase was dedicated to a single, specified project. This would set a precedent that the advocates of other projects may try to use for their favored project.

ADMINISTRATIVE IMPLICATIONS

TRD reports a moderate information systems impact. “This legislation would require rate changes of the combined fuel tax (CFT) program for tax and surcharge on gasoline and special fuel, setting up two new RA accounts to distribute funds to new recipients of gasoline surtax and special fuel surtax, and distribution rates changes of tax and surcharge on gasoline and special fuel. This will result in approximately 300 hours. Forms and online reporting would need to change to incorporate the CFT surtax on the return. NM distributors/suppliers would need to be notified of the surtax and make changes to their electronic filing. The surtax would also be part of any refunds that are issued by TRD. The registered Indian Tribal Distributors would have to certify to TRD that the tribe has this surtax in place and that they are collecting the surtax. Since currently the tribes do not remit the taxes to TRD, there would need to be some way for them to remit the $0.01/gallon surtax which may be required for the overall deal to work.”

TRD continues, “…assuming that the surtax can be treated on the CFT form as if it were a tax increase the CFT return will not require a new line item. The instructions will need to be changed and a bulletin will need to be produced to introduce the increase. But if a new line item needs to be added, the impact will increase. The CFT form will require a new line, instructions changes, GenTax and electronic filing modifications as well. If a new line item is needed with an effective date of July 1, 2014, there will be little time to make the changes on our end, and to give taxpayers time to make the changes needed to electronically file. Taxpayer and TRD employee education will be required and notices will need to be developed and mailed to taxpayers affected by the rate increase of this bill.”

TECHNICAL ISSUES

The bill provides that the Highway 491 project bonds must be issued through NMFA. It might be appropriate to allow provisions for the option that the State Transportation Commission issue the bonds, or options such as placing a note with a bank, lines of credit, or other debt instruments. Such options might allow reduced costs associated with the debt issuance, given the relatively short time frame (15 years) and the relatively small project size.

ALTERNATIVES

Fund this project using federal highway funds or severance tax bond proceeds as allocated by the State Highway Commission or adopt the alternative discussed in “Technical Issues” above.

LG/jl