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

ORIGINAL DATE 2/14/18
SPONSOR SFC **LAST UPDATED** 2/15/18 **HB**

SHORT TITLE Gas Tax, Road Fund & Carlsbad Brine Well **SB** 177/SFCS

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY18	**FY19**	**FY20**	**FY21**	**FY22**		
--	*	$72,506.0	$72,219.0	$72,226.0	Recurring	State Road Fund
--	*	$0.2	$0.2	$0.2	Recurring	Municipalities and Counties Fund - (excl. P&I)
--	*	$0.2	$0.2	$0.2	Recurring	State Aviation Fund
--	*	($0.9)	($0.9)	($0.9)	Recurring	Motorboat Fuel Tax Fund
--	*	$0.2	$0.2	$0.2	Recurring	County Government Road Fund
--	*	$0.2	$0.2	$0.2	Recurring	Municipal Roads Fund
--	*	$0.5	$0.5	$0.5	Recurring	Municipal Arterial Program of Local Governments Road Fund
--	*	$1.1	$1.1	$1.2	Recurring	Local Governments Road Fund
--	*	$1,200.0	$1,200.0	$1,200.0	Recurring	Tribal Tax Sharing Agreements (Pueblo of Santo Domingo and Nambe)
--	*	**$73,707.5**	**$73,420.5**	**$73,427.5**	**Recurring**	**TOTAL**

Parenthesis ( ) indicate revenue decreases

*See fiscal implications section for discussion of potential FY19 impacts

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	$115.0	$115.0	$230.0	Nonrecurring	TRD Operating
unknown				Recurring	General Fund

Parenthesis ( ) indicate expenditure decreases

Conflicts with HB 228

SOURCES OF INFORMATION
LFC Files

SUMMARY

Synopsis of Bill

Senate Finance Committee Substitute for Senate Bill 177 increases the gasoline tax by 5 cents per gallon (from 17 cents to 22 cents) and increases the special fuels tax by 5 cents per gallon (from 21 cents to 26 cents), with new revenues going primarily to the state road fund.

The bill is contingent upon enactment by the U.S. Congress of a federal infrastructure funding bill that requires the state to match at least 50 percent funding for state highway infrastructure, as long as such a federal bill is effective on or before October 1, 2020. The effective date of the bill is the first day of the third month following enactment of an applicable federal transportation funding bill. The bill requires the secretary of the Department of Transportation (DOT) to certify to the Taxation and Revenue Department (TRD) that such a federal transportation funding bill has come into effect pursuant to the bill's provisions.

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 does not make any assumptions regarding the effect of the tax increases on the price elasticity demand for gasoline and special fuels. The fuel tax increases are estimated to generate about $73 million in new revenue annually, with about $45 million attributable to the gasoline tax increase and about $28 million attributable to the special fuels tax increase.

The fiscal estimates assume a full impact beginning in FY20; however, it is possible for bill to begin generating revenues as early as FY19 or as late as FY21. This is because the effective date of the bill is contingent upon the enactment of a federal transportation funding bill that requires at least 50 percent state match for state highway infrastructure projects, such that the provisions of this bill will become effective on the first day of the third month following enactment of the federal bill. Therefore, it is possible for this bill's contingencies to come into effect in late 2018 or early 2019 such that the bill could start generating revenues in FY19. Similarly, it if the contingencies do not come into effect until mid-to-late 2020, then there could be no FY19 or FY20 fiscal impact.

Revenue Sources (in thousands)			**Fund Affected**
FY20	**FY21**	**FY22**	
$45,250.0	$44,900.0	$44,571.0	Gasoline Tax (5 cents)
$28,458.0	$28,521.0	$28,856.0	Special Fuels Tax (5 cents)

This bill adjusts fuel tax distributions to essentially hold harmless the various existing fuel tax beneficiaries. However, due to the gasoline tax sharing agreements, the Pueblo of Santo Domingo and the Pueblo of Nambe 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 $50 thousand each per month (annual amount of $600 thousand each).

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 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 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

On February 12, 2018, the White House released an infrastructure plan that included $200 billion in federal funding over the next 10 years and aimed to raise up to $1.5 trillion in total by incentivizing investment from state and local governments, as well as private firms. Included in the plan is $100 billion for direct grants to local governments to help trigger investments and $50 billion to projects in rural areas in the form of block grants (with the remaining $50 billion spent on other infrastructure projects and programs).

Currently, the proposed federal plan involves state and local governments taking on 80 percent or more of the funding burden for infrastructure projects. Presumably this bill would generate new revenues that could be used to provide state matching dollars for highway infrastructure projects.

Despite the recent release of this plan, both *Business Insider* and *The Wall Street Journal* report there is little expectation for Congress to pass an infrastructure plan this year, largely due to the recent passage of a $1.5 trillion federal tax-cut package.

ADMINISTRATIVE IMPLICATIONS

According to TRD, implementing fuel tax increases would have a high impact on the Information Technology Department of approximately 1,500 hours or about 9.5 months and $380 thousand ($230 thousand in contract costs, one full-time project manager and one business analyst; and $105 thousand in soft costs). State development resources along with a part-time FAST contract resource would need to work on these changes.

TECHNICAL ISSUES

Currently, the bill ties the tax rate increases to a federal transportation funding bill. However, a comprehensive federal infrastructure plan such as the one recently released (see significant issues section) is not a federal transportation funding bill. For example, the Fixing America's Surface Transportation (FAST) Act passed in 2015 under the Obama administration, which established funding match percentages for states, was not a federal transportation funding bill. In the last several years, federal highway infrastructure programs have been funded on continuing resolutions.

Assuming the intent of the bill is to raise state road fund revenues in the event the federal government increases funding match percentages to 50 percent or higher as part of a comprehensive infrastructure plan, the following revisions to Section 10 of the bill may be considered:

> "The effective date of the provisions of this act is the first day of the third month following enactment of a federal transportation *infrastructure plan* that provides funding for highway infrastructure in the state and that requires the state to provide a fifty percent or greater funding match; provided that such federal transportation *infrastructure plan* comes into effect on or before October 1, 2020; and provided further that the secretary of transportation certifies to the taxation and revenue department that such federal transportation *infrastructure plan* has come into effect pursuant to this section."

However, further analysis from the New Mexico Department of Transportation would be useful determining how the bill's contingencies apply and if other language changes are needed to meet the bill's intent.

The bill 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, it is assumed that this technical error is fixed and it remains a monthly distribution.

CONFLICT, RELATIONSHIP

- Conflicts with House Bill 228, which increases both the gasoline tax and special fuels tax by 10 cents and creates a new state road maintenance fund.
- Related to HB 168, which makes various changes to motor fuel taxes, including changing the incidence of the tax from distributors to rack operators.

OTHER SUBSTANTIVE 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.

Based on inflation-adjusted fuel tax revenue data reported to the Census Bureau, *Governing* magazine has indicated total motor fuel tax revenues have not kept pace with inflation.[1] 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 have supported similar legislation to increase motor fuel taxes (2018 HB228). Many local governments have seen a real decline in the

[1] Governing, *State Gas Tax Revenue Data*, http://www.governing.com/gov-data/transportation-infrastructure/gas-tax-revenue-data-by-state-inflation-adjusted.html

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. County and municipal funds would benefit directly from this bill. 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.

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. Additionally, TRD notes that because the distribution amounts for the two qualified tribes cited in statute 7-1-6.44 are based on the total revenues generated by a fixed amount of gasoline sales, the distribution for those tribes increase significantly when the gasoline tax rises. This may be unintended.

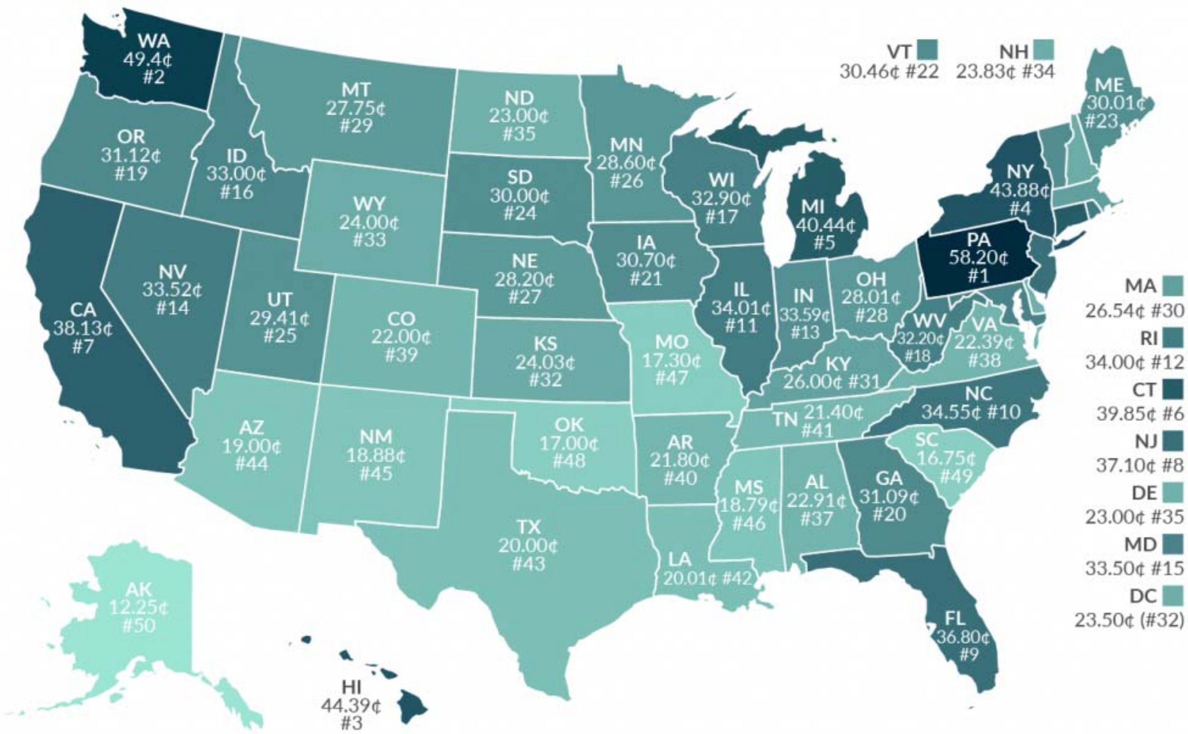
TRD has pointed out in related bills that gasoline taxes are regressive, meaning that they have an outsized effect on those with lower incomes. This will be especially true in New Mexico as the state's lowest tax bracket (defined as a taxable income of less than $5.5 thousand if single, $8 thousand if married or head of household, or $4 thousand if married filing separately) currently comprises 46 percent of filers.

DI/sb/al

APPENDIX A

How High Are Gas Taxes in Your State?

Total State Taxes and Fees on Gasoline, as of January 2017 (cents per gallon)



Total State Taxes/Fees on Gasoline

Lower — Higher

Notes: These rates do not include the 18.40 cent/gallon federal excise tax on gas. The American Petroleum Institute (API) has developed a methodology for determining the average tax rate on a gallon of fuel. Rates may include any of the following: excise taxes, environmental fees, storage tank taxes, other fees or taxes, and general sales tax. In states where gasoline is subject to the general sales tax, or where the fuel tax is based on the average sale price, the average rate determined by API is sensitive to changes in the price of gasoline. States that fully or partially apply general sales taxes to gasoline are California, Connecticut, Georgia, Illinois, Indiana, Michigan, and New York. D.C.'s rank does not affect states' ranks, but the figure in parentheses indicates where it would rank if included.

Source: American Petroleum Institute.

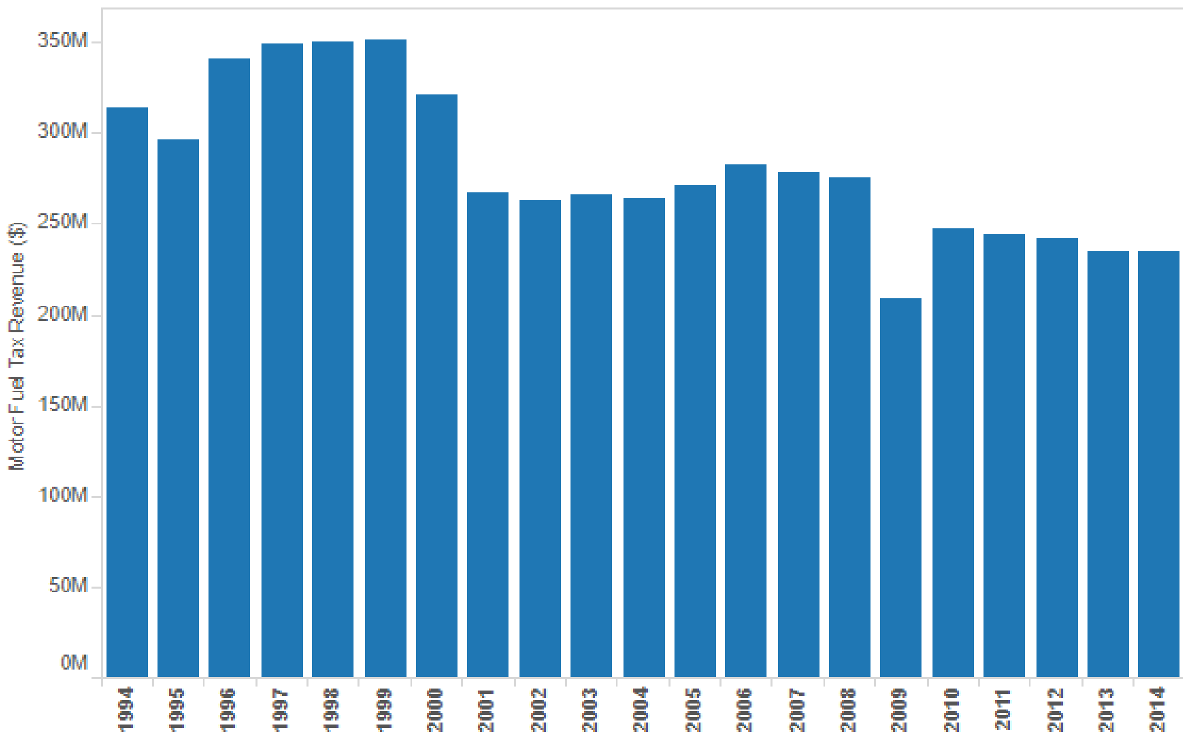
TAX FOUNDATION @TaxFoundation

APPENDIX B

Governing Magazine: State Gas Tax Revenues Have Not Kept Pace with Inflation

New Mexico

Inflation-adjusted change since 1994: -$78,860,000 (-25.1%)
Inflation-adjusted change since 2000: -$85,683,000 (-26.7%)
Years since raising gas tax: 21.6 years as of February



Figures were adjusted for inflation and shown in 2014 dollars.

SOURCE: *Governing* calculations of U.S. Census Bureau Annual Survey of State Government Tax Collections data. Information on last gas tax raise compiled by the Institute on Taxation and Economic Policy.