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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/17

SPONSOR Crowder/Gonzales LAST UPDATED 3/14/17 HB 63a/HTRC/aHF1#1

SHORT TITLE Local Option Fuel Tax SB _____

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19	FY20	FY21		
\$0.0	Up to \$760.6	Up to \$1,429.5	Up to \$2,148.4	Up to \$2,423.6	Recurring	Counties
\$0.0	Up to \$13,425.8	Up to \$27,161.1	Up to \$40,820.5	Up to \$46,048.2	Recurring	Municipalities
\$0.0	Up to \$14,132.40	Up to \$28,590.63	Up to \$42,967.85	Up to \$48,471.82	Recurring	TOTAL

Parenthesis () indicate revenue decreases

Related to SB95, SB131, SB132

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Municipal League
 NM Department of Transportation (DOT)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Floor Amendment

House Floor Amendment 1 strikes the HTRC amendments, but imposes the same due date (the 25th of each calendar month) for filing tax returns in all the jurisdictions that impose a local fuel tax.

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee (HTRC) amended House Bill 63 to change reporting requirements to use the same due date (the 25th day of each calendar month) for filing tax returns in all the jurisdictions that impose a local fuel tax.

Synopsis of Original Bill

House Bill 63 (HB 63) renames the County and Municipal Gasoline Tax Act as the County and Municipal Fuels Tax Act, expands the current local gasoline tax to all municipalities and counties, and allows all counties and municipalities the possibility to impose local special fuel tax (on diesel).

This bill authorizes local governments to impose a tax on retail sales of gasoline and special fuels in increments of one cent per gallon up to five cents per gallon, an increase from the current two cent per gallon maximum tax rate allowed for gasoline sales only in certain counties and municipalities. Ordinances to impose or increase the fuel tax are subject to gaining a simple majority vote in an election held within 90 days after the ordinance is adopted.

This bill also changes how counties and municipalities can use the fuel tax revenue, permitting the use of proceeds only for public bridge or highway projects, including construction, reconstruction, repair and maintenance, and payment of bonds. The bill also strikes a Motor Vehicle Code provision allowing counties and municipalities authority to charge up to a five-dollar add-on fee on vehicle registrations for funding vehicle emission inspection programs. According to DOT, currently this fee is not imposed by any county or municipality.

This bill provides for local administration and enforcement of the fuels tax and adds provisions on taxpayer record-keeping requirements, allowance of taxpayer audits by the county or municipality, tax return extensions, civil penalties and interest, certificates of lien for the fuels tax, and potential legal action for delinquencies and disputes.

Additionally, this bill eliminates the requirement for counties and municipalities to submit a certified copy of the ordinance imposing the tax to the Taxation and Revenue Department.

The effective date of this bill is July 1, 2017.

FISCAL IMPLICATIONS

This bill allows municipalities and counties to impose a tax of up to five cents per gallon on gasoline and special fuels in one cent increments. The municipality or county will administer the tax in a manner similar to the administration of the lodger's tax. Imposition of the tax will increase the amount of revenue the municipality or county will collect for bridge and road projects.

The fiscal impact of this bill is estimated by multiplying the gallons of gasoline sold on non-tribal lands forecasted by the Department of Transportation (as of January 2017) by three cents in FY18, four cents in FY19, and five cents in FY20 and FY21; and by multiplying the gallons of special fuels sold on non-tribal lands forecasted by DOT (as of January 2017) by one cent in FY18 and in one cent increments each year thereafter.

In order to calculate the maximum fiscal impact, the estimate holds the following assumptions:

- At least 95 percent of all non-tribal fuel sales occur in a municipality.
- Municipalities and counties currently impose the maximum allowed \$0.02/gallon tax on gasoline.

- All municipalities and counties will vote to increase the gasoline tax rate by one cent each fiscal year until the maximum rate of \$0.05/gallon is reached.
- All municipalities and counties will impose a special fuels tax of \$0.01/gallon in FY18 and will vote to increase the special fuels tax rate by one cent each fiscal year until the maximum rate of \$0.05/gallon is reached.

Based on the above assumptions, counties and municipalities would both receive over \$40 million in new recurring revenue by FY20.

DOT notes that without further action by local governing bodies and subsequent voter approval, this bill alone would generate no new revenue. If all New Mexico local jurisdictions imposed a one-cent gasoline tax, it would generate approximately \$9 million per year and another \$5 million per year from a one cent tax on diesel, totaling up to an additional \$14 million per year in FY18-FY20, which all local jurisdictions (including 33 counties) in the state would share.

The Taxation and Revenue Department (TRD) points out that by adding the definition of “county area,” and repealing the county-wide gasoline tax (Section 7-24A-6.1 NMSA 1978), this bill addresses the potential for a 10 cents tax per gallon in areas where both the county-wide and municipal governments could have enacted a 5 cents tax per gallon. Therefore, updated analysis removes any double-taxation between counties and municipalities.

SIGNIFICANT ISSUES

New Mexico fuel taxes are lower than in surrounding states and lower than the national average. Many local governments have seen a real decline in the amount of their gasoline tax distributions over the years due to competing sales of gasoline by Native American tribes in the vicinity of municipal limits. 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.

According to the New Mexico Municipal League, municipalities and counties have not had an increase in gasoline or special fuels taxes in a significant period of time. This legislation would allow municipalities and counties to impose a local option tax to raise new revenues that would allow them to maintain roads and bridges in their jurisdiction. The New Mexico Municipal League supports this legislation.

TRD states, “While bill is intended to address adequate funding for local roads by allowing cities and counties to impose a retail level tax on fuel sales, smaller communities may not have the resources to avail themselves of the program, as it would require developing IT systems of record, managing registration, staff to perform audits and process refunds, and attorneys to litigate cases.” TRD indicates, while the option for a gasoline tax has been available to some cities and counties for several decades, there are cases where the option has not been utilized, “suggesting the costs of implementing a full tax program at the local level may outweigh the benefits.”

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.

DOT adds it is not clear how this local option diesel fuel tax would fit into the International Fuel Tax Agreement (IFTA) or if interstate truckers would receive the appropriate credit for payments of this local tax. In New Mexico, IFTA is administered by the Taxation and Revenue Department; it is a tax collection agreement among the lower 48 U.S. states and the Canadian provinces for highway fuel use tax distribution based on miles traveled, taxes paid, and fuel consumed. IFTA has no provision for local option taxes on diesel so truckers would not get credit for local option taxes paid on fuel used outside New Mexico, and local governments would not receive revenue from diesel bought outside of their jurisdictions but used on their roads.

DOT states neither the House Taxation and Revenue Committee (HTRC) amendment nor the House Floor Amendment change their initial analysis, and the significant issue identified on IFTA is still valid.

Additionally, TRD states:

“While the proposed bill contains more provisions to address procedural aspects of local tax implementation, it continues to lack due process provisions for taxpayer that are subject to assessments. Citizens need to have redress channels (appeal procedures) for actions taken by state and local governments. Additionally, as the tax does not fall within the Tax Administration Act, the taxpayer bill of rights does not apply.”

ADMINISTRATIVE IMPLICATIONS

This bill tasks municipalities and counties with establishing procedures for the reporting and collections of the local option fuel tax. The New Mexico Municipal League states municipalities and counties will need to establish programs to assure the reporting is accurate and reporting and payments are timely.

RELATIONSHIP

Senate Bill 95 increases the state gasoline tax by 10 cents per gallon and the state special fuels tax by 5 cents per gallon. Senate Bill 131 and Senate Bill 132 both increase the state gasoline tax and the state special fuels tax by 10 cents per gallon.

TECHNICAL ISSUES

Referencing Page 10, line 15, which reads, “The penalty shall not exceed the greater of ten percent of the amount of tax due or one hundred dollars (\$100)”, TRD indicates the low penalty provisions would make compliance difficult and hard to enforce. The counties would have to adopt higher interest rates on unpaid sums in order to ensure compliance.

TRD addresses a few additional technical issues. First, the interrelationship between court jurisdiction and administrative dispute resolution is unclear and may raise due process issues. The proposed bill allows local governments to bring actions in court to enforce the act, but there is no corresponding grant of court jurisdiction for taxpayers. Put another way, local governments must provide administrative procedures for refund claim and assessment disputes, but the bill

does not contain any mechanism for a taxpayer to seek court review of administrative decisions.¹ TRD does not know whether cities and counties have authority, through ordinance, to expand the scope of state court jurisdiction, but it would seem unlikely.

Second, the amendment to page 10 does not specify that the returns for activity that occurs within a calendar month are due on the 25th day of the following calendar month causing potential confusion.

Third, TRD suggests consideration be given to the 1 percent interest rate cap specified in section 8 of the bill (Page 10, line 23). In certain economic circumstances, 1 percent may not reflect the time value of money. Interest rates are typically allowed to fluctuate according to a baseline rate.²

OTHER SUBSTANTIVE ISSUES

TRD points out that, as a per-gallon excise, gasoline taxes are regressive; they have an outsized effect on those with lower incomes. This will be especially true in New Mexico as the 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 all personal income tax filers.

TRD believes that the option to increase the tax could create a competitive advantage for Indian retailers operating on the Indian reservation, as there is no requirement, nor ability to require, the Indian tribe hosting a gas station to enact a mirror image tax.

Additionally, TRD states:

“Depending on the number of cities and counties that enact the taxes, taxpayer compliance burdens could increase significantly. A taxpayer that owns service stations in multiple jurisdictions would have to file returns for each jurisdiction imposing the tax, as well as its [Combined Report System] returns to the state (for convenience stores), and in some circumstances, gasoline and special fuel returns with the state each month.”

House Floor Amendment 1 fixes the lack of uniformity in filing dates; however, TRD points out:

“...other operative mechanisms are left to individual cities and counties, which could result in complicated multi-jurisdictional filing burdens. Under the bill, different cities and counties can have differing: (1) retailer record retention rules; (2) documents acceptable to establish entitlement to deductions; (3) audit timing, rules, and procedures; (4) audit and refund limitation periods; (5) return composition and return filing mechanisms; (6) return extensions; (7) interest rates; and (8) administrative procedures for resolving disputes. While differing procedures do not have a significant adverse effect on businesses that own and operate one retail station in one location, common vendors who own multiple retail fuel locations across the state could be subject to a maze of differing rules, procedures, documentation requirements, and limitation periods, as well as tax rates.”

¹ See, e.g., §§ 7-1-22, 7-1-23, 7-1-24, and 7-1-26 NMSA 1978.

² See 26 U.S.C. § 6621.

Finally, TRD indicates there are no express code promulgation requirements. For example, there are no requirements for a local government to publish its rate and procedures on a website or make a copy of its code publicly available.

To address uniformity and promulgation issues, TRD suggests, at minimum:

- All city and county codes and rates to be published in a centralized location (either a major city, the Municipal League, or the Association of Counties website);
- The bill should require the development and adoption of uniform procedural rules by all local governments enacting the tax;
- The bill should require use of a standardized reporting form (whether paper or electronic) by all cities and counties enacting the tax; and
- The bill should employ or call for development of a single forum for resolving disputes administratively, such as the current Administrative Hearings Office or an equivalent forum developed and funded by participating cities and counties.

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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