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**SENATE BILL 40**

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 1999**

**INTRODUCED BY**

**Manny M Aragon**

**AN ACT**

**RELATING TO FINANCING OF HIGHWAY PROJECTS; CREATING THE  
HIGHWAY INFRASTRUCTURE FUND; PROVIDING FOR DISTRIBUTION OF  
CERTAIN FEES AND TAX PROCEEDS TO THE FUND TO ENSURE NECESSARY  
FUNDS FOR CERTAIN HIGHWAY PROJECTS AUTHORIZED BY LAWS 1998,  
CHAPTER 84 AND LAWS 1998, CHAPTER 85; MAKING APPROPRIATIONS.**

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

Section 1. Section 7-1-6.25 NMSA 1978 (being Laws 1988,  
Chapter 70, Section 9, as amended) is amended to read:

"7-1-6.25. DISTRIBUTION OF PETROLEUM PRODUCTS LOADING  
FEE--CORRECTIVE ACTION FUND--LOCAL GOVERNMENTS ROAD FUND.--  
HIGHWAY INFRASTRUCTURE FUND--A distribution pursuant to  
Section 7-1-6.1 NMSA 1978 of the net receipts attributable to  
the petroleum products loading fee shall be made to each of  
the following funds in the following amounts:

A. to the local governments road fund an amount

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1 equal to the net receipts attributable to a fee of forty  
2 dollars (\$40.00) per load; [~~and~~]  
3 B. to the highway infrastructure fund an amount  
4 equal to the net receipts attributable to a fee of seventy  
5 dollars (\$70.00) per load; and  
6 [~~B.~~] C. to the corrective action fund the balance  
7 [~~if any~~] of the net receipts."

8 Section 2. Section 7-13A-3 NMSA 1978 (being Laws 1990,  
9 Chapter 124, Section 16, as amended) is amended to read:

10 "7-13A-3. IMPOSITION AND RATE OF FEE--DENOMINATION AS  
11 "PETROLEUM PRODUCTS LOADING FEE".--

12 A. For the privilege of loading gasoline or  
13 special fuel from a rack at a refinery or pipeline terminal in  
14 this state into a cargo tank, there is imposed a fee on the  
15 distributor at a rate provided in Subsection C of this section  
16 on each gallon of gasoline or special fuel loaded in New  
17 Mexico on which the petroleum products loading fee has not  
18 been previously paid.

19 B. For the privilege of importing gasoline or  
20 special fuel into this state for resale or consumption in this  
21 state there is imposed a fee determined as provided in  
22 Subsection C of this section on each load of gasoline or  
23 special fuel imported into New Mexico for resale or  
24 consumption on which the petroleum products loading fee has  
25 not been previously paid. For the purposes of this section,  
"load" means eight thousand gallons of gasoline or special  
fuel. To determine how many loads a person is to report under  
the provisions of this section, the person shall divide by  
eight thousand the total gallons of gasoline reported for the

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1 purposes of Section 7-13-3 NMSA 1978 as adjusted under the  
2 provisions of Section 7-13-4 NMSA 1978 and the total gallons  
3 of special fuels received in New Mexico less any gallons  
4 exempted under Section 7-13A-4 NMSA 1978. Loads shall be  
calculated to the nearest one-hundredth of a load.

5 C. The fee imposed by this section is and may be  
6 referred to as the "petroleum products loading fee" and shall  
7 be one hundred fifty dollars (\$150) per load [ ~~or whichever of~~  
8 ~~the following applies:~~

9 ~~(1) in the event the secretary of environment~~  
10 ~~certifies that the unobligated balance of the corrective~~  
11 ~~action fund at the end of the prior fiscal year equals or~~  
12 ~~exceeds eighteen million dollars (\$18,000,000), the fee shall~~  
13 ~~be set at forty dollars (\$40.00) per load;~~

14 ~~(2) in the event the secretary of~~  
15 ~~environment certifies that the unobligated balance of the~~  
16 ~~corrective action fund at the end of the prior fiscal year~~  
17 ~~exceeds twelve million dollars (\$12,000,000) but is less than~~  
18 ~~eighteen million dollars (\$18,000,000), the fee shall be set~~  
19 ~~at eighty dollars (\$80.00) per load;~~

20 ~~(3) in the event the secretary of environment~~  
21 ~~certifies that the unobligated balance of the corrective~~  
22 ~~action fund at the end of the prior fiscal year exceeds six~~  
23 ~~million dollars (\$6,000,000) but is less than twelve million~~  
24 ~~dollars (\$12,000,000), the fee shall be set at one hundred~~  
25 ~~twenty dollars (\$120) per load and~~

~~(4) in the event the secretary of~~  
~~environment certifies that the unobligated balance of the~~  
~~corrective action fund at the end of the prior fiscal year is~~

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1 ~~less than six million dollars (\$6,000,000), the fee shall be~~  
2 ~~set at one hundred fifty dollars (\$150) per load.~~

3 ~~D. The amount of the petroleum products loading~~  
4 ~~fee set pursuant to Paragraph (1), (2), (3) or (4) of~~  
5 ~~Subsection C of this section shall be imposed on the first day~~  
6 ~~of the month following expiration of ninety days after the end~~  
7 ~~of the fiscal year for which the certification was made.~~

8 ~~E. As used in this section, "unobligated balance~~  
9 ~~of the corrective action fund" means corrective action fund~~  
10 ~~equity less all known or anticipated liabilities against the~~  
11 ~~fund]."~~

12 **Section 3. Section 7-14A-10 NMSA 1978 (being Laws 1991,**  
13 **Chapter 197, Section 14) is amended to read:**

14 **"7-14A-10. DISTRIBUTION OF PROCEEDS. --At the end of each**  
15 **month, the net receipts attributable to the leased vehicle**  
16 **gross receipts tax and any associated penalties and interest**  
17 **shall be distributed [as follows:**

- 18 **A. ~~five twelfths to the state road fund;~~**
- 19 **B. ~~one third to the general fund; and~~**
- 20 **C. ~~the remainder to the local governments road~~**  
21 **fund] to the highway infrastructure fund."**

22 **Section 4. Section 66-6-23 NMSA 1978 (being Laws 1978,**  
23 **Chapter 35, Section 358, as amended) is amended to read:**

24 **"66-6-23. DISPOSITION OF FEES. --**  
25 **A. After the necessary disbursements for refunds**  
**and other purposes have been made, the money remaining in the**

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1 motor vehicle suspense fund, except for remittances received  
2 within the previous two months that are unidentified as to  
3 source or disposition, shall be distributed as follows:

4 (1) to each municipality, county or fee agent  
5 operating a motor vehicle field office:

6 (a) an amount equal to six dollars  
7 (\$6.00) per driver's license and three dollars (\$3.00) per  
8 identification card or motor vehicle or motorboat registration  
9 or title transaction performed; and

10 (b) for each such agent determined by  
11 the secretary pursuant to [~~Subsection F~~] of Section 66-2-16  
12 NMSA 1978 to have performed ten thousand or more transactions  
13 in the preceding fiscal year, other than a class A county with  
14 a population exceeding three hundred thousand or any  
15 municipality with a population exceeding three hundred  
16 thousand that has been designated as an agent pursuant to  
17 Section 66-2-14.1 NMSA 1978, an amount equal to one dollar  
18 (\$1.00) in addition to the amount distributed pursuant to  
19 Subparagraph (a) of this paragraph for each driver's license,  
20 identification card, motor vehicle registration, motorboat  
21 registration or title transaction performed;

22 (2) to each municipality or county, other  
23 than a class A county with a population exceeding three  
24 hundred thousand or a municipality with a population exceeding  
25 three hundred thousand designated as an agent pursuant to

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1 Section 66-2-14.1 NMSA 1978, operating a motor vehicle field  
2 office, an amount equal to fifty cents (\$.50) for each  
3 administrative service fee remitted by that county or  
4 municipality to the department pursuant to the provisions of  
5 Subsection A of Section 66-2-16 NMSA 1978;

6 (3) to the state road fund:

7 (a) an amount equal to the fee  
8 collected pursuant to Section 66-3-417 NMSA 1978;

9 (b) the remainder of each driver's  
10 license fee collected by the department employees from an  
11 applicant to whom a license is granted after deducting from  
12 the driver's license fee the amount of the distribution  
13 authorized in Paragraph (1) of this subsection with respect to  
14 that collected driver's license fee; and

15 (c) an amount equal to fifty percent of  
16 the fees collected pursuant to Section 66-6-19 NMSA 1978;

17 (4) to the local governments road fund, the  
18 amount of the fees collected pursuant to Subsection B of  
19 Section 66-5-33.1 NMSA 1978 and the remainder of the fees  
20 collected pursuant to Subsection A of Section 66-5-408 NMSA  
21 1978;

22 (5) to the department:

23 (a) any amounts reimbursed to the  
24 department pursuant to Subsection C of Section 66-2-14.1 NMSA  
25 1978;

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1 (b) an amount equal to two dollars  
2 (\$2.00) of each motorcycle registration fee collected pursuant  
3 to Section 66-6-1 NMSA 1978;

4 (c) an amount equal to the fees  
5 provided for in Subsection D of Section 66-2-7 NMSA 1978,  
6 Subsection E of Section 66-2-16 NMSA 1978, Subsections J and K  
7 of Section 66-3-6 NMSA 1978 other than the administrative fee,  
8 [~~Subsection C of Section 66-3-16 NMSA 1978~~] Subsection C of  
9 Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408  
10 NMSA 1978; and

11 (d) the amounts due to the department  
12 pursuant to Paragraph (1) of Subsection E of Section 66-3-419  
13 NMSA 1978, Subsection E of Section 66-3-422 NMSA 1978 and  
14 Subsection E of Section 66-3-423 NMSA 1978;

15 (6) to each New Mexico institution of higher  
16 education, an amount equal to that part of the fees  
17 distributed pursuant to Paragraph (2) of Subsection D of  
18 Section 66-3-416 NMSA 1978 proportionate to the number of  
19 special registration plates issued in the name of the  
20 institution to all such special registration plates issued in  
21 the name of all institutions;

22 (7) to the armed forces veterans license  
23 fund, the amount to be distributed pursuant to Paragraph (2)  
24 of Subsection E of Section 66-3-419 NMSA 1978;

25 (8) to the children's trust fund, the amount

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1 to be distributed pursuant to Paragraph (2) of Subsection D of  
2 Section 66-3-420 NMSA 1978;

3 (9) to the state highway and transportation  
4 department, an amount equal to the fees collected pursuant to  
5 Section 66-5-35 NMSA 1978;

6 (10) to the state equalization guarantee  
7 distribution made annually pursuant to the general  
8 appropriation act, an amount equal to one hundred percent of  
9 the driver safety fee collected pursuant to Subsection D of  
10 Section 66-5-44 NMSA 1978;

11 (11) to the motorcycle training fund, two  
12 dollars (\$2.00) of each motorcycle registration fee collected  
13 pursuant to Section 66-6-1 NMSA 1978;

14 (12) to the ~~[rubberized asphalt fund, forty-~~  
15 ~~five percent of]~~ highway infrastructure fund, all tire  
16 recycling fees collected pursuant to the provisions of  
17 Sections 66-6-1, 66-6-2, 66-6-4, 66-6-5 and 66-6-8 NMSA 1978;

18 ~~[(13) to the tire recycling fund, the amount~~  
19 ~~remaining, after distributions pursuant to Paragraph (12) of~~  
20 ~~this subsection have been made to the rubberized asphalt fund,~~  
21 ~~from all annual tire recycling fees collected pursuant to the~~  
22 ~~provisions of Sections 66-6-1, 66-6-2, 66-6-4, 66-6-5 and~~  
23 ~~66-6-8 NMSA 1978;~~

24 ~~(14)]~~ (13) to each county, an amount equal to  
25 fifty percent of the fees collected pursuant to Section



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1 66-6-19 NMSA 1978 multiplied by a fraction, the numerator of  
2 which is the total mileage of public roads maintained by the  
3 county and the denominator of which is the total mileage of  
4 public roads maintained by all counties in the state; and

5 [~~(15)~~] (14) to the litter control and  
6 beautification fund, an amount equal to the fees collected  
7 pursuant to Section 67-16-14 NMSA 1978.

8 B. The balance, exclusive of unidentified  
9 remittances, shall be distributed in accordance with Section  
10 66-6-23.1 NMSA 1978.

11 C. If any of the paragraphs, subsections or  
12 sections referred to in Subsection A of this section are  
13 recompiled or otherwise re-designated without a corresponding  
14 change to Subsection A of this section, the reference in  
15 Subsection A of this section shall be construed to be the  
16 recompiled or re-designated paragraph, subsection or section."

17 Section 5. A new section of Chapter 67, Article 3 NMSA  
18 1978 is enacted to read:

19 "[NEW MATERIAL] HIGHWAY INFRASTRUCTURE FUND CREATED--  
20 PURPOSE. --

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

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

4 B. Money in the fund shall be used solely for  
5 acquisition of rights of way or planning, design, engineering,  
6 construction or improvement of state highway projects  
7 authorized pursuant to the provisions of Laws 1998, Chapter 84  
8 and Subsections C through H of Section 1 of Chapter 85 of Laws  
9 1998 and is appropriated to the department for expenditure for  
10 those purposes.

11 C. The taxes and fees required by law to be  
12 distributed to the highway infrastructure fund may be pledged  
13 for the payment of state highway bonds issued pursuant to  
14 Section 67-3-59.1 NMSA 1978 for the highway projects  
15 authorized in the laws specified in Subsection B of this  
16 section. "

17 Section 6. Section 67-3-59.1 NMSA 1978 (being Laws 1989,  
18 Chapter 157, Section 1, as amended) is amended to read:

19 "67-3-59.1. STATE HIGHWAY DEBENTURES--ISSUANCE--  
20 LIMITS--APPROVAL--COUPONS.--

21 A. In order to provide funds to finance state  
22 highway projects, including state highway projects that are  
23 required for the waste isolation pilot project and are  
24 eligible for federal reimbursement or payment as authorized by  
25 federal legislation, the state highway commission is

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1 authorized, subject to the limitations of this section, to  
2 issue bonds from time to time, payable from federal funds not  
3 otherwise obligated that are paid into the state road fund,  
4 the proceeds of the collection of taxes and fees that are  
5 required by law to be paid into the state road fund and not  
6 otherwise pledged solely to the payment of outstanding bonds  
7 and debentures.

8 B. Except as provided in Subsections C and D of  
9 this section, the total aggregate outstanding principal amount  
10 of bonds issued from time to time pursuant to this section,  
11 secured by or payable from federal funds not otherwise  
12 obligated that are paid into the state road fund and the  
13 proceeds from the collection of taxes and fees required by law  
14 to be paid into the state road fund, shall not, without  
15 additional authorization of the state legislature, exceed one  
16 hundred fifty million dollars (\$150,000,000) at any given  
17 time, subject to the following provisions:

18 (1) the total aggregate outstanding principal  
19 amount of bonds issued for state highway projects that are  
20 required for the waste isolation pilot project and are  
21 eligible for federal reimbursement or payment as authorized by  
22 federal legislation shall not exceed one hundred million  
23 dollars (\$100,000,000); and

24 (2) the total aggregate outstanding principal  
25 amount of bonds issued for state highway projects other than

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1 state highway projects that are required for the waste  
2 isolation pilot project and are eligible for federal  
3 reimbursement or payment as authorized by federal legislation  
4 shall not exceed fifty million dollars (\$50,000,000).

5 C. Upon specific authorization and appropriation  
6 by the legislature, and subject to the limitations of  
7 Subsection D of this section, an additional amount of bonds  
8 may be issued pursuant to this section for state highway  
9 projects, to be secured by or payable from taxes or fees  
10 required by law to be paid into the state road fund and  
11 federal funds not otherwise obligated that are paid into the  
12 state road fund, and, as applicable, taxes or fees required by  
13 law to be paid into the highway infrastructure fund, as  
14 follows:

15 (1) an aggregate outstanding principal amount  
16 of bonds, not to exceed six hundred twenty-four million  
17 dollars (\$624,000,000), for major highway infrastructure  
18 projects for which the [~~state highway and transportation~~]  
19 department has, prior to January 1, 1998, submitted or  
20 initiated the process of submitting a plan to the federal  
21 highway administration for innovative financing pursuant to 23  
22 USCA Sections 122 and 307;

23 (2) an aggregate outstanding principal amount  
24 of bonds, not to exceed one hundred million dollars  
25 (\$100,000,000), for state highway projects that are required

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1 for the waste isolation pilot project and are eligible for  
2 federal reimbursement; and

3 (3) an aggregate outstanding principal amount  
4 of bonds, not to exceed four hundred million dollars  
5 (\$400,000,000), for other state highway projects.

6 D. The total amount of bonds that may be issued by  
7 the state highway commission for state highway projects  
8 pursuant to Subsection C of this section shall not exceed a  
9 total aggregate outstanding principal amount of:

10 (1) three hundred million dollars  
11 (\$300,000,000) prior to July 1, 1999;

12 (2) six hundred million dollars  
13 (\$600,000,000) from July 1, 1999 through June 30, 2000;

14 (3) nine hundred million dollars  
15 (\$900,000,000) from July 1, 2000 through June 30, 2001; and

16 (4) one billion one hundred twenty-four  
17 million dollars (\$1,124,000,000) after June 30, 2001.

18 E. The state highway commission may issue bonds to  
19 refund other bonds issued pursuant to this section by exchange  
20 or current or advance refunding.

21 F. Each series of bonds shall have a maturity of  
22 no more than twenty-five years from the date of issuance. The  
23 state highway commission shall determine all other terms,  
24 covenants and conditions of the bonds; provided that the bonds  
25 shall not be issued pursuant to this section unless the state

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1 board of finance approves the issuance of the bonds and the  
2 principal amount of and interest rate or maximum net effective  
3 interest rate on the bonds.

4 G. The bonds shall be executed with the manual or  
5 facsimile signature of the chairman of the state highway  
6 commission, countersigned by the state treasurer and attested  
7 to by the secretary of the state highway commission, with the  
8 seal of the state highway commission imprinted or otherwise  
9 affixed to the bonds.

10 H. Proceeds of the bonds may be used to pay  
11 expenses incurred in the preparation, issuance and sale of the  
12 bonds and, together with the earnings on the proceeds of the  
13 bonds, may be used to pay rebate, penalty, interest and other  
14 obligations relating to the bonds and the proceeds of the  
15 bonds under the Internal Revenue Code of 1986, as amended.

16 I. The bonds may be sold at a public or negotiated  
17 sale at, above or below par or through the New Mexico finance  
18 authority. Any negotiated sale shall be made with one or more  
19 investment banker whose services are obtained through a  
20 competitive proposal process. For any sale, the state highway  
21 commission or the New Mexico finance authority shall also  
22 procure the services of any financial advisor or bond counsel  
23 through a competitive proposal process. If sold at public  
24 sale, a notice of the time and place of sale shall be  
25 published in a newspaper of general circulation in the state,

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1 and in any other newspaper determined in the resolution  
2 authorizing the issuance of the bonds, once each week for two  
3 consecutive weeks prior to the date of sale. The bonds may be  
4 purchased by the state treasurer or state investment officer.

5 J. This section is full authority for the issuance  
6 and sale of the bonds, and the bonds shall not be invalid for  
7 any irregularity or defect in the proceedings for their  
8 issuance and sale and shall be incontestable in the hands of  
9 bona fide purchasers or holders of the bond for value.

10 K. The bonds shall be legal investments for any  
11 person or board charged with the investment of public funds  
12 and may be accepted as security for any deposit of public  
13 money and, with the interest thereon, are exempt from taxation  
14 by the state and any political subdivision or agency of the  
15 state.

16 L. Any law authorizing the imposition or  
17 distribution of taxes or fees paid into the state road fund or  
18 the highway infrastructure fund or that affects those taxes  
19 and fees shall not be amended or repealed or otherwise  
20 directly or indirectly modified so as to impair any  
21 outstanding bonds secured by a pledge of revenues from those  
22 taxes and fees paid into the state road fund or the highway  
23 infrastructure fund, unless the bonds have been discharged in  
24 full or provisions have been made for a full discharge. In  
25 addition, while any bonds issued by the state highway

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1 commission pursuant to the provisions of this section remain  
2 outstanding, the powers or duties of the commission shall not  
3 be diminished or impaired in any manner that will affect  
4 adversely the interests and rights of the holder of such  
5 bonds.

6 M In contracting for state highway projects to be  
7 paid in whole or in part with proceeds of bonds authorized by  
8 this section, the department shall require that any sand,  
9 gravel, caliche or similar material needed for the project  
10 shall, if practicable, be mined from state lands. Each  
11 contract shall provide that the contractor notify the  
12 commissioner of public lands of the need for the material and  
13 that, through lease or purchase, the material shall be mined  
14 from state lands if:

15 (1) the material needed is available from  
16 state lands in the vicinity of the project;

17 (2) the commissioner determines that the  
18 lease or purchase is in the best interest of the state land  
19 trust beneficiaries; and

20 (3) the cost to the contractor for the  
21 material, including the costs of transportation, is  
22 competitive with other available material from non-state  
23 lands.

24 ~~M-~~ N. Bonds issued pursuant to this section  
25 shall be paid solely from federal funds not otherwise



1 obligated and taxes and fees deposited into the state road  
2 fund and, as applicable, the highway infrastructure fund,  
3 shall not constitute a general obligation of the state."

4 Section 7. EFFECTIVE DATES. --

5 A. The effective date of the provisions of  
6 Sections 2 through 6 of this act is January 1, 2000.

7 B. The effective date of the provisions of Section  
8 1 of this act is February 1, 2000.

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