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

SPONSOR HTPWC **ORIGINAL DATE** 2/16/15 **LAST UPDATED** 3/16/15 **HB** 262/HTPWCS

SHORT TITLE Gas Tax & Road Projects **SB**

ANALYST van Moorsel

REVENUE (dollars in thousands)

Estimated Revenue by Beneficiary					Recurring or Nonrecurring	Fund Affected
FY15	**FY16**	**FY17**	**FY18**	**FY19**		
$29,700.0	$21,800.0	$20,400.0	$21,700.0	$72,400.0	Recurring	State Road Projects
$0.0	$45,800.0	$46,500.0	$49,000.0	$50,400.0	Recurring	Local Government Road Projects
($29,700.0)	($57,300.0)	($25,500.0)	($26,200.0)	($27,400.0)	Recurring	Legislative Capital Projects
$0.0	($13,000.0)	($18,400.0)	($20,100.0)	($22,600.0)	Recurring	Public School Capital Outlay
$0.0	$6,700.0	$1,200.0	$1,300.0	$5,200.0	Recurring	Severance Tax Permanent Fund
$0.0	$0.0	$0.0	$100.0	$100.0	Recurring	General Fund

(Parenthesis ( ) indicate revenue decreases

	Estimated Revenue by Source					Recurring or Nonrecurring	Fund Affected
	FY15	**FY16**	**FY17**	**FY18**	**FY19**		
Gasoline Tax Increase	$0.0	$17,400.0	$17,800.0	$18,200.0	$18,700.0	Recurring	Local Governments Road Fund
Special Fuels Tax Increase	$0.0	$10,000.0	$10,300.0	$10,600.0	$10,900.0	Recurring	Local Governments Road Fund
Motor Vehicle Excise Tax Increase	$0.0	$0.0	$0.0	$0.0	$50,500.0	Recurring	State Road Fund
Senior STB Earmark	$29,700.0	$21,800.0	$20,400.0	$21,700.0	$21,900.0	Recurring	State Road Fund
Supplemental STB Earmark	$0.0	$18,300.0	$18,400.0	$20,100.0	$20,800.0	Recurring	Local Governments Road Fund

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)
Energy, Minerals and Natural Resources Department (EMNRD)
Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of Bill

House Transportation and Public Works Committee Substitute for House Bill 262 amends several statutes to generate additional revenues for state and local road funding.

Specifically, the bill increases the gasoline excise tax from $0.17 per gallon to $0.19 per gallon and the special fuels (diesel) tax from $0.21 per gallon to $0.23 per gallon beginning in FY16, and indexes these excise tax rates to inflation using the chained price index for nonresidential construction in the consumer price index beginning in FY17. The bill amends the Tax Administration Act to adjust the distribution of gasoline and special fuels tax revenues (see below) to ensure the marginal revenue is transferred to the local government road fund and all other beneficiaries are held harmless.

Current and Proposed Distribution of Gasoline and Special Fuel Tax

Tax	Fund	Current	Proposed
Special Fuels	State Road Fund	90.5%	82.6%
	Local Government Road Fund	9.5%	17.4%
Gasoline	State Road Fund	76.3%	68.2%
	Local Government Road Fund	0.0%	10.5%
	Other Beneficiaries	23.7%	21.3%

Beginning in FY19, the bill increases the motor vehicle excise tax from 3 percent to 4 percent, and transfers the marginal revenue to the state road fund.

The bill also amends the Severance Tax Bonding Act to permit the issuance of severance tax bonds and supplemental severance tax bonds for state and local road projects, respectively. For FY15-19, the bill earmarks ten percent of the senior severance tax bonding capacity for a list of high priority projects identified by the Department of Transportation (see attachment 1). For FY16-FY20, the bill earmarks one ninth of supplemental severance tax bonding capacity as estimated by Board of Finance for local road projects, subject to legislative appropriation. After FY20, supplemental severance tax bonding capacity is limited to 40 percent of deposits to the severance tax bonding fund, all dedicated to public school capital outlay.

Finally, the bill amends the severance tax bonding act to limit the revenue used to calculate severance tax bonding capacity to the lesser of the deposits during the preceding fiscal year or the deposits during the current fiscal year as estimated by the state Board of Finance. Current law bases the capacity on deposits during the prior year.

There is no effective date of this bill - it is assumed the new effective date is 90 days after this session ends.

FISCAL IMPLICATIONS

Severance Tax Bonding

The State Board of Finance (BoF) estimated the impact of bill's provisions affecting severance tax bonding. Based on the February 2015 bonding capacity estimate, BoF estimates the bill would reduce severance tax bonding capacity as follows over the ten-year period FY15-FY24:

- Total senior STB capacity is reduced by $104.6 million, or by 5 percent, as a result of language requiring senior STB capacity to be based on the lesser of previous year or current year STBF revenue.
- Total supplemental STB capacity is reduced by $74 million, mostly as a result of reducing the overall limit of bonding from 95 percent to 90 percent of STBF revenues beginning in FY21.

BoF reports that, because senior capacity is reduced as a result of basing capacity on the lesser of current- or prior-year severance tax revenue, the statutory earmarks of certain percentages of senior capacity are reduced as well. Although the percentage of the earmarks is unchanged, they are applied to a smaller base, resulting in the following reductions:

- Water trust fund capacity is reduced by $10.5 million, or 5 percent.
- Tribal infrastructure capacity is reduced by $5.2 million, or 5 percent.
- Colonias infrastructure capacity is reduced by $5.2 million, or 5 percent.
- A new earmark of 10 percent of senior STB capacity for transportation projects identified in the bill will result in $115.6 million being available for that purpose.

After considering the above existing earmarks and the proposed earmark, remaining capacity available for legislative appropriation is reduced by $199.3 million, or 11 percent. The BoF points out legislative capital sees a larger decline than other uses of senior capacity because it sees not only a reduction in overall capacity, but an additional carve out for road projects as well.

Addressing supplemental severance tax bonding capacity, the BoF notes the amount for public schools sees a reduction of $172 million over the ten-year period. The initial reduction results from the direction of a portion of supplemental STB capacity to transportation projects. However, after 5 years of transportation project funding, the overall capacity for supplemental STBs is dedicated solely to public school projects, albeit at a lower percentage of revenue to the severance tax bonding fund.

By reducing the amount of revenue that may be used to finance STBs, the bill is projected to increase contributions to the STPF. BoF estimates the increase to total $89.3 million over 10 years. Further, the investment earnings on the additional STPF transfers at an assumed 7.5 percent compound interest rate would contribute $17.5 million more over 10 years.

Finally, increasing the corpus of the STPF, will lead to increased distributions to the general fund. Set at 4.7 percent of the 5-year average of year-ending market values, general fund revenues are estimated to increase by $3.7 million over 10 years.

BoF provided the following table which details the ten-year impact to bonding programs.

Fiscal Impact Estimate of HB262 Committee Substitute versus Current Law

Sources of Funds (millions)	**FY15**	**FY16**	**FY17**	**FY18**	**FY19**	**FY20**	**FY21**	**FY22**	**FY23**	**FY24**	**10-Year**	**% Change from Current Law**
Severance Tax Bonds	-	(6.4)	(6.4)	(6.4)	(6.4)	(6.4)	(6.4)	(6.4)	(6.4)	(6.4)	(57.6)	-3%
Severance Tax Notes	-	(38.0)	0.1	0.8	(0.4)	(3.9)	(2.9)	(1.9)	(0.9)	0.1	(47.0)	-9%
Subtotal Senior STBs	**-**	***(44.4)***	***(6.3)***	***(5.6)***	***(6.8)***	***(10.3)***	***(9.3)***	***(8.3)***	***(7.3)***	***(6.3)***	***(104.6)***	-5%
Supplemental Severance Tax Bonds	-	-	-	-	-	-	-	-	-	-	-	
Supplemental Severance Tax Notes	-	31.4	-	-	(1.8)	(5.6)	(26.3)	(23.0)	(24.7)	(24.0)	(74.1)	-4%
Subtotal Supplemental STBs	**-**	***31.4***	**-**	**-**	***(1.8)***	***(5.6)***	***(26.3)***	***(23.0)***	***(24.7)***	***(24.0)***	***(74.1)***	-4%
Total Sources of Funds	**$0.0**	**($13.0)**	**($6.3)**	**($5.6)**	**($8.6)**	**($15.9)**	**($35.6)**	**($31.3)**	**($32.0)**	**($30.3)**	**($178.7)**	-4%
Uses of Funds (millions)	**FY15**	**FY16**	**FY17**	**FY18**	**FY19**	**FY20**	**FY21**	**FY22**	**FY23**	**FY24**	**10-Year**	
Authorized but Unissued STB Projects*	-	-	-	-	-	-	-	-	-	-	-	
10% Water Projects	-	(4.4)	(0.6)	(0.6)	(0.7)	(1.0)	(0.9)	(0.8)	(0.7)	(0.6)	(10.5)	-5%
Colonias Projects - 5%	-	(2.2)	(0.3)	(0.3)	(0.3)	(0.5)	(0.5)	(0.4)	(0.4)	(0.3)	(5.2)	-5%
Tribal Projects - 5%	-	(2.2)	(0.3)	(0.3)	(0.3)	(0.5)	(0.5)	(0.4)	(0.4)	(0.3)	(5.2)	-5%
10% Senior Legislative Transportation Projects	29.7	21.8	20.4	21.7	21.9	-	-	-	-	-	115.6	
New Senior STB Statewide Capital Projects	(29.7)	(57.3)	(25.5)	(26.2)	(27.4)	(8.2)	(7.4)	(6.6)	(5.9)	(5.1)	(199.3)	-11%
SSTB for Education Capital	-	13.0	(18.4)	(20.1)	(22.6)	(25.8)	(26.3)	(23.0)	(24.7)	(24.0)	(172.0)	-10%
SSTB for Transportation	-	18.3	18.4	20.1	20.8	20.2	-	-	-	-	97.9	
Total Uses of Funds	**$0.0**	**($13.0)**	**($6.3)**	**($5.6)**	**($8.6)**	**($15.9)**	**($35.6)**	**($31.3)**	**($32.0)**	**($30.3)**	**($178.7)**	-4%
Estimated STPF Transfer	-	6.7	0.7	0.7	4.5	12.5	12.0	9.0	11.5	31.5	89.3	61%
STPF Earnings on Contributions - 7.5% Compounding	-	-	0.5	0.6	0.7	1.1	2.1	3.2	4.1	5.2	17.5	25%
General Fund Distributions from STPF	-	-	-	0.1	0.1	0.2	0.4	0.6	0.9	1.3	3.7	0.2%

Source: Department of Finance and Administration

<u>Excise Tax Increases</u>

The impact of the gasoline and special fuels tax increases shown in the revenue table are based on data from the Department of Transportation's road fund forecast and beginning in FY17, the impact is grown based on an assumption of a 2.5 percent inflation rate. The motor vehicle excise tax increase is based on the February consensus revenue forecast.

SIGNIFICANT ISSUES

PSFA analysis indicates that even under current law, forecasted SSTB revenues (February, 2015) are not sufficient to maintain the average statewide Facility Condition Index (FCI). PSFA estimates that an annual state match of $157.9 million is required annually in order to maintain the FCI. The graph and table below show the current funding, the proposed funding by this legislation fall short of the funding of $157.9 million required to maintain the statewide FCI.

It should be noted that due to significant reductions in oil and gas prices since the December estimate that the February bonding capacity estimate was reduced significantly. The biggest impact from the commodity price decline was seen in the supplemental severance tax bonding capacity, which was reduced by a total of $124 million over five years, for an average reduction in annual SSTB capacity of nearly $25 million. FY16 SSTB capacity was revised downward by $54.2 million. This reduction alone will have a significant impact on the ability of the Public School Capital Outlay Council (PSCOC) to award funding for school facilities. The provisions in this bill would further reduce the availability of such funding.

PSFA notes it reported to the Public School Capital Outlay Council (PSCOC) the current PSCOC fund balance projection shows that the rate of SSTB sales and budgeting of revenues outpace the needs of the current project schedules in the current financial plan and project delays are imminent. PSFA adds reductions in SSTB capacity available for PSCOC programs would further exacerbate the risk of project delays.

PSFA adds the current funding source for public school capital outlay was established in response to the Zuni Lawsuit. In 1999, the district court ruled that the current public school capital outlay funding system was unconstitutional and appointed a special master to review the state's progress in developing a uniform system for funding public school capital improvements and in 2002 issued a finding that the state "is in good faith and with substantial resources attempting to comply with the requirements" of the court. In 2014, Gallup McKinley County school district, one of the original litigants, requested that the court re-open the lawsuit and the request was granted. A hearing is currently scheduled in the spring of 2015. PSFA cautions that repurposing SSTB proceeds at this time may be viewed unfavorably.

<u>Infrastructure Funding Needs</u>

The New Mexico Department of Transportation (NMDOT) estimates the annual construction funding need for to be $600 million while the current budget for construction projects is $257 million leaving an unfunded need, or gap, of $343 million. The provisions of this legislation would reduce the construction funding gap by approximately $33 million, per year through FY19.8 percent per year through FY18.

While the amount of the proposed construction funding is not sufficient to complete all of the high priority, unfunded projects listed by DOT, the department will establish a funding priority based on fatality/safety data, economic development potential, and congestion mitigation.

<u>Fuel Taxes</u>

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 (see attachment 2)

The increase in fuel taxes will be directed to the local governments road fund which is distributed to counties, municipalities, and school districts in accordance with statutory provisions. The bill would increase funding available within the local governments road fund by $27.4 million, or 250 percent to be distributed as shown in the table below.

Local Governments Road Fund Distribution of Fuel Taxes (FY16)

Percentage		Program	Current Funding	Proposed	Difference
42%	Cooperative Agreements		$ 4,620.0	$ 16,128.0	$ 11,508.0
	33%	Counties	$ 1,524.6	$ 5,322.2	$ 3,797.6
	49%	Municipalities	$ 2,263.8	$ 7,902.7	$ 5,638.9
	14%	School Districts	$ 646.8	$ 2,257.9	$ 1,611.1
	4%	Other	$ 184.8	$ 645.1	$ 460.3
16%		Municipal Arterial	$ 1,760.0	$ 6,144.00	$ 4,384.0
16%		School Bus Routes	$ 281.6	$ 6,144.00	$ 5,862.4
26%		County Arterial	$ 73.2	$ 9,984.00	$ 9,910.8
Total Funding			**$ 11,000.0**	**$38,400.0**	**$27,400.0**

Although changes in the distribution of the gasoline and special fuels taxes increase the local governments road fund and decrease all other beneficiaries, the increased revenue offsets the distribution reductions so that state road funs and other beneficiaries are held harmless.

Because neither of these taxes are ad valorem taxes, that is, imposed as a percentage of the value of the product sold, there is no inflationary component in the rate. This has resulted in a reduction in the purchasing power of these two taxes over time as the cost of road construction has increased. Implementing an inflation adjustment on the rates of these taxes would maintain the purchasing power of these tax revenues which together comprised 53 percent of state road fund revenues in FY13.

<u>Motor Vehicle Excise Tax.</u> New Mexico's Motor Vehicle Excise Tax is currently 3.0%. It is lower than surrounding states:

- Arizona's tax is 5.6% plus additional local rates (up to additional 3.0%). Arizona also imposes an annual Vehicle License Tax that is similar to a property tax. It is based on an assessed value of 60 percent of the manufacturer's base retail price reduced by 16.25 percent for each year since the vehicle was first registered in Arizona. The rate is $2.80 (new vehicles)/$2.89 (used vehicles) for each $100 of the assessed value.
- Colorado's tax is 2.9% plus additional local rates (for example the tax in Denver is 7.62%)
- Texas' tax is 6.25% with no additional local rates
- Utah's tax is 4.7% with additional local rates (for example the tax in Salt Lake City is 6.85%)
- Oklahoma's tax is 3.25%.
- Nationally, tax rates are generally higher than New Mexico's.

<u>Severance Tax Permanent Fund Transfers</u>.
In addition to increasing road funding, he bill attempts to increase inflows into the severance tax permanent fund. The State Investment Council reports the STPF is in jeopardy of being permanently impaired or diminished due to the existing imbalance between contributions of state severance taxes to the STPF, and annual distributions the STPF makes to the general fund. The following chart, provided by SIC, shows historic STPF corpus, contribution, distribution values, as well as the total amount of severance taxes collected by the state.

	Contributions to STPF	Distributions from STPF	Total Severance Taxes Collected	STPF Value
FY02	$ 32,034,751	$ 159,182,592	$ 230,506,000	3,403,010,366
FY03	$ 1,032,283	$ 170,954,868	$ 237,642,000	3,323,379,564
FY04	$ 16,318,268	$ 172,434,107	$ 305,594,000	3,632,322,981
FY05	$ 12,371,958	$ 173,249,126	$ 391,581,000	3,781,460,841
FY06	$ 123,217,261	$ 171,797,507	$ 497,336,000	4,150,806,633
FY07	$ 24,073,243	$ 170,972,506	$ 452,901,000	4,709,504,971
FY08	$ 41,413,897	$ 177,171,816	$ 511,794,000	4,314,948,773
FY09	$ 27,539,293	$ 191,292,480	$ 516,315,000	3,173,448,933
FY10	$ 3,488,067	$ 187,072,285	$ 350,123,000	3,379,772,625
FY11	$ 7,617,058	$ 184,570,731	$ 366,727,000	3,966,034,159
FY12	$ 103,888,028	$ 183,423,501	$ 462,831,000	3,880,616,288
FY13	$ 339	$ 176,172,687	$ 414,375,000	4,166,990,158
FY14	$ 129,975,882	$ 170,472,647	$ 530,668,000	4,768,257,245
FY15 (YTD@12/31)	$ 88	$ 182,722,980	$ 296,095,000	4,696,094,067

Tribal Infrastructure Fund

The Tribal Infrastructure Fund (TIF) program receives 5 percent of STB capacity through a statutory earmark. As this bill reduces senior STB capacity, it would also reduce the amount of capacity for TIF projects, as well as water infrastructure and colonias projects, which also receive statutorily earmarked STB capacity. IAD states since the program's inception in 2006, New Mexico has invested over $69 million in tribal infrastructure projects, funding 156 tribal planning, design and construction projects to benefit 54 tribal communities.

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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