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FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/19

SPONSOR Martinez, J. LAST UPDATED _____ HB 465

SHORT TITLE Jet Fuel Excise Tax SB _____

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
\$0.0	(\$659.0)- (\$867.0)*	(\$710.0)- (\$917.0)*	(\$769.0)- (\$977.0)*	(\$779.0)- (\$987.0)*	Recurring	State Aviation Fund
\$0.0	(\$970.0)	(\$1,010.0)	(\$1,060.0)	(\$1,070.0)	Recurring	Counties and Municipalities

Parenthesis (\$) indicate revenue decreases

*Per the Department of Transportation (DOT), the total impact on the State Aviation Fund revenue is partly uncertain. This revenue impact range is based on the assumption that all the gallons are sold at the lowest/highest of all fixed-base operators (FBO) prices posted on airnav.com in and around major New Mexico airports as of 2/5/2019. See “Fiscal Implications” section below for further details.

** The total impact of the provisions of this bill on counties and municipalities is calculated using Albuquerque’s local option gross receipts tax (GRT) rates, which may tend to understate the fiscal impact slightly. Exempting sale of jet fuel from GRT will reduce the revenues received from local option GRT.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

Responses Not Received From

Taxation and Revenue Department (TRD)

Department of Finance and Administration (DFA)

New Mexico Municipal League

New Mexico Association of Counties

SUMMARY

Synopsis of Bill

House Bill 465 amends the alternative fuel tax act to include jet fuel and imposes a jet fuel excise tax of 5 cents per gallon of jet fuel distributed. All of the revenue generated from the jet fuel excise tax is distributed to the State Aviation Fund.

This bill defines jet fuel similarly under the current law as “fuel specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines”.

Currently, sale of jet fuel is subject to gross receipts and compensating tax and taxpayers can deduct forty percent of the receipts from the sale of jet fuel. Under current law, the state aviation fund receives a distribution of 4.79 percent of the taxable gross receipts from the sale of jet fuel, and local governments get the local option gross receipts tax (GRT) amount and the amount of state GRT shared with municipalities (1.225 percent).

This bill exempts jet fuel from GRT and compensating tax and repeals the GRT and compensating tax deductions for the sale or use of jet fuel (7-9-83, 7-9-84 NMSA). The bill replaces this revenue source to the state aviation fund by distributing all of the jet fuel excise tax to this fund; however, the local governments’ share of GRT is not replaced.

The effective date of this bill is July 1, 2019.

FISCAL IMPLICATIONS

This bill narrows the gross receipts tax (GRT) base. See *Significant Issues* for more information.

DOT provided the analysis for the fiscal implications of this bill. Depending on fuel prices, the bill could decrease revenue to the state aviation fund anywhere in the range of \$659 thousand and \$867 thousand in FY20, and in the range of \$700 thousand and \$980 thousand, annually from FY21 to FY23. This would account for about a 12 percent to 15 percent decrease in total revenue to the state aviation fund in FY20.

DOT reports the state aviation fund currently receives about 18 percent of its revenues from jet fuel GRT, which totaled \$1.04 million in FY18.

Under this bill, the local governments will not receive any revenue from the jet fuel excise tax. Further, exempting the sale of jet fuel from GRT will negatively impact their revenues due to lost revenue from local option GRT for counties and municipalities and from the 1.225 percent state distribution of GRT to municipalities.

The above fiscal impact range provided by DOT is based on the assumption that price of jet fuel in New Mexico in FY19 will be in the range of the lowest (\$3.70 per gallon) and highest (\$6.24 per gallon) prices observed on www.airnav.com at FBOs within 100 miles of major New Mexico airports (such as Albuquerque, Santa Fe, Las Cruces) as of February 5, 2019. Prices for following years are computed using the forecasted growth rate of average retail price of motor gasoline provided by IHS Global Insight.

DOT notes commercial airlines might be able to purchase jet fuel at discounted prices under various volume discount programs. These discounted prices are not made publicly available. As a result, to the extent that actual prices associated with the gallons sold is lower than the lowest posted price, the revenue impact here may be overestimating the loss to the state aviation fund.

The revenue estimates are based on DOT’s January 2019 state road fund estimates.

SIGNIFICANT ISSUES

This bill narrows the gross receipts tax (GRT) base. Many of the efforts over the last few years to reform New Mexico’s taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state’s largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

According to DOT, exempting jet fuel from GRT and compensating tax and instead subjecting it to a volume based excise tax will lead to a number of untaxed aviation related services provided to commercial airlines and private aircrafts by various FBOs at the airports. On this point, DOT provides the following analysis:

The price charged by various FBOs is generally higher than the spot price of jet fuel plus added transportation and handling costs. As of February 1, 2019, the difference was a significant 208 percent.

Jet Fuel Spot Price vs. Weighted Average Retail Price in New Mexico

(Dollars per Gallon)

Date	Jet fuel Spot Price*	Jet fuel NM Retail Price**	\$ Difference	% Difference
Jan 31, 2019	1.836	5.530	3.69	201%
Feb 1, 2019	1.797	5.530	3.73	208%

*U.S. Gulf Coast Kerosene-Type Jet Fuel Spot Price FOB; Source: US Energy Administration
 **Based on NMDOT calculations from the information provided at www.airnav.com. The weighted average takes into account the average price of jet fuel at Albuquerque, Las Cruces, Santa Fe and Lea County airports and uses 0.925, 0.05, 0.02, and 0.005 as the respective weights. The calculations do not incorporate any volume based price discounts offered to commercial airlines.

The difference in price, among other things, reflects the various fees imposed on FBOs by the airport for doing business at airports. These fees might include a flowage fee for every gallon of fuel pumped; a percentage of the FBO’s gross revenues; and a monthly rent payment calculated on the footprint of the FBO’s terminal building, hangars, and the square footage of the ramp area.

In addition, most airports have minimum standards clauses in their contracts, which require FBOs to operate 18 to 24 hours per day regardless of the number airplane arrivals/departures, and to offer a number of ancillary services, such as aircraft maintenance, avionics repair, or flight training. Typically, those other lines of business have very low margins or even lose money so the FBOs tend to pass on the costs of those services by increasing the price of jet fuel.¹

Depending on the location of the FBO and the services provided by the FBO, there is significant variability in jet fuel prices across New Mexico. For example, on one hand, according to information provided on www.airnav.com, as of February 5, 2019, the price of jet fuel sold was \$5.34 per gallon at Albuquerque International Sunport, where the FBO is open 24 hours and offers a complete range of services and amenities such as line services, travel agency, parts distribution, new and pre-owned aircraft sales, tie-down space, pilot lounge, conference room, wash/wax/cleaning services, baggage handling, complimentary ice, coffee and newspaper, aircraft charter and management, among others. On the other hand, the price at Grant County Airport in Silver City is only \$3.70 per gallon. This lower price to some degree reflects the smaller number of services and amenities (limited mostly to general maintenance, hangar, and rental car) offered by the FBO at the airport.

The market for jet fuel is considerably different from the market for gasoline. In the gasoline market, the retail price of gasoline closely reflects the price at the refinery adjusted for transportation costs and federal and state taxes, and does not include price of other services provided at the pump. For example, since 2010, the difference between spot and retail price of gasoline in the PADD III Region, which includes NM, TX, AR, LA, MS and AL, has averaged about 35 percent.

The other services at the gas stations are priced separately and are subject to GRT and compensating taxes, where applicable. As a result, a volume based excise tax on gasoline is apt. However, in the case of jet fuel, because the services provided are priced into the price of fuel at the FBO, a volume based excise tax will leave such services outside the tax net.

Gasoline Spot Price vs. Retail Price in PADD III Region

(Dollars per Gallon)

FY	Gasoline Spot Price	Gasoline Retail Price**	\$ Difference	% Difference
2016	1.33	2.07	0.74	55%
2017	1.48	2.18	0.69	47%
2018	1.79	2.46	0.67	37%
*U.S. Gulf Coast Conventional Gasoline Regular Spot Price FOB ** Regular Retail Gasoline Prices (inclusive of federal and state taxes) in PADD III Region, which includes NM, TX, AR, LA, MS and AL; Source: US Energy Information Administration				

¹ (1) <https://www.bizavadvvisor.com/what-drives-jet-fuel-prices/> and (2) <https://www.ainonline.com/aviation-news/aviation-international-news/2008-07-07/fbos-explain-sky-high-fuel-prices>

Currently, 13 states including New Mexico tax jet fuel through a sales tax. Thirty-four states tax jet fuel through an excise tax based on cents per gallon, and three states (TX, OH, DE) have no tax on jet fuel (Arizona has no tax after 10 million gallons).²

Industry representatives have stated a preference for per-gallon excise taxes because it makes the tax more predictable for taxpayers. A per-gallon excise tax does not fluctuate with price, allowing industry operators to plan for future jet fuel tax payments based on expected volumes. However, as DOT pointed out, the current structure of New Mexico's GRT on jet fuel allows the state to capture some aviation-related services that are fixed into jet fuel prices, and a per-gallon excise tax would not capture those services in the tax.

PERFORMANCE IMPLICATIONS

According to DOT, this bill will negatively impact the state aviation fund and reduce the ability to issue Airport Capital Improvement (ACIP) grants.

OTHER SUBSTANTIVE ISSUES

DOT provides the following additional analysis regarding this bill:

“[This bill] will substantially alter the method of revenue collection and will substantially reduce the amount distributed to the aviation fund. The bill will eliminate the current GRT method and replace it with a constant volume-based excise tax. Under the current method, as gas prices increase, the revenue to the aviation fund increases. Historically, jet fuel prices have increased so the current method helps protect the aviation division from inflationary pressures. Under the proposed method, revenue will depend solely on the volume of gallons sold. The current method provides some insulation to the effects of price changes.

Furthermore, because the state road fund and the local governments will lose money as a result of imposing a volume-based jet fuel excise tax and exempting jet fuel sales from GRT, this bill will negatively affect the safety and security of the state's aviation system. For general-use aviation improvement projects under the Airport Improvement Program (AIP) of the Federal Aviation Administration (FAA), a 5 percent commitment from the state road fund and another 5 percent from the local governments is required, while the FAA provides the remaining 90 percent. This is one of the most beneficial match rates of any federal program. [This bill] will potentially have a detrimental impact on the state and local governments' ability to fund necessary projects and leverage available federal funding. This could derail or delay necessary infrastructure improvements at the 59 public use, public owned aviation facilities throughout the State. In the future, there could arise the need to divert additional money from the state road fund to meet FAA matching requirements for the state. The City of Albuquerque may lose the most revenue since the Albuquerque Sunport sells approximately 90-95 percent of jet fuel in New Mexico.”

²² Federation of Tax Administrators, *Motor Fuel Tax Information by State*, September 2017, retrieved from <https://www.taxadmin.org/assets/docs/MotorFuel/2017%20Motor%20Fuel%20Tax%20Information%20by%20State%20Book.pdf>

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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