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

SPONSOR Begaye

ORIGINAL DATE 01/25/12

LAST UPDATED

HB 61

SHORT TITLE Fireworks Gross Receipts Tax Distribution

SB

ANALYST Walker-Moran/ Hoffman

REVENUE (dollars in thousands)

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY12	FY13	FY14	FY15	FY16		
--	($79.8)	($82.2)	($84.6)	($87.0)	R	General Fund (GRT)
--	($53.2)	($54.8)	($56.4)	($58.0)	R	Local Governments (GRT)
--	$133.0	$137.0	$141.0	$145.0	R	Wildlands Fire Prevention Fund

*In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Nonrecurring (NR).

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY12	FY13	FY14	FY12-14		
	>$40.0		>$40.0	NR	TRD Operating Fund

*In thousands of dollars. Parentheses ( ) indicate a cost saving. ** Recurring (R) or Nonrecurring (NR).

Relates to Senate Bill 5

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

House Bill 61 would amend the Gross Receipts and Compensating Tax Act and the Tax Administration Act to require 60% of the annual net revenues (less penalties and interest) derived from the gross receipts tax on fireworks, be distributed to the Wildlands Fire Prevention Fund. The bill also amends the Forest Conservation Act to provide for the creation of the Wildlands Fire Prevention Fund.

The bill provides a definition of “wildlands” to include “forests, Bosques, and brush-covered lands.”

The effective date of the bill would be May 16, 2012.

FISCAL IMPLICATIONS

During the 2011 1st Special Session, representatives from the fireworks industry estimated that statewide annual sales of fireworks were between $14 and $15 million. This analysis assumes annual sales of $15 million, a deductions ratio of 14 percent, the portion of sales occurring on tribal lands as 75 percent, and an average gross receipts tax rate of 6.88 percent. Furthermore, the calculations assume a 60/40 split in the state and local shares of the revenue. The calculation for FY2013 is then grown at a rate of 3% each year to reflect inflation and economic growth. See other issues below for discussion of taxation of fireworks on tribal lands.

This bill creates a new fund (the Wildlands Fire Prevention Fund) and provides for a redistribution of gross receipts tax revenue on a continuing basis, reducing revenue available for appropriations and the ability of the legislature to revise spending priorities. For these reasons the LFC has concerns with including continuing redistribution language in the statutory provisions for newly created funds such as this one.

SIGNIFICANT ISSUES

The TRD advises that though it is estimated that 75% if the fireworks sold are on tribal land, tribal gross receipts taxes are imposed by action of the individual pueblos and nations, and not the Gross Receipts and Compensating Tax Act. This bill only redistributes the gross receipts tax imposed on fireworks sold outside of tribal boundaries.

The EMNRD suggests that HB61 could have a potential negative impact on the Forestry Division Budget. Without specific language to preclude the reduction of base general fund operating budget levels due to the increase in fund balances associated with the creation of the “designated-use” proposed Wildlands Fire Prevention Fund, the division may lose the operational flexibility that is required to address statewide life and property vulnerabilities in an around communities at risk to wildfires.

The State Forestry Division already manages fire prevention and fire mitigation programs in the state and is not pursuing additional programs for this purpose. The types of wildland fire prevention projects State Forestry Division conducts include: fuel reduction projects around communities at risk, riparian treatment projects, forest health projects, as well as education and outreach presentations.

ADMINISTRATIVE IMPLICATIONS

The TRD expressed the following concerns related to the administrative and compliance impact of HB61 on the department’s operations.

> HB61 has bill has a very high administrative impact because the CRS is currently unable to differentiate sales of fireworks from any other business activity. The Taxation and Revenue Department’s ITD suggests there are two solutions that the GenTax project can

provide. Both will require extensive time and resources to complete. The time would increase when considering the impact on the other TRD divisions to monitor, manage, and process the credit and distribution of funds. The GenTax options include the following:

1) Create a new special code such as telecommunications to be indicated on the CRS-1 Form for a location code similar to Section 7-1-6.7C. Distributions would continue for GRT as they currently do on a monthly basis. The distribution report would have to be changed to identify the amount of money claimed for the special code then 60% of the net total be taken from the general fund and transferred to the new Wildlands Fire Prevention Fund. This process would require the creation of numerous table entries in GenTax, code changes for the distributions and reports, retesting of all CRS distributions, and queries to identify money. High impact (1000 hours - $40,000)

2) The second option is to create a new form to identify firework sales similar to the form used for Section 7-1-6.7A. The form is easier to track but will have no tie to actual money claimed on a location code on a CRS-1 Form. This allows for inaccurate tracking of the money being distributed to the wildlife fund. The coding and configuration in GenTax would be somewhat less extensive in GenTax for this option, but still has a high impact of approximately 850 hours ($34,000).

This bill has low impact on the distribution process. Once programming changes are made to GenTax by IT, the Financial Distributions Bureau (FDB) staff will need to verify the changes by performing selected tests of data and functionality, prior to authorizing IT to move changes into production. Programming changes and testing would need to be completed by May 17, 2012 (90 days following adjournment). FDB would need to obtain the accounting stream for distribution to the Wildlands Fire Protection Fund from the Energy, Minerals and Natural Resources Department. Within the state's central accounting system (SHARE) a new subaccount would need to be created by FDB staff to account for this distribution. FDB would need to modify the operating transfer order template for this distribution.

TRD's Revenue Processing Division (RPD) notes that because the effective date begins on a day other than the 1st of January or the 1st of July, the impact increases exponentially. This can be processed using a special rate code. They would have to revise the CRS instructions and publications; make a change to processing within Gentax to account for the new special rate code. Modify CRS webfile, and data entry processing for paper forms. Instead of making the changes to the instructions at the beginning of a semi-annual period at minimal cost, they will need to advertise the use of the new special rate code to persons selling fireworks and make changes to the instructions and publications prior to the next semi-annual revision process. As such, even more additional resources will be needed.

The EMNRD states the Forestry Division and EMNRD's Administrative Services Division would have increased responsibilities to manage the new fund, implement and oversee the additional projects, develop contracts, and process payments. HB 61 does not explicitly authorize EMNRD to use the new fund for administrative purposes.

RELATIONSHIP

Senate Bill 5 would give the governor, in addition of municipal officials, the authority to restrict the sale of fireworks when the fire danger is high.

TECHNICAL ISSUES

The TRD identified the following technical issues.

Page 1, line 25 and page 2, line 1, to be consistent with other statutes in the 7-1-6 series, “net receipts attributable to the gross receipts tax less penalties and interest” should be changed to “net receipts, exclusive of penalties and interest, attributable to the gross receipts tax”.

The bill lacks an effective date. The department recommends a date certain, such as July 1, 2013. This will reduce the administrative impact associated with implementation.

OTHER SUBSTANTIVE ISSUES

The TRD suggests that although this bill redistributes tax revenue from the sale of fireworks toward wildfire prevention, it does not provide any disincentive for the use of fireworks, an activity associated with wildfire risk.

POSSIBLE QUESTIONS

Does the bill meet the LFC tax policy principles?
Adequacy: Revenue should be adequate to fund needed government services.
Efficiency: Tax base should be as broad as possible and avoid excess reliance on one tax.
Equity: Different taxpayers should be treated fairly.
Simplicity: Collection should be simple and easily understood.
Accountability: Preferences should be easy to monitor and evaluate

EWM/svb