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

ORIGINAL DATE 02/05/10
SPONSOR Munoz **LAST UPDATED** **HB**

SHORT TITLE Gas Surtax for Road Construction **SB** 239

ANALYST Clifford

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
NFI	$64,200.0	$66,500.0	Recurring	Roads Equal Jobs Fund
NFI	$12,800.0	$13,300.0	Recurring	County & Municipal Road Funds
NFI	$77,000.0	$79,800.0	Recurring	Total Motor Fuels Surtax

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

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

SUMMARY

Synopsis of Bill

Senate Bill 239 would impose new surtaxes on both gasoline and special fuels at a rate of 6 cents per gallon each. Five-sixths of the revenue from the surtaxes would be distributed to a new “Roads Equal Jobs” fund, from which revenue would not revert to the general fund. The DOT would be required to use the funds in such a way that equal amounts are used in each of the state’s six transportation districts. The remaining one-sixth of the revenue would be distributed to county and municipal road funds based on the volume of motor fuel sales in the jurisdiction. County allocations are based on sales in the areas outside of municipal boundaries.

Provisions are effective July 1, 2010.

FISCAL IMPLICATIONS

TRD reports that the revenue impacts are based on the latest DOT revenue forecast as published in the Road Fund Outlook. Roughly $50 million of the additional revenue is from the gasoline surtax and $27 million is from the special fuels surtax.

SIGNIFICANT ISSUES

DOT notes:

> The state gasoline tax is currently 17 cents ($.17) per gallon and the state Special Fuel Excise Tax is 21 cents ($.21) per gallon, both of which are appropriated to the State Road Fund and other funds to pay for NMDOT operations costs such as salaries and administrative expenses.
>
> Over time, the State Road Fund has been losing effective buying power because costs for operations and increased road use and other expenses have increased faster than revenues. This loss of purchasing power has affected NMDOT's ability to pay for both operations and maintenance activities and for construction of capital outlay projects. In the 2007 and 2009 legislative sessions, HM 35 and HM 5, respectively, mandated studies of options for long term revenue enhancements. The surtax in SB 239 is one of the options that was studied.

TRD notes:

> The gasoline surtax will not apply to gasoline sold by Tribal retailers, and there is no requirement that Tribes impose any similar tax (as is required under the gasoline excise tax). This could result in a substantial price differential between Tribal gasoline retailers and non-Tribal retailers.

ADMINISTRATIVE IMPLICATIONS

TRD notes:

> Development of a Special Fuel sales location report to accommodate the revenue distribution to local governments will present a new burden on both the Department and taxpayers (see Technical Issues). The July 1, 2010, effective date (very short time frame) and the additional reporting requirements contribute to the administrative impact of the bill.

DOT notes:

> As mentioned above, NMDOT carries out two general types of activity: general operations and capital projects (construction). General operational expenses include all costs associated with running the NMDOT (such as salaries, benefits and administrative expenses) and performing maintenance activities on the state's transportation infrastructure. Capital outlay projects include all major construction and rehabilitation of the highway system. Currently, NMDOT is attempting to cope with funding shortfalls for operational expenses. However, although capital outlay project appropriations place additional burdens on NMDOT's resources, these appropriations do not generally allow NMDOT to pay for operational costs associated with administering these projects. SB 239 is a typical example of this trend. NMDOT would benefit greatly if the proposed legislation would allow some of the projected revenues to be used to reimburse NMDOT for the cost of administering the projects authorized in the bill.

RELATIONSHIP

Senate bill 240 would raise revenue for a new road project fund by increasing the motor vehicle excise tax.

TECHNICAL ISSUES

TRD notes:

Section 3 of the bill (page 2, line 11 through page 3, line 15) should be reorganized into two sections. Subsections A and C relating to the creation and uses of the "Roads Equal Jobs Fund" should be a new section of the Highway Department Organization Act (Chapter 67, Article 1). Subsection B relating to revenue distributions pursuant to Section 7-1-6.1 NMSA 1978 should be a new section of the Tax Administration Act.

Section 4, Subsection F (page 5, lines 21 through page 6, line 4) provides that revenue will be allocated to counties and municipalities in proportion to the volume of gasoline and special fuel sales in each jurisdiction. Gasoline volume is currently collected by jurisdiction for revenue distribution under the gasoline excise tax. However, no such information is collected for special fuel volumes. Further, since the large majority of special fuel is purchased along interstate highways by long-haul truckers, allocation of revenue by special fuel purchase patterns may not achieve the desired affect for local government revenue allocations. An alternative allocation of special fuel revenue might be to use the same local jurisdiction allocators as for the gasoline surtax, or distribute the $0.01 on special fuel to the Local Governments Road Fund (similar to the Special Fuel Excise Tax distribution), or to allocate among counties and municipalities based on population, or some other formula allocation such as those used in Section 66-6-23.1 NMSA 1978 for motor vehicle registration fee revenue.

OTHER SUBSTANTIVE ISSUES

TRD notes:

The gasoline excise tax rate of 17 cents per gallon has been in effect since July 1995. The special fuels excise tax rate of 21 cents per gallon has been in effect since July 2004.

The Petroleum Products Loading Fee, applicable to both gasoline and special fuels, is 1.875 cents per gallon. New Mexico's excise tax rate on gasoline is relatively low compared to other states, both nationally and within the region (see State Comparison Table).

State comparisons of special fuel tax rates are difficult, since states rely to differing degrees on diesel tax, heavy truck registration fees, and weight-distance taxes. The effective tax burden on heavy trucks ought to consider the combination of all three taxes. While New Mexico is extremely low on truck registration fees, the combined tax burden on heavy trucks is fairly high compared to most states.

LFC notes that after the increase proposed in SB 239, New Mexico's rate would be in the top half of all states and would be among the higher rates in the region.

State Gasoline Tax Rates

As of July 1, 2009

State	Gasoline Tax Rate	Tax Rate Ranking	State	Gasoline Tax Rate	Tax Rate Ranking
Alabama	$0.209	35	New York	$0.425	1
Alaska (1)	$0.080	50	California	$0.399	2
Arizona	**$0.190**	**41**	Washington	$0.375	3
Arkansas	$0.218	33	Connecticut	$0.364	4
California	$0.399	2	Florida	$0.345	5
Colorado	**$0.220**	**31**	Illinois	$0.338	6
Connecticut	$0.364	4	Hawaii	$0.336	7
Delaware	$0.230	28	Nevada	$0.331	8
Florida	$0.345	5	Wisconsin	$0.329	9
Georgia	$0.124	49	Pennsylvania	$0.323	10
Hawaii	$0.336	7	West Virginia	$0.322	11
Idaho	$0.250	21	Rhode Island	$0.310	12
Illinois	$0.338	6	Michigan	$0.309	13
Indiana	$0.297	16	N. Carolina	$0.302	14
Iowa	$0.220	32	Maine	$0.299	15
Kansas	**$0.250**	**22**	Indiana	$0.297	16
Kentucky	$0.225	30	Ohio	$0.280	17
Louisiana	$0.200	36	Montana	$0.278	18
Maine	$0.299	15	Nebraska	$0.273	19
Maryland	$0.235	26	Minnesota	$0.256	20
Massachusetts	$0.235	27	Idaho	$0.250	21
Michigan	$0.309	13	**Kansas**	**$0.250**	**22**
Minnesota	$0.256	20	Oregon	$0.250	23
Mississippi	$0.188	42	**Utah**	**$0.245**	**24**
Missouri	$0.173	44	S. Dakota	$0.240	25
Montana	$0.278	18	Maryland	$0.235	26
N. Carolina	$0.302	14	Massachusetts	$0.235	27
N. Dakota	$0.230	29	Delaware	$0.230	28
Nebraska	$0.273	19	N. Dakota	$0.230	29
Nevada	$0.331	8	Kentucky	$0.225	30
New Hampshire	$0.196	39	**Colorado**	**$0.220**	**31**
New Jersey	$0.145	47	Iowa	$0.220	32
New Mexico	**$0.188**	**43**	Arkansas	$0.218	33
New York	$0.425	1	Tennessee	$0.214	34
Ohio	$0.280	17	Alabama	$0.209	35
Oklahoma	**$0.170**	**45**	Louisiana	$0.200	36
Oregon	$0.250	23	**Texas**	**$0.200**	**37**
Pennsylvania	$0.323	10	Vermont	$0.200	38
Rhode Island	$0.310	12	New Hampshire	$0.196	39
S. Carolina	$0.168	46	Virginia	$0.191	40
S. Dakota	$0.240	25	**Arizona**	**$0.190**	**41**
Tennessee	$0.214	34	Mississippi	$0.188	42
Texas	**$0.200**	**37**	**New Mexico**	**$0.188**	**43**
Utah	**$0.245**	**24**	Missouri	$0.173	44
Vermont	$0.200	38	**Oklahoma**	**$0.170**	**45**
Virginia	$0.191	40	S. Carolina	$0.168	46
Washington	$0.375	3	New Jersey	$0.145	47
West Virginia	$0.322	11	Wyoming	$0.140	48
Wisconsin	$0.329	9	Georgia	$0.124	49
Wyoming	$0.140	48	Alaska (1)	**$0.080**	50

NOTE: The American Petroleum Institute has developed a methodology for determining the average tax rate on a gallon of fuel. Rates may include any of the following: excise taxes, environmental fees, storage tank fees, other fees or taxes, general sales tax, and local taxes. In states where gasoline is subject to the general sales tax, or where the fuel tax is based on the average sale price, the average rate determined by API is sensitive to changes in the price of gasoline. States that fully or partially apply general sales taxes to gasoline: CA, CO, GA, IL, IN, MI, NY. Rates shown are as of April 3, 2009.

(1) Alaska's 8 cents per gallon tax was suspended from 9/1/08 through 8/31/09.

Sources: The Tax Foundation and the American Petroleum Institute.

TC/svb

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