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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13
 LAST UPDATED 03/14/13

SPONSOR Ingle HB
 SHORT TITLE Biodiesel Definitions SB 160/aSCONC/aSFl#1/aHFl#1

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
\$0.0	(\$55.0)	(\$55.0)	Recurring	Local Government Road Fund
\$0.0	(\$519.0)	(\$519.0)	Recurring	State Road Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Department of Transportation (DOT)
 Department of Finance and Administration (DFA)
 Economic Development Department (EDD)
 Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HFl Amendment #1

The House Floor amendment #1 to Senate Bill 160 strikes Senate Floor amendment #1. The Senate Floor amendment adds a reporting requirement. The taxpayer shall report the deducted amount separately with the taxpayer's return. It also requires the Taxation and Revenue Department (TRD) to compile an annual report that includes the aggregate amount of the deduction and the number of taxpayers that received the deduction. The TRD shall compile and present the annual report to the Revenue Stabilization and Tax Policy Committee and the Legislative Finance Committee with an analysis of the costs and benefits of the deduction to the state.

Synopsis of SFl Amendment #1

The Senate Floor amendment #1 to Senate Bill 160 adds a reporting requirement. The TRD is to report annually to the Revenue Stabilization and Tax Policy Committee (RSTP) the aggregate

amounts of biodiesel deductions taken, the number of taxpayers claiming the deduction and any other information to determine that the deduction is performing its purpose for which it was enacted.

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment to Senate Bill 160 amends the definition of “biodiesel” as a renewable, biodegradable, mono alkyl ester combustibile liquid fuel that is derived from agricultural plant oils or animal fats and that meets the American society for testing and materials specifications for biodiesel fuel, B100 or B99 blend stock for distillate fuels. “Blended biodiesel” is defined as diesel engine fuel that contains at least 2 percent biodiesel.

Synopsis of Original Bill

Senate Bill 160 (SB 160) amends section 7-16A-10 NMSA 1978 (being Laws 1992, Chapter 51, Section 10) to include a deduction in the special fuel excise tax for biodiesel.

The bill defines “biodiesel” as a renewable, biodegradable, combustibile liquid fuel that is derived from agricultural plant oils or animal fats and that meets the American society for testing and materials specifications for biodiesel fuel, B100 or B99 blend stock for distillate fuels. “Blended biodiesel” is defined as diesel engine fuel that contains at least 2 percent biodiesel.

The applicability and effective date of this bill is May 1, 2013 provided that prior to May 1, 2013, the provisions of this act are enacted into law. If provisions of this act are not enacted into law prior to May 1, 2013 then the effective date is July 1, 2013. There is no sunset date. The Legislative Finance Committee (LFC) recommends adding a sunset date.

This bill contains an emergency clause, and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

According to publicly available data there at least two producers in New Mexico that makes B100/B99 biodiesel fuel: Rio Valley Biofuels LLC in Anthony, and Renewable Energy Group Biodiesel in Clovis. There is a third producer that has not begun production. Rio Valley Biofuels’ maximum output will be 2.2 million gallons a year but they have reported that their production has averaged 2,000 per day which is about 730,000 gallons per year. Renewable Energy Group biodiesel reports that their maximum production will be 15 million gallons per year. This company began operations June 2012. This analysis assumes that this producer is not at full capacity but conservatively producing 2 million gallons per year. With a \$0.21 per gallon tax the cost to the state is \$573,300.

Once these two producers reach full capacity the cost of the credit could be as high as \$3.6 million. Since the LFC does not have access to confidential data it cannot verify the tax paid by this producer. According to other publicly available data sources most of this type of biodiesel fuel is blended out of state and imported to New Mexico to avoid the tax. The LFC came to consensus with the TRD on this revised analysis.

As reported by the TRD:

On July 1, 2012, New Mexico mandated the use of blended biodiesel B5 (contain 5 percent of biodiesel) in all state agencies and public schools operating on-road motor vehicles. After July 1, 2012, the B5 mandate will extend to consumers. According to the laws as they are written today: The “pure” biodiesel (i.e., B100 or B99) is subject to taxation as a special fuel as it is manufactured (there are two current manufacturers in New Mexico) or when imported. However, there is also concern that some portion of the B100/B99 fuel that is being blended is not being taxed at the present time. However, this is simply an enforcement issue.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure’s fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

This bill removes the double taxation on special fuel delivered to New Mexico. Double taxation can occur if the biodiesel (100 percent biodiesel) is delivered in quantity by truck or tanker (not pipeline) to a rack operator for blending with conventional diesel. Currently, the recipient of the biodiesel at the pipeline terminal or rack must pay \$0.21 per gallon special fuels tax. In turn, special fuels tax is charged a second time at the dispenser.

PERFORMANCE IMPLICATIONS

With the Senate Floor amendment the LFC tax policy of accountability is met since the TRD is required in the bill to report annually to the RSTP regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

According to the Energy, Mineral and Natural Resources Department (EMNRD), this bill may have an impact on the Biodiesel Fuel Standard (Section 57-19-29 NMSA 1978) that requires a minimum of five percent biodiesel in all diesel fuel sold in the state. Currently, the Biodiesel Fuel Standard is temporarily suspended because of lack of supply and additional cost of transportation of biodiesel. If SB 160 is enacted, the availability of biodiesel for resale could increase.

ADMINISTRATIVE IMPLICATIONS

The impact to the TRD is minimal. This bill will cause a modification to the forms and instructions and GenTax, but can be communicated to rack operators until the changes can be implemented within GenTax, and special fuels reports.

TECHNICAL ISSUES

New Mexico has four methods of reporting: monthly, quarterly, bi-annually and annually. When a business is registered, this bill seeks to include biodiesel blending business/sales and as such is able to select the period in which to report.

This bill repeals the version of Section 7-16A-10 that was set to take effect on July 1, 2014. The 2014 version of Section 7-16A-10 removed Subsection H on special fuel received in New Mexico consisting of at least 99 percent vegetable oil or animal fat. However, this bill modifies the current statute so that this section applies prior to July 1, 2014, and it adds biodiesel to that subsection.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the Economic Development Department (EDD), expansion of the industry definitions prepares the State of NM to align itself with technological changes in the process by including and amending the special fuels definition. In order to spur economic growth for industries such as these in the state, not expanding the definition limits the use of the tax deduction in a technological field that continues to evolve.

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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