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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/21
 LAST UPDATED 3/16/21

SPONSOR Woods HB _____

SHORT TITLE Seed Cotton Transport Special Fuel Permits SB 50

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25		
	(\$5.0)	(\$5.0)	(\$5.0)	(\$5.0)	Recurring	State Road Fund

Parenthesis () indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$80.0			\$80.0	Nonrecurring	TRD operating

Parenthesis () indicate expenditure decreases.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

New Mexico Taxation and Revenue Department (TRD) – revised

SUMMARY

Synopsis of Bill

Senate Bill 50 allows the operator of a seed cotton module transport vehicle that is not registered with the Taxation and Revenue Department (TRD) to obtain a 60-day permit before operating that vehicle on New Mexico highways. The fee for the permit is \$250.00. The provisions of the bill also exempt special fuel users who obtain this trip tax permit from other permits and taxes under the Special Fuels Supplier Tax Act and from the trip tax.

The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

This bill will not appreciably narrow the special fuels tax base but may narrow the trip tax base. It is uncertain how this trip tax change would interact with the International Fuel Tax Agreement (IFTA) or the International Registration Program (IRP). In general, an IRP and IFTA account is required for companies that have vehicles crossing state lines that are over 26,000 pounds gross vehicle weight or have 3 or more axles on the power unit. Observing pictures of these specialized rigs leads the observer to the conclusion that a cottonseed module transport vehicle both exceeds the 26,000 GVW threshold and have three axles. Several pictures of these trucks are included in the final section of this review.

If the only issue involved here is substituting a prepaid 60-day permit at a cost of \$250 for multiple payments pursuant to the trip tax act for approximately $\frac{1}{4}$ of total cotton production, then the revenue change would be minimal. There would be additional road fund revenue from the special trip tax permit and less revenue from the multiple single-trip trip taxes. Again, there is uncertainty if there would be a loss of special fuels revenue because the companies operating these trucks should be participants in IFTA and IRP.

Cottonseed Module Transport companies transporting cotton produced and ginned (processed) in the Mesilla Valley and other counties in the southeast and southwest of the state will probably not benefit from this prepaid trip tax permit.

Approximately $\frac{3}{4}$ of total statewide production of cotton will be transported to gins located in New Mexico and these trucks will be registered for the state's Weight-Distance tax and will be IRP and IFTA participants.

If $\frac{1}{4}$ of the cotton produced in New Mexico were formed into modules and one 24,000 pound module could be carried per trip, two trips per day with 90 miles in New Mexico currently subject to .12 cents per mile trip tax, it would only take five trucks working 60 days each to transport this quantity to Texas gins. Each of the five trucks would benefit over \$1 thousand per season and the cost of the bill would not exceed \$5 thousand.

SIGNIFICANT ISSUES

TRD notes a correction to their original analysis. See TECHNICAL ISSUES for more information:

TRD recommends consideration of removing the exemption from the trip tax from the language on the proposed legislation, in order to apply regulations consistently on comparable vehicles. Under section 7-15-3.1(C)(1)(a) NMSA 1978 of the Trip Tax Act, TRD can regulate the issuance of "prepaid permits" for "custom harvesting operations". This section would allow for a 60-day prepaid trip tax permit imposed by regulation rather than an exemption from trip tax in the statute as proposed in this bill.

Per the NM Department of Agriculture:

Cotton grown in eastern New Mexico counties is ginned (processed) at the closest cotton gins which are in west Texas. New Mexico is limited on gin locations to the lower Pecos Valley (Artesia, Loving) and the Mesilla Valley. It is cost prohibitive to transport cotton

modules long distances. Cotton has rebounded in some areas of the state as a rotation crop partially due to being a low water consumption crop. An efficient/cost effective permitting process for module transport assists in making cotton a viable crop for areas encountering irrigation water shortages.

Cotton module transport vehicles from Texas gins are currently required to obtain an individual trip permit, based on the location/mileage to the farm where the cotton module is to be picked up and transported. This process is required for each trip into New Mexico for a single module. The process is time consumptive and inefficient not only for the gin transporter but also for the DOT port of entry.

Transport in prior years was conducted under a 30-day ag permit. However, these temporary permits were determined to not be allowable under current state law.

Further, the NM Department of Agriculture indicates that there are only two remaining gins in New Mexico. One is located south of Las Cruces and the other is near Artesia.

The special treatment for cottonseed module transportation trucks is the natural outgrowth of the current and evolving nature of the cotton harvesting and ginning industry. In general, as time goes on, there are fewer ginning operations, but these fewer operations operate over a longer season because the staple cotton is packed into 24,000 pound “modules” in the field, then these modules are transported up to 90 miles to a gin and are stored under weather-protective wrapping until the cotton contents are ginned.

Specialized harvesting equipment is usually (1) only incidentally used on the highways of the state; (2) eligible for a "prepaid permit" for "custom harvesting operations". This would be pursuant to Section 7-15-3.1(C)(1)(a) NMSA 1978 of the Trip Tax Act. This custom harvesting permit would not relieve the operator of the obligation to pay interstate registration fees or special fuels taxes. Nor would the special permit allow a custom transporter to avoid the gross receipts tax liability.

The Texas-based cottonseed module transporters should register with TRD for payment of the Weight-Distance tax. Coupled with participation in IFTA and IRP, this would put the Texas-based transporters on even footing with New Mexico based cottonseed transporters. There may also be an indirect economic impact if the Texas ginning operations compete with New Mexico gins, particularly if any New Mexico based gins were to consolidate or close. Since the NMDFA indicates only two gins remain in New Mexico, this consolidation has already occurred.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking this tax expenditure and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD discusses some administrative consequences. This is shown as a small cost in the Additional Operating Budget table on page 1.

Since 2015, the special fuel user permits have been issued at the ports of entry by the Department of Transportation (DOT) on behalf of the Department of Public Safety (DPS) and TRD. If TRD is asked to implement the new special fuel users permit for seed cotton module transport vehicles, the bill would have a moderate impact on TRD of approximately 400 hours of effort or approximately 2 ½ months for an estimated \$80,000 in contractual costs for the Information Technology Division (ITD).

The changes required would include the following: creating a new account type with the ability to add a debit card and to make payment, creation of the new permit, new transactions, updates to revenue accounting, refunds, reports, Taxpayer Access Point (TAP) functionality, programming to ensure that exemption does not last longer than 60 days from the start of registration, and possibly new reports for DOT.

LFC staff note that the administrative/IT cost far exceed the cost savings of a relatively few companies or the revenue loss to the state road fund.

TECHNICAL ISSUES

TRD revised its technical comment:

The bill proposes to exempt from the trip tax users of the special fuel permit. If the exemption remains in the bill, TRD suggests rewriting the language to specifically limit the exemption from the trip tax for the duration of the special fuel users permit. Once the permit expires, the users should be subject to trip tax once more.

The specific language of this exemption follows: “A special fuel user holding this sixty-day permit shall be exempt from any other temporary special fuel user permit required pursuant to the Special Fuels Supplier Tax Act, exempt from any per mile or per gallon special fuel user tax required pursuant to the Special Fuels Supplier Tax Act and exempt from any tax levied pursuant to the Trip Tax Act.” It is uncertain if this language exempts these trucks from other interstate agreements, such as the International Fuel Tax Agreement (IFTA) or the International Registration Program (IRP). In general, an IRP and IFTA account is required for companies that have vehicles crossing state lines that are over 26,000 pounds gross vehicle weight or have 3 or more axles on the power unit. Enacting this legislation may be reinforcing non-compliance with these registration and participation requirements.

Article IV, Section 24 of the New Mexico Constitution prohibits the legislature from passing “local or special laws” dealing with, among other issues, “; the assessment or collection of taxes or extending the time of collection thereof.” This prohibition may not apply to the trip tax. However, if the LFC staff calculation that this special trip tax provision will only affect a relatively few companies and those companies may not be fully compliant with all registration and participation requirements and agreements, it could be considered as a special law prohibited by Article IV, Section 24 of the NM Constitution.

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