FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/19

SPONSOR Gonzales/Crowder **LAST UPDATED** **HB** 211

SHORT TITLE County and Municipal Gas Tax Changes **SB**

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	**FY20**	**FY21**	**FY22**	**FY23**		
$0.0	**	**	**	**	Recurring	Counties and Municipalities

Parenthesis ( ) indicate revenue decreases

** If all local governing bodies passed, and all voters approved, a one cent tax on both gasoline and diesel approximately $15 million per year could be generated. See fiscal implications below.

Relates to HB6, HB201, and SB 129

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Transportation (DOT)
New Mexico Attorney General (NMAG)
New Mexico Finance Authority (NMFA)
New Mexico Municipal League (NMML)

Responses Not Received From
Taxation and Revenue Department (TRD)
New Mexico Association of Counties (NMAC)

SUMMARY

Synopsis of Bill

House Bill 211 expands the current local gasoline tax to all municipalities and counties and allows all counties and municipalities the possibility to impose local special fuel tax (on diesel). Cities and counties may impose the tax in increments of one cent per gallon up to a maximum of ten cents per gallon and would require voter approval. Currently there is no provision for local taxation of diesel and only certain counties and municipalities may impose a local gasoline tax.

This bill changes the current “County and Municipal Gasoline Tax Act” to be the “County and Municipal Fuels Tax Act” and revises administration provisions and definitions for this locally administered tax.

The bill limits the use of local fuel taxes only to construction, reconstruction, repair or maintenance to public bridges or highway projects, or for the payment of bonds issued under the Act, and strikes the current ability of county and municipal gasoline taxes to be used for public transportation. The bill also changes the bond ordinance to only allow counties and municipalities to issue fuel tax bonds to fund public bridges or highway construction, reconstruction, repair or maintenance, or the refunding of bonds previously issued, and strikes the ability to use these bonds to acquire land, buildings, buses or other equipment for public transit.

This bill also strikes a Motor Vehicle Code provision allowing counties and municipalities the authority to charge up to five dollar add-on fee on vehicle registrations for funding vehicle emission inspection programs. Currently this fee is not imposed by any county or municipality.

The effective date of this bill is July 1, 2019.

FISCAL IMPLICATIONS

Without further action by local governing bodies and then subsequent voter approval, this bill alone would generate no new revenue. According to the Department of Transportation (DOT), if all New Mexico local jurisdictions imposed a one cent gasoline tax, it would generate approximately $9.3 million per year. A one cent tax on diesel will generate another $5.7 million per year.

According to the New Mexico Municipal League, the municipality or county would administer the tax in a manner similar to the administration of the lodgers tax.

The New Mexico Finance Authority (NMFA) states the agency has made various gas tax loans to different municipalities, counties, and tribal entities. The following table demonstrates outstanding public project revolving fund (PPRF) gas tax loans by category:

Entity Type	# of Loans Outstanding	$ of Loans Outstanding
Municipal Gas Tax	4	$5,847,629
County Gas Tax	3	$342,492
Tribal Gas Tax	9	$56,686,959

NMSA states the potential optional increases in gas tax, as well as fuel tax, imposed by counties and municipalities increases its financial ability to improve highways and bridges within its boundaries.

It is possible that increased gas and fuel taxes within a given county or municipality may cause consumers to purchase gas and fuel at a neighboring county or municipality or tribal entity where the tax rates may not be as high.

SIGNIFICANT ISSUES

According to NMFA, the changes contemplated by this bill could impair outstanding NMFA gas tax loans in violation of several New Mexico statutory provisions, as well as Article I, Section 10 of the United States Constitution and Article II, Section 10 of the New Mexico Constitution, if revenue estimates fall short of expectations and fail to meet projections. NMFA further states,

> "The concept in [this bill] raises issues related to whether the legislation would be held by a court to be a violation of the non-impairment statutory provisions in the NMFA Act, the Tax Administration Act or the prohibition in the United States and State Constitution of the impairment of obligations under existing contracts, or each of them, thus giving rise to potential bondholder litigation claims. The existence of those legal issues would have a substantial impact on the NMFA's bond rating, and ability to issue the NMFA's PPRF Bonds in the form of higher interest rates due to a market perception that the New Mexico Legislature has impaired NMFA's obligations to its bond holders."

According to DOT, it is not clear how a local option diesel fuel tax would fit into the International Fuel Tax Agreement (IFTA) (see note below) or if interstate truckers would receive the appropriate credit for payments of this local tax. DOT states,

> "In New Mexico, IFTA is administered by the Taxation and Revenue Department, it is a tax collection agreement among the lower 48 US states and the Canadian provinces for highway fuel use tax distribution based on miles traveled, taxes paid, and fuel consumed. IFTA does not seem to have a provision for local option taxes on diesel so truckers would not get credit for local option taxes paid on fuel used outside New Mexico, and local governments would not receive revenue from diesel bought outside of their jurisdiction but used on their roads."

The NM Municipal League states the following,

> "Municipalities and counties have extensive road networks and bridges that are maintained by the municipality or county. Municipalities and counties have not had an increase in gasoline or special fuels taxes in a significant period of time. This legislation would allow municipalities and counties to impose a local option tax to raise new revenues that would allow them to maintain roads and bridges in their jurisdiction. The New Mexico Municipal League wholeheartedly supports this legislation. "

ADMINISTRATIVE IMPLICATIONS

Municipalities and counties would be tasked with establishing procedures for the reporting and collections of the local option fuel tax. Additionally, municipalities and counties will need to establish programs to assure the reporting is accurate and reporting and payments are timely. According to the NM Municipal League, municipalities currently collect occupancy tax from lodging establishment with a common reporting date. Setting a common reporting date of the 25th of each month assures that vendors with locations in multiple municipalities and/or counties do not face confusion over the reporting date in a particular locality.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 6, Tax changes, proposes an increase to fuel taxes that may be in conflict with this bill. HB 201, County Road Fund Tax Refund Donation, references funding for county roads. SB 129, Tax Protests & Admin Hearings Office, discusses delinquent taxpayers which this bill addresses as well.

TECHNICAL ISSUES

The New Mexico Attorney General's Office (NMAG) notes this bill may have potential complications with the Tax Administration Act and the funding of public transportation.

OTHER SUBSTANTIVE ISSUES

NMAG states it is unclear how the auditing process contemplated by Section 6 would work and what credentials the auditor must have, or deadlines to complete audits. Section 6 would add a new provision [Section 7-24A-4.3] that would require taxpayers in counties and municipalities imposing the tax to keep records related to taxes collected, and retain them for a period of time determined by ordinance and make those records available for inspection when the county or municipality requests it. If an audit is conducted, the taxpayer can apply for a refund for the time while an audit or inspection is being done.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

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