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FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/2008

SPONSOR Snyder LAST UPDATED _____ HB _____

SHORT TITLE Weight Distance Tax Violation Penalties SB 232

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI	NFI	State Road Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	\$0.1 (See Fiscal Implications)			State Road Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 NM Department of Transportation (NMDOT)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 232 amends Sections 7-15A-3 and 7-15A-12 NMSA 1978 to establish penalties for failure to pay the Weight Distance Tax (WDT) imposed for the use of motor vehicles weighing more than 26,000 pounds. The penalty for failure to pay due to negligence or disregard of rules, but without intent to defraud would equal 100 percent of the tax due. The penalty for failure to pay with intent to defraud the state would be 100 percent of the tax due plus \$25,000. The bill also provides that TRD “shall” (instead of “may”) suspend or decline to renew a weight distance permit if the vehicle’s owner or operator does not comply with the provisions of the Weight Distance Tax Act.

The WDT is imposed within the Tax Administration Act (TAA), and current penalties amount to 2% per month of the tax due up to a maximum of 20%, when there is no willful intent to evade or defeat the tax. This penalty would be increased to 100% of the tax due. In the case of willful intent to evade or defeat the tax, the current penalty of an additional 50% of tax due would be replaced by an additional \$25,000.

FISCAL IMPLICATIONS

TRD indicates that the actual amount of revenue resulting from the bill relates to the number of companies that are delinquent, those deemed to be intentionally negligent and the impact the bill has as a deterrent to failure to report and pay the tax.

In considering the fiscal impact, TRD analyzed the results of the recent Motor Transportation Division (MTD)/ Department of Public Safety weight distance tax enforcement blitzes. MTD stopped trucks in a multi-day, around the clock operation, to determine if they had outstanding WDT delinquencies. During the blitz operation, 17,256 trucks were processed by MTD and 108 or 0.625% had an outstanding delinquency. Based on the total amount collected, the average delinquency was \$952.26 per truck. If this percentage (0.625%) is applied to the total number of trucks with permits in calendar year 2007 (845,254), the resulting extrapolated delinquency would be 5,282 trucks. If the average delinquency of \$952.26 is applied to each of those trucks the resulting revenue generated by the bill would be \$5 million, assuming that each truck represented one company. \$5 million would be equivalent to about 6.0% of this \$80+ million tax program.

TRD additionally points out that the MTD operation at Ports-of-Entry on Interstate highways represents only the interstate traffic and the operation probably did not sample the many vehicles operating mostly within the state. There were many reports of trucks parking near the state borders, apparently waiting out the enforcement effort before entering the state. A note of caution must be given in that the MTD enforcement efforts may not necessarily be reflective of what increased penalties might generate.

The current level of overall noncompliance has not been quantified, and it is difficult to forecast how increased penalties alone, without an extensive audit program, might affect compliance.

SIGNIFICANT ISSUES

New Mexico is one of four states that has what is commonly known as a Weight/Distance tax (NY, KY, OR are the others). For trucks driving in and across the state, a fee is charged based on how far they travel and how much they weigh. In the case on New Mexico, the Weight/Distance tax is offset by the state having the lowest truck registration fees in the country.

The Weight/Distance tax in FY09 will produce \$83 million for the state road fund (SRF) and is the SRF's third largest source of revenue after fuel taxes.

The HM 35 task force undertook a comprehensive study of current NMDOT revenues and a number of possible revenue enhancement sources. Weight/Distance tax generated the most compliance concern – both on-the-road and in the administration of the collection process. There are approximately 1,000,000 different trucks that use New Mexico's roads and to effectively monitor them and their companies is complex at best. In an effort to improve

compliance, the task force focused on three areas: 1) enhanced auditing of returns; 2) increased road and port-of-entry coverage (HB 298), and increasing penalties. It was estimated by the HM35 task force that as much as 20% or approximately \$19 million additional revenue could be collected.

There is a widely-held perception, and significant evidence that indicates that WDT compliance is a significant statewide problem. TRD indicates that while an increase in penalties may be appropriate there are a number of technical problems issues that would need to be worked out. These are:

- The bill’s proposed penalty provisions are considerably harsher than the currently applicable penalty provisions under Section 7-1-69 NMSA, but the new penalties would not increase with increased periods of delinquency. This structure provides no incentive to file and pay, once the deadline has been missed.
- The bill does not specify any exceptional application of this penalty, so the full penalty would apply to any late payment or late filing, even a day after the tax due date.
- The change from “may” to “shall suspend or decline to renew a weight distance tax identification permit ... if the owner or operator ... does not comply with the provisions of the Weight Distance Tax Act” appears to allow no tolerance for minor delinquencies, and would probably result in inappropriate suspensions of weight distance tax identification permits. Presumably, anyone subject to any penalty would also be subject to suspension of their tax identification permit.
- An alternative approach to increasing WDT penalties offered by TRD might be a reference that the penalties imposed by Section 7-1-69 should be imposed at some multiple of the normal penalty amounts for purposes of the WDT only.

PERFORMANCE IMPLICATIONS

NMDOT indicates that heavy trucks are the most significant impactors of highways – roads are built to their criteria and replaced more frequently. The department indicates it would take 38,000 passenger vehicles to create as much wear and tear as one 86 thousand pound truck does in one pass over the same stretch of road. The Weight/Distance tax is a direct user tax. Accordingly, NMDOT argues that it is important that the full taxes be collected so that these revenues can be placed back onto the roads from which they are generated.

TECHNICAL ISSUES

TRD offers the following technical considerations:

- To assure clarity of definitions, the Section 7-1-69 phrase “evade or defeat the tax” should be used in place of the word “[defraud]” on page 2, line 7 and in place of the phrase “[defraud the state]” on page 2, line 10.
- The bill is unclear as to whether its penalties are in addition to the penalties imposed by Section 7-1-69 NMSA 1978 or would be in lieu of those existing penalties. In either case the bill should specify the intent with something to the effect that “the penalties imposed

under Subsection B of this Section are {in lieu of | in addition to} the penalties imposed pursuant to Section 7-1-69NMSA 1978.”

- The penalty of 100% of tax due, applying to all situations of delinquency, does not impose any incentive to file and pay once a taxpayer is only one day late. Taxpayers, many of whom may be New Mexico-based operators, would undoubtedly view the penalty as unfair and draconian. An alternative approach might be a reference to the phased penalties imposed under Section 7-1-69 NMSA 1978, but imposed at some multiple of those penalties (2% per month up to 20%) for this particular WDT. Such an alternative approach might amend Section 7-1-69 NMSA 1978, rather than amending Section 7-15A-3 NMSA 1978 as Section 1 of the bill does.
- The Tax Administration Act (Section 7-1-69 (G) (2) NMSA 1978) provides that no penalties will be applied to “tax due as a result of a managed audit;”. This provision should be included in the bill.
- The change from “may” to “shall suspend or decline to renew a weight distance tax identification permit ... if the owner or operator ... does not comply with the provisions of the Weight Distance Tax Act” appears to allow no tolerance for minor delinquencies, and would probably result in inappropriate suspensions of weight distance tax identification permits. Presumably, anyone subject to any penalty would also be subject to suspension of their tax identification permit. The word “may” as is used in current law should be retained.

GM/bb