
FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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BY ELECTRONIC MAIL

March 23, 2022

Hon. Juan Zaragoza Gómez
President, Committee on Finance, Federal Affairs and Oversight Board
Senate of Puerto Rico
El Capitolio
San Juan, Puerto Rico

Re: Preliminary Review of Proposed Legislation — Senate Joint Resolution 240

Dear Senator Zaragoza Gómez,

We write in response to your March 14, 2022, request concerning Senate Joint Resolution 240 (“SJR 240” or the “Bill”). We take your letter as a request for a preliminary review of the proposed legislation to determine whether the legislation would be consistent with the certified Commonwealth Fiscal Plan (the “Fiscal Plan”), as contemplated by Section 204(a)(6) of PROMESA. We understand the Bill is currently pending in the Legislature and has not become law. The Bill, among other things, seeks to suspend the excise tax on gasoline and diesel oil for a period of forty-five (45) days in light of recent increases in the costs of oil and gas products.

We have completed our preliminary review of the Bill pursuant to PROMESA Section 204(a)(6). The Oversight Board finds the Bill, as proposed, is inconsistent with the Fiscal Plan and the certified Budget because the Bill would reduce Commonwealth tax revenues without providing offsetting savings or alternative revenues.

While the Oversight Board supports the Commonwealth’s efforts to minimize the economic impact on the people of Puerto Rico generated by recent increases in gas and diesel prices, the Bill would have a negative fiscal impact of \$25 million without specifying offsetting savings or alternative revenues. Putting aside the merits of the Bill’s purposes, any bill that has a negative fiscal impact without corresponding savings or new revenues is not revenue neutral and, therefore, inconsistent with the Fiscal Plan and in violation of PROMESA.

Further, the Bill violates PROMESA § 204(c), which prohibits reprogramming without prior Oversight Board analysis and approval. The Title III Court has recognized that laws that create “a

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revenue deficiency in the budget that the Government would likely have to remedy through reprogramming” fall under Section 204(c). *In re Fin. Oversight and Mgt. Bd. for P.R.*, 616 B.R. 238, 249 (D.P.R. 2020). Because the Bill will decrease Commonwealth revenues by \$25 million and provides no mechanism to offset this revenue shortfall, the Bill’s economic impact will have to be resolved through reprogramming. The Legislature has not requested and the Oversight Board has not approved any reprogramming associated with the Bill. Passing such a law and waiting to deal with the fiscal consequences is contrary to PROMESA. The Title III Court has held that “[t]he Government may not avoid the bar on implementation of statutes calling for unauthorized reprogramming by holding onto its cards and waiting until a post-implementation date to request reprogramming if the law as written is likely to require reprogramming due to insufficiency of budgeted funds.” *In re Fin. Oversight and Mgt. Bd. for P.R.*, 511 F. Supp. 3d 90, 134 (D.P.R. 2020). Accordingly, the Legislature is prohibited by PROMESA § 204(c) from passing the Bill.

Notwithstanding the concerns raised above, the Oversight Board is available to meet with the Legislature to discuss how the Bill could be amended to achieve its objectives in a manner consistent with the Fiscal Plan and PROMESA.

* * *

We are pleased you have availed yourself of section 204(a)(6) of PROMESA, which provides a mechanism for the preliminary review of proposed laws.¹ It is far more effective to engage on new laws during the legislative process to ensure the Government and the Oversight Board share their respective analyses before new laws creating new government obligations are enacted. Historically, the Government waiting until after laws were enacted to prepare and/or share its analysis of the laws led to deficient Section 204(a)(1) estimates and erroneous certifications, creating avoidable complications and, on occasion, requiring resort to the Title III court.

The Oversight Boards looks forward to engaging with you regarding the Bill and any other legislation you believe may impact the Commonwealth’s expenditures, revenues, compliance with any Fiscal Plan, or PROMESA’s purposes.

Sincerely,



Jaime A. El Koury
General Counsel

CC: Hon. Omar Marrero Díaz

¹ If the Bill is enacted, the Governor will still be required to make a Section 204(a) submission and, as stated in PROMESA, the results of this preliminary review under section 204(a)(6) are not binding on the Oversight Board in its review of that submission.

Fiscal note on SJR 240

on suspending the gasoline and diesel fuel excise taxes for 45 days, starting mid-March 2022

Is the Act in compliance with the Fiscal Plan? N

Total fiscal impact:

- **Overall Commonwealth: \$(25) million**
- **General fund: \$(25) million**
- **Local/CRIM/Municipalities: NA**

Detailed data supporting this fiscal impact assessment can be found at the end of this Note.

Summary: SJR 240 amends Act 1-2011, the Internal Revenue Code for a New Puerto Rico, to suspend the gasoline and diesel fuel excise taxes for a 45-day period upon enactment of the legislation. Currently, an excise tax of \$0.16/gallon is levied on gasoline and an excise tax of \$0.04/gallon is levied on gas or diesel fuel. This 45-day moratorium on gasoline and diesel excise taxes is estimated to result in a \$25 million loss in revenue for the Commonwealth.

Assumptions and interpretation of provisions:

The estimate presented in this fiscal note assumed the law would be implemented in mid-March 2022 and estimated the effect of the suspension on all sales occurring after March 16, 2022 and before May 1, 2022. The estimate may change depending on the precise implementation date. The legislation does not refer to any suspension of motor fuel tax on Aviation fuel (AVGAS) or fuels such as LPG or compressed natural gas. The estimate presented in this fiscal note assumes that the tax on these fuels is not suspended.

Stated reasons for change: Not available

Identification of Potential Effects/Implications:

1. The extent of the short-term price reduction is uncertain. One possible outcome is that the reduced price (at \$4 per gallon, a 16 cent/gallon reduction equates to a 4% decrease in the price per gallon) could slightly increase demand that would immediately push prices back where they were prior to the tax reduction, increasing the profit of the industry. However, since the short-term price elasticity of demand for fuel is very low (bls.gov)², these adjustments could be minimal. The average short term price elasticity of fuel is estimated to be -0.25%,³ meaning that the 4% price decrease would result in a 1% increase in demand for

² Using gasoline data to explain inelasticity: Beyond the Numbers: U.S. Bureau of Labor Statistics (bls.gov)

³ Goodwin, P. and Dargay, J. and Hanly, M. (2004) Elasticities of road traffic and fuel consumption with respect to price and income: a review. Transport Reviews, 24 (3). pp. 275-292. ISSN 01441647

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fuel. The consumers' behavioral change would be minimal, but the Commonwealth would lose revenues.

Other economic impacts (short and long term):

If implemented in March, the suspension would continue through April 2022. This may result in some adjustment of motor fuel purchases prior to the end of the suspension period as consumers shift some of their May motor fuel consumption into April where possible to take advantage of the lower prices. As such there may be a small decline in motor fuel receipts in May. This effect is not currently reflected in the estimate and is not likely to result in any long-term shift in demand for motor fuels.

Adjustments to improve fiscal implications:

N/A

Fiscal impact summary tables:

The estimates here rely on motor fuel tax receipts data from Hacienda (Table 1). In 2019 gasoline tax receipts for the period between mid-March and April equaled 24% of the total receipts for gasoline. This figure equaled 16% in 2020 and 13% in 2021.

Diesel receipts for the same mid-March–April period in 2019, 2020 and 2021 equaled 19%, 21% and 7% respectively.

Motor fuel consumption for FY2020 and 2021, due to the change in transportation behavior as a result of the pandemic, is distorted and is not expected to reflect receipts or levels of consumption for 2022. Therefore, the estimate uses receipts for FY2019 as the most appropriate baseline of expected receipts for FY2022. In FY2019, receipts of gasoline equaled \$143 million, while receipts for diesel fuel equaled \$13 million. Receipts for July-December of FY2022 are tracking approximately 2% below the FY2019 level for gasoline and 21% below in the case of diesel fuels. Therefore, the estimate assumes total annual receipts FY2022 of \$141 million in gasoline receipts and \$11 million in diesel receipts.^{4, 5}

The estimate of the revenue effect of the suspension is 24% and 19% of the total FY2022 total of gasoline and diesel receipts, respectively, reflecting the share that the months between mid-March and April represent of the annual total in FY2019.

Table 1. Historical Gasoline and Diesel Excise Tax Receipts in Puerto Rico, *Hacienda*

Gasoline (thousands of dollars)					
	March	April	Annual total	March-April total	Share of year
FY2018	\$10,839	\$14,716	N/A	\$25,555	N/A
FY2019	\$22,717	\$11,057	\$143,459	\$33,774	24%

⁴ The estimate for diesel fuel is estimated to exclude sales of aviation fuel (AVGAS), LPG, and compressed natural gas which are not affected by the proposed suspension. Based on fuel consumption data in other states, these fuels represent at most 1% of the total fuels included in the Diesel category.

⁵ This forecast does not incorporate a significant impact on gasoline and diesel consumption as a result of the current Ukrainian crisis and higher prices. If significant disruptions occur, the forecast could be lower.

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FY2020	\$12,135	\$9,549	\$133,165	\$21,684	16%
FY2021	\$2,779	\$12,997	\$126,104	\$15,776	13%
Average	\$12,117	\$12,080	\$134,243	\$24,197	17%

Diesel (thousands of dollars)

	March	April	Annual total	March-April total-month total	Share of year
FY2018	\$1,661	\$1,482	N/A	\$3,143	N/A
FY2019	\$1,471	\$1,077	\$13,328	\$2,548	19%
FY2020	\$1,930	\$1,804	\$17,540	\$3,734	21%
FY2021	\$45	\$819	\$12,504	\$864	7%
Average	\$1,277	\$1,295	\$14,457	\$2,572	16%

Table 2. Estimated Revenue Effect, mid-March - April 2022 (\$ in 000)

Motor Fuel	Forecasted Revenue w/o Excise Tax Suspension	Portion of Annual Excise Tax Collected mid March - April	Revenue Effect
Gasoline	140,509	23.5%	\$23,901
Diesel	10,571	19.1%	\$1,171
Total Revenue Loss	151,081		\$25,072