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

		ORIGINAL DATE	01/26/10		
SPONSOR	Griego, P.	**LAST UPDATED**	02/10/10	**HB**	
SHORT TITLE	Extend Gas Tax Sharing Agreement Terms			**SB**	59/aSFC
				ANALYST	Clifford

REVENUE (dollars in thousands)

Revenue		Recurring or Non-Rec	Fund Affected
FY10	**FY11**		
NFI	NFI	Recurring*	Road Fund

(Parenthesis ( ) Indicate Revenue Decreases)
*Indeterminate impacts on the Road Fund in future years. See discussion below.

SOURCES OF INFORMATION
LFC Files

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

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment would require the Secretary of the Department of Transportation and a qualified tribe with a gasoline tax sharing agreement to report to the Legislative Finance Committee and to the Revenue Stabilization and Tax Policy Committee on the status of the agreement at the midpoint of the term of the agreement.

Synopsis of Bill

Senate Bill 59 would extend the period of the gasoline tax revenue sharing agreements between the state and two pueblos. Under present law the agreements can be entered into for up to ten years. The bill would allow agreements for up to 20 years.

FISCAL IMPLICATIONS

Under the current revenue sharing agreement the state pays $2.04 million per year each to the Nambe and Santo Domingo pueblos in exchange for their agreement to not distribute gasoline for resale outside the boundaries of the pueblo's land and claim a deduction for the gasoline sold. These amounts would increase or decrease if the state's gasoline tax rate increases or decreases.

DOT notes:

> The current agreements will expire in three (3) to four (4) years and the pueblos could presumably again distribute up to 2.5 million gallons each tax free per month. [LFC note: or the state and the pueblos could enter into a new revenue sharing agreement.]
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> If the two pueblos, instead of agreeing to continue the revenue-sharing agreement, were to instead go back into the business of distributing gasoline, and if they were to distribute the maximum 30 million gallon amount they are permitted, the annual gasoline tax revenue foregone at 17 cents per gallon would be about $10.2 million. About 73 percent of this amount or $7.5 million would be reduced distributions to the Road Fund. Thus, the Road Fund is better off under the revenue sharing agreement than if the pueblos were to distribute the maximum tax free amount. However, if the pueblos in fact distribute less than 16 million gallons each tax free, then the Road Fund would be better off if the deduction were allowed and the revenue sharing agreement were to lapse.

LFC notes that the state is not obligated by federal law to allow tax free wholesale distribution of gasoline by tribal vendors to non-tribal members. Given the significant drop in revenue to the road fund in recent years, it may be appropriate to repeal the tribal wholesale exemption.

SIGNIFICANT ISSUES

TRD notes:

> Section 7-13-4 (F) NMSA 1978 provides that certain Indian Tribes (Nambe Pueblo and Santo Domingo Pueblo) are each allowed to distribute up to 30 million gallons of gasoline per year outside Tribal Reservation boundaries on which no state gasoline tax is paid (Laws 1999, Chapter 190).
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> Section 67-3-8.1 NMSA 1978 provides that the Department of Transportation may enter into agreements with certain Indian Tribes (Nambe Pueblo and Santo Domingo Pueblo) to forego the distribution of untaxed gasoline outside reservation boundaries in exchange for a 40% share of the revenue that would be collected on equivalent gallons of taxed gasoline (Laws 2003, Chapter 150).
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> The Department of Transportation entered into such an agreement with Nambe Pueblo on December 31, 2003, and entered into an agreement with Santo Domingo Pueblo approximately six months later. Each of these tribes receives $170 thousand per month pursuant to the agreements. The existing agreements have a term of ten years. Portions of the revenue stream have been pledged against debt through the NMFA.

Separate from this deduction, tribes and pueblos are permitted to distribute gasoline tax free at the retail level. That deduction is not affected by this proposal.

ADMINISTRATIVE IMPLICATIONS

Two major problems were identified at the time the revenue sharing agreements were originally authorized by the legislature. The first problem was enforcing the 30 million gallon limit per pueblo on tax-free gasoline sales. The second problem was in collecting the gross receipts tax, which is due on gasoline when the gasoline tax has not been paid. The most streamlined approach to gasoline tax enforcement is to apply the tax “at the rack”, i.e. when the product is first distributed in the state. If the state wishes to allow deductions, they could be applied at that point. This would enable the Department to keep close account of the total deductible gallons.

TECHNICAL ISSUES

The purpose of the statutory change is not clear because although the current agreements are limited to a term of ten years, there is no prohibition in statute from the state and the pueblos entering into another agreement at the end of 10 years to renew the agreements.

OTHER SUBSTANTIVE ISSUES

The deduction for wholesale distribution of gasoline by tribal entities is an example of tax expenditure, i.e. the use of public funds to subsidize a private or tribal activity. Because they are not subject to annual appropriation, tax expenditures are not subject to the same degree of oversight as regular appropriations. For this reason it is important to maintain a regular process for review of tax expenditures. Even a 10-year period is probably too long for the state to go between reviewing tax expenditures like this one, a twenty-year period is much too long a period between reviews.

Road Fund revenue is down by more than 12 percent over the last three years. The state is having difficulty funding essential maintenance on its highways. In this environment, continuing to fund the tribal revenue sharing agreement may be an unsustainable luxury. Under a separate provision of law tribal entities are authorized to sell tax free gasoline at the retail level. Thus, if tribes are concerned about their members having access to tax-free gasoline, they have the option of operating a retail business. The Santo Domingo Pueblo already has such an operation.

DOT notes:

> In addition to payments to the pueblos, as part of the resolution of the tribal wholesale gasoline tax deduction, the road fund is required to make monthly distributions of $33,333 to the general fund to compensate for gross receipts tax loss (section 7-1-6.44).

POSSIBLE QUESTIONS

Why is there a need to lengthen the period of the agreements rather than just renegotiate the agreements at thee end of the current ten-year period?

TC/mew:svb:mew

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc