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

ORIGINAL DATE 2/01/17
SPONSOR SFC **LAST UPDATED** 3/6/17 **HB**

SHORT TITLE Gas Tax, Road Fund & Distributions **SB** 95&131/SFCS

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue*					Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19	FY20	FY21		
$0.0	$57,572.9	$57,889.5	$57,842.5	$0.0	Recurring	NEW Tax Stabilization Reserve (fuel taxes)
$0.0	$49,167.0	$51,000.0	$53,000.0	$0.0	Recurring	NEW Tax Stabilization Reserve (motor vehicle excise)
$0.0	$19,200.0	$19,200.0	$19,200.0	$0.0	Recurring	NEW Tax Stabilization Reserve (petroleum products loading fee)
$0.0	($19,200.0)	($19,200.0)	($19,200.0)	$0.0	Recurring	Corrective Action Fund (petroleum products loading fee)
$0.0	$26,170.8	$26,230.0	$26,170.0	$54,827.9	Recurring	NEW State Road Maintenance Fund (fuel taxes)
$0.0	$0.0	$0.0	$0.0	$54,000.0	Recurring	NEW State Road Maintenance Fund (motor vehicle excise)
$0.0	$17,455.9	$17,495.4	$17,455.4	$36,570.2	Recurring	NEW Municipalities – road maintenance (fuel taxes)
$0.0	$8,714.9	$8,734.6	$8,714.6	$18,257.7	Recurring	NEW Counties – road maintenance (fuel taxes)
$0.0	$1.1	$1.1	$1.1	$1.0	Recurring	Municipalities and Counties Fund
$0.0	$0.7	$0.7	$0.7	$0.7	Recurring	State Aviation Fund
$0.0	$0.4	$0.4	$0.4	$0.3	Recurring	Motorboat Fuel Tax Fund
$0.0	$0.8	$0.8	$0.8	$0.8	Recurring	County Government Road Fund
$0.0	$0.8	$0.8	$0.8	$0.8	Recurring	Municipal Roads Fund
$0.0	$0.8	$0.8	$0.8	$0.8	Recurring	Municipal Arterial Program of Local Governments Road Fund
$0.0	$1.0	$1.1	$1.1	$1.1	Recurring	Local Governments Road Fund
$0.0	$2,400.0	$2,400.0	$2,400.0	$2,400.0	Recurring	Tribal Tax Sharing Agreements (Pueblo of Santo Domingo and Nambe)
$0.0	$2,808.8	$3,026.3	$3,122.3	$3,215.5	Recurring	State Road Fund

Parenthesis ( ) indicate revenue decreases

*Estimates are based on the assumption that in FY20, the total amount in the state general fund will be greater than 5 percent.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
$374.0	$0.0	$0.0	$374.0	Nonrecurring	TRD
unknown	unknown	unknown	unknown	Recurring	General Fund

Conflicts with SB132, SB436 and HB509; relates to HB 63.

SOURCES OF INFORMATION
LFC Files

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

SUMMARY

The Senate Finance Committee substitute for Senate Bill 95 and Senate Bill 131 contains the following provisions, effective July 1, 2017:

- increases the gasoline tax by 10 cents per gallon (from 17 cents to 27 cents),
- increases the special fuels tax by 5 cents per gallon (from 21 cents to 26 cents),
- increase the motor vehicle excise tax by 1 percent (from 3 percent to 4 percent),
- specifies the petroleum products loading (PPL) fee will be $150 per load until state reserves reach 5 percent, and
- creates the state road maintenance fund.

One-half of the new revenues from the fuel tax increases are to be distributed to the tax stabilization reserve until the State Board of Finance certifies to the secretary of taxation and revenue that state fund reserves were at least 5 percent of the total general fund appropriations for the prior fiscal year, as per the general fund financial summary prepared by the department of finance and administration. Additionally, until the 5 percent reserve threshold is met, $110 of the PPL fee, and all revenues from the 1 percent motor vehicle excise tax increase, will be distributed to the tax stabilization reserve.

In the fiscal year following state reserves reaching at least 5 percent:

- The revenues from the gasoline and special fuels taxes flowing to the tax stabilization reserve will instead be distributed to the state road maintenance fund, and the municipalities and counties maintenance fund;
- The PPL fee will revert to amounts and distribution under current law, with funds no longer flowing to reserves; and
- New revenue from the 1 percent motor vehicle excise tax increase will flow to the state road maintenance fund.

This bill designates the newly created state road maintenance fund for improvement or maintenance of existing public roads or bridges. This will be a nonreverting fund in the state treasury and will be administered by the Department of Transportation and cannot be used for bonding. Additionally, the new money distributed to municipalities and counties for road maintenance cannot be used for bonding.

FISCAL IMPLICATIONS

The fiscal impact of the gasoline and special fuels tax increases is estimated by multiplying the gallons of gasoline and special fuel forecasted by the New Mexico Department of Transportation (as of January 2017) by the amount of the tax increase. The appropriate distribution percentage rates were then applied to the different funds. The analysis is based on the assumption that the tax increases do not modify the price elasticity demand for gasoline and special fuels. The fuel tax increases will generate about $116 million in new revenue, with about $90 million attributable to the gasoline tax increase and about $26 million attributable to the special fuels tax increase.

This bill adjusts fuel tax distributions to essentially hold harmless the various fuel tax beneficiaries as well as create the following effect. Before state reserves reach 5 percent:

- Gasoline: 5 cents to the tax stabilization reserve, 2.5 cents to municipalities and counties for road maintenance, and 2.5 cents to the state road maintenance fund.
- Special fuels: 2.5 cents to the tax stabilization reserve, 1 cent to the state road fund, and 1.5 cents split between the state road maintenance fund and the municipalities and counties maintenance fund.

After state reserves reach 5 percent:

- Gasoline: 5 cents to municipalities and counties for road maintenance and 5 cents to the state road maintenance fund.
- Special fuels: 1 cent to the state road fund, and 2 cents to the state road maintenance fund, and 2 cents to the municipalities and counties maintenance fund.

The fiscal impact for the motor vehicle excise tax increase was determined using the December 2016 consensus revenue estimates for this tax. The estimates assume little to no impact on sales of new or used cars and light trucks from this change in the tax rate. Each additional percent added to New Mexico’s rate would generate about $50 million for the general fund.

The fiscal impact for the adjustments made to the amount and distribution of the petroleum products loading fee uses the FY16 actual amount received in PPL fees by the corrective action fund, in which the PPL fee was $150 per load of which the correction action fund received $110 per load, as is the case with this bill. In FY16, the correction action fund received $19.2 million from the PPL fee.

Distributions assume the 5 percent state fund reserve target will be met by the end of FY20, thus enabling distributions to alternative distributions to begin in FY21.

The state road fund revenue is somewhat reduced by payments to the Pueblo of Santo Domingo and the Pueblo of Nambe, pursuant to the gasoline tax sharing agreements specifying they are entitled to receive an amount equal to 40 percent of the net receipts attributable to the gasoline tax paid to the DOT on 2.5 million gallons of gasoline each month, and which consequently will receive an additional $100 thousand each per month, while all the other funds are held harmless. This effect is offset by the distribution of an additional 1 cent/gallon from special fuels that this bill distributes to the state road fund, creating a net positive impact.

The tables below summarize the total revenue sources and uses as outlined in the bill.

Revenue Sources (in millions)					Five Year Total	Fund Affected
FY17	**FY18**	**FY19**	**FY20**	**FY21**		
$0.0	$90.0	$88.6	$88.2	$87.4	**$353.2**	Gasoline Tax (10 cents)
$0.0	$26.2	$27.2	$27.5	$27.8	**$108.7**	Special Fuels Tax (5 cents)
$0.0	$19.2	$19.2	$19.2	$0.0	**$57.6**	PPL Fee ($110 of the $150 fee)*
$0.0	$49.2	$51.0	$53.0	$54.0	**$207.2**	Motor Vehicle Excise Tax (1%)
$0.0	**$183.5**	**$186.0**	**$187.9**	**$169.2**	**$726.6**	**TOTAL**

* The PPL fee is not "new" revenue, as the fee currently exists at this rate; however, this bill distributes $110/load of the $150/load fee to the tax stabilization reserve until state reserves reach 5 percent, and is therefore included in the total.

Revenue Uses (in millions)					Five Year Total	Fund Affected
FY17	**FY18**	**FY19**	**FY20**	**FY21**		
$0.0	$125.9	$128.1	$130.0	$0.0	**$384.1**	Tax Stabilization Reserve
$0.0	$26.2	$26.2	$26.2	$54.8	**$133.4**	Muni & County Road Maintenance
$0.0	$26.2	$26.2	$26.2	$108.8	**$187.4**	State Road Maintenance Fund
$0.0	$2.8	$3.0	$3.1	$3.2	**$12.2**	State Road Fund

As indicated above, this bill will generate about $670 million in new revenue and provide about $727 in total revenue sources over the five-year period. Assuming state reserves reach 5 percent before FY21, this bill will distribute about $384 million to the tax stabilization reserve and over $260 million for local and state road maintenance.

The Taxation and Revenue Department (TRD) estimates the committee substitute bill to have a high impact on the Information Technology Division and a moderate impact on the Financial Distribution Bureau. TRD estimated a total operating budget impact of $374 thousand nonrecurring in FY17.

The fuel tax increases will also have a direct but unknown effect on all other general fund agencies with motor vehicle travel costs, as these agencies will now have to pay the increased tax rate on gasoline purchased.

This bill creates a new fund for state road maintenance and provides for annual appropriations by the legislature.

This bill addresses the LFC tax policy principles of adequacy and efficiency by raising revenues from a source that is far less volatile that some of the other sources of general fund revenues. Motor fuels tax revenues and motor vehicle excise tax revenues fluctuate over time, but the revenue stream is much more stable than taxes more susceptible to changes in oil and gas prices, for example (see significant issues section).

SIGNIFICANT ISSUES

The last increase in the state gasoline tax occurred in 1993, when the tax was raised from $0.16 to $0.22 per gallon. It has since been reduced twice to the current rate of $0.17 per gallon. The special fuels tax rate was last increased in 2003, when it was raised from $0.18 per gallon to its present rate of $0.21 per gallon. New Mexico fuel taxes are lower than in surrounding states and lower than the national average. Seven states raised their gas tax rates on January 1, 2017. The two highest increases occurred in Pennsylvania and Michigan, with rate hikes of 7.9 cents and 7.3 cents per gallon resulting in total rates of 58.3 cents and 37.8 cents per gallon, respectively, according to the Tax Foundation. The other five states – Nebraska, Georgia, North Carolina, Indiana, and Florida – implemented more modest rate increases.

The New Mexico Municipal League and its' members support this legislation. Many local governments have seen a real decline in the amount of their gasoline tax distributions over the years, reportedly due in part to competing sales of gasoline by Native American tribes in the vicinity of municipal limits. Additionally, gradually increasing fuel efficiency may contribute to observed declines. While the proposed tax increase would significantly increase the state road fund, county and municipal funds would benefit directly as well. Local governments are responsible for the maintenance, repair and construction of approximately 44,000 miles of roads compared to 30,000 miles of roads for which the state is responsible.

DOT indicates fuel taxes have historically served as a proxy for damage done to public roads, and motor fuel revenues are usually considered "user fees" paid for road maintenance and road projects. Based on economic theory, any diversion of "user fee" revenues away from road-related purposes represents a violation of the benefit according to principle of taxation.

Gasoline prices fluctuate with crude oil prices. However, gasoline tends to be a relatively inelastic product in that price fluctuations do not tend to significantly increase or reduce demand. As such, the revenues resulting from passage of this bill would likely remain consistent regardless of changes in prices at the pump.

It should be noted that Native American tribes can increase their taxes in step with state increases but preserve any differential they deem appropriate.

TRD has pointed out in related bills that gasoline taxes are regressive, meaning that they have an outsized effect on those with lower incomes. This will be especially true in New Mexico as the state's lowest tax bracket (defined as a taxable income of less than $5,500 if single, $8,000 if married or head of household, or $4,000 if married filing separately) currently comprises 46 percent of filers.

Motor vehicle excise taxes in New Mexico are less than half the rates in many places in Arizona, Colorado, and Texas. New Mexico's rate is 3 percent, while rates in surrounding areas can be more than 8 percent after adding in local rate increments. The Arizona and Texas statewide rates alone are approximately double that of New Mexico. TRD indicates the increase in motor vehicle excise tax amounts to a 33% increase in the tax. This increase would still add an average about $340 to the cost of a new car and $170 to the cost of a used car.[1] While it is possible for price increases to affect car-buying decisions, the fiscal impact estimates assumes the increase in the motor vehicle excise tax will not reduce the demand for vehicles.

As passed by the House of Representatives, House Bill 2 includes $23.7 million from the corrective action fund for the Environment Department's (NMED) FY18 operating budget, accounting for about one quarter of the agency's expenditure authority. The fund ended FY16 with a balance of $12.2 million; however, the unobligated balance was $2.5 million. FY16

[1] Average new and used vehicle prices from Kelley's Blue Book and Edmunds, respectively.

revenues were $19.2 million and expenditures were $21.8 million. Assuming revenues and expenditures are flat in FY17, the fund will have an ending balance of $9.6 million, and an unobligated balance of $0, which would require either a significant reduction in the agency's FY18 operating budget, including the need to terminate positions, or increases from other revenue sources. The fund is used to fulfill New Mexico's obligations under the federal Resource Conservation and Recovery Act and diversion of revenues to the general fund could result in relinquishing the state's authority to implement petroleum storage tank regulations to the federal government. In addition to using the fund to implement the petroleum storage tank program, NMED can use up to 30 percent of the fund to leverage additional federal grants to support other agency functions and diverting the petroleum products loading fee to the tax stabilization reserve will thus limit other agency revenue sources.

This bill does <u>not</u> change how funds are appropriated from the tax stabilization reserve and does <u>not</u> change or diminish legislative appropriation authority. Under current law, money in the tax stabilization reserve may only be appropriated if (1) the governor declares it "necessary for the public peace, health and safety" and only with the vote of two-thirds of both the House and Senate, or (2) if revenues are determined by the governor to be insufficient to meet authorized appropriations for the current and next fiscal year and the House and Senate approve a transfer to the general fund with a majority vote to cover the projected insufficiency for either or both fiscal years. Therefore, in FY16 and FY17 when revenues were projected to be insufficient to meet appropriations, the state would have been able to access the tax stabilization reserve for solvency measures.

However, it should also be noted, when the tax stabilization reserve balance reaches 6 percent of the previous fiscal year's recurring appropriations, current state law requires the transfer of the excess funds to the taxpayers dividend fund. Under current law, if the taxpayers dividend fund balance exceeds 1 percent of state personal income tax collection, the governor must propose a method to refund the balance to the state's taxpayers in legislation to be considered at the next legislative session.

If the intent of this bill is to allow funds in the tax stabilization reserve to accumulate and build balances over time, the Legislature should consider addressing the issue of excess balances flowing to the taxpayers dividend fund.

ADMINISTRATIVE IMPLICATIONS

TRD estimates the bill as substituted by HTRC to have moderate to high impact on the Information Technology Division and a moderate impact to the Financial Distribution Bureau, which will need to make significant changes to the states central accounting system and also verify significant changes made in the GenTax system.

Given current workloads, and changes needed to GenTax, TRD states the effective date of July 1, 2017 is not reasonable. January 1, 2018 would be a more feasible effective date.

CONFLICT & RELATIONSHIP

Conflicts with Senate Bill 132, which sets the trigger for funds diverting from the tax stabilization reserve to the newly created state road maintenance fund at oil prices reaching $67/barrel rather than reserves reaching 5 percent.

Conflicts with SB 436 and HB 509, which change the gasoline and special fuel tax rates and distributions of new revenue.

Conflicts with HB167, which phases in a redistribution of the motor vehicle excise tax from the general fund back to the state road fund over a period of three years.
Conflicts with HB310, which raises the motor vehicle excise tax to 5 percent.

Conflicts with SB353, which raises the motor vehicle excise tax rate and distributes 50 percent of the revenue to the state road fund.

Relates to HB 63, which expands the local option fuel taxes.

TECHNICAL ISSUES

The bill as substituted amends Section 7-1-6.7(D) NMSA 1978 to remove expired distribution amounts from the gross receipts tax to the state aviation fund. While doing this, the bill also removes the specification that this is a monthly distribution. Without that specification, it is unclear what the qualifying time period is on the distribution. For the estimated revenue impact above, TRD assumed that this technical error is fixed and it remains a monthly distribution.

Assuming the intent of the bill is to change the distribution of the gasoline tax and special fuels tax, based on taxes imposed on or after the July 1, 2017 tax increase, DOT recommends an Applicability Section be added to the bill stating that the distribution changes apply only to revenue from taxes imposed on or after July 1, 2017.

DOT notes the distribution changes for the Petroleum Products Loading Fee could feasibly be initiated with an effective date of July 1, 2017; however, this would affect two months of FY17 revenue (Petroleum Products Loading Fees imposed on May and June 2017 motor fuel volumes). The fiscal impact estimate has assumed applicability to revenue attributable to fees imposed on or after July 1, 2017 for the Petroleum Products Loading Fee as well.

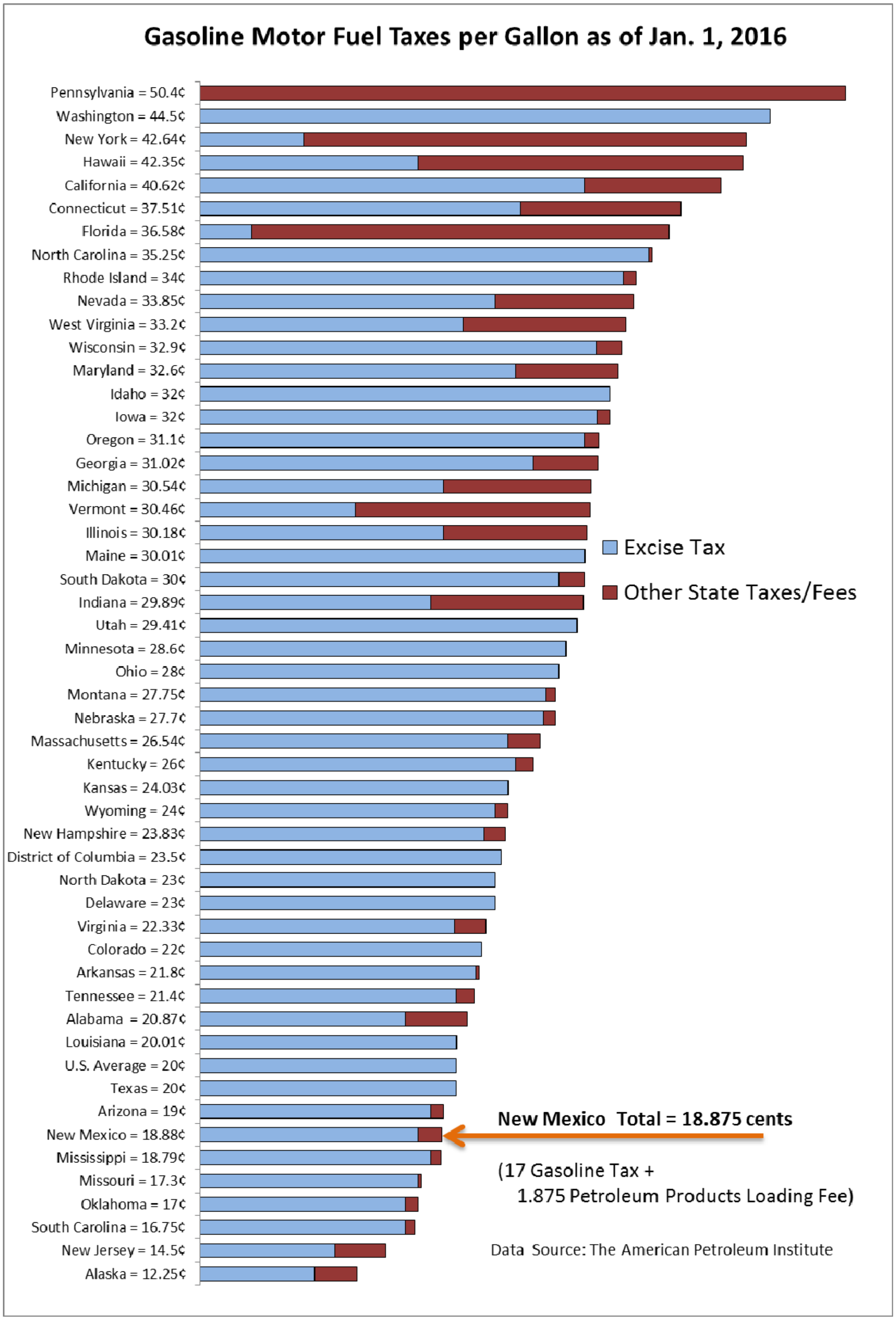
Does the bill meet the Legislative Finance Committee tax policy principles?

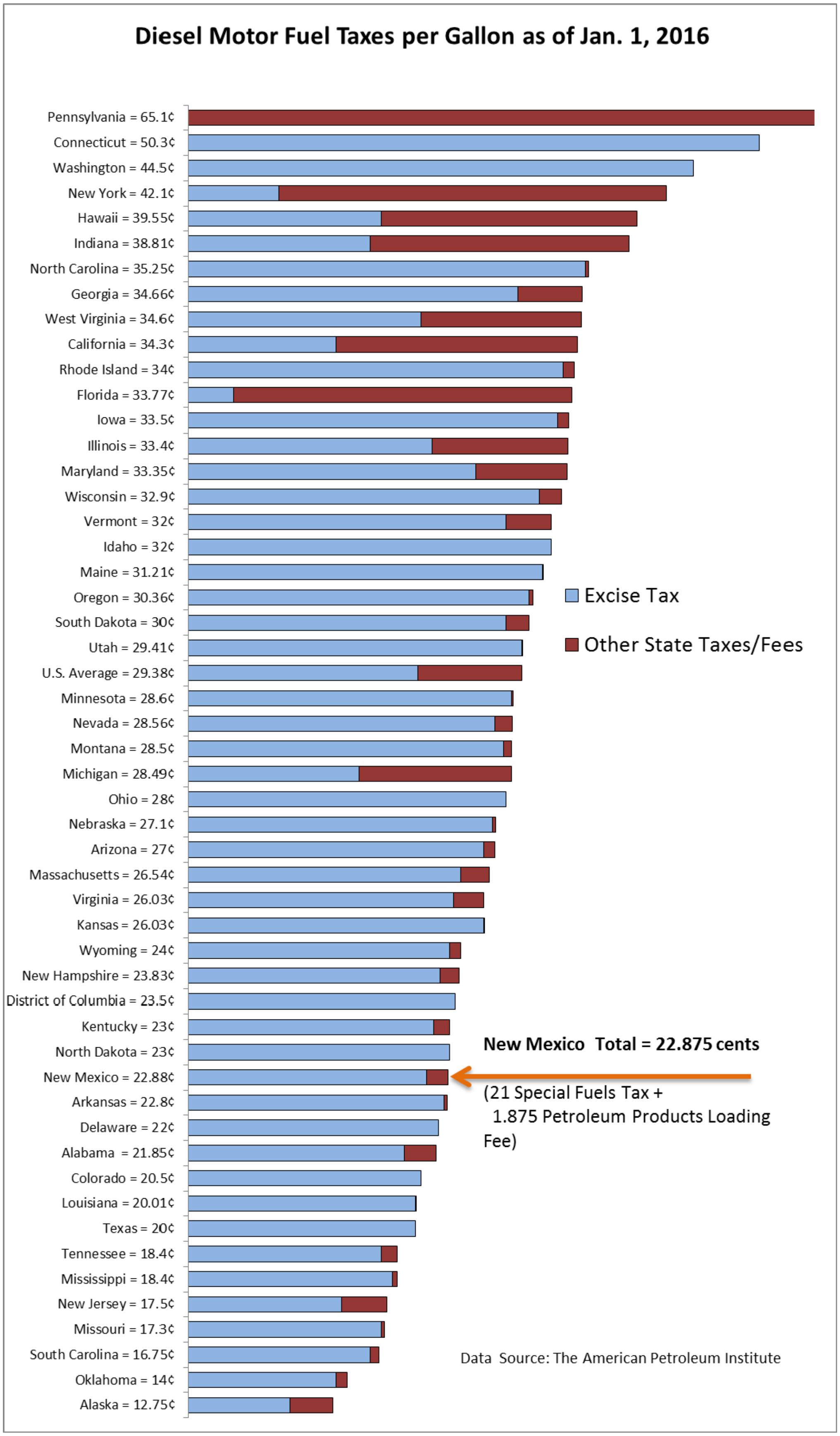
1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.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

DI/al/jle/sb

APPENDIX

The following graphic depictions show New Mexico's relative fuel tax rates:




Diesel Motor Fuel Taxes per Gallon as of Jan. 1, 2016
Pennsylvania = 65.1¢
Connecticut = 50.3¢
Washington = 44.5¢
New York = 42.1¢
Hawaii = 39.55¢
Indiana = 38.81¢
North Carolina = 35.25¢
Georgia = 34.66¢
West Virginia = 34.6¢
California = 34.3¢
Rhode Island = 34¢
Florida = 33.77¢
Iowa = 33.5¢
Illinois = 33.4¢
Maryland = 33.35¢
Wisconsin = 32.9¢
Vermont = 32¢
Idaho = 32¢
Maine = 31.21¢
Oregon = 30.36¢
South Dakota = 30¢
Utah = 29.41¢
U.S. Average = 29.38¢
Minnesota = 28.6¢
Nevada = 28.56¢
Montana = 28.5¢
Michigan = 28.49¢
Ohio = 28¢
Nebraska = 27.1¢
Arizona = 27¢
Massachusetts = 26.54¢
Virginia = 26.03¢
Kansas = 26.03¢
Wyoming = 24¢
New Hampshire = 23.83¢
District of Columbia = 23.5¢
Kentucky = 23¢
North Dakota = 23¢
New Mexico = 22.88¢
Arkansas = 22.8¢
Delaware = 22¢
Alabama = 21.85¢
Colorado = 20.5¢
Louisiana = 20.01¢
Texas = 20¢
Tennessee = 18.4¢
Mississippi = 18.4¢
New Jersey = 17.5¢
Missouri = 17.3¢
South Carolina = 16.75¢
Oklahoma = 14¢
Alaska = 12.75¢
Excise Tax
Other State Taxes/Fees
New Mexico Total = 22.875 cents
(21 Special Fuels Tax + 1.875 Petroleum Products Loading Fee)
Data Source: The American Petroleum Institute

Current and Proposed Distribution of Special Fuels Tax

Tax	Fund	Current	Proposed
Special Fuels	Local Governments Road Fund	9.52%	7.69%
	State Road Fund	90.48%	76.92%
	Tax Stabilization Reserve (until reserves reach 5%)	n/a	9.61%
	Municipalities and Counties Fund – maintenance (before 5%) Municipalities and Counties Fund – maintenance (after 5%)	n/a	2.89% 7.695%
	State Road Maintenance Fund (before reserves reach 5%) State Road Maintenance Fund (after reserves reach 5%)	n/a	2.89% 7.695%

Current and Proposed Distribution of Gasoline Tax

Tax	Fund	Current	Proposed
Gasoline	State Aviation Fund	0.26%	0.164%
	Motorboat Fuel Tax Fund	0.13%	0.082%
	Municipalities and Counties	10.38%	6.536%
	County Government Road Fund	5.76%	3.627%
	Municipal Roads Fund	5.76%	3.627%
	Municipal Arterial Program of Local Governments Road Fund	1.44%	0.907%
	State Road Fund	76.270%	48.03%
	Tax Stabilization Reserve (until reserves reach 5%)	n/a	18.52%
	Municipalities and Counties Fund – maintenance (before 5%) Municipalities and Counties Fund – maintenance (after 5%)	n/a	9.256% 18.516%
	State Road Maintenance Fund (before reserves reach 5%) State Road Maintenance Fund (after reserves reach 5%)	n/a	9.256% 18.516%