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HOUSE BILL 842

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mary Helen Garcia

AN ACT

RELATING TO THE FINANCING OF A HIGHWAY PROJECT; AUTHORIZING THE
ISSUANCE OF STATE HIGHWAY BONDS FOR IMPROVEMENTS TO SUNLAND
PARK DRIVE IN DONA ANA COUNTY; PROVIDING FOR A DISTRIBUTION
FROM THE GAMING TAX TO PAY FOR THE BONDS; MAKING AN
APPROPRIATION.

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

Section 1. Section 60-2E-47 NMSA 1978 (being Laws 1997,
Chapter 190, Section 49, as amended) is amended to read:

"60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION. --

A. An excise tax is imposed on the privilege of
engaging in gaming activities in the state. This tax shall be
known as the "gaming tax".

B. The gaming tax is an amount equal to ten percent
of the gross receipts of manufacturer licensees from the sale,

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1 lease or other transfer of gaming devices in or into the state,
2 except receipts of a manufacturer from the sale, lease or other
3 transfer to a licensed distributor for subsequent sale or lease
4 may be excluded from gross receipts; ten percent of the gross
5 receipts of distributor licensees from the sale, lease or other
6 transfer of gaming devices in or into the state; ten percent of
7 the net take of a gaming operator licensee that is a nonprofit
8 organization; and twenty-five percent of the net take of every
9 other gaming operator licensee. For the purposes of this
10 section, "gross receipts" means the total amount of money or
11 the value of other consideration received from selling, leasing
12 or otherwise transferring gaming devices.

13 C. The gaming tax imposed on a licensee is in lieu
14 of all state and local gross receipts taxes on that portion of
15 the licensee's gross receipts attributable to gaming
16 activities.

17 D. The gaming tax is to be paid on or before the
18 fifteenth day of the month following the month in which the
19 taxable event occurs. The gaming tax shall be administered and
20 collected by the taxation and revenue department in cooperation
21 with the board. The provisions of the Tax Administration Act
22 apply to the collection and administration of the tax. For
23 fiscal years 2005 through 2017, the secretary of highway and
24 transportation shall certify each year to the taxation and
25 revenue department the need for an amount not to exceed one

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1 million five hundred thousand dollars (\$1,500,000) a year to be
2 distributed to the state road fund to pay debt service on the
3 Sunland Park drive project bonds authorized by Section
4 67-3-59.1 NMSA 1978; provided that any federal, local or
5 private funds available for the project shall be used to
6 supplant gaming tax distributions and the gaming tax
7 distribution shall be reduced by the amount available from
8 other sources. Any distribution to the state road fund for the
9 Sunland Park drive project that is in excess of the amount
10 needed for that project shall revert to the general fund.

11 E. In addition to the gaming tax, a gaming operator
12 licensee that is a racetrack shall pay twenty percent of its
13 net take to purses to be distributed in accordance with rules
14 adopted by the state racing commission. An amount not to
15 exceed twenty percent of the interest earned on the balance of
16 any fund consisting of money for purses distributed by
17 racetrack gaming operator licensees pursuant to this subsection
18 may be expended for the costs of administering the
19 distributions. A racetrack gaming operator licensee shall
20 spend no less than one-fourth of one percent of the net take of
21 its gaming machines to fund or support programs for the
22 treatment and assistance of compulsive gamblers.

23 F. A nonprofit gaming operator licensee shall
24 distribute at least sixty percent of the balance of its net
25 take, after payment of the gaming tax and any income taxes,

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1 for charitable or educational purposes. "

2 Section 2. Section 67-3-59.1 NMSA 1978 (being Laws 1989,
3 Chapter 157, Section 1, as amended) is amended to read:

4 "67-3-59.1. STATE HIGHWAY DEBENTURES--ISSUANCE--
5 LIMITS--APPROVAL--COUPONS.--

6 A. In order to provide funds to finance state
7 highway projects, including state highway projects that are
8 required for the waste isolation pilot project and are eligible
9 for federal reimbursement or payment as authorized by federal
10 legislation, the state [~~highway~~] transportation commission is
11 authorized, subject to the limitations of this section, to
12 issue bonds from time to time, payable from federal funds not
13 otherwise obligated that are paid into the state road fund and
14 the proceeds of the collection of taxes and fees that are
15 required by law to be paid into the state road fund and not
16 otherwise pledged solely to the payment of outstanding bonds
17 and debentures.

18 B. Except as provided in Subsections C, [~~and~~] D and
19 E of this section, the total aggregate outstanding principal
20 amount of bonds issued from time to time pursuant to this
21 section, secured by or payable from federal funds not otherwise
22 obligated that are paid into the state road fund and the
23 proceeds from the collection of taxes and fees required by law
24 to be paid into the state road fund, shall not, without
25 additional authorization of the state legislature, exceed one

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1 hundred fifty million dollars (\$150,000,000) at any given time,
2 subject to the following provisions:

3 (1) the total aggregate outstanding principal
4 amount of bonds issued for state highway projects that are
5 required for the waste isolation pilot project and are eligible
6 for federal reimbursement or payment as authorized by federal
7 legislation shall not exceed one hundred million dollars
8 (\$100,000,000); and

9 (2) the total aggregate outstanding principal
10 amount of bonds issued for state highway projects other than
11 state highway projects that are required for the waste
12 isolation pilot project and are eligible for federal
13 reimbursement or payment as authorized by federal legislation
14 shall not exceed fifty million dollars (\$50,000,000).

15 C. Upon specific authorization and appropriation by
16 the legislature, and subject to the limitations of Subsection D
17 of this section, an additional amount of bonds may be issued
18 pursuant to this section for state highway projects, to be
19 secured by or payable from taxes or fees required by law to be
20 paid into the state road fund and federal funds not otherwise
21 obligated that are paid into the state road fund, and, as
22 applicable, taxes or fees required by law to be paid into the
23 highway infrastructure fund, as follows:

24 (1) an aggregate outstanding principal amount
25 of bonds, not to exceed six hundred twenty-four million dollars

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1 (\$624,000,000), for major highway infrastructure projects for
2 which the department has, prior to January 1, 1998, submitted
3 or initiated the process of submitting a plan to the federal
4 highway administration for innovative financing pursuant to 23
5 USCA Sections 122 and 307;

6 (2) an aggregate outstanding principal amount
7 of bonds, not to exceed one hundred million dollars
8 (\$100,000,000), for state highway projects that are required
9 for the waste isolation pilot project and are eligible for
10 federal reimbursement; and

11 (3) an aggregate outstanding principal amount
12 of bonds, not to exceed four hundred million dollars
13 (\$400,000,000), for other state highway projects.

14 D. The total amount of bonds that may be issued by
15 the state [~~highway~~] transportation commission for state highway
16 projects pursuant to Subsection C of this section shall not
17 exceed a total aggregate outstanding principal amount of:

18 (1) three hundred million dollars
19 (\$300,000,000) prior to July 1, 1999;

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

22 (3) nine hundred million dollars
23 (\$900,000,000) from July 1, 2000 through June 30, 2001; and

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

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1 E. The state transportation commission may issue
2 bonds in 2005 with a maturity of no more than twelve years from
3 the date of issuance, in an amount not to exceed twelve million
4 dollars (\$12,000,000) to improve Sunland Park drive in Dona Ana
5 county, and the bonds shall be payable from a distribution of
6 the gaming tax paid into the state road fund as provided in
7 Section 60-2E-47 NMSA 1978 or from such other funds that are
8 deposited in the state road fund for that purpose as provided
9 in that section.

10 ~~[E.]~~ F. The state ~~[highway]~~ transportation
11 commission may issue bonds to refund other bonds issued
12 pursuant to this section by exchange or current or advance
13 refunding.

14 ~~[F.]~~ G. Each series of bonds shall have a maturity
15 of no more than twenty-five years from the date of issuance.
16 The state ~~[highway]~~ transportation commission shall determine
17 all other terms, covenants and conditions of the bonds;
18 provided that the bonds shall not be issued pursuant to this
19 section unless the state board of finance approves the issuance
20 of the bonds and the principal amount of and interest rate or
21 maximum net effective interest rate on the bonds.

22 ~~[G.]~~ H. The bonds shall be executed with the manual
23 or facsimile signature of the chairman of the state ~~[highway]~~
24 transportation commission, countersigned by the state treasurer
25 and attested to by the secretary of the state ~~[highway]~~

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1 transportation commission, with the seal of the state [~~highway~~]
2 transportation commission imprinted or otherwise affixed to the
3 bonds.

4 [~~H.-~~] I. Proceeds of the bonds may be used to pay
5 expenses incurred in the preparation, issuance and sale of the
6 bonds and, together with the earnings on the proceeds of the
7 bonds, may be used to pay rebate, penalty, interest and other
8 obligations relating to the bonds and the proceeds of the bonds
9 under the Internal Revenue Code of 1986, as amended.

10 [~~I.-~~] J. The bonds may be sold at a public or
11 negotiated sale at, above or below par or through the New
12 Mexico finance authority. Any negotiated sale shall be made
13 with one or more investment [~~banker~~] bankers whose services are
14 obtained through a competitive proposal process. For any sale,
15 the state [~~highway~~] transportation commission or the New Mexico
16 finance authority shall also procure the services of any
17 financial advisor or bond counsel through a competitive
18 proposal process. If sold at public sale, a notice of the time
19 and place of sale shall be published in a newspaper of general
20 circulation in the state, and in any other newspaper determined
21 in the resolution authorizing the issuance of the bonds, once
22 each week for two consecutive weeks prior to the date of sale.
23 The bonds may be purchased by the state treasurer or state
24 investment officer.

25 [~~J.-~~] K. This section is full authority for the

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1 issuance and sale of the bonds, and the bonds shall not be
2 invalid for any irregularity or defect in the proceedings for
3 their issuance and sale and shall be incontestable in the hands
4 of bona fide purchasers or holders of the bond for value.

5 ~~[K-]~~ L. The bonds shall be legal investments for
6 any person or board charged with the investment of public funds
7 and may be accepted as security for any deposit of public money
8 and, with the interest thereon, are exempt from taxation by the
9 state and any political subdivision or agency of the state.

10 ~~[L-]~~ M. Any law authorizing the imposition or
11 distribution of taxes or fees paid into the state road fund or
12 the highway infrastructure fund or that affects those taxes and
13 fees shall not be amended or repealed or otherwise directly or
14 indirectly modified so as to impair any outstanding bonds
15 secured by a pledge of revenues from those taxes and fees paid
16 into the state road fund or the highway infrastructure fund,
17 unless the bonds have been discharged in full or provisions
18 have been made for a full discharge. In addition, while any
19 bonds issued by the state ~~[highway]~~ transportation ~~commission~~
20 pursuant to the provisions of this section remain outstanding,
21 the powers or duties of the ~~commission~~ shall not be diminished
22 or impaired in any manner that will affect adversely the
23 interests and rights of the holder of such bonds.

24 ~~[M-]~~ N. In contracting for state highway projects
25 to be paid in whole or in part with proceeds of bonds

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1 authorized by this section, the department shall require that
2 any sand, gravel, caliche or similar material needed for the
3 project shall, if practicable, be mined from state lands. Each
4 contract shall provide that the contractor notify the
5 commissioner of public lands of the need for the material and
6 that, through lease or purchase, the material shall be mined
7 from state lands if:

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

10 (2) the commissioner of public lands
11 determines that the lease or purchase is in the best interest
12 of the state land trust beneficiaries; and

13 (3) the cost to the contractor for the
14 material, including the costs of transportation, is competitive
15 with other available material from non-state lands.

16 [~~N.~~] 0. Bonds issued pursuant to this section shall
17 be paid solely from federal funds not otherwise obligated and
18 taxes and fees deposited into the state road fund and, as
19 applicable, the highway infrastructure fund, and shall not
20 constitute a general obligation of the state."