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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/30/09  
**LAST UPDATED** 03/18/09    **HB** \_\_\_\_\_

**SPONSOR** Beffort

**SHORT TITLE** Weight Distance Tax Under Reporting Penalties    **SB** 213/aSFL#1

**ANALYST** Gutierrez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate but significant	Indeterminate but significant	Recurring	Road Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.01			Nonrecurring	Road Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB632 and HB802

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Transportation (DOT)

Department of Public Safety (DPS)

Taxation and Revenue Department, Motor Vehicle Division (TRD, MVD)

### SUMMARY

#### Synopsis of SFL Amendment

The Senate Floor amendment to Senate Bill 213 strikes Section 1 in its entirety, thus removing the \$4,000 civil penalty for reporting zero miles traveled when more than zero taxable miles were traveled.

#### Synopsis of Original Bill

Senate Bill 213 imposes civil penalties for underreporting mileage driven and/or gross vehicle weights for commercial motor carriers required to file a report pursuant to Subsection B of

Section 7-15A-8 NMSA 1978. An additional civil penalty of \$4,000 for each tax period is assessed to a commercial motor carrier that reports zero miles traveled on New Mexico highways during any reporting period and is later determined to have traveled within New Mexico during that reporting period.

Additionally, the bill provides civil penalties of up to \$4,000 for commercial motor carriers that underreport miles traveled and/or less than the actual gross vehicle weight on New Mexico highways during any reporting period and is later determined to have underreported through an audit.

### **FISCAL IMPLICATIONS**

MVD's Commercial Vehicle Bureau advised that an average of 16,175 commercial carriers filed zero taxable miles in 2008. This means there was an average of 4,043 zero-filers every quarter. If we assume that only 50 percent of those zero-filers are filing falsely, then we assume that 2,021 filers every quarter could be fined anywhere from \$100 to \$4,000 depending upon how much they owed for the period. These civil penalties could generate anywhere from \$20,218 to \$837,500 quarterly and \$8,084 to \$3.35 million annually, although it is highly unlikely that all zero-filers would be fined the full \$4,000. This estimate only includes zero-filers, and other under-filers would also be included in these civil penalties. Because we do not have any real data as to the exact amount of under-filing, it is impossible to know the amount of revenue this bill could generate but it could reach the millions.

The Motor Transportation Division (MTD) of the Department of Public Safety (DPS) notes the difficulty of estimating the annual potential revenue to be generated from the imposition of these civil penalties to commercial motor carriers for failure to be in compliance with the Weight Distance Tax Act. These penalties will encourage timely and accurate reporting of accurate gross vehicle weight and actual miles driven which is expected to translate into increased revenue not only from imposed penalties but also due to accurate quarterly reporting.

The civil assessments are in addition to the back taxes owed plus any other applicable fees, penalties and interest.

### **SIGNIFICANT ISSUES**

DOT:

The State Road Fund receives the proceeds of the weight distance tax, which amounts to between \$80 and \$85 million per year and is the third largest State revenue source to the road fund (after gasoline and special fuel revenues). It has been thought that there could be some substantial noncompliance, and institution of these penalties could produce greatly increased, but unknown amounts, of revenues.

New Mexico is one of four states with a Weight/Distance tax on the travel of commercial vehicles (Kentucky, New York and Oregon are the others). It is used in lieu of vehicle registration fees used in other states as a revenue source for the use of highways. Under a proportional registration system used by all the states, commercial carriers registered in this and other states file quarterly tax returns showing the distances traveled in New Mexico and load weights by trip, and pay tax accordingly. The rate, depending on weight, varies from 11 to about 44 mills per mile. A fully loaded truck pays \$16.35 to cross the state on I-40 and \$7.19 to cross the State on I-10. (If a truck is not registered in the New Mexico system, the

one-time Trip Tax is \$59.74 and \$26.29 for those interstates. There are also, special, separate fees for excessive size and weight vehicles.)

In New Mexico we have recently instituted a system where the database that records a trucks' registration for tax purposes is now connected to the data base that contains the truck's heavy vehicle registration information. Trucks can now be checked for compliance with New Mexico's Weight/Distance tax program. As the volume of trucks crossing using the interstate borders, the current system of manually entering truck data is heavily labor intensive and sometimes slow enough to cause highway backups. (It is also dependent on staffing levels – many of which are frozen.)

To combat the above, a new system will be implemented over the next six months that will optically scan, read and compare. It will be faster and more accurate. There has been noticeable non-reporting catches recently and NMDOT has seen a slight up-tick in the Trip Tax revenues. Increased Weight/Distance revenues may be on the horizon, but with quarterly filing and industry awareness time lags, it might be a while yet.

The Motor Transportation Police have placed an emphasis on identifying and taking enforcement action on non-filers who are subject to the state weight distance tax. These are motor carriers who are registered with the state for the weight distance tax but have failed to submit the required quarterly report. SB438 was passed during the 2008 Legislative session that created a penalty assessment misdemeanor for failure to be in compliance with the requirements of the Weight Distance Tax Act pursuant to section 65-1-26(E) NMSA 1978 to address the high number of non-filers.

Since the implementation of SB438 on July 1st, 2008, the Motor Transportation Police have issued over 1,700 citations under 65-1-26 to weight distance tax non-filers. Instances of non-filers fell from 5,706 in August 2008 to 1,490 in December 2008. The Motor Transportation Police believe that this is because of their ability to take enforcement action by the issuance of citations and having the authority to detain motor carriers until they become compliant with 7-15A-8 NMSA 1978.

The Motor Transportation Police have also identified a corresponding trend of increasing number of zero-filers during the same reporting period. These are motor carriers that are reporting zero miles driven during the quarterly reporting period. The number of zero-filers identified from August through December 2008 increased from 3,968 to 6,120. The agency believes that some of these motor carriers are filing their required quarterly reports and reporting zero miles in an effort to avoid sanctions under 65-1-26 NMSA 1978. The agency believes motor carriers are not properly reporting all miles driven in New Mexico and that 10% - 20% of weight distance taxes due are not being collected.

## **PERFORMANCE IMPLICATIONS**

Undetermined, however it should result in increased weight distance tax revenue from accurate reporting in addition to revenue generated from civil penalties assessed to commercial motor carriers that underreport gross vehicle weight and/or miles driven on New Mexico highways.

## **ADMINISTRATIVE IMPLICATIONS**

These civil penalties will only be imposed upon completion of a proper audit of the commercial motor carrier suspected of underreporting gross vehicle weight and/or miles driven. Therefore, it is essential that the Motor Transportation Police continue to provide timely motor carrier information to the TRD Audit and Compliance Division (ACD) so they can identify potential audits on both zero and non-filer motor carriers. In addition, the information provided by the TRD EFILE system must be accurate and timely to allow the Motor Transportation Police the ability to determine which commercial motor carriers are compliant with the Weight Distance Tax Act.

The Motor Transportation Police are in the process of deploying a Smart Roadside Vehicle Inspection system at three (3) major ports of entry. License plate readers and DOT number optical readers will facilitate division employees to confirm compliance with the tax identification permit requirement. This technology will expedite commerce while facilitating tax compliance. Electronic verification of the weight distance tax will expedite identification of non-filers and zero-filers. Data collected by this system can be utilized by the TRD Audit and Compliance Division (ACD) to identify potential audits and to concentrate on the most delinquent and fraudulent motor carriers.

### **TRD:**

The additional civil penalty would require computer system and changes to audit worksheets and procedures. Computer system changes to the GenTax weight distance tax program would impose a moderate administrative impact.

- 1) Modification to forms - 40 hours
- 2) Changes to configuration for new transactions – 40 hours
- 3) Changes to revenue accounting – 40 hours

Total 120 hours

## **RELATIONSHIP**

Senate Bill 213 relates to HB632 and HB802 which increase the rate of the weight distance tax.

## **OTHER SUBSTANTIVE ISSUES**

Presumably the existence of additional penalties would tend to enhance weight-distance tax reporting. The Commercial Vehicle Bureau of MVD has identified a surprisingly large number of “zero miles” weight-distance tax returns filed by New Mexico carriers, so the general consensus is that we continue to have significant compliance problems in the Weight-Distance Tax area. Any improved compliance in Weight-Distance Tax reporting would benefit the State Road Fund which receives 100% of the tax. It is presumed in this fiscal impact that the civil penalties would also accrue to the Road Fund.

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