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SENATE BILL 95

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Clemente Sanchez

AN ACT

RELATING TO TAXATION; INCREASING THE GASOLINE TAX BY TEN CENTS
(\$.10) AND THE SPECIAL FUEL EXCISE TAX BY FIVE CENTS (\$.05);
DISTRIBUTING THE NEW REVENUE TO THE STATE ROAD FUND AND THE
LOCAL GOVERNMENTS ROAD FUND, EXCEPT AMOUNTS TO BE DISTRIBUTED
TO THE TAX STABILIZATION RESERVE UNTIL STATE RESERVES REACH TEN
PERCENT; CONFORMING SECTION 67-3-28.2 NMSA 1978 (BEING LAWS
1986, CHAPTER 20, SECTION 125, AS AMENDED).

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 four and seventy-nine hundredths percent of the

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1 taxable gross receipts attributable to the sale of fuel
2 specially prepared and sold for use in turboprop or jet-type
3 engines as 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~~] one hundred sixty-four
7 thousandths percent of gasoline taxes, exclusive of penalties
8 and interest, collected pursuant to the Gasoline Tax Act.

9 C. From July 1, 2013 through June 30, 2021, 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-six
12 thousandths percent of the net receipts attributable to the
13 gross receipts tax distributable to the general fund.

14 D. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to the state aviation fund from the net
16 receipts attributable to the gross receipts tax distributable
17 to the general fund in an amount equal to

18 [~~(1) eighty thousand dollars (\$80,000) monthly~~
19 ~~from July 1, 2007 through June 30, 2008;~~

20 ~~(2) one hundred sixty-seven thousand dollars~~
21 ~~(\$167,000) monthly from July 1, 2008 through June 30, 2009; and~~

22 ~~(3)] two hundred fifty thousand dollars~~
23 ~~(\$250,000) [monthly after July 1, 2009]."~~

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

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1 "7-1-6.8. DISTRIBUTION--MOTORBOAT FUEL TAX FUND.--A
2 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
3 made to the motorboat fuel tax fund in an amount equal to
4 [~~thirteen hundredths of one~~] eighty-two thousandths percent of
5 the net receipts attributable to the gasoline tax."

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

8 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO
9 MUNICIPALITIES AND COUNTIES.--

10 A. A distribution pursuant to Section 7-1-6.1 NMSA
11 1978 shall be made in an amount equal to [~~ten and thirty-eight~~]
12 six and fifty-five hundredths percent of the net receipts
13 attributable to the taxes, exclusive of penalties and interest,
14 imposed by the Gasoline Tax Act.

15 B. [~~Except as provided in Subsection D of this~~
16 ~~section~~] The amount determined in Subsection A of this section
17 shall be distributed as follows:

18 (1) ninety percent of the amount shall be paid
19 to the treasurers of municipalities and H class counties in the
20 proportion that the taxable motor fuel sales in each of the
21 municipalities and H class counties bears to the aggregate
22 taxable motor fuel sales in all of these municipalities and H
23 class counties; and

24 (2) ten percent of the amount shall be paid to
25 the treasurers of the counties, including H class counties, in

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1 the proportion that the taxable motor fuel sales outside of
2 incorporated municipalities in each of the counties bears to
3 the aggregate taxable motor fuel sales outside of incorporated
4 municipalities in all of the counties.

5 C. Except as provided in Subsection D of this
6 section, this distribution shall be paid into a separate road
7 fund in the municipal treasury or county road fund for
8 expenditure only for construction, reconstruction, resurfacing
9 or other improvement or maintenance of public roads, streets,
10 alleys or bridges, including right-of-way and materials
11 acquisition. Money distributed pursuant to this section may be
12 used by a municipality or county to provide matching funds for
13 projects subject to cooperative agreements entered into with
14 the [~~state highway and~~ department of transportation
15 [~~department~~] pursuant to Section 67-3-28 NMSA 1978. Any
16 municipality or H class county that has created or that creates
17 a "street improvement fund" to which gasoline tax revenues or
18 distributions are irrevocably pledged under Sections 3-34-1
19 through 3-34-4 NMSA 1978 or that has pledged all or a portion
20 of gasoline tax revenues or distributions to the payment of
21 bonds shall receive its proportion of the distribution of
22 revenues under this section impressed with and subject to these
23 pledges.

24 D. This distribution may be paid into a separate
25 road fund or the general fund of the municipality or county if

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1 the municipality has a population less than three thousand or
2 the county has a population less than four thousand."

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

5 "7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

6 A. A distribution pursuant to Section 7-1-6.1 NMSA
7 1978 shall be made to the state road fund in an amount equal to
8 the net receipts attributable to the taxes, surcharges,
9 penalties and interest imposed pursuant to the Gasoline Tax Act
10 and to the taxes, surtaxes, fees, penalties and interest
11 imposed pursuant to the Special Fuels Supplier Tax Act and the
12 Alternative Fuel Tax Act less:

13 (1) the amount distributed to the state
14 aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA
15 1978;

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

18 (3) the amount distributed to municipalities
19 and counties pursuant to Subsection A of Section 7-1-6.9 NMSA
20 1978;

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

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

25 (6) the amount distributed to the

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1 municipalities pursuant to Section 7-1-6.27 NMSA 1978;

2 (7) the amount distributed to the municipal
3 arterial program of the local governments road fund pursuant to
4 Section 7-1-6.28 NMSA 1978;

5 (8) the amount distributed to a qualified
6 tribe pursuant to [~~a gasoline tax sharing agreement entered
7 into between the secretary of transportation and the qualified
8 tribe pursuant to the provisions~~] Subsection A of Section
9 [~~67-3-8.1~~] 7-1-6.44 NMSA 1978; [~~and~~]

10 (9) the amount distributed to the general fund
11 pursuant to Subsection B of Section 7-1-6.44 NMSA 1978; and

12 (10) the amount distributed to the tax
13 stabilization reserve pursuant to Section 9 of this 2017 act.

14 B. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to the state road fund in an amount equal to
16 the net receipts attributable to the taxes, interest and
17 penalties from the Weight Distance Tax Act."

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

20 "7-1-6.19. DISTRIBUTION--COUNTY GOVERNMENT ROAD FUND
21 CREATED.--

22 A. There is created in the state treasury the
23 "county government road fund".

24 B. A distribution pursuant to Section 7-1-6.1 NMSA
25 1978 shall be made to the county government road fund in an

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1 amount equal to [~~five and seventy-six~~] three and sixty-three
2 hundredths percent of the net receipts attributable to the
3 gasoline tax."

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

6 "7-1-6.27. DISTRIBUTION--MUNICIPAL ROADS.--

7 A. A distribution pursuant to Section 7-1-6.1 NMSA
8 1978 shall be made to municipalities for the purposes and
9 amounts specified in this section in an aggregate amount equal
10 to [~~five and seventy-six~~] three and sixty-three hundredths
11 percent of the net receipts attributable to the gasoline tax.

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

14 (1) reconstructing, resurfacing, maintaining,
15 repairing or otherwise improving existing alleys, streets,
16 roads or bridges, or any combination of the foregoing; or
17 laying off, opening, constructing or otherwise acquiring new
18 alleys, streets, roads or bridges, or any combination of the
19 foregoing; provided that any of the foregoing improvements may
20 include [~~but are not limited to~~] the acquisition of rights of
21 way;

22 (2) to provide matching funds for projects
23 subject to cooperative agreements with the [~~state highway and~~]
24 department of transportation [~~department~~] pursuant to Section
25 67-3-28 NMSA 1978; and

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

16 C. For the purposes of this section:

17 (1) "computed distribution amount" means the
18 distribution amount calculated for a municipality for a month
19 pursuant to Paragraph (2) of Subsection D of this section prior
20 to any adjustments to the amount due to the provisions of
21 Subsections E and F of this section;

22 (2) "floor amount" means four hundred
23 seventeen dollars (\$417);

24 (3) "floor municipality" means a municipality
25 whose computed distribution amount is less than the floor

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1 amount; and

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

5 D. Subject to the provisions of Subsections E and F
6 of this section, each municipality shall be distributed a
7 portion of the aggregate amount distributable under this
8 section in an amount equal to the greater of:

9 (1) the floor amount; or

10 (2) eighty-five percent of the aggregate
11 amount distributable under this section times a fraction, the
12 numerator of which is the municipality's reported taxable
13 gallons of gasoline for the immediately preceding state fiscal
14 year and the denominator of which is the reported total taxable
15 gallons for all municipalities for the same period.

16 E. Fifteen percent of the aggregate amount
17 distributable under this section shall be referred to as the
18 "redistribution amount". Beginning in August 1990, and each
19 month thereafter, from the redistribution amount there shall be
20 taken an amount sufficient to increase the computed
21 distribution amount of every floor municipality to the floor
22 amount. In the event that the redistribution amount is
23 insufficient for this purpose, the computed distribution amount
24 for each floor municipality shall be increased by an amount
25 equal to the redistribution amount times a fraction, the

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1 numerator of which is the difference between the floor amount
2 and the municipality's computed distribution amount and the
3 denominator of which is the difference between the product of
4 the floor amount multiplied by the number of floor
5 municipalities and the total of the computed distribution
6 amounts for all floor municipalities.

7 F. If a balance remains after the redistribution
8 amount has been reduced pursuant to Subsection E of this
9 section, there shall be added to the computed distribution
10 amount of each municipality that is neither a full distribution
11 municipality nor a floor municipality an amount that equals the
12 balance of the redistribution amount times a fraction, the
13 numerator of which is the computed distribution amount of the
14 municipality and the denominator of which is the sum of the
15 computed distribution amounts of all municipalities that are
16 neither full distribution municipalities nor floor
17 municipalities."

18 SECTION 7. Section 7-1-6.28 NMSA 1978 (being Laws 1991,
19 Chapter 9, Section 22, as amended) is amended to read:

20 "7-1-6.28. DISTRIBUTION--MUNICIPAL ARTERIAL PROGRAM OF
21 LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to
22 Section 7-1-6.1 NMSA 1978 shall be made to the municipal
23 arterial program of the local governments road fund created in
24 Section 67-3-28.2 NMSA 1978 in an amount equal to [~~one and~~
25 ~~forty-four hundredths~~] nine hundred seven-thousandths percent

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1 of the net receipts attributable to the gasoline tax."

2 SECTION 8. Section 7-1-6.39 NMSA 1978 (being Laws 1995,
3 Chapter 6, Section 9, as amended) is amended to read:

4 "7-1-6.39. DISTRIBUTION OF GASOLINE TAX AND SPECIAL FUEL
5 EXCISE TAX TO LOCAL GOVERNMENTS ROAD FUND.--

6 A. A distribution pursuant to Section 7-1-6.1 NMSA
7 1978 shall be made to the local governments road fund in an
8 amount equal to the following percentages of the net receipts
9 attributable to the gasoline tax:

10 (1) before the last distribution to the tax
11 stabilization reserve is made pursuant to Section 9 of this
12 2017 act, eleven and eleven-hundredths percent; and

13 (2) after the last distribution to the tax
14 stabilization reserve is made pursuant to Section 9 of this
15 2017 act, eighteen and fifty-two hundredths percent.

16 B. A distribution pursuant to Section 7-1-6.1 NMSA
17 1978 shall be made to the local governments road fund in an
18 amount equal to [~~nine and fifty-two hundredths percent~~] the
19 following percentages of the net receipts attributable to the
20 taxes, exclusive of penalties and interest, from the special
21 fuel excise tax imposed by the Special Fuels Supplier Tax Act:

22 (1) before the last distribution to the tax
23 stabilization reserve is made pursuant to Section 9 of this
24 2017 act, fifteen and thirty-eight hundredths percent; and

25 (2) after the last distribution to the tax

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1 stabilization reserve is made pursuant to Section 9 of this
2 2017 act, nineteen and twenty-three hundredths percent."

3 SECTION 9. A new section of the Tax Administration Act is
4 enacted to read:

5 "[NEW MATERIAL] DISTRIBUTION--TAX STABILIZATION RESERVE.--

6 A. A distribution pursuant to Section 7-1-6.1 NMSA
7 1978 shall be made to the tax stabilization reserve in an
8 amount equal to eleven and eleven-hundredths percent of the net
9 receipts attributable to the gasoline tax and in an amount
10 equal to seven and sixty-nine hundredths percent of the net
11 receipts attributable to the special fuel excise tax until the
12 month following certification by the state board of finance to
13 the secretary of taxation and revenue that the total amount in
14 state general fund reserves at the end of the prior fiscal
15 year, according to the general fund financial summary that is
16 prepared by the department of finance and administration in
17 August of each year, was at least ten percent of the total
18 general fund appropriations for the current fiscal year.

19 B. As used in this section, "state reserve funds"
20 means the general fund operating reserve, the appropriation
21 contingency fund, the tax stabilization reserve and the tobacco
22 settlement permanent fund."

23 SECTION 10. Section 7-13-3 NMSA 1978 (being Laws 1971,
24 Chapter 207, Section 3, as amended) is amended to read:

25 "7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS

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1 "GASOLINE TAX".--

2 A. For the privilege of receiving gasoline in this
3 state, there is imposed an excise tax at a rate provided in
4 Subsection B of this section on each gallon of gasoline
5 received in New Mexico.

6 B. The tax imposed by Subsection A of this section
7 shall be [~~seventeen cents (\$.17)~~] twenty-seven cents (\$.27) per
8 gallon received in New Mexico.

9 C. The tax imposed by this section may be called
10 the "gasoline tax".

11 SECTION 11. Section 7-16A-3 NMSA 1978 (being Laws 1992,
12 Chapter 51, Section 3, as amended) is amended to read:

13 "7-16A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
14 SPECIAL FUEL EXCISE TAX.--

15 A. For the privilege of receiving or using special
16 fuel in this state, there is imposed an excise tax at a rate
17 provided in Subsection B of this section on each gallon of
18 special fuel received in New Mexico.

19 B. The tax imposed by Subsection A of this section
20 shall be [~~twenty-one cents (\$.21)~~] twenty-six cents (\$.26) per
21 gallon of special fuel received or used in New Mexico.

22 C. The tax imposed by this section may be called
23 the "special fuel excise tax".

24 SECTION 12. Section 67-3-28.2 NMSA 1978 (being Laws 1986,
25 Chapter 20, Section 125, as amended) is amended to read:

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1 "67-3-28.2. LOCAL GOVERNMENTS ROAD FUND CREATED--
2 USES.--

3 A. There is created in the state treasury the
4 "local governments road fund" to be administered by the
5 department. All income received from investment of the fund
6 shall be credited to the fund. No money in the fund shall be
7 used by the department to administer any program, and except as
8 provided in Subsection E of this section, no entity receiving a
9 distribution pursuant to a program requiring matching funds
10 shall use another distribution made pursuant to this section to
11 meet the match required.

12 B. No more than five hundred thousand dollars
13 (\$500,000) annually from the local governments road fund shall
14 be used by the department to purchase at fair market value, for
15 municipalities and counties that can demonstrate financial
16 hardship as determined by the department, automotive, major
17 road and miscellaneous equipment that would otherwise be sold
18 at auction by the department as unusable for department
19 purposes. The department shall adopt rules setting the
20 procedure to carry out the purposes of this subsection.

21 C. Except for the amounts in Subsections B and E of
22 this section and amounts distributed pursuant to the municipal
23 arterial program pursuant to Section 7-1-6.28 NMSA 1978, money
24 in the local governments road fund shall be distributed in the
25 following amounts for the specified purposes:

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1 (1) forty-two percent for the cooperative
2 agreements program, to be used solely for the cooperative
3 agreements entered into pursuant to Section 67-3-28 NMSA 1978
4 and in accordance with the match authorized pursuant to Section
5 67-3-32 NMSA 1978; provided, however, that distribution amounts
6 made pursuant to this paragraph in each year shall be based on
7 the following allocations:

8 (a) thirty-three percent for agreements
9 entered into with counties;

10 (b) forty-nine percent for agreements
11 entered into with municipalities;

12 (c) fourteen percent for agreements
13 entered into with school districts; and

14 (d) four percent for agreements entered
15 into with other entities;

16 (2) sixteen percent for the municipal arterial
17 program, to be used solely for the necessary project
18 development, construction, reconstruction, improvement,
19 maintenance, repair and right-of-way and material acquisition
20 of and for those streets that are principal extensions of rural
21 state highways and of other streets not on the state highway
22 system but that qualify under the designated criteria
23 established by the department. In entering into agreements
24 with municipalities to provide funds for any project qualifying
25 for the municipal arterial program, the department shall give

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1 preference to municipalities that contribute an amount equal to
2 at least twenty-five percent of the project cost, including a
3 contribution made through funding received pursuant to
4 Subsection E of this section;

5 (3) sixteen percent for school bus routes, to
6 be used solely for cooperative agreements entered into pursuant
7 to Section 67-3-28 NMSA 1978 and in accordance with the match
8 authorized pursuant to Section 67-3-32 NMSA 1978 for acquiring
9 rights of way and constructing, maintaining, repairing,
10 improving and paving school bus routes and public school
11 parking lots; and

12 (4) twenty-six percent for the county arterial
13 program, to be used for project development, construction,
14 reconstruction, improvement, maintenance, repair and right-of-
15 way and material acquisition of and for county roads for which
16 individual counties have prioritized road projects. Prior to
17 entering into any agreements for projects with the counties for
18 the following fiscal year, in June of each year the department
19 shall determine and certify the amount to which each county is
20 entitled pursuant to the following schedule:

21 Road Mileage Category Based on
22 Number of Miles Maintained

23 By a County:	Entitlement to County:
24 400 miles or under	\$250 for each mile
25 401 to 800 miles	\$100,000 plus \$200 for each

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1 mile over 400 miles
2 801 to 1,200 miles \$180,000 plus \$150 for each
3 mile over 800 miles
4 1,201 to 1,600 miles \$240,000 plus \$100 for each
5 mile over 1,200 miles
6 Over 1,600 miles \$300,000 plus \$50 for each
7 mile over 1,600 miles.

8 If in any year there is an insufficient amount in the fund
9 of the county arterial program to certify the total amount to
10 which all counties are entitled, the department shall decrease
11 the entitlement amount due to each county in the same
12 proportion as the insufficiency is to the total entitlements to
13 all counties. Distribution of an entitlement amount and an
14 agreement entered into with a county for any of the purposes
15 for which the money may be spent requires an amount from the
16 county equal to at least twenty-five percent of the
17 entitlement. The county contribution may be made through funds
18 received pursuant to Subsection E of this section. Any
19 uncommitted or unencumbered balance remaining in the county
20 arterial program fund at the end of a fiscal year shall be
21 transferred to the cooperative agreements program specified in
22 Paragraph (1) of this subsection for additional funding of that
23 program in the next fiscal year.

24 D. The department may transfer funds from the state
25 road fund to the local governments road fund to facilitate cash

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1 flow for the funding of these local governments road projects.
2 The administrator of the local governments road fund shall
3 reimburse the state road fund in a timely manner for any such
4 transfers.

5 E. The department may distribute up to one million
6 dollars (\$1,000,000) per calendar year of the money in the
7 local governments road fund to municipalities and counties that
8 can demonstrate financial hardship, for use as all or a portion
9 of the municipality's or county's matching fund requirements
10 pursuant to this section. In order to qualify for matching
11 funds under this subsection, a county or municipality shall
12 provide the department with a financial hardship qualification
13 certificate issued by the department of finance and
14 administration."

15 SECTION 13. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2017.