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HOUSE BILL 427

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Daniel P. Silva

AN ACT

**RELATING TO FINANCING OF HIGHWAY PROJECTS; INCREASING THE
GASOLINE TAX; ADJUSTING DISTRIBUTIONS OF GASOLINE TAX
PROCEEDS; CREATING THE HIGHWAY PRIORITY PROJECT FUND;
AUTHORIZING THE ISSUANCE OF STATE HIGHWAY BONDS FOR SPECIFIED
HIGHWAY PROJECTS; AMENDING, REPEALING AND ENACTING SECTIONS OF
THE NMSA 1978; AMENDING AND REPEALING SECTIONS OF LAWS 1995;
MAKING APPROPRIATIONS.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994,
Chapter 5, Section 2, as amended) is amended to read:**

"7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

**A. A distribution pursuant to Section 7-1-6.1 NMSA
1978 shall be made to the state aviation fund in an amount
equal to three and fifty-nine hundredths percent of the gross**

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1 receipts attributable to the sale of fuel specially prepared
2 and sold for use in turboprop or jet-type engines as
3 determined by the department.

4 B. A distribution pursuant to Section 7-1-6.1 NMSA
5 1978 shall be made to the state aviation fund in an amount
6 equal to [~~twenty-six hundredths of one~~] twenty-one hundredths
7 percent of gasoline taxes, exclusive of penalties and
8 interest, collected pursuant to the Gasoline Tax Act.

9 C. From July 1, 2002 through June 30, 2007, a
10 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
11 made to the state aviation fund in an amount equal to forty-
12 six thousandths [~~of one~~] percent of the net receipts
13 attributable to the gross receipts tax distributable to the
14 general fund. "

15 Section 2. Section 7-1-6.8 NMSA 1978 (being Laws 1983,
16 Chapter 211, Section 13, as amended) is amended to read:

17 "7-1-6.8. DISTRIBUTION--MOTORBOAT FUEL TAX FUND.--A
18 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
19 made to the motorboat fuel tax fund in an amount equal to
20 [~~thirteen hundredths of one~~] one-tenth percent of the net
21 receipts attributable to the gasoline tax. "

22 Section 3. Section 7-1-6.9 NMSA 1978 (being Laws 1991,
23 Chapter 9, Section 11, as amended) is amended to read:

24 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO
25 MUNICIPALITIES AND COUNTIES.--

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1 A. A distribution pursuant to Section 7-1-6.1 NMSA
2 1978 shall be made in an amount equal to [~~ten and thirty-eight~~
3 ~~hundredths~~] eight and four-tenths percent of the net receipts
4 attributable to the taxes, exclusive of penalties and
5 interest, imposed by the Gasoline Tax Act.

6 B. Except as provided in Subsection D of this
7 section, the amount determined in Subsection A of this section
8 shall be distributed as follows:

9 (1) ninety percent of the amount shall be
10 paid to the treasurers of municipalities and H class counties
11 in the proportion that the taxable motor fuel sales in each of
12 the municipalities and H class counties bears to the aggregate
13 taxable motor fuel sales in all of these municipalities and H
14 class counties; and

15 (2) ten percent of the amount shall be paid
16 to the treasurers of the counties, including H class counties,
17 in the proportion that the taxable motor fuel sales outside of
18 incorporated municipalities in each of the counties bears to
19 the aggregate taxable motor fuel sales outside of incorporated
20 municipalities in all of the counties.

21 C. This distribution shall be paid into a separate
22 road fund in the municipal treasury or county road fund for
23 expenditure only for construction, reconstruction, resurfacing
24 or other improvement or maintenance of public roads, streets,
25 alleys or bridges, including right-of-way and materials

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1 acquisition. Money distributed pursuant to this section may
2 be used by a municipality or county to provide matching funds
3 for projects subject to cooperative agreements entered into
4 with the state highway and transportation department pursuant
5 to Section 67-3-28 NMSA 1978. Any municipality or H class
6 county that has created or that creates a "street improvement
7 fund" to which gasoline tax revenues or distributions are
8 irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA
9 1978 or that has pledged all or a portion of gasoline tax
10 revenues or distributions to the payment of bonds shall
11 receive its proportion of the distribution of revenues under
12 this section impressed with and subject to these pledges.

13 D. This distribution may be paid into a separate
14 road fund or the general fund of the municipality or county if
15 the municipality has a population less than three thousand or
16 the county has a population less than four thousand."

17 Section 4. Section 7-1-6.10 NMSA 1978 (being Laws 1983,
18 Chapter 211, Section 15, as amended) is amended to read:

19 "7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

20 A. A distribution pursuant to Section 7-1-6.1 NMSA
21 1978 shall be made to the state road fund in an amount equal
22 to the net receipts attributable to the taxes, surcharges,
23 penalties and interest imposed pursuant to the Gasoline Tax
24 Act and to the taxes, surtaxes, fees, penalties and interest
25 imposed pursuant to [the Special Fuels Tax Act] the Special

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1 Fuels Supplier Tax Act and the Alternative Fuel Tax Act less:

2 (1) the amount distributed to the state
3 aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA
4 1978;

5 (2) the amount distributed to the motorboat
6 fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

7 (3) the amount distributed to municipalities
8 and counties pursuant to Subsection A of Section 7-1-6.9 NMSA
9 1978;

10 (4) the amount distributed to the county
11 government road fund pursuant to Section 7-1-6.19 NMSA 1978;

12 (5) the amount distributed to the local
13 governments road fund pursuant to Section 7-1-6.39 NMSA 1978;

14 (6) the amount distributed to the
15 municipalities pursuant to Section 7-1-6.27 NMSA 1978; [and]

16 (7) the amount distributed to the municipal
17 arterial program of the local governments road fund pursuant
18 to Section 7-1-6.28 NMSA 1978; and

19 (8) the amount distributed to the highway
20 priority project fund pursuant to Section 7-1-6.43 NMSA 1978.

21 B. A distribution pursuant to Section 7-1-6.1 NMSA
22 1978 shall be made to the state road fund in an amount equal
23 to the net receipts attributable to the taxes, fees, interest
24 and penalties from the Weight Distance Tax Act. "

25 Section 5. Section 7-1-6.19 NMSA 1978 (being Laws 1991,
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1 Chapter 9, Section 15, as amended) is amended to read:

2 "7-1-6.19. DISTRIBUTION-- COUNTY GOVERNMENT ROAD FUND
3 CREATED. --

4 A. There is created in the state treasury the
5 "county government road fund".

6 B. A distribution pursuant to Section 7-1-6.1 NMSA
7 1978 shall be made to the county government road fund in an
8 amount equal to [~~five and seventy-six~~] four and sixty-six
9 hundredths percent of the net receipts attributable to the
10 gasoline tax. "

11 Section 6. Section 7-1-6.27 NMSA 1978 (being Laws 1991,
12 Chapter 9, Section 20, as amended) is amended to read:

13 "7-1-6.27. DISTRIBUTION-- MUNICIPAL ROADS. --

14 A. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to municipalities for the purposes and
16 amounts specified in this section in an aggregate amount equal
17 to [~~five and seventy-six~~] four and sixty-six hundredths
18 percent of the net receipts attributable to the gasoline tax.

19 B. The distribution authorized in this section
20 shall be used for the following purposes:

21 (1) reconstructing, resurfacing, ~~maintaining,~~
22 repairing or otherwise improving existing alleys, streets,
23 roads or bridges, or any combination of the foregoing; or
24 laying off, opening, constructing or otherwise acquiring new
25 alleys, streets, roads or bridges, or any combination of the

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1 foregoing; provided that any of the foregoing improvements may
2 include, but are not limited to, the acquisition of rights of
3 way;

4 (2) to provide matching funds for projects
5 subject to cooperative agreements with the state highway and
6 transportation department pursuant to Section 67-3-28 NMSA
7 1978; and

8 (3) for expenses of purchasing, maintaining
9 and operating transit operations and facilities, for the
10 operation of a transit authority established by the Municipal
11 Transit Law and for the operation of a vehicle emission
12 inspection program. A municipality may engage in the business
13 of the transportation of passengers and property within the
14 political subdivision by whatever means the municipality may
15 decide and may acquire cars, trucks, motor buses and other
16 equipment necessary for operating the business. A
17 municipality may acquire land, erect buildings and equip the
18 buildings with all the necessary machinery and facilities for
19 the operation, maintenance, modification, repair and storage
20 of the cars, trucks, motor buses and other equipment needed.
21 A municipality may do all things necessary for the acquisition
22 and the conduct of the business of public transportation.

23 C. For the purposes of this section:

24 (1) "computed distribution amount" means the
25 distribution amount calculated for a municipality for a month

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1 pursuant to Paragraph (2) of Subsection D of this section
2 prior to any adjustments to the amount due to the provisions
3 of Subsections E and F of this section;

4 (2) "floor amount" means four hundred
5 seventeen dollars (\$417);

6 (3) "floor municipality" means a municipality
7 whose computed distribution amount is less than the floor
8 amount; and

9 (4) "full distribution municipality" means a
10 municipality whose population at the last federal decennial
11 census was at least two hundred thousand.

12 D. Subject to the provisions of Subsections E and
13 F of this section, each municipality shall be distributed a
14 portion of the aggregate amount distributable under this
15 section in an amount equal to the greater of:

16 (1) the floor amount; or

17 (2) eighty-five percent of the aggregate
18 amount distributable under this section times a fraction, the
19 numerator of which is the municipality's reported taxable
20 gallons of gasoline for the immediately preceding state fiscal
21 year and the denominator of which is the reported total
22 taxable gallons for all municipalities for the same period.

23 E. Fifteen percent of the aggregate amount
24 distributable under this section shall be referred to as the
25 "redistribution amount". Beginning in August 1990, and each

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1 month thereafter, from the redistribution amount there shall
2 be taken an amount sufficient to increase the computed
3 distribution amount of every floor municipality to the floor
4 amount. In the event that the redistribution amount is
5 insufficient for this purpose, the computed distribution
6 amount for each floor municipality shall be increased by an
7 amount equal to the redistribution amount times a fraction,
8 the numerator of which is the difference between the floor
9 amount and the municipality's computed distribution amount and
10 the denominator of which is the difference between the product
11 of the floor amount multiplied by the number of floor
12 municipalities and the total of the computed distribution
13 amounts for all floor municipalities.

14 F. If a balance remains after the redistribution
15 amount has been reduced pursuant to Subsection E of this
16 section, there shall be added to the computed distribution
17 amount of each municipality that is neither a full
18 distribution municipality nor a floor municipality an amount
19 that equals the balance of the redistribution amount times a
20 fraction, the numerator of which is the computed distribution
21 amount of the municipality and the denominator of which is the
22 sum of the computed distribution amounts of all municipalities
23 that are neither full distribution municipalities nor floor
24 municipalities. "

25 Section 7. Section 7-1-6.28 NMSA 1978 (being Laws 1991,

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1 Chapter 9, Section 22, as amended) is amended to read:

2 "7-1-6. 28. DISTRIBUTION--MUNICIPAL ARTERIAL PROGRAM OF
3 LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to
4 Section 7-1-6. 1 NMSA 1978 shall be made to the municipal
5 arterial program of the local governments road fund created in
6 Section 67-3-28. 2 NMSA 1978 in an amount equal to [~~one and~~
7 ~~forty-four~~] one and seventeen hundredths percent of the net
8 receipts attributable to the gasoline tax. "

9 Section 8. A new section of the Tax Administration Act,
10 Section 7-1-6. 43 NMSA 1978, is enacted to read:

11 "7-1-6. 43. [NEW MATERIAL] DISTRIBUTION--HIGHWAY PRIORITY
12 PROJECT FUND.--A distribution pursuant to Section 7-1-6. 1 NMSA
13 1978 shall be made to the highway priority project fund in an
14 amount equal to nineteen and five hundredths percent of the
15 net receipts attributable to the gasoline tax. "

16 Section 9. Section 7-13-3 NMSA 1978 (being Laws 1971,
17 Chapter 207, Section 3, as amended) is amended to read:

18 "7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
19 "GASOLINE TAX".--

20 A. For the privilege of receiving gasoline in this
21 state, there is imposed an excise tax at a rate provided in
22 Subsection B of this section on each gallon of gasoline
23 received in New Mexico.

24 B. The tax imposed by Subsection A of this section
25 shall be [~~seventeen cents (\$.17)~~] twenty-one cents (\$.21) per

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1 gallon received in New Mexico.

2 C. The tax imposed by this section may be called
3 the "gasoline tax". "

4 Section 10. Section 7-13-3 NMSA 1978 (being Laws 1971,
5 Chapter 207, Section 3, as amended) is repealed and a new
6 Section 7-13-3 NMSA 1978 is enacted to read:

7 "7-13-3. [NEW MATERIAL] IMPOSITION AND RATE OF TAX--
8 DENOMINATION AS "GASOLINE TAX". --

9 A. For the privilege of receiving gasoline in this
10 state, there is imposed an excise tax at a rate provided in
11 Subsection B of this section on each gallon of gasoline
12 received in New Mexico.

13 B. The tax imposed by Subsection A of this section
14 shall be seventeen cents (\$.17) per gallon received in New
15 Mexico.

16 C. The tax imposed by this section may be called
17 the "gasoline tax". "

18 Section 11. A new section of Chapter 67, Article 3 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] HIGHWAY PRIORITY PROJECT FUND CREATED. --

21 A. The "highway priority project fund" is created
22 in the state treasury and shall be administered by the
23 department. The fund shall consist of money from taxes
24 distributed to the fund. Earnings on investment of the fund
25 shall be credited to the fund. Balances in the fund at the

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1 end of any fiscal year shall not revert and shall remain in
2 the fund for the purposes authorized in this section.

3 B. Money in the fund shall be used solely for
4 acquisition of rights of way or planning, design, engineering,
5 construction or improvement of the state highway projects
6 authorized in Subsection D of this section or for payment of
7 principal and interest on bonds issued for those projects and
8 is appropriated to the department for expenditure only for
9 those purposes.

10 C. The taxes required by law to be distributed to
11 the highway priority project fund may be pledged for the
12 payment of state highway bonds issued pursuant to Section
13 67-3-59.3 NMSA 1978 for the state highway projects authorized
14 in Subsection D of this section.

15 D. The state highway commission may issue and sell
16 state highway bonds in compliance with the provisions of
17 Section 67-3-59.3 NMSA 1978 in an amount not to exceed the
18 total of the amounts authorized for purposes specified in this
19 section when the commission determines the need for the
20 issuance of the bonds. The state highway commission shall
21 schedule the issuance and sale of the bonds in the most
22 expeditious and economic manner possible upon a finding by the
23 commission that the project has been developed sufficiently to
24 justify the issuance and that the project can proceed to
25 contract within a reasonable time. The proceeds from the sale

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1 of the bonds are appropriated to the state highway and
2 transportation department in the following amounts for the
3 following projects in the following order of priority:

4 (1) eighty million dollars (\$80,000,000) for
5 the construction of United States highway 84-285 from Santa Fe
6 to Pojoaque;

7 (2) fifty million dollars (\$50,000,000) for
8 reconstruction of the Coors boulevard and interstate 40
9 interchange;

10 (3) seventy-five million dollars
11 (\$75,000,000) for improvement of United States highway 666
12 from Gallup to Shiprock;

13 (4) seventy-five million dollars
14 (\$75,000,000) for the four-lane construction of United States
15 highways 62 and 180 from Carlsbad to the Texas state line;

16 (5) fifteen million dollars (\$15,000,000) for
17 construction of the Silver City relief route;

18 (6) thirty-five million dollars (\$35,000,000)
19 for construction of the southwest loop in Albuquerque,
20 including the Paseo de Volcan interchange at interstate 40;
21 and

22 (7) thirty-two million dollars (\$32,000,000)
23 for the six-lane construction of interstate 25 from the
24 Tramway interchange to the United States highway 550
25 interchange. "

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1 Section 12. A new Section 67-3-59.3 NMSA 1978 is enacted
2 to read:

3 "67-3-59.3. [NEW MATERIAL] ADDITIONAL STATE HIGHWAY
4 DEBENTURES--ISSUANCE--LIMITS--APPROVAL.--

5 A. In order to provide funds to finance state
6 highway projects the state highway commission is authorized,
7 subject to the limitations of this section, to issue bonds
8 from time to time, payable from the highway priority project
9 fund and from federal funds not otherwise obligated that are
10 paid into the state road fund and the proceeds of the
11 collection of taxes and fees that are required by law to be
12 paid into the state road fund and not otherwise pledged solely
13 to the payment of outstanding bonds and debentures.

14 B. The total aggregate outstanding principal
15 amount of bonds issued from time to time pursuant to this
16 section, secured by or payable from the highway priority
17 project fund and from federal funds not otherwise obligated
18 that are paid into the state road fund and the proceeds from
19 the collection of taxes and fees required by law to be paid
20 into the state road fund, shall not, without additional
21 authorization of the state legislature, exceed three hundred
22 sixty-two million dollars (\$362,000,000).

23 C. The state highway commission may issue bonds to
24 refund other bonds issued pursuant to this section by exchange
25 or current or advance refunding.

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1 D. Each series of bonds shall have a maturity of
2 no more than twenty-five years from the date of issuance. The
3 state highway commission shall determine all other terms,
4 covenants and conditions of the bonds; provided that the bonds
5 shall not be issued pursuant to this section unless the state
6 board of finance approves the issuance of the bonds and the
7 principal amount of and interest rate or maximum net effective
8 interest rate on the bonds.

9 E. The bonds shall be executed with the manual or
10 facsimile signature of the chairman of the state highway
11 commission, countersigned by the state treasurer and attested
12 to by the secretary of the state highway commission, with the
13 seal of the state highway commission imprinted or otherwise
14 affixed to the bonds.

15 F. Proceeds of the bonds may be used to pay
16 expenses incurred in the preparation, issuance and sale of the
17 bonds and, together with the earnings on the proceeds of the
18 bonds, may be used to pay rebate, penalty, interest and other
19 obligations relating to the bonds and the proceeds of the
20 bonds under the Internal Revenue Code of 1986, as amended.

21 G. The bonds may be sold at a public or negotiated
22 sale at, above or below par or through the New Mexico finance
23 authority. Any negotiated sale shall be made with one or more
24 investment bankers whose services are obtained through a
25 competitive proposal process. For any sale, the state highway

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1 commission or the New Mexico finance authority shall also
2 procure the services of any financial advisor or bond counsel
3 through a competitive proposal process. If sold at public
4 sale, a notice of the time and place of sale shall be
5 published in a newspaper of general circulation in the state,
6 and in any other newspaper determined in the resolution
7 authorizing the issuance of the bonds, once each week for two
8 consecutive weeks prior to the date of sale. The bonds may be
9 purchased by the state treasurer or state investment officer.

10 H. This section is full authority for the issuance
11 and sale of the bonds, and the bonds shall not be invalid for
12 any irregularity or defect in the proceedings for their
13 issuance and sale and shall be incontestable in the hands of
14 bona fide purchasers or holders of the bond for value.

15 I. The bonds shall be legal investments for any
16 person or board charged with the investment of public funds
17 and may be accepted as security for any deposit of public
18 money and, with the interest thereon, are exempt from taxation
19 by the state and any political subdivision or agency of the
20 state.

21 J. Any law authorizing the imposition or
22 distribution of taxes or fees paid into the state road fund or
23 the highway priority project fund or that affects those taxes
24 and fees shall not be amended or repealed or otherwise
25 directly or indirectly modified so as to impair any

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1 outstanding bonds secured by a pledge of revenues from those
2 taxes and fees paid into the state road fund or the highway
3 priority project fund, unless the bonds have been discharged
4 in full or provisions have been made for a full discharge. In
5 addition, while any bonds issued by the state highway
6 commission pursuant to the provisions of this section remain
7 outstanding, the powers or duties of the commission shall not
8 be diminished or impaired in any manner that will affect
9 adversely the interests and rights of the holder of such
10 bonds.

11 K. Bonds issued pursuant to this section shall be
12 paid solely from federal funds not otherwise obligated and
13 taxes and fees deposited into the state road fund or the
14 highway priority project fund, and shall not constitute a
15 general obligation of the state."

16 Section 13. Laws 1995, Chapter 6, Section 23 is amended
17 to read:

18 "Section 23. EFFECTIVE DATE. --

19 A. The effective date of the provisions of
20 Sections 10 and 12 through 14 of [~~this act~~] Laws 1995, Chapter
21 6 is July 1, 1995.

22 B. The effective date of the provisions of
23 Sections 1 through 9 and 21 of [~~this act~~] Laws 1995, Chapter 6
24 is August 1, 1995.

25 [~~C. The effective date of the provisions of~~

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1 ~~Section 11 of this act is July 1, 2003 or the July 1 or~~
2 ~~January 1 immediately following any earlier date on which the~~
3 ~~obligations for payment of principal and interest on the~~
4 ~~series 1993 state highway debentures have been defeased.]"~~

5 Section 14. REPEAL. -- Laws 1995, Chapter 6, Section 11 is
6 repealed.

7 Section 15. EFFECTIVE DATE. --

8 A. The effective date of the provisions of
9 Sections 9 and 11 through 14 of this act is July 1, 2002.

10 B. The effective date of the provisions of
11 Sections 1 through 8 of this act is August 1, 2002.

12 C. The effective date of the provisions of Section
13 10 of this act is July 1, 2017.