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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/11

SPONSOR Gonzales LAST UPDATED _____ HB 568

SHORT TITLE Special Fuel Excise & Gas Tax Rate Change SB _____

ANALYST Burrows

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$953.0)	\$8,615.0	Recurring	State Road Fund
	(\$176.0)	\$281.0	Recurring	Local Govt Road Fund
	\$223.0	\$1,849.0	Recurring	Other Road Funds

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		**	\$0.0	**	Nonrecurring	TRD – IT Dept & Revenue Processing
		**	**	**	Recurring	TRD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 465, HB 287, SB 507, and SB 434

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Taxation and Revenue (TRD)

Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

House Bill 568 proposes to amend the basis of the gasoline and special fuels excise taxes from a flat amount per gallon to a percent of total value (price x gallons). The bill proposes to change

the tax rate on gasoline from \$0.17 per gallon to 7.2 percent of total value, and the tax rate on special fuel from \$0.21 per gallon to 8.7 percent of total value.

The effective date of the provisions of this bill is July 1, 2011.

FISCAL IMPLICATIONS

The rates proposed in this bill were so structured to ensure an approximately neutral revenue impact in FY12, and are based on the Department of Transportation’s wholesale price estimates. The rates would remain fixed into the future, but revenues would vary depending on gasoline and special fuel prices and consumption patterns. The fiscal impact assumes a future increase in revenue from current law due to the rising price of fuel. The figure below illustrates the fiscal impact of House Bill 568.

Gasoline	Price \$/gal	Current Law \$M	HB568 \$M	Difference \$M
FY12	\$2.37	\$152.6	\$153.5	\$0.9
FY13	\$2.48	\$153.1	\$160.9	\$7.8
FY14	\$2.56	\$154.0	\$167.4	\$13.4
FY15	\$2.64	\$154.8	\$174.4	\$18.6
Special Fuel				
FY12	\$2.38	\$106.0	\$104.1	(\$1.8)
FY13	\$2.48	\$112.5	\$115.5	\$3.0
FY14	\$2.57	\$117.4	\$124.6	\$7.2
FY15	\$2.64	\$123.2	\$134.8	\$11.5

According to NMDOT, this proposal would allow revenues to keep pace with the cost of road infrastructure and economic growth.

The state road fund receives 76.27 percent of gasoline tax and 90.48 percent of special fuel tax revenue. Gasoline tax revenues are also distributed to city and county road, aviation and motor boat funds. The local government road fund receives the remaining 10.52 percent of special fuel tax revenue.

SIGNIFICANT ISSUES

This proposal would make the state road fund largely dependent on a highly volatile source of revenue. While the road fund could benefit during periods of high fuel prices, it could also experience dramatic shifts in available funding. Any changes in fuel consumption patterns as a result of inflated prices could add to the vulnerability of the road fund.

As structured under House Bill 568, fuel price increases would lead to increases in the dollar value of the tax, which could further burden consumers faced with inflated prices. For example, a \$1 increase in the price of a gallon of gasoline would lead to a \$1.07 increase in consumer price.

NMDOT reports that New Mexico experienced a 16.6 percent decline in sales of diesel from FY08 to FY09. Gasoline prices have shown fluctuations from +27 percent to -18 percent from year to year since FY2000, with diesel prices exhibiting even larger swings (see Attachment 1). NMDOT notes the longer term trend of fuel revenue under House Bill 568 will likely be growth, but the short-term could be problematic.

TRD notes that with the assumption of rising gasoline prices, tax revenue determined by the price of fuel would also grow over time, providing increased adequacy in the tax structure. Also, because fuel and oil prices are closely associated with highway construction and maintenance costs, linking the revenue base to these prices could help ensure adequate revenue when highway costs rise.

TRD also reports that forecast accuracy for fuel revenues would suffer under House Bill 568. Revenue estimators would probably find it necessary to use a fairly conservative price forecast when preparing the DOT revenue forecast to avoid significant and continually fluctuating budget adjustments during the course of each year. Under House Bill 568, gasoline and special fuel taxes would be subject to the same kind of volatility now seen in oil and gas severance taxes.

PERFORMANCE IMPLICATIONS

NMDOT reports that its expenditures include major infrastructure planning, construction, and maintenance, which are generally long-term with certain fixed costs, including personnel, debt service, and equipment investment. Moreover, funds are necessary for significant federal dollar matches. These somewhat inflexible costs are best served by a stable revenue stream, and the variability resulting from this proposal may conflict with these objectives.

ADMINISTRATIVE IMPLICATIONS

NMDOT notes that tax reporting by distributors may have to be altered to allow for daily price fluctuations.

TRD reports a significant adverse administrative impact on both TRD and fuel distributors is likely. TRD would need to conduct extensive revisions to tax filing forms, the e-filing web site, and tax processing systems. A non-recurring cost of \$100 thousand may be likely to implement these changes. Audit and compliance functions could be complicated and significantly more time consuming. Such complications could have recurring impacts and may require additional FTE or result in decreased audit coverage for other tax programs

RELATIONSHIP

House Bill 287 proposes a deduction from special fuel tax for diesel sold within tribal boundaries that is subject to a tribal fuel tax.

House Bill 465 proposes to expand the current law tax-exempt status to apply to shipments between any two entities that can be defined as “any other facility that produces, refines, manufactures, distills and blends or compounds special fuel.”

Senate Bill 507 proposes to index and increase the special fuel excise tax by increments.

Senate Bill 434 proposes to authorize the State Board of Finance to issue \$50 million in short-term severance tax bonds for the state road fund.

TECHNICAL ISSUES

NMDOT and TRD both note that the changes to the gasoline and special fuel inventory taxes do not adequately address the shift from a cents per gallon tax rate to a percent of value tax. The

inventory tax is triggered at the time of a rate change. The new language does not explain how the tax will be calculated at the time of the shift or under the new tax structure.

TRD notes tax refunds will be difficult under House Bill 568. All fuel tax refund language in Chapter 7, Articles 13 and 16A should probably be revised to specify the calculation of tax refunds based on quarterly price averages for some prior period of time, which would be published by TRD. Note that such published average prices will also be required to establish a cents-per-gallon tax rate on special fuel for purposes of the International Fuel Tax Agreement (IFTA).

According to TRD, this bill would affect the “registered Indian tribal distributor” deduction for gasoline sold at Tribal retail stations (Section 7-13-4, Subsection E). Tribal tax rates would have to be converted to a percentage tax on value in order for the deduction to operate correctly.

OTHER SUBSTANTIVE ISSUES

TRD reports New Mexico is a member of the International Fuel Tax Association (IFTA) which is an association of all US states and Canadian provinces that collect and transmit special fuel tax for member states and provinces. Under IFTA, New Mexico is required to submit its quarterly special fuel tax rate on a per gallon basis to IFTA so that taxes can be appropriately collected and distributed among the states. IFTA allows each US state or Canadian province to set their own special fuel tax rate, however, the special fuel tax rate submitted to IFTA must be a special fuel tax rate on a cents-per-gallon basis.

Moreover, TRD notes the special fuel tax actually paid by truckers at the pump may vary significantly from the tax rate published in the IFTA system since the IFTA tax rate can only be adjusted quarterly and that rate would be based on older price information.

A percent of value tax structure could cause out-of-state terminals to opt out of the TS-22 agreements. In particular, these agreements allow payment of New Mexico special fuel tax by Texas rack operators. If the TS-22 agreements were to end, New Mexico distributors would have to pay the Texas tax, and then file for refund on volumes exported to New Mexico. Another implication for audit and compliance activity in the absence of TS-22 agreements might be increased difficulty quantifying imports into New Mexico from Texas.

TRD reports most states tax gasoline and special fuel at a rate of cents per gallon. While some states on the east coast do impose percent of price taxes in combination with taxes per gallon, TRD is not aware of any western states using a percent of price tax structure for purposes of the fuel excise tax. Kentucky and North Carolina impose fuel taxes as some percent of price, and a number of other states impose sales taxes in addition to excise taxes (see Attachment 2).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

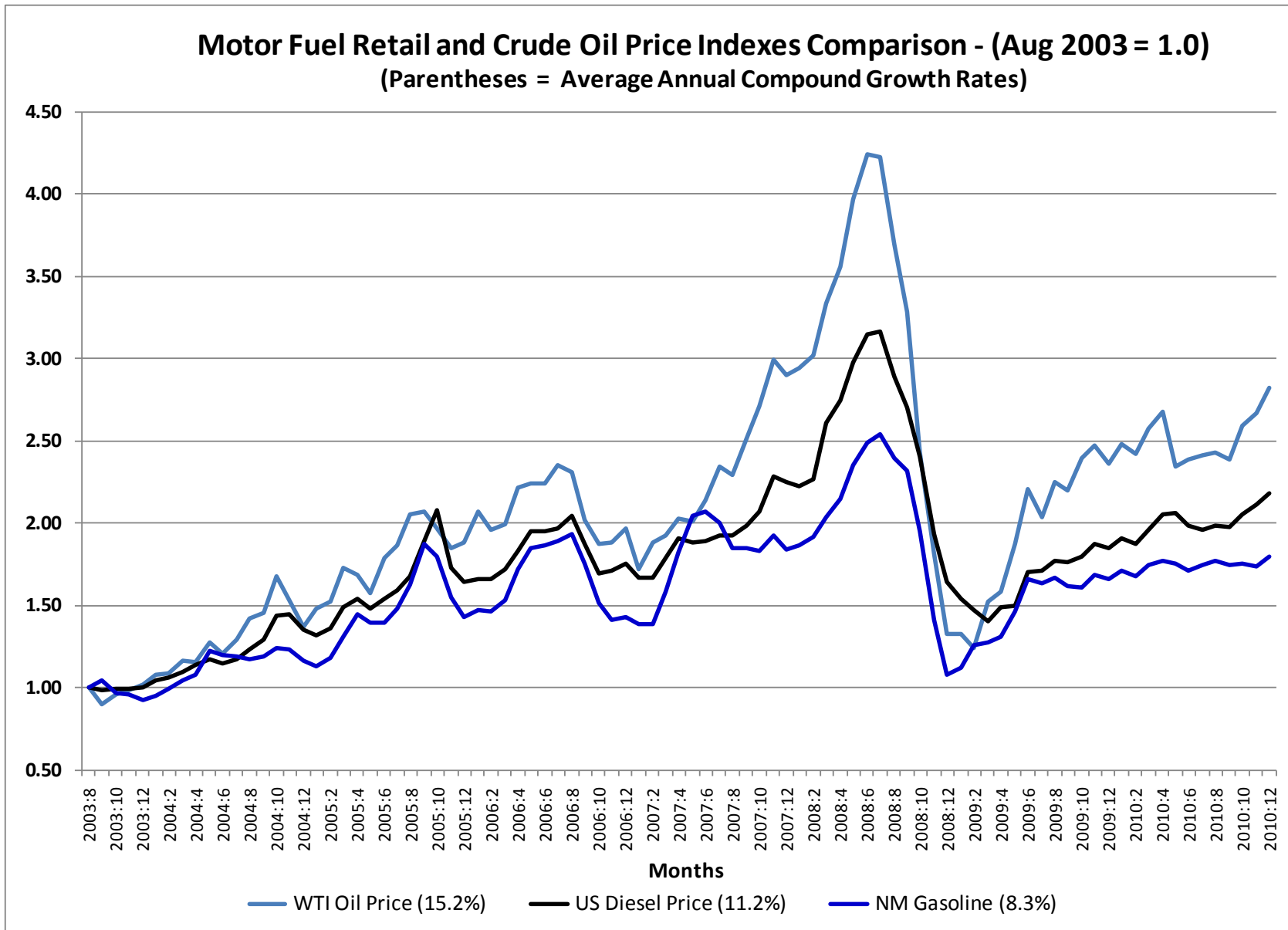
The gasoline and special fuel excise taxes will be determined as a flat cents per gallon tax as under current law.

LKB/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



Source: NM Department of Transportation

State Motor Fuel Tax Rates

(January 1, 2010)

	GASOLINE			DIESEL FUEL			GASOHOL			Notes
	Excise	Fee/Tax	Total	Excise	Fee/Tax	Total	Excise	Fee/Tax	Total	
Alabama /1	16.0	2.0	18.0	19.0		19.0	16.0	2.0	18.0	Inspection fee
Alaska	8.0		8.0	8.0		8.0	8.0		8.0	
Arizona	18.0		18.0	18.0		18.0	18.0		18.0	/3
Arkansas	21.5		21.5	22.5		22.5	21.5		21.5	
California	18.0		18.0	18.0		18.0	18.0		18.0	Sales tax applicable
Colorado	22.0		22.0	20.5		20.5	22.0		22.0	
Connecticut	25.0		25.0	37.0		37.0	25.0		25.0	
Delaware	23.0		23.0	22.0		22.0	23.0		23.0	Plus 0.5% GRT
Florida /2	4.0	12.0	16.0	16.0	15.8	31.8	4.0	12.0	16.0	Sales tax added to excise /2
Georgia	7.5	9.3	16.8	7.5	10.0	17.5	7.5	9.3	16.8	Sales tax added to excise
Hawaii /1	17.0		17.0	17.0		17.0	17.0		17.0	Sales tax applicable
Idaho	25.0	1	26.0	25.0	1	26.0	25.0	1	26.0	Clean water tax /7
Illinois /1	19.0	1.1	20.1	21.5	1.1	22.6	19.0	1.1	20.1	Sales tax add., env. & LUST fee /3
Indiana	18.0		18.0	16.0		16.0	18.0		18.0	Sales tax applicable /3
Iowa	21.0		21.0	22.5		22.5	19.0		19.0	
Kansas	24.0		24.0	26.0		26.0	24.0		24.0	
Kentucky	22.7	1.4	24.1	19.7	1.4	21.1	22.7	1.4	24.1	Environmental fee /4 /3
Louisiana	20.0		20.0	20.0		20.0	20.0		20.0	
Maine	29.5		29.5	30.7		30.7	29.5		29.5	/5
Maryland	23.5		23.5	24.25		24.25	23.5		23.5	
Massachusetts	21.0		21.0	21.0		21.0	21.0		21.0	
Michigan	19.0		19.0	15.0		15.0	19.0		19.0	Sales tax applicable
Minnesota	27.1		27.1	27.1		27.1	27.1		27.1	
Mississippi	18.0	0.4	18.4	18.0	0.4	18.4	18.0	0.4	18.4	Environmental fee
Missouri	17.0	0.55	17.55	17.0	0.55	17.55	17.0	0.55	17.55	Inspection fee
Montana	27.0		27.0	27.75		27.75	27.0		27.0	
Nebraska	26.8	0.9	27.7	26.8	0.3	27.1	26.8	0.9	27.7	Petroleum fee /5
Nevada /1	24.0	0.055	24.055	27.0		27.0	24.0	0.055	24.055	Inspection fee
New Hampshire	18.0	1.625	19.625	18.0	1.625	19.625	18.0	1.625	19.625	Oil discharge cleanup fee
New Jersey	10.5	4.0	14.50	13.5	4.0	17.50	10.5	4.0	14.50	Petroleum fee
New Mexico	17.0	1.875	18.875	21.0	1.875	22.875	17.0	1.875	18.875	Petroleum loading fee
New York	8.0	16.4	24.4	8.0	14.65	22.65	8.0	16.4	24.4	Petroleum Tax, Sales tax appl.
North Carolina	30.3	0.25	30.55	30.3	0.25	30.55	30.3	0.25	30.55	/4 Inspection tax
North Dakota	23.0		23.0	23.0		23.0	23.0		23.0	
Ohio	28.0		28.0	28.0		28.0	28.0		28.0	Plus 3 cents commercial
Oklahoma	16.0	1.0	17.0	13.0	1.0	14.0	16.0	1.0	17.0	Environmental fee
Oregon /1	24.0		24.0	24.0		24.0	24.0		24.0	
Pennsylvania	12.0	19.2	31.2	12.0	26.1	38.1	12.0	19.2	31.2	Oil franchise tax
Rhode Island	30.0	1	31.0	30.0	1	31.0	30.0	1	31.0	LUST tax
South Carolina	16.0		16.0	16.0		16.0	16.0		16.0	
South Dakota /1	22.0		22.0	22.0		22.0	20.0		20.0	
Tennessee /1	20.0	1.4	21.4	17.0	1.4	18.4	20.0	1.4	21.4	Petroleum Tax & Envir. Fee
Texas	20.0		20.0	20.0		20.0	20.0		20.0	
Utah	24.5		24.5	24.5		24.5	24.5		24.5	
Vermont	19.0	5.5	24.5	25.0	4.0	29.0	19.0	5.5	24.5	Cleanup Fee & Trans. Fee
Virginia /1	17.5		17.5	17.5		17.5	17.5		17.5	/6
Washington	37.5		37.5	37.5		37.5	37.5		37.5	0.5% privilege tax
West Virginia	20.5	11.7	32.2	20.5	11.7	32.2	20.5	11.7	32.2	Sales tax added to excise
Wisconsin /5	30.9	2.0	32.9	30.9	2.0	32.9	30.9	2.0	32.9	/5 Petroleum Insp. Fee
Wyoming	13.0	1	14.0	13.0	1	14.0	13.0	1	14.0	License tax
Dist. of Columbia	20.0		20.0	20.0		20.0	20.0		20.0	
Federal	18.3	0.1	18.4	24.3	0.1	24.4	13.0	0.1	13.1	/7 LUST tax

SOURCE: Compiled by FTA from various sources.

/1 Tax rates do not include local option taxes. In AL, 1 - 3 cents; HI, 8.8 to 18.0 cent; IL, 5 cents in Chicago and 6 cents in Cook county (gasoline only); NV, 4.0 to 9.0 cents; OR, 1 to 3 cents; SD and TN, one cent; and VA 2%.

/2 Local taxes for gasoline and gasohol vary from 12.6 cents to 18.6 cents. Plus a 2.2 cent per gallon pollution tax.

/3 Carriers pay an additional surcharge equal to AZ-8 cents, IL-12.3 cents (g) 13.5 cents (d), IN-11 cents, KY-2% (g) 4.7% (d).

/4 Tax rate is based on the average wholesale price and is adjusted quarterly. The actual rates are: KY, 9%; and NC, 17.5¢ + 7%.

/5 Portion of the rate is adjustable based on maintenance costs, sales volume, cost of fuel to state government, or inflation.

/6 Large trucks pay an additional 3.5 cents.

/7 Tax rate is reduced by the percentage of ethanol used in blending (reported rate assumes the max. 10% ethanol).

Source: Taxation and Revenue Department

Note: See footnote 4 for states imposing percent-of-price taxes (Kentucky and North Carolina).

Also see notes in rightmost column for "Sales Tax Applicable" or "Sales tax added".