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HOUSE BILL 173

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Matthew McQueen

AN ACT

RELATING TO TAXATION; IMPOSING A GASOLINE SURTAX AND SPECIAL FUEL EXCISE SURTAX; INCREASING AND INDEXING THE SURTAXES; DISTRIBUTING THE REVENUE FROM THE SURTAXES TO THE STATE ROAD FUND, A NEW CLEAN INFRASTRUCTURE FUND AND A NEW GASOLINE AND SPECIAL FUEL EXCISE SURTAX LOW-INCOME REBATE FUND; CREATING THE GASOLINE AND SPECIAL FUEL EXCISE SURTAX LOW-INCOME REBATE; MAKING AN APPROPRIATION.

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

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

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

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, ~~[surcharges,~~

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1 ~~penalties and interest imposed pursuant to the Gasoline Tax Act~~
2 ~~and to the taxes, surtaxes]~~ not including the gasoline surtax
3 and the special fuel excise surtax, and to the fees, penalties
4 and interest imposed pursuant to the Gasoline Tax Act, the
5 Special Fuels Supplier Tax Act and the Alternative Fuel Tax Act
6 less:

7 (1) the amount distributed to the state
8 aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA
9 1978;

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

12 (3) the amount distributed to municipalities
13 and counties pursuant to Subsection A of Section 7-1-6.9 NMSA
14 1978;

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

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

19 (6) the amount distributed to the
20 municipalities pursuant to Section 7-1-6.27 NMSA 1978;

21 (7) the amount distributed to the municipal
22 arterial program of the local governments road fund pursuant to
23 Section 7-1-6.28 NMSA 1978;

24 (8) the amount distributed to a qualified
25 tribe pursuant to ~~[a gasoline tax sharing agreement entered~~

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1 ~~into between the secretary of transportation and the qualified~~
2 ~~tribe pursuant to the provisions]~~ Subsection A of Section
3 ~~[67-3-8.1]~~ 7-1-6.44 NMSA 1978; and

4 (9) the amount distributed to the general fund
5 pursuant to Subsection B of Section 7-1-6.44 NMSA 1978.

6 B. 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, interest and
9 penalties from the Weight Distance Tax Act."

10 SECTION 2. A new section of the Tax Administration Act is
11 enacted to read:

12 "[NEW MATERIAL] DISTRIBUTION--GASOLINE SURTAX--SPECIAL
13 FUEL EXCISE SURTAX.--A distribution pursuant to Section 7-1-6.1
14 NMSA 1978 shall be made of the net receipts attributable to the
15 gasoline surtax and the special fuel excise surtax as follows,
16 rounded in accordance with standard accounting rules:

17 A. one-third of each surtax to the state road fund;

18 B. one-third of each surtax to the clean
19 infrastructure fund; and

20 C. one-third of each surtax, plus any remainder, to
21 the gasoline and special fuel excise surtax low-income rebate
22 fund."

23 SECTION 3. A new section of the Income Tax Act is enacted
24 to read:

25 "[NEW MATERIAL] GASOLINE AND SPECIAL FUEL EXCISE SURTAX

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1 LOW-INCOME REBATE.--

2 A. For taxable years beginning on or after January
3 1, 2021, a taxpayer who is a resident and who files an
4 individual New Mexico income tax return and who is not a
5 dependent of another individual is entitled to a rebate
6 pursuant to this section for a portion of gasoline and special
7 fuel excise surtaxes passed on to the resident, regardless of
8 whether the resident has taxable income for that taxable year.
9 The rebate provided by this section may be cited as the
10 "gasoline and special fuel excise surtax low-income rebate".

11 B. Except as provided in Subsection C of this
12 section, the rebate provided in this section may be claimed in
13 the amounts shown in the following table:

14 Modified gross
15 income is:

% Over federal poverty guidelines	But not over	Rebate amount for a taxable year beginning on or after:				
		2021	2022	2023	2024	2025
400%	500%	\$0	\$25	\$40	\$55	\$70
300%	400%	50	75	100	125	150
200%	300%	100	150	200	250	300
100%	200%	125	190	255	320	385
0%	100%	150	225	300	375	450.

25 C. If a taxpayer's modified gross income is zero or

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1 less, the taxpayer may claim a rebate in the amount shown in
2 the last row of the table.

3 D. A taxpayer shall claim the gasoline and special
4 fuel excise surtax low-income rebate on forms and in a manner
5 as prescribed by the department.

6 E. The department shall compile an annual report on
7 the gasoline and special fuel excise surtax low-income rebate
8 that shall include the number of residents approved by the
9 department to receive the rebate, the aggregate amount of
10 rebates approved and any other information necessary to
11 evaluate the rebate. The department shall compile and present
12 the annual report to the revenue stabilization and tax policy
13 committee and the legislative finance committee with an
14 analysis of the cost of the rebate.

15 F. For purposes of this section, "federal poverty
16 guidelines" means the level of income defining poverty by
17 family size published annually in the federal register by the
18 United States department of health and human services."

19 **SECTION 4.** Section 7-13-2.1 NMSA 1978 (being Laws 1999,
20 Chapter 190, Section 2) is amended to read:

21 "7-13-2.1. WHEN GASOLINE RECEIVED AND BY WHOM.--

22 A. Gasoline that is produced, refined,
23 manufactured, blended or compounded at a refinery in this state
24 or stored at a pipeline terminal in this state by a person is
25 received by that person when it is loaded there into tank cars,

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1 tank trucks, tank wagons or other types of transportation
2 equipment, or when it is placed there into a tank or other
3 container from which sales or deliveries not involving
4 transportation are made; however:

5 (1) when gasoline is delivered at the refinery
6 or pipeline terminal to a person registered as a distributor
7 pursuant to the Gasoline Tax Act, then it is received there by
8 the distributor to whom it is delivered at the time of the
9 delivery;

10 (2) when gasoline is delivered at the refinery
11 or pipeline terminal to a person not registered as a
12 distributor pursuant to the Gasoline Tax Act for the account of
13 a person that is registered as a distributor, it is received
14 there by the distributor for whose account it is delivered at
15 the time of delivery; and

16 (3) gasoline is not received when it is
17 shipped from one refinery or pipeline terminal to another
18 refinery or pipeline terminal.

19 B. Gasoline imported into New Mexico by any means
20 other than in the fuel supply tank of a motor vehicle or by
21 pipeline is received at the time and place it is imported into
22 this state. The person who owns the gasoline at the time of
23 importation receives the gasoline at the time and place of
24 importation unless the gasoline is delivered to a person who is
25 registered as a distributor pursuant to the Gasoline Tax Act,

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1 in which case the distributor is deemed to have received the
2 gasoline at the time and place of importation.

3 C. Any product other than gasoline that is blended
4 in this state to produce gasoline other than at a refinery or
5 pipeline terminal is received by the person who is the owner of
6 the gasoline at the time and place the blending is completed.

7 D. If gasoline is received within the exterior
8 boundaries of an Indian reservation or pueblo grant and the
9 gasoline tax or gasoline surtax is not paid with respect to the
10 gasoline by the person receiving the gasoline within the
11 exterior boundaries of the Indian reservation or pueblo grant,
12 the gasoline is also received when the gasoline is transported
13 off the reservation or pueblo grant by any means other than in
14 the fuel supply tank of a motor vehicle. In such a case, the
15 person who owns the gasoline immediately after the time of
16 transportation off the reservation or pueblo grant or, if the
17 gasoline is delivered to a person registered as a distributor
18 pursuant to the Gasoline Tax Act, the distributor receives the
19 gasoline at the time and place the gasoline is transported off
20 the reservation or pueblo grant."

21 SECTION 5. Section 7-13-3 NMSA 1978 (being Laws 1971,
22 Chapter 207, Section 3, as amended) is amended to read:

23 "7-13-3. IMPOSITION AND RATE OF GASOLINE TAX--
24 [~~DENOMINATION AS "GASOLINE TAX"~~] IMPOSITION AND RATE OF
25 GASOLINE SURTAX.--

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1 A. For the privilege of receiving gasoline in this
2 state, there is imposed an excise tax at a rate [~~provided in~~
3 ~~Subsection B of this section~~] of seventeen cents (\$.17) on each
4 gallon of gasoline received in New Mexico.

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

8 ~~G.~~] The tax imposed by this [~~section~~] subsection may
9 be [~~called~~] cited as the "gasoline tax".

10 B. In addition to the gasoline tax, a surtax is
11 imposed, which may be cited as the "gasoline surtax", at the
12 following rates on each gallon of gasoline received in New
13 Mexico:

14 (1) beginning July 1, 2021 and prior to July
15 1, 2022, ten cents (\$.10);

16 (2) beginning July 1, 2022 and prior to July
17 1, 2023, fifteen cents (\$.15);

18 (3) beginning July 1, 2023 and prior to July
19 1, 2024, twenty cents (\$.20);

20 (4) beginning July 1, 2024 and prior to July
21 1, 2025, twenty-five cents (\$.25);

22 (5) beginning July 1, 2025 and prior to July
23 1, 2026, thirty cents (\$.30); and

24 (6) beginning July 1, 2026, the rate
25 determined pursuant to Subsection C of this section.

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1 C. No later than April 30, 2026 and April 30 of
2 each subsequent year, the department shall calculate the rate
3 of gasoline surtax to be imposed as of July 1 of that year.
4 The rate of the surtax per gallon shall be equal to the
5 product, rounded down to the nearest whole cent, of thirty
6 cents (\$.30) multiplied by a fraction with a numerator equal to
7 the consumer price index for the previous calendar year and a
8 denominator equal to the consumer price index for calendar year
9 2024; provided that the rate shall not be adjusted to less than
10 the rate imposed in the previous fiscal year.

11 D. As used in this section, "consumer price index"
12 means the consumer price index for all urban consumers as
13 published by the United States bureau of labor statistics."

14 SECTION 6. Section 7-13-3.1 NMSA 1978 (being Laws 1979,
15 Chapter 166, Section 7, as amended) is amended to read:

16 "7-13-3.1. GASOLINE INVENTORY TAX--IMPOSITION OF TAX--
17 DATE PAYMENT OF TAX DUE.--

18 A. A gasoline inventory tax is imposed measured by
19 the quantity of gallons of gasoline in the possession of a
20 distributor or wholesaler on the day in which an increase in
21 the ~~[excise tax imposed by Section 7-13-3 NMSA 1978]~~ the sum of
22 the rates of the gasoline tax and the gasoline surtax is
23 effective. The taxable event is the existence of an inventory
24 in the possession of a distributor or wholesaler on the day
25 prior to the day in which an increase in the ~~[excise tax~~

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1 ~~imposed by Section 7-13-3 NMSA 1978~~ gasoline tax and gasoline
2 surtax is effective. The rate of the gasoline inventory tax to
3 apply on each gallon of gasoline held in inventory by a
4 distributor or wholesaler, as provided in Section 7-13-3.2 NMSA
5 1978, shall be the difference between the sum of the rates of
6 the gasoline [excise] tax [rate] and the gasoline surtax
7 imposed on the day prior to the day in which the [~~gasoline~~
8 ~~excise tax~~] the sum of the rates is increased subtracted from
9 the [~~gasoline excise tax rate~~] sum of the rates imposed on the
10 day that the [~~gasoline excise tax rate~~] increase is effective,
11 expressed in cents per gallon.

12 B. The gasoline inventory tax is to be paid to
13 the department on or before the twenty-fifth day of the month
14 following the month in which the taxable event occurs."

15 SECTION 7. Section 7-13-3.2 NMSA 1978 (being Laws 1979,
16 Chapter 166, Section 8, as amended) is amended to read:

17 "7-13-3.2. GASOLINE INVENTORIES.--

18 A. On the day prior to the day that the [~~excise tax~~
19 ~~imposed by Section 7-13-3 NMSA 1978~~] sum of the rates of the
20 gasoline tax and the gasoline surtax is increased, each
21 distributor, wholesaler and retailer shall take inventory of
22 the gallons of gasoline on hand.

23 B. Distributors and wholesalers shall report total
24 gallons of gasoline in inventory on the day prior to the day
25 that an increase in the [~~gasoline tax rate~~] sum of the rates of

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1 the gasoline tax and the gasoline surtax is effective and pay
2 any tax due imposed by Section 7-13-3.1 NMSA 1978.

3 C. Retailers shall maintain a record of the total
4 gallons of gasoline in inventory on the day prior to the day
5 that an increase in the sum of the rates of the gasoline tax
6 [~~rate~~] and the gasoline surtax is effective and shall not
7 increase the price of the gasoline sold until the inventory is
8 disposed of in the ordinary course of business."

9 SECTION 8. Section 7-13-3.5 NMSA 1978 (being Laws 1997,
10 Chapter 192, Section 3) is amended to read:

11 "7-13-3.5. BOND REQUIRED OF TAXPAYERS.--

12 A. Except as provided in Subsection H of this
13 section, every taxpayer shall file with the department a bond
14 on a form approved by the attorney general with a surety
15 company authorized by the [~~state corporation commission~~] office
16 of superintendent of insurance to transact business in this
17 state as a surety and upon which bond the taxpayer is the
18 principal obligor and the state the obligee. The bond shall be
19 conditioned upon the prompt filing of true reports and the
20 payment by the taxpayer to the department of all taxes levied
21 by the Gasoline Tax Act, together with all applicable penalties
22 and interest thereon.

23 B. In lieu of the bond, the taxpayer may elect to
24 file with the department cash or bonds of the United States or
25 New Mexico or of any political subdivision of the state.

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1 C. The total amount of the bond, cash or securities
2 required of any taxpayer shall be fixed by the department and
3 may be increased or reduced by the department at any time,
4 subject to the limitations provided in this section.

5 D. In fixing the total amount of the bond, cash or
6 securities required of any taxpayer required to post bond, the
7 department shall require an equivalent in total amount to at
8 least two times the amount of the department's estimate of the
9 taxpayer's monthly gasoline tax and gasoline surtax, determined
10 in such manner as the secretary may deem proper; provided,
11 however, the total amount of bond, cash or securities required
12 of a taxpayer shall never be less than one thousand dollars
13 (\$1,000).

14 E. In the event the department decides that the
15 amount of the existing bond, cash or securities is insufficient
16 to insure payment to this state of the amount of the gasoline
17 tax and gasoline surtax and any penalties and interest for
18 which the taxpayer is or may at any time become liable, ~~[then]~~
19 the taxpayer, upon written demand of the department mailed to
20 the last known address of the taxpayer as shown on the records
21 of the department, shall file an additional bond, cash or
22 securities in the manner, form and amount determined by the
23 department to be necessary to secure at all times the payment
24 by the taxpayer of all taxes, penalties and interest due under
25 the Gasoline Tax Act.

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1 F. A surety on a bond furnished by a taxpayer as
2 required by this section shall be released and discharged from
3 all liability accruing on the bond after the expiration of
4 ninety days from the date upon which the surety files with the
5 department a written request to be released and discharged;
6 provided, however, that such request shall not operate to
7 release or discharge the surety from any liability already
8 accrued or that shall accrue before the expiration of the
9 ninety-day period, unless a new bond is filed during the
10 ninety-day period, in which case the previous bond may be
11 canceled as of the effective date of the new bond. On receipt
12 of notice of such request, the department promptly shall notify
13 the taxpayer who furnished the bond that the taxpayer, on or
14 before the expiration of the ninety-day period, shall file with
15 the department a new bond with a surety satisfactory to the
16 department in the amount and form required in this section.

17 G. The taxpayer required to file bond with or
18 provide cash or securities to the department in accordance with
19 this section and who is required by another state law to file
20 another bond with or provide cash or securities to the
21 department may elect to file a combined bond or provide cash or
22 securities applicable to the provisions of both this section
23 and the other law, with the approval of the secretary. The
24 amount of the combined bond, cash or securities shall be
25 determined by the department, and the form of the combined bond

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1 shall be approved by the attorney general.

2 H. Every taxpayer who, for the twenty-four month
3 period immediately preceding July 1, 1994, has not been a
4 delinquent taxpayer pursuant to the Gasoline Tax Act is exempt
5 from the requirement pursuant to this section to file a bond.
6 A taxpayer required to file a bond pursuant to the provisions
7 of this section who, for a twenty-four consecutive month period
8 ending after July 1, 1994, has not been a delinquent taxpayer
9 pursuant to the Gasoline Tax Act may request to be exempt from
10 the requirement to file a bond beginning with the first day of
11 the first month following the end of the twenty-four month
12 period. If a taxpayer exempted pursuant to this subsection
13 subsequently becomes a delinquent taxpayer under the Gasoline
14 Tax Act, the department may terminate the exemption and require
15 the filing of a bond in accordance with this section. If the
16 department terminates the exemption, the termination shall not
17 be effective any earlier than ten days after the date the
18 department notifies the taxpayer in writing of the
19 termination."

20 SECTION 9. Section 7-13-4 NMSA 1978 (being Laws 1991,
21 Chapter 9, Section 32, as amended) is amended to read:

22 "7-13-4. DEDUCTIONS [~~GASOLINE TAX~~].--In computing the
23 gasoline tax and gasoline surtax due, the following amounts of
24 gasoline may be deducted from the total amount of gasoline
25 received in New Mexico during the tax period, provided

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1 satisfactory proof thereof is furnished to the department:

2 A. gasoline received in New Mexico, but exported
3 from this state by a rack operator, distributor or wholesaler
4 other than in the fuel supply tank of a motor vehicle or sold
5 for export by a rack operator or distributor; provided that, in
6 either case:

7 (1) the person exporting the gasoline is
8 registered in or licensed by the destination state to pay that
9 state's gasoline or equivalent fuel tax;

10 (2) proof is submitted that the destination
11 state's gasoline or equivalent fuel tax has been paid or is not
12 due with respect to the gasoline; or

13 (3) the destination state's gasoline or
14 equivalent fuel tax is paid to New Mexico in accordance with
15 the terms of an agreement entered into pursuant to Section
16 9-11-12 NMSA 1978 with the destination state;

17 B. gasoline received in New Mexico sold to the
18 United States or an agency or instrumentality thereof for the
19 exclusive use of the United States or an agency or
20 instrumentality thereof. Gasoline sold to the United States
21 includes gasoline delivered into the supply tank of a
22 government-licensed vehicle of the United States;

23 C. gasoline received in New Mexico sold to an
24 Indian nation, tribe or pueblo or a political subdivision,
25 agency or instrumentality of that Indian nation, tribe or

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1 pueblo for the exclusive use of the Indian nation, tribe or
2 pueblo or a political subdivision, agency or instrumentality
3 thereof. Gasoline sold to an Indian nation, tribe or pueblo
4 includes gasoline delivered into the supply tank of a
5 government-licensed vehicle of the Indian nation, tribe or
6 pueblo;

7 D. gasoline received in New Mexico, dyed in
8 accordance with department regulations and used in a manner
9 other than for propulsion of motor vehicles on the highways of
10 this state or motorboats or activities ancillary to that
11 propulsion;

12 E. gasoline received in New Mexico and sold at
13 retail by a registered Indian tribal distributor if:

14 (1) the sale occurs on the Indian reservation,
15 pueblo grant or trust land of the distributor's Indian nation,
16 tribe or pueblo;

17 (2) the gasoline is placed into the fuel
18 supply tank of a motor vehicle on that reservation, pueblo
19 grant or trust land; and

20 (3) the Indian nation, tribe or pueblo has
21 certified to the department that it has in effect an excise,
22 privilege or similar tax on the gasoline; provided that the
23 volume of gasoline deducted pursuant to this subsection shall
24 be the total gallons sold in accordance with the provisions of
25 this subsection multiplied by a fraction the numerator of which

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1 is the rate of the tribal tax certified to the department by
2 the Indian nation, tribe or pueblo and the denominator of which
3 is the ~~[rate]~~ sum of the rates of the gasoline tax and the
4 gasoline surtax imposed pursuant to the Gasoline Tax Act, but
5 if the fraction exceeds one, it shall be one for purposes of
6 determining the deduction;

7 F. gasoline received in New Mexico and sold by a
8 registered Indian tribal distributor from a nonmobile storage
9 container located within that distributor's Indian reservation,
10 pueblo grant or trust land for resale outside that
11 distributor's Indian reservation, pueblo grant or trust land;
12 provided the department certifies that the distributor claiming
13 the deduction sold no less than one million gallons of gasoline
14 from a nonmobile storage container located within that
15 distributor's Indian reservation, pueblo grant or trust land
16 for resale outside that distributor's Indian reservation,
17 pueblo grant or trust land during the period of May through
18 August 1998; and provided further that the amount of gasoline
19 deducted by a registered Indian tribal distributor pursuant to
20 this subsection shall not exceed two million five hundred
21 thousand gallons per month, calculated as a monthly average
22 during the calendar year. Volumes deducted pursuant to
23 Subsection E of this section shall not be deducted pursuant to
24 this subsection; and

25 G. gasoline received in New Mexico on which New

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1 Mexico gasoline tax and gasoline surtax was paid by the out-of-
2 state terminal at which the gasoline was loaded, provided that
3 documentation that the gasoline was to be imported into New
4 Mexico was provided to the terminal operator by the person
5 receiving the fuel."

6 SECTION 10. Section 7-13-4.4 NMSA 1978 (being Laws 2000,
7 Chapter 50, Section 1) is amended to read:

8 "7-13-4.4. ADDITIONAL DEDUCTION--CERTAIN RETAIL SALES ON
9 AN INDIAN RESERVATION, PUEBLO GRANT OR TRUST LAND.--In
10 computing the gasoline tax and gasoline surtax due, a person
11 other than a registered Indian tribal distributor may deduct
12 from the total amount of gasoline received in New Mexico during
13 the tax period, provided satisfactory proof is provided to the
14 department, gasoline received in New Mexico and sold at retail
15 in New Mexico if:

16 A. the sale occurs on an Indian reservation, pueblo
17 grant or trust land;

18 B. the gasoline is placed into the fuel supply tank
19 of a motor vehicle on that reservation, pueblo grant or trust
20 land;

21 C. the Indian nation, tribe or pueblo has certified
22 to the department that it has in effect an excise, privilege or
23 similar tax on gasoline; provided that the gallons of gasoline
24 deducted pursuant to this section shall be the total gallons
25 sold in accordance with the provisions of this section

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1 multiplied by a fraction, the numerator of which is the rate of
2 the tribal tax certified to the department by the Indian
3 nation, tribe or pueblo and the denominator of which is the
4 [~~rate~~] sum of the rates of the gasoline tax and the gasoline
5 surtax imposed pursuant to the Gasoline Tax Act, but, if the
6 fraction exceeds one, the fraction shall be deemed to be one
7 for purposes of determining the deduction; and

8 D. the person is subject to and in compliance with
9 the tax on gasoline imposed by the Indian nation, tribe or
10 pueblo where the sale occurs."

11 SECTION 11. Section 7-13-5 NMSA 1978 (being Laws 1971,
12 Chapter 207, Section 5, as amended) is amended to read:

13 "7-13-5. TAX RETURNS--PAYMENT OF TAX.--Distributors shall
14 file [~~gasoline~~] tax returns in form and content as prescribed
15 by the secretary on or before the twenty-fifth day of the month
16 following the month in which gasoline is received in New
17 Mexico. Such returns shall be accompanied by payment of the
18 amount of gasoline tax and gasoline surtax due. The department
19 may require that the tax returns be provided through electronic
20 means as long as an exception is provided for distributors with
21 limited amounts of fuel distributed."

22 SECTION 12. Section 7-13-8 NMSA 1978 (being Laws 1971,
23 Chapter 207, Section 8, as amended) is amended to read:

24 "7-13-8. MISDEMEANOR FOR ANYONE OTHER THAN PRODUCER,
25 REFINER OR PIPELINE COMPANY TO TRANSPORT OR STORE DRIP

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1 GASOLINE--MISDEMEANOR TO USE DRIP GASOLINE IN VEHICLE OPERATED
2 ON HIGHWAYS OF THIS STATE--ENFORCEMENT BY STATE POLICE--
3 MAGISTRATE COURT JURISDICTION.--

4 A. Any person other than a recognized producer,
5 refiner or pipeline company who transports or stores drip
6 gasoline in New Mexico without having in [~~his~~] the person's
7 possession an instrument in writing issued and signed by a
8 recognized seller of gasoline stating the names and addresses
9 of the seller and purchaser, the date of sale and the amount
10 sold and price paid therefor shall, upon conviction thereof, be
11 fined not less than one hundred dollars (\$100) nor more than
12 one thousand dollars (\$1,000) or confined in the county jail
13 for a period of not longer than six months, or both, together
14 with costs of prosecution.

15 B. Whoever uses drip gasoline in a motor vehicle
16 operated on the highways of this state shall, upon conviction
17 thereof, be fined not less than one hundred dollars (\$100) nor
18 more than one thousand dollars (\$1,000) or confined in the
19 county jail for a period of not longer than six months, or
20 both, together with costs of prosecution.

21 C. The New Mexico state police shall have the
22 responsibility of enforcing the provisions of this section.

23 D. Jurisdiction over actions brought under this
24 section is granted to magistrate courts."

25 SECTION 13. Section 7-13-12 NMSA 1978 (being Laws 1971,

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1 Chapter 207, Section 11, as amended) is amended to read:

2 "7-13-12. MANIFEST OR BILL OF LADING REQUIRED WHEN
3 TRANSPORTING GASOLINE.--Every person transporting gasoline from
4 a refinery or pipeline terminal in this state, importing
5 gasoline into this state or exporting gasoline from this state,
6 other than by pipeline or in the fuel supply tanks of motor
7 vehicles, shall carry a manifest or bill of lading in form and
8 content as prescribed by or acceptable to the department. The
9 manifest or bill of lading shall be signed by the consignor and
10 by every person accepting the gasoline or any part of it, with
11 a notation as to the amount accepted. If a manifest or bill of
12 lading is not required to be carried by the terms of this
13 section, any person transporting gasoline without such a
14 manifest or bill of lading shall, upon demand, furnish proof
15 acceptable to the department that the gasoline so transported
16 was legally acquired by a registered distributor who assumed
17 liability for payment of the [~~tax~~] taxes imposed by the
18 Gasoline Tax Act."

19 SECTION 14. Section 7-13-17 NMSA 1978 (being Laws 1998,
20 Chapter 44, Section 2) is amended to read:

21 "7-13-17. PERMIT TO PURCHASE UNDYED GASOLINE FOR CERTAIN
22 OFF-ROAD USE AND TO CLAIM REFUND OF TAX.--

23 A. Any person using gasoline in the operation of a
24 clothes cleaning establishment, in stoves or in other
25 appliances burning gasoline, or operators of aircraft using

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1 aviation gasoline exclusively in the operation of aircraft,
2 upon proper showing of the permit provided for in this section,
3 may purchase gasoline to which dye has not been added and may
4 claim a refund thereon under the provisions of this section.

5 B. Upon submission of proof satisfactory to the
6 department that the requirements of this subsection have been
7 met, the department shall allow a claim for refund of gasoline
8 tax and gasoline surtax paid on gasoline purchased and used in
9 the manner described in Subsection A of this section by holders
10 of permits issued under this section. The individual purchases
11 of gasoline, other than that used for aviation fuel, must have
12 been made in quantities of fifty gallons or more. Purchasers
13 of aviation fuel may accumulate invoices to reach the fifty
14 gallon minimum. No claim for refund may be presented or
15 allowed on less than one hundred gallons so purchased. The
16 secretary may prescribe by regulation or instruction the
17 documents necessary to support a claim for refund made pursuant
18 to the provisions of this subsection.

19 C. The department shall create permits, in form and
20 content as the secretary may prescribe, that will allow persons
21 to purchase gasoline to which dye has not been added for the
22 uses specified in Subsection A of this section. The secretary
23 shall prescribe the method by which a person may apply for a
24 permit.

25 D. The secretary, upon notice and after hearing,

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1 may suspend for a period of up to one year or revoke the
2 [~~gasoline~~] tax refund permit of any person who makes any false
3 statement on an application for a permit or on a claim for
4 refund made pursuant to the provisions of this section, who
5 uses the gasoline in a motor boat or in a vehicle registered to
6 operate on the highways of this state or who violates any other
7 provision of the Gasoline Tax Act."

8 SECTION 15. Section 7-13-18 NMSA 1978 (being Laws 1998,
9 Chapter 44, Section 3) is amended to read:

10 "7-13-18. DYED GASOLINE--PERMISSIBLE USES--PENALTIES FOR
11 MISUSE.--

12 A. Gasoline distributors and wholesalers who are
13 registered as distributors or wholesalers with the department
14 may sell gasoline to be used other than in motor boats or in
15 vehicles licensed to operate on the highways. These
16 distributors and wholesalers shall mix with the gasoline an
17 identifying dye in a manner consistent with state and federal
18 law and regulations. The department shall furnish without
19 charge the dye upon request. Such dyed gasoline may not be
20 used in motor boats or in vehicles registered to be operated
21 upon the highways of this state.

22 B. Any person who uses dyed gasoline in a motor
23 boat or in a vehicle registered to be operated upon the
24 highways of this state is liable for a civil penalty for each
25 occurrence in an amount equal to the greater of one hundred

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1 dollars (\$100) or the [~~rate~~] sum of the rates of the gasoline
2 tax and the gasoline surtax multiplied by the capacity in
3 gallons of the fuel supply tank or tanks of the motor boat or
4 vehicle."

5 SECTION 16. Section 7-16A-2 NMSA 1978 (being Laws 1992,
6 Chapter 51, Section 2, as amended) is amended to read:

7 "7-16A-2. DEFINITIONS.--As used in the Special Fuels
8 Supplier Tax Act:

9 A. "biodiesel" means a renewable, biodegradable,
10 mono alkyl ester combustible liquid fuel that is derived from
11 agricultural plant oils or animal fats and that meets the
12 American society for testing and materials specifications for
13 biodiesel fuel, B100 or B99 blend stock for distillate fuels;

14 B. "blended biodiesel" means a diesel engine fuel
15 that contains at least two percent biodiesel;

16 C. "bulk storage" means the storage of special
17 fuels in any tank or receptacle, other than a supply tank, for
18 the purpose of sale by a dealer or for use by a user or for any
19 other purpose;

20 D. "bulk storage user" means a user who operates,
21 owns or maintains bulk storage in this state from which the
22 user places special fuel into the supply tanks of motor
23 vehicles owned or operated by that user;

24 E. "dealer" means any person who sells and delivers
25 special fuel to a user;

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1 F. "department" means the taxation and revenue
2 department, the secretary of taxation and revenue or any
3 employee of the department exercising authority lawfully
4 delegated to that employee by the secretary;

5 G. "government-licensed vehicle" means a motor
6 vehicle lawfully displaying a registration plate, as defined in
7 the Motor Vehicle Code issued by:

8 (1) the United States or any state,
9 identifying the motor vehicle as belonging to the United States
10 or any of its agencies or instrumentalities;

11 (2) the state of New Mexico, identifying the
12 vehicle as belonging to the state of New Mexico or any of its
13 political subdivisions, agencies or instrumentalities; or

14 (3) any state, identifying the motor vehicle
15 as belonging to an Indian nation, tribe or pueblo or an agency
16 or instrumentality thereof;

17 H. "gross vehicle weight" means the weight of a
18 motor vehicle or combination motor vehicle without load, plus
19 the weight of any load on the vehicle;

20 I. "highway" means every road, highway,
21 thoroughfare, street or way, including toll roads, generally
22 open to the use of the public as a matter of right for the
23 purpose of motor vehicle travel and notwithstanding that the
24 same may be temporarily closed for the purpose of construction,
25 reconstruction, maintenance or repair;

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1 J. "motor vehicle" means any self-propelled vehicle
2 or device that is either subject to registration pursuant to
3 Section 66-3-1 NMSA 1978 or is used or may be used on the
4 public highways in whole or in part for the purpose of
5 transporting persons or property and includes any connected
6 trailer or semitrailer;

7 K. "person" means an individual or any other
8 entity, including, to the extent permitted by law, any federal,
9 state or other government or any department, agency,
10 instrumentality or political subdivision of any federal, state
11 or other government;

12 L. "rack operator" means the operator of a refinery
13 in this state, any person who blends special fuel in this state
14 or the owner of special fuel stored at a pipeline terminal in
15 this state;

16 M. "registrant" means any person who has registered
17 a motor vehicle pursuant to the laws of this state or of
18 another state;

19 N. "retailer" means a person who sells special fuel
20 generally in quantities of less than two hundred fifty gallons
21 and delivers the special fuel into the supply tanks of motor
22 vehicles;

23 O. "sale" means any delivery, exchange, gift or
24 other disposition;

25 P. "secretary" means the secretary of taxation and

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1 revenue or the secretary's delegate;

2 Q. "special fuel" means any diesel-engine fuel,
3 biodiesel, blended biodiesel or kerosene used for the
4 generation of power to propel a motor vehicle, except for
5 gasoline, liquefied petroleum gas, compressed or liquefied
6 natural gas and products specially prepared and sold for use in
7 aircraft propelled by turbo-prop or jet engines;

8 R. "special fuel user" means any user who is a
9 registrant, owner or operator of a motor vehicle using special
10 fuel and having a gross vehicle weight in excess of twenty-six
11 thousand pounds;

12 S. "state" or "jurisdiction" means a state,
13 territory or possession of the United States, the District of
14 Columbia, the commonwealth of Puerto Rico, a foreign country or
15 a state or province of a foreign country;

16 T. "supplier" means any person, but not including a
17 rack operator or the United States or any of its agencies
18 except to the extent now or hereafter permitted by the
19 constitution of the United States and laws thereof, who
20 receives special fuel;

21 U. "supply tank" means any tank or other receptacle
22 in which or by which fuel may be carried and supplied to the
23 fuel-furnishing device or apparatus of the propulsion mechanism
24 of a motor vehicle when the tank or receptacle either contains
25 special fuel or special fuel is delivered into it;

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1 V. "tax" means, unless the context clearly requires
2 otherwise, the special fuel excise tax and special fuel excise
3 surtax imposed pursuant to the Special Fuels Supplier Tax Act,
4 and, with respect to a special fuel user, "tax" includes any
5 special fuel tax and special fuel excise surtax paid to another
6 jurisdiction pursuant to a cooperative agreement to which the
7 state is a party pursuant to Section 9-11-12 NMSA 1978;

8 W. "user" means any person other than the
9 United States government or any of its agencies or
10 instrumentalities; the state of New Mexico or any of its
11 political subdivisions, agencies or instrumentalities; or an
12 Indian nation, tribe or pueblo or any agency or instrumentality
13 of an Indian nation, tribe or pueblo, who uses special fuel to
14 propel a motor vehicle on the highways; and

15 X. "wholesaler" means a person who is not a
16 supplier and who sells special fuel in quantities of two
17 hundred fifty gallons or more and does not deliver special fuel
18 into the supply tanks of motor vehicles."

19 **SECTION 17.** Section 7-16A-3 NMSA 1978 (being Laws 1992,
20 Chapter 51, Section 3, as amended) is amended to read:

21 "7-16A-3. IMPOSITION AND RATE OF SPECIAL FUEL EXCISE
22 TAX--~~[DENOMINATION AS SPECIAL FUEL EXCISE TAX]~~ IMPOSITION AND
23 RATE OF SPECIAL FUEL EXCISE SURTAX.--

24 A. For the privilege of receiving or using special
25 fuel in this state, there is imposed an excise tax at a rate

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1 ~~[provided in Subsection B of this section]~~ of twenty-one cents
2 (\$.21) on each gallon of special fuel received or used in New
3 Mexico.

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

7 ~~G.]~~ The tax imposed by this ~~[section]~~ subsection may
8 be ~~[called]~~ cited as the "special fuel excise tax".

9 B. In addition to the special fuel excise tax, a
10 surtax is imposed, which may be cited as the "special fuel
11 excise surtax", at the following rates on each gallon of
12 special fuel received or used in New Mexico:

13 (1) beginning July 1, 2021 and prior to July
14 1, 2022, ten cents (\$.10);

15 (2) beginning July 1, 2022 and prior to July
16 1, 2023, fifteen cents (\$.15);

17 (3) beginning July 1, 2023 and prior to July
18 1, 2024, twenty cents (\$.20);

19 (4) beginning July 1, 2024 and prior to July
20 1, 2025, twenty-five cents (\$.25);

21 (5) beginning July 1, 2025 and prior to July
22 1, 2026, thirty cents (\$.30); and

23 (6) beginning July 1, 2026, the rate
24 determined pursuant to Subsection C of this section.

25 C. No later than April 30, 2026 and April 30 of

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1 each subsequent year, the department shall calculate the rate
2 of special fuel excise surtax to be imposed as of July 1 of
3 that year. The rate of the surtax per gallon shall be equal to
4 the product, rounded down to the nearest whole cent, of thirty
5 cents (\$.30) multiplied by a fraction with a numerator equal to
6 the consumer price index for the previous calendar year and a
7 denominator equal to the consumer price index for calendar year
8 2024; provided that the rate shall not be adjusted to less than
9 the rate imposed in the previous fiscal year.

10 D. As used in this section, "consumer price index"
11 means the consumer price index for all urban consumers as
12 published by the United States bureau of labor statistics."

13 SECTION 18. Section 7-16A-4 NMSA 1978 (being Laws 1992,
14 Chapter 51, Section 4) is amended to read:

15 "7-16A-4. SPECIAL FUEL INVENTORY TAX--IMPOSITION OF
16 TAX--DATE PAYMENT OF TAX DUE.--

17 A. A "special fuel inventory tax" is imposed
18 measured by the quantity of gallons of special fuel in the
19 possession of a supplier or bulk storage user on the day in
20 which an increase in the sum of the rates of the special fuel
21 excise tax [rate] and the special fuel excise surtax is
22 effective. The taxable event is the existence of an inventory
23 in the possession of a supplier or bulk storage user on the day
24 prior to the day in which [an] the increase [in the special
25 fuel excise tax rate] is effective. The rate of the special

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1 fuel inventory tax applicable to each gallon of special fuel
2 held in inventory by a supplier or bulk storage ~~[use]~~ user, as
3 provided in Section ~~[5 of the Special Fuels Supplier Tax Act]~~
4 7-16A-5 NMSA 1978, shall be the difference between the sum of
5 the rates of the special fuel excise tax ~~[rate]~~ and the special
6 fuel excise surtax imposed on the day prior to the day in which
7 the ~~[special fuel excise tax rate]~~ sum of the rates is
8 increased, subtracted from the ~~[special fuel excise tax rate]~~
9 sum of the rates imposed on the day in which the ~~[special fuel~~
10 ~~excise tax rate]~~ increase is effective, expressed in cents per
11 gallon.

12 B. The special fuel inventory tax is to be paid to
13 the department on or before the twenty-fifth day of the month
14 following the month in which the taxable event occurs."

15 SECTION 19. Section 7-16A-5 NMSA 1978 (being Laws 1992,
16 Chapter 51, Section 5, as amended) is amended to read:

17 "7-16A-5. SPECIAL FUEL INVENTORIES.--

18 A. On the day prior to the day in which the sum of
19 the rates of the special fuel excise tax ~~[rate]~~ and the special
20 fuel excise surtax is increased or decreased, each supplier,
21 dealer and bulk storage user shall take inventory of the
22 gallons of special fuel on hand.

23 B. Suppliers and bulk storage users shall report
24 total gallons of special fuel in inventory on the day prior to
25 the day in which an increase in the sum of the rates of the

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1 special fuel excise tax [~~rate~~] and the special fuel excise
2 surtax is effective and pay any special fuel inventory tax
3 due."

4 SECTION 20. Section 7-16A-6 NMSA 1978 (being Laws 1992,
5 Chapter 51, Section 6) is amended to read:

6 "7-16A-6. SPECIAL FUEL INVENTORY TAX REFUND.--A "special
7 fuel inventory tax refund" is established measured by the
8 quantity of gallons of special fuel in the possession of a
9 supplier or bulk storage user on the day in which a decrease in
10 the sum of the rates of the special fuel excise tax [~~rate~~] and
11 the special fuel excise surtax is effective. The refund event
12 is the existence of an inventory in the possession of a
13 supplier or bulk storage user on the day prior to the day in
14 which [~~a~~] the decrease [~~in the special fuel excise tax rate~~] is
15 effective. The refund is to be calculated by determining the
16 difference between the sum of the rates of the special fuel
17 excise tax [~~rate~~] and the special fuel excise surtax imposed on
18 the day prior to the day in which the [~~special fuel excise tax~~
19 ~~rate~~] sum of the rates is decreased, subtracted from the
20 [~~special fuel excise tax rate~~] sum of the rates imposed on the
21 day in which the [~~special fuel excise tax rate~~] decrease is
22 effective, expressed in cents per gallon. The refund rate so
23 determined is then multiplied by each gallon in inventory as
24 determined under Section [~~5 of the Special Fuels Supplier Tax~~
25 ~~Act~~] 7-16A-5 NMSA 1978."

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1 SECTION 21. Section 7-16A-9.4 NMSA 1978 (being Laws 2013,
2 Chapter 109, Section 3) is amended to read:

3 "7-16A-9.4. REPORTING REQUIREMENTS--SPECIAL FUEL
4 DEDUCTION--BIODIESEL.--

5 A. A taxpayer that deducts an amount of special
6 fuel that is biodiesel from the total amount of special fuel
7 received in New Mexico pursuant to Paragraph (2) of Subsection
8 H of Section 7-16A-10 NMSA 1978 shall report the deducted
9 amount separately with the taxpayer's return in a manner
10 prescribed by the department.

11 B. The department shall calculate the aggregate
12 amount, in dollars, of the difference between the amount of
13 [~~special fuel excise~~] tax that would have been collected in a
14 fiscal year if not for the deduction allowed pursuant to
15 Paragraph (2) of Subsection H of Section 7-16A-10 NMSA 1978 and
16 the amount of [~~special fuel excise~~] tax actually collected.

17 The department shall compile an annual report that includes the
18 aggregate amount, the number of taxpayers that deducted an
19 amount of special fuel pursuant to Paragraph (2) of Subsection
20 H of Section 7-16A-10 NMSA 1978 and any other information
21 necessary to evaluate the deduction. Beginning in 2017 and
22 every five years thereafter, the department shall compile and
23 present the annual reports to the revenue stabilization and tax
24 policy committee and the legislative finance committee with an
25 analysis of the costs and benefits of the deduction to the

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1 state."

2 SECTION 22. Section 7-16A-10 NMSA 1978 (being Laws 1992,
3 Chapter 51, Section 10, as amended) is amended to read:

4 "7-16A-10. DEDUCTIONS [~~SPECIAL FUEL EXCISE TAX~~]~~--SPECIAL~~
5 FUEL SUPPLIERS.--In computing the tax due, the following
6 amounts of special fuel may be deducted from the total amount
7 of special fuel received in New Mexico during the tax period,
8 provided that satisfactory proof thereof is furnished to the
9 department:

10 A. special fuel received in New Mexico, but
11 exported from this state by a rack operator, special fuel
12 supplier or dealer, other than in the fuel supply tank of a
13 motor vehicle or sold for export by a rack operator or
14 distributor; provided that, in either case:

15 (1) the person exporting the special fuel is
16 registered in or licensed by the destination state to pay that
17 state's special fuel or equivalent fuel tax;

18 (2) proof is submitted that the destination
19 state's special fuel or equivalent fuel tax has been paid or is
20 not due with respect to the special fuel; or

21 (3) the destination state's special fuel or
22 equivalent fuel tax is paid to New Mexico in accordance with
23 the terms of an agreement entered into pursuant to Section
24 9-11-12 NMSA 1978 with the destination state;

25 B. special fuel sold to the United States or any

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1 agency or instrumentality thereof for the exclusive use of the
2 United States or any agency or instrumentality thereof.

3 Special fuel sold to the United States includes special fuel
4 delivered into the supply tank of a government-licensed
5 vehicle;

6 C. special fuel sold to the state of New Mexico or
7 any political subdivision, agency or instrumentality thereof
8 for the exclusive use of the state of New Mexico or any
9 political subdivision, agency or instrumentality thereof.

10 Special fuel sold to the state of New Mexico includes special
11 fuel delivered into the supply tank of a government-licensed
12 vehicle;

13 D. special fuel sold to an Indian nation, tribe or
14 pueblo or any agency or instrumentality thereof for the
15 exclusive use of the Indian nation, tribe or pueblo or any
16 agency or instrumentality thereof. Special fuel sold to an
17 Indian nation, tribe or pueblo includes special fuel delivered
18 into the supply tank of a government-licensed vehicle;

19 E. special fuel dyed in accordance with federal
20 regulations;

21 F. special fuel that is number 2 diesel fuel sold
22 for the generation of power to propel a vehicle authorized by
23 contract with the public education department as a school bus;
24 provided that the fuel has a distillation temperature of five
25 hundred degrees Fahrenheit at a ten percent recovery point and

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1 six hundred forty degrees Fahrenheit at a ninety percent
2 recovery point;

3 G. special fuel received in New Mexico on which New
4 Mexico special fuel excise tax and special fuel excise surtax
5 was paid by the out-of-state terminal at which the special fuel
6 was loaded, provided that documentation that the special fuel
7 was to be imported into New Mexico was provided to the terminal
8 operator by the person receiving the fuel; and

9 H. special fuel received in New Mexico that:

10 (1) prior to July 1, 2014, consists of at
11 least ninety-nine percent vegetable oil or animal fat; provided
12 that the use is restricted to an auxiliary fuel system that is
13 subject to a certificate of conformity pursuant to the federal
14 Clean Air Act; or

15 (2) is biodiesel received or manufactured and
16 delivered to a rack operator that is within the state for
17 blending or resale."

18 SECTION 23. Section 7-16A-11 NMSA 1978 (being Laws 1992,
19 Chapter 51, Section 11, as amended) is amended to read:

20 "7-16A-11. TAX RETURNS--PAYMENT OF TAX--SPECIAL FUEL
21 USERS--EXCEPTION.--

22 A. Except as otherwise provided in this section, a
23 special fuel user shall file a [~~special fuel excise~~] tax return
24 in form and content as prescribed by the secretary to conform
25 to the due date for the [~~special fuel excise~~] tax return

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1 required by an interstate agreement to which the state is a
2 party.

3 B. A special fuel user may elect to file and pay
4 the [~~special fuel excise~~] tax annually by conforming to the
5 annual filing requirements of an international fuel tax
6 agreement to which the state is a party.

7 C. A special fuel user shall file a return in
8 accordance with the conditions and terms of the international
9 fuel tax agreement to which the state is a party.

10 D. To the extent that a special fuel user whose use
11 of New Mexico highways is limited to that for which the special
12 fuel user holds a valid border crossing special fuel user
13 permit, as provided for in Section [~~1 of this 2018 act~~]
14 7-16A-19.1 NMSA 1978, the special fuel user is exempt from the
15 requirements of this section."

16 SECTION 24. Section 7-16A-12 NMSA 1978 (being Laws 1992,
17 Chapter 51, Section 12, as amended) is amended to read:

18 "7-16A-12. CREDIT [~~SPECIAL FUEL EXCISE TAX~~]-SPECIAL FUEL
19 USERS.--In computing any [~~special fuel excise~~] tax due, all
20 [~~special fuel excise~~] tax paid on special fuel used during the
21 reporting period may be credited against the calculated
22 [~~special fuel excise~~] tax due for that reporting period,
23 provided [~~that~~] satisfactory proof of the [~~special fuel excise~~]
24 tax paid is furnished to the department."

25 SECTION 25. Section 7-16A-13 NMSA 1978 (being Laws 1992,

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1 Chapter 51, Section 13, as amended) is amended to read:

2 "7-16A-13. CLAIM FOR REFUND OR CREDIT OF [~~SPECIAL FUEL~~
3 ~~EXCISE~~] TAX PAID--ON SPECIAL FUEL DESTROYED BY FIRE, ACCIDENT
4 OR ACTS OF GOD BEFORE RETAIL SALE--ON SPECIAL FUEL PREVIOUSLY
5 RECEIVED FROM A SOURCE OTHER THAN A REFINER OR PIPELINE
6 TERMINAL.--

7 A. Upon the submission of proof satisfactory to the
8 department, the department shall allow a claim for refund or
9 credit of any special fuel excise tax, special fuel excise
10 surtax or special fuel inventory tax paid on special fuel
11 destroyed by fire, accident or acts of God while in the
12 possession of a supplier, bulk storage user or dealer.

13 B. Upon the submission of proof satisfactory to the
14 department, a rack operator may submit, and the department may
15 allow, a claim for refund of a New Mexico tax paid on special
16 fuel previously received in New Mexico from a source other than
17 a refiner or pipeline terminal in this state and placed in a
18 terminal from which it will be loaded into tank cars, tank
19 trucks, tank wagons or other types of transportation equipment.

20 C. No person may submit claims for refund pursuant
21 to the provisions of this section more frequently than
22 quarterly. No claim for refund may be submitted or allowed on
23 less than one hundred gallons.

24 D. The department may prescribe the documents
25 necessary to support a claim for refund pursuant to the

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1 provisions of this section."

2 SECTION 26. Section 7-16A-15 NMSA 1978 (being Laws 1992,
3 Chapter 51, Section 15, as amended) is amended to read:

4 "7-16A-15. BOND REQUIRED OF SUPPLIER.--

5 A. Except as provided in Subsection H of this
6 section, every supplier shall file with the department a bond
7 on a form approved by the attorney general with a surety
8 company authorized by the [~~state corporation commission~~] office
9 of superintendent of insurance to transact business in this
10 state as a surety and upon which bond the supplier is the
11 principal obligor and the state the obligee. The bond shall be
12 conditioned upon the prompt filing of true reports and the
13 payment by the supplier to the department of all taxes levied
14 by the Special Fuels Supplier Tax Act, together with all
15 applicable penalties and interest thereon.

16 B. In lieu of the bond, the supplier may elect to
17 file with the department cash or bonds of the United States or
18 New Mexico or of any political subdivision of the state.

19 C. The total amount of the bond, cash or securities
20 required of any supplier shall be fixed by the department and
21 may be increased or reduced by the department at any time,
22 subject to the limitations provided in this section.

23 D. In fixing the total amount of the bond, cash or
24 securities required of any supplier required to post bond, the
25 department shall require an equivalent in total amount to at

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1 least two times the amount of the department's estimate of the
2 supplier's monthly [~~special fuel excise~~] tax, determined in
3 such manner as the secretary may deem proper; provided,
4 however, the total amount of bond, cash or securities required
5 of a supplier shall never be less than one thousand dollars
6 (\$1,000).

7 E. In the event the department decides that the
8 amount of the existing bond, cash or securities is insufficient
9 to insure payment to this state of the amount of the [~~special~~
10 ~~fuel excise~~] tax and any penalties and interest for which the
11 supplier is or may at any time become liable, [~~then~~] the
12 supplier shall [~~forthwith~~], upon written demand of the
13 department mailed to the last known address of the supplier as
14 shown on the records of the department, file an additional
15 bond, cash or securities in the manner, form and amount
16 determined by the department to be necessary to secure at all
17 times the payment by the supplier of all taxes, penalties and
18 interest due pursuant to the Special Fuels Supplier Tax Act.

19 F. Any surety on any bond furnished by any supplier
20 as required by this section shall be released and discharged
21 from all liability accruing on the bond after the expiration of
22 ninety days from the date upon which the surety files with the
23 department a written request to be released and discharged;
24 provided, however, the request shall not operate to release or
25 discharge the surety from any liability already accrued or that

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1 shall accrue before the expiration of the ninety-day period,
2 unless a new bond is filed during the ninety-day period, in
3 which case the previous bond may be canceled as of the
4 effective date of the new bond. On receipt of notice of such
5 request, the department shall notify promptly the supplier who
6 furnished the bond that the supplier shall, on or before the
7 expiration of the ninety-day period, file with the department a
8 new bond with a surety satisfactory to the department in the
9 amount and form required in this section.

10 G. The supplier required to file bond with or
11 provide cash or securities to the department in accordance with
12 this section and who is required by any other state law to file
13 another bond with or provide cash or securities to the
14 department may elect to file a combined bond or provide cash or
15 securities applicable to the provisions of both this section
16 and the other law, with the approval of the secretary. The
17 amount of the combined bond, cash or securities shall be
18 determined by the department and the form of the combined bond
19 shall be approved by the attorney general.

20 H. On July 1, 1994, every supplier who, for the
21 twenty-four month period immediately preceding that date, has
22 not been a delinquent taxpayer under the Special Fuels Supplier
23 Tax Act or the Special Fuels Tax Act is exempt from the
24 requirement pursuant to this section to file a bond. A
25 supplier required to file a bond pursuant to the provisions of

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1 this section who, for a twenty-four consecutive month period
2 ending after July 1, 1994, has not been a delinquent taxpayer
3 pursuant to either the Special Fuels Supplier Tax Act or the
4 Special Fuels Tax Act may request to be exempt from the
5 requirement to file a bond beginning with the first day of the
6 first month following the end of the twenty-four month period.
7 If a supplier exempted pursuant to this subsection subsequently
8 becomes a delinquent taxpayer pursuant to the Special Fuels
9 Supplier Tax Act, the department may terminate the exemption
10 and require the filing of a bond in accordance with this
11 section. If the department terminates the exemption, the
12 termination shall not be effective any earlier than ten days
13 after the date the department notifies the supplier in writing
14 of the termination."

15 SECTION 27. Section 7-16A-15.1 NMSA 1978 (being Laws
16 2007, Chapter 110, Section 4) is amended to read:

17 "7-16A-15.1. SPECIAL FUEL USERS--SURETY BOND REQUIRED--
18 EXCEPTIONS.--

19 A. Except as required in Subsection H of this
20 section, every special fuel user with a commercial domicile not
21 located in an International Fuel Tax Agreement jurisdiction
22 shall file with the department a bond on a form approved by the
23 attorney general with a surety company authorized by the
24 [~~public regulation commission~~] office of superintendent of
25 insurance to transact business in New Mexico as a surety and

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1 upon which bond the special fuel user is the principal obligor
2 and the state the obligee. The bond shall be conditioned upon
3 the prompt filing of true reports and the payment by the
4 special fuel user to the department of all taxes levied by the
5 Special Fuels Supplier Tax Act, together with all applicable
6 penalties and interest on the taxes.

7 B. In lieu of the bond, the special fuel user may
8 elect to file with the department cash or bonds of the United
9 States or New Mexico or of any political subdivision of the
10 state.

11 C. The total amount of the bond, cash or securities
12 required of a special fuel user shall be fixed by the
13 department and may be increased or reduced by the department at
14 any time, subject to the limitations provided in this section.

15 D. In fixing the total amount of the bond, cash or
16 securities required of a special fuel user required to post a
17 bond, the department shall require an amount equivalent to the
18 total estimated tax due for two quarters; provided, however,
19 that the total amount of bond, cash or securities required of a
20 special fuel user shall never be less than five hundred dollars
21 (\$500).

22 E. In the event the department determines that the
23 amount of the existing bond, cash or securities is insufficient
24 to ensure payment to New Mexico of the amount of the [~~special~~
25 ~~fuel-excise~~] tax and penalties and interest for which a special

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1 fuel user is or may at any time become liable, the special fuel
2 user, upon written demand from the department mailed to the
3 last known address of the special fuel user as shown on the
4 records of the department, shall file an additional bond, cash
5 or securities in the manner, form and amount determined by the
6 department to be necessary to secure at all times the payment
7 by the special fuel user of all taxes, penalties and interest
8 due pursuant to the Special Fuels Supplier Tax Act.

9 F. A surety on a bond furnished by a special fuel
10 user as required by this section shall be released and
11 discharged from all liability accruing on the bond after the
12 expiration of ninety days from the date upon which the surety
13 files with the department a written request to be released and
14 discharged; provided, however, that the request shall not
15 operate to release or discharge the surety from liability
16 already accrued or that shall accrue before the expiration of
17 the ninety-day period, unless a new bond is filed during the
18 ninety-day period, in which case the previous bond may be
19 canceled as of the effective date of the new bond. On receipt
20 of notice of the request to cancel the bond due to filing of a
21 new bond, the department shall promptly notify the special fuel
22 user who furnished the bond that the special fuel user, on or
23 before the expiration of the ninety-day period, shall file with
24 the department a new bond with a surety satisfactory to the
25 department in the amount and form required in this section.

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1 G. A special fuel user who is required to file a
2 bond with or provide cash or securities to the department in
3 accordance with this section and who is required by another
4 state law to file another bond with or provide cash or
5 securities to the department may elect to file a combined bond
6 or provide cash or securities applicable to the provision of
7 both this section and the other law, with the approval of the
8 secretary. The amount of the combined bond, cash or securities
9 shall be determined by the department, and the form of the
10 combined bond shall be approved by the attorney general.

11 H. A special fuel user who is required to file a
12 bond pursuant to the provisions of this section and who for the
13 eight consecutive quarters preceding the date of request has
14 not been delinquent filing reports or paying special fuel
15 excise taxes pursuant to the Special Fuels Supplier Tax Act may
16 request to be exempt from the requirement to file a bond
17 beginning with the first day of the first quarter following the
18 end of the eight-quarter period. If a special fuel user
19 exempted pursuant to this subsection subsequently becomes
20 delinquent, the department may terminate the exemption and
21 require the filing of a bond in accordance with this section.
22 If the department terminates the exemption, the termination
23 shall not be effective any earlier than ten days after the date
24 the department notifies the special fuel user in writing of the
25 termination."

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1 SECTION 28. Section 7-16A-20 NMSA 1978 (being Laws 1992,
2 Chapter 51, Section 20) is amended to read:

3 "7-16A-20. ADMINISTRATION AND ENFORCEMENT OF ACT.--The
4 department shall interpret the provisions of the Special Fuels
5 Supplier Tax Act. The department shall administer and enforce
6 the collection of the [~~special fuel excise tax, the special
7 fuel inventory taxes and the tax on liquefied petroleum gas~~]
8 taxes imposed pursuant to the Special Fuels Supplier Tax Act
9 and the Tax Administration Act applies to the administration
10 and enforcement of those taxes."

11 SECTION 29. A new section of the Taxation and Revenue
12 Department Act is enacted to read:

13 "[NEW MATERIAL] GASOLINE AND SPECIAL FUEL EXCISE SURTAX
14 LOW-INCOME REBATE FUND.--The "gasoline and special fuel excise
15 surtax low-income rebate fund" is created in the state
16 treasury. The department shall administer the fund, and money
17 in the fund is appropriated to the department to fund gasoline
18 and special fuel excise surtax low-income rebates. Money in
19 the fund shall consist of distributions from the net receipts
20 attributable to the gasoline surtax and the special fuel excise
21 surtax. Disbursements from the fund shall be made upon
22 warrants drawn by the secretary of finance and administration
23 pursuant to vouchers signed by the secretary of taxation and
24 revenue. Any unexpended or unencumbered balance remaining in
25 the fund at the end of a fiscal year shall not revert to any

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1 other fund."

2 SECTION 30. A new section of Chapter 67, Article 3 NMSA
3 1978 is enacted to read:

4 "[NEW MATERIAL] CLEAN INFRASTRUCTURE FUND--CLEAN
5 INFRASTRUCTURE PLAN.--

6 A. The "clean infrastructure fund" is created in
7 the state treasury. The department of transportation shall
8 administer the fund, and money in the fund shall be expended in
9 accordance with a clean infrastructure plan described in
10 Subsection B of this section. Money in the fund shall consist
11 of appropriations, distributions, gifts, grants, donations,
12 income from investment of the fund and money otherwise accruing
13 to the fund. Disbursements from the fund shall be made upon
14 warrants drawn by the secretary of finance and administration
15 pursuant to vouchers signed by the secretary of transportation.
16 Money in the fund shall not revert to any other fund.

17 B. A clean infrastructure plan shall be developed
18 by the department of transportation by December 31, 2020 and
19 updated every three years thereafter. The clean infrastructure
20 plan shall seek to maximize reductions in air pollution,
21 including greenhouse gases, from transportation in New Mexico
22 and may include:

23 (1) support for local and statewide public
24 transit infrastructure and operating costs, including in
25 provision to rural, urban and low-income populations;

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1 (2) state and local government electric
2 vehicle acquisition, including for state, county, city and
3 school district light duty, transit, school buses and medium
4 and heavy duty fleets;

5 (3) green street completion, including
6 pedestrian and bike improvements meant to increase multiple use
7 roadways, increase pedestrian and bike safety and support
8 economic development through bicycle- and walking-friendly
9 neighborhoods;

10 (4) grants for electric vehicle charging
11 infrastructure; and

12 (5) resilient roadway investments that will
13 reduce erosion and improve soil carbon sequestration through
14 planting of native plants along road rights of way."

15 SECTION 31. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2021.