

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 269

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE RECYCLING AND ILLEGAL  
DUMPING ACT; EXPANDING THE TIRE RECYCLING PROGRAM; PROVIDING  
PROHIBITIONS; PROVIDING FOR INSPECTIONS OF PREMISES; PROVIDING  
FOR COMPLIANCE ORDERS AND FIELD CITATIONS; CREATING THE  
RECYCLING AND ILLEGAL DUMPING ALLIANCE; AMENDING, REPEALING  
AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES;  
MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 20 of this act may be cited as the "Recycling and  
Illegal Dumping Act".

Section 2. [NEW MATERIAL] LEGISLATIVE PURPOSES.--The  
purposes of the Recycling and Illegal Dumping Act are to:

A. protect the health and welfare of current and

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1 future residents of New Mexico by providing for the prevention  
2 and abatement of illegal dumpsites;

3 B. promote environmentally sound methods for reuse  
4 and recycling;

5 C. create a statewide recycling alliance involving  
6 the cooperation of cities, counties, state agencies, tribal  
7 governments, land grant communities and private business to  
8 encourage economic development, community development and  
9 collaboration that foster sustainable use of resources,  
10 increased recycling and a cleaner and healthier environment;  
11 and

12 D. enhance and coordinate existing highway litter  
13 control and removal and recycling efforts that include the  
14 recycling of tires, glass, plastic, metal, paper products,  
15 electronic waste and construction and demolition materials.

16 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
17 Recycling and Illegal Dumping Act:

18 A. "abatement" means to reduce in amount, degree or  
19 intensity or to eliminate;

20 B. "agricultural use" means the beneficial use of  
21 scrap tires in conjunction with the operations of a farm or  
22 ranch that includes construction projects and aids in the  
23 storage of feed;

24 C. "alliance" means the recycling and illegal  
25 dumping alliance;

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1           D. "board" means the environmental improvement  
2 board;

3           E. "civil engineering application" means the use of  
4 scrap tires or other recycled material in conjunction with  
5 other aggregate materials in engineering applications;

6           F. "composting" means the process by which  
7 biological decomposition of organic material is carried out  
8 under controlled conditions and the process stabilizes the  
9 organic fraction into a material that can be easily and safely  
10 stored, handled and used in an environmentally acceptable  
11 manner;

12           G. "cooperative association" means a refuse  
13 disposal district created pursuant to the Refuse Disposal Act,  
14 a sanitation district created pursuant to the Water and  
15 Sanitation District Act, a special district created pursuant to  
16 the Special District Procedures Act or other associations  
17 created pursuant to the Joint Powers Agreements Act or the  
18 Solid Waste Authority Act;

19           H. "department" means the department of  
20 environment;

21           I. "dispose" means to deposit scrap tires or solid  
22 waste into or on any land or water;

23           J. "household" means any single and multiple  
24 residence, hotel or motel, bunkhouse, ranger station, crew  
25 quarters, campground, picnic ground or day-use recreation area;

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1           K. "illegal dumping" means disposal of trash, scrap  
2 tires or any solid waste in a manner that violates the Solid  
3 Waste Act or the Recycling and Illegal Dumping Act;

4           L. "illegal dumpsite" means a place where illegal  
5 dumping has occurred;

6           M. "market development" means activities to expand  
7 or create markets for recyclable and reusable materials;

8           N. "motor vehicle" means a vehicle or device that  
9 is propelled by an internal combustion engine or electric motor  
10 power that is used or may be used on the public highways for  
11 the purpose of transporting persons or property and includes  
12 any connected trailer or semitrailer;

13           O. "processing" means techniques to change  
14 physical, chemical or biological character or composition of  
15 solid waste but does not include composting, transformation or  
16 open burning;

17           P. "recycling" means any process by which  
18 recyclable materials are collected, separated or processed and  
19 reused or returned to use in the form of raw materials or  
20 products;

21           Q. "reuse" means the return of a commodity into the  
22 economic stream without a change to its original form;

23           R. "scrap tire" means a tire that is no longer  
24 suitable for its originally intended purpose because of wear,  
25 damage or defect;

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1           S. "scrap tire baling" means the process by which  
2 scrap tires are mechanically compressed and bound into block  
3 form;

4           T. "scrap tire generator" means a person who  
5 generates scrap tires, including retail tire dealers,  
6 retreaders, scrap tire processors, automobile dealers,  
7 automobile salvage yards, private company vehicle maintenance  
8 shops, garages, service stations and city, county and state  
9 government, but does not include persons who generate scrap  
10 tires in a household or in agricultural operations;

11           U. "scrap tire hauler" means a person who  
12 transports scrap tires for hire for the purpose of recycling,  
13 disposal, transformation or use in a civil engineering  
14 application;

15           V. "secretary" means the secretary of environment;

16           W. "tire" means a continuous solid or pneumatic  
17 rubber covering that encircles the wheel of a motor vehicle;

18           X. "tire-derived fuel" means whole or chipped tires  
19 that produce a low sulfur, high-heating-value fuel;

20           Y. "tire-derived product" means a usable product  
21 produced from the processing of a scrap tire but does not  
22 include baled tires;

23           Z. "tire recycling" means a process in which scrap  
24 tires are collected, stored, separated or reprocessed for reuse  
25 as a different product or shredded into a form suitable for use

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1 in rubberized asphalt or as raw material for the manufacture of  
2 other products; and

3 AA. "tire recycling facility" means a place  
4 operated or maintained for tire recycling but does not  
5 include:

6 (1) retail business premises where tires are  
7 sold, if no more than five hundred loose scrap tires or two  
8 thousand scrap tires, if left in a closed conveyance or  
9 enclosure, are kept on the premises at one time;

10 (2) the premises of a tire retreading  
11 business, if no more than three thousand scrap tires are kept  
12 on the premises at one time;

13 (3) premises where tires are removed from  
14 motor vehicles in the ordinary course of business, if no more  
15 than five hundred scrap tires are kept on the premises at one  
16 time;

17 (4) a solid waste facility having a valid  
18 permit or registration issued pursuant to the provisions of the  
19 Solid Waste Act or regulations adopted pursuant to that act or  
20 registration issued pursuant to the Environmental Improvement  
21 Act; or

22 (5) a site where tires are stored or used for  
23 agricultural uses.

24 Section 4. [NEW MATERIAL] PROHIBITED ACTS.--

25 A. A person shall not store or use in a civil

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1 engineering application, except for agricultural use, more than  
2 one hundred scrap tires anywhere in this state, unless the  
3 person has a valid permit or registration from the department.

4 B. A person shall not operate or maintain a tire  
5 recycling facility unless the facility has a valid permit  
6 issued pursuant to the provisions of the Recycling and Illegal  
7 Dumping Act or is a facility where tires are stored and used  
8 for agricultural uses and complies with rules enacted pursuant  
9 to the Recycling and Illegal Dumping Act.

10 C. A person shall not transport scrap tires for  
11 hire to a place other than a tire recycling facility unless the  
12 place is specifically excluded from the definition of a "tire  
13 recycling facility".

14 D. A person shall not transport scrap tires for  
15 hire either for disposal or recycling purposes without being  
16 registered as a scrap tire hauler by the department pursuant to  
17 rules adopted in accordance with the Recycling and Illegal  
18 Dumping Act.

19 E. A scrap tire generator shall not release scrap  
20 tires to a person other than a registered scrap tire hauler  
21 pursuant to the Recycling and Illegal Dumping Act or a  
22 registered commercial waste hauler pursuant to the Solid Waste  
23 Act.

24 F. A person shall not engage in the open burning of  
25 scrap tires.

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1           G. A person shall not store or dispose of scrap  
2 tires or tire-derived products in a manner that creates a  
3 public nuisance, promotes the breeding or harboring of disease  
4 vectors or creates a potential for fire or other health or  
5 environmental hazards.

6           H. Except for agricultural uses, a person shall not  
7 store scrap tires or tire-derived products for a period  
8 exceeding twelve months unless specifically authorized by the  
9 secretary.

10          I. A scrap tire hauler shall not transport scrap  
11 tires without possessing a New Mexico scrap tire manifest  
12 approved by the department.

13          J. A person shall not engage in, maintain or allow  
14 illegal dumping.

15           Section 5. [NEW MATERIAL] FACILITIES--ENTRY BY  
16 DEPARTMENT--AVAILABILITY OF RECORDS TO DEPARTMENT AND OTHERS.--

17          A. The secretary or any authorized representative,  
18 employee or agent of the department may:

19               (1) enter a facility of a scrap tire  
20 generator, scrap tire hauler or tire recycling facility at any  
21 reasonable time for the purpose of making a routine inspection  
22 or investigation of scrap tire management practices based on  
23 reasonable evidence of a violation of the Recycling and Illegal  
24 Dumping Act;

25               (2) take and analyze samples of the facility's



1 waste, soil, air or water in order to detect the nature and  
2 concentration of contaminants, including those produced by  
3 leaching, natural decomposition, gas production or hazardous  
4 products in the facility, and the owner or operator shall have  
5 the right to split the sample and conduct the owner or  
6 operator's own analysis;

7 (3) for the purposes of developing or  
8 assisting in the development of rules, conducting a study,  
9 taking corrective action or enforcing the provisions of the  
10 Recycling and Illegal Dumping Act, conduct monitoring or  
11 testing of the equipment, contents or surrounding soil, air,  
12 surface water or ground water at the facility of a scrap tire  
13 generator, scrap tire hauler or tire recycling facility; and

14 (4) in coordination with the secretary of  
15 transportation, conduct at weigh stations or any other adequate  
16 site or facility inspections of scrap tire haulers.

17 B. Records, reports or information obtained by the  
18 department pursuant to this section shall be available to the  
19 public, except that information shall be treated confidentially  
20 upon a showing, satisfactory to the department, that records,  
21 reports or information or a particular part of the records,  
22 reports or information, if made public, would divulge  
23 information entitled to protection under the provisions of 18  
24 USCA Section 1905. That record, report or information may be  
25 disclosed to officers, employees or authorized representatives

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1 of the United States concerned with carrying out the  
2 federal Resource Conservation and Recovery Act of 1976 or to  
3 officers, employees or authorized representatives of the state  
4 when relevant in any proceedings pursuant to the Solid Waste  
5 Act.

6 C. A person not subject to the provisions of 18  
7 USCA Section 1905 who knowingly and willfully divulges or  
8 discloses information entitled to protection pursuant to this  
9 section shall, upon conviction, be subject to a fine of not  
10 more than five thousand dollars (\$5,000) or to imprisonment not  
11 to exceed one year or both.

12 D. In submitting data pursuant to the Recycling and  
13 Illegal Dumping Act, a person required to provide such data  
14 may:

15 (1) designate, in writing and in such manner  
16 as the secretary may prescribe, the data the person believes is  
17 entitled to protection pursuant to this section; and

18 (2) submit the designated data separately from  
19 other data submitted pursuant to the Recycling and Illegal  
20 Dumping Act.

21 Section 6. [NEW MATERIAL] ADMINISTRATION OF ACT.--The  
22 department is responsible for the administration and  
23 enforcement of the provisions of the Recycling and Illegal  
24 Dumping Act and of all rules adopted by the board pursuant to  
25 the provisions of that act. The department is delegated all

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1 authority necessary and appropriate to carry out its  
2 responsibilities.

3 Section 7. [NEW MATERIAL] RECYCLING AND ILLEGAL DUMPING  
4 ALLIANCE.--

5 A. The "recycling and illegal dumping alliance" is  
6 created and is comprised of one member from each of the  
7 following:

- 8 (1) state government;
- 9 (2) local government;
- 10 (3) a solid waste authority;
- 11 (4) an industry waste generator;
- 12 (5) a tribal government;
- 13 (6) a nonprofit organization;
- 14 (7) a recycling company;
- 15 (8) a retailer;
- 16 (9) an agricultural producer;
- 17 (10) a soil and water conservation district;
- 18 (11) a waste management company; and
- 19 (12) the public at large.

20 B. The secretary shall appoint members of the  
21 alliance to serve two-year terms as volunteers with no  
22 compensation from the state.

23 C. The alliance shall:

- 24 (1) develop strategies to increase recycling  
25 and decrease illegal dumping in New Mexico;

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1 (2) create a state recycling plan, as a  
2 component of the New Mexico solid waste management plan, to  
3 establish programs and goals and update the plan every three  
4 years to measure progress and modify strategies; and

5 (3) review and make recommendations for  
6 funding grant applications from the recycling and illegal  
7 dumping fund.

8 Section 8. [NEW MATERIAL] RULES--AUTHORITY AND CONTENT.--

9 The board shall adopt rules to implement the provisions of the  
10 Recycling and Illegal Dumping Act. The rules shall be adopted  
11 pursuant to the provisions of the Environmental Improvement Act  
12 and shall include:

13 A. requirements and procedures for the issuance of  
14 permits and registrations to tire recycling facilities, civil  
15 engineering applications, scrap tire generators and scrap tire  
16 haulers;

17 B. standards and requirements for tire recycling  
18 and scrap tire storage and processing;

19 C. record-keeping requirements for tire recycling  
20 facilities, scrap tire haulers and scrap tire generators;

21 D. financial assurance criteria for tire recycling  
22 facilities;

23 E. fire rules for storage of scrap tires and tire-  
24 derived products that are consistent with the rules or  
25 recommendations adopted by the state fire marshal;

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1 F. criteria and procedures for making disbursements  
 2 pursuant to grant and loan programs authorized from the  
 3 recycling and illegal dumping fund;

4 G. requirements and procedures for contracting with  
 5 counties, municipalities, Indian nations, pueblos and tribes,  
 6 land grant communities and cooperative associations for the  
 7 abatement of illegal dumpsites and recycling;

8 H. requirements and procedures for a scrap tire  
 9 manifest system;

10 I. a fee schedule applicable to scrap tire haulers  
 11 and tire recycling facilities not exceeding the estimated cost  
 12 of investigating and issuing permits and registrations and  
 13 conducting regulatory oversight of permitted and registered  
 14 activities; and

15 J. a fee schedule applicable to scrap tire  
 16 generators not exceeding the estimated cost of conducting  
 17 regulatory oversight of scrap tire generators.

18 Section 9. [NEW MATERIAL] SCRAP TIRE MANIFEST SYSTEM.--A  
 19 scrap tire generator who transports or offers for  
 20 transportation, scrap tires for offsite handling, altering,  
 21 storage, disposal or for any combination thereof shall complete  
 22 a scrap tire manifest pursuant to rules adopted by the board.  
 23 Upon demand, the manifest for every generator whose scrap tire  
 24 load is transported shall be shown to an officer of the motor  
 25 transportation division of the department of public safety,

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1 the New Mexico state police, a local law enforcement officer or  
2 the secretary or the secretary's designee.

3 Section 10. [NEW MATERIAL] SOLID WASTE PERMIT  
4 EXEMPTION.--A person operating a tire recycling facility under  
5 a permit issued pursuant to the Recycling and Illegal Dumping  
6 Act shall not be required to obtain a permit for that facility  
7 pursuant to the Solid Waste Act.

8 Section 11. [NEW MATERIAL] ABATEMENT OF ILLEGAL  
9 DUMPSITE.--

10 A. The department may bring an abatement action  
11 pursuant to the provisions of Section 30-8-8 NMSA 1978 to  
12 eliminate an illegal dumpsite.

13 B. The secretary may act administratively to  
14 eliminate illegal dumpsites pursuant to the provisions of the  
15 Recycling and Illegal Dumping Act.

16 C. Nothing in this section shall prohibit a  
17 municipality, county, Indian nation, pueblo or tribe, land  
18 grant community or cooperative association from contracting for  
19 services to complete an abatement action.

20 Section 12. [NEW MATERIAL] AUTHORIZATION FOR ABATEMENT  
21 CONTRACTS.--The secretary may contract with the governing body  
22 of a county, municipality, Indian nation, pueblo or tribe, land  
23 grant community or cooperative association for the abatement of  
24 illegal dumpsites located within the boundaries of the county,  
25 municipality, Indian nation, pueblo or tribe, land grant

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1 community, cooperative association or solid waste authority.  
 2 The contract shall provide for the reimbursement of the county,  
 3 municipality, Indian nation, pueblo or tribe, land grant  
 4 community or cooperative association for expenses incurred in  
 5 bringing an abatement action, including court costs, reasonable  
 6 attorney fees and the actual expense of elimination of the  
 7 illegal dumpsite if that expense is not recovered from and paid  
 8 by the owner or operator of the illegal dumpsite as a result of  
 9 the abatement action.

10 Section 13. [NEW MATERIAL] ENFORCEMENT--COMPLIANCE  
 11 ORDERS.--

12 A. Whenever the secretary determines that a person  
 13 has violated or is violating any requirement or prohibition of  
 14 the Recycling and Illegal Dumping Act, a rule adopted pursuant  
 15 to that act or a condition of a permit issued pursuant to that  
 16 act, the secretary may:

17 (1) issue a compliance order stating with  
 18 reasonable specificity the nature of the violation and  
 19 requiring compliance immediately or within a specified time  
 20 period or assessing a civil penalty for any past or current  
 21 violation or both; and

22 (2) commence a civil action in district court  
 23 for appropriate relief, including a temporary or permanent  
 24 injunction.

25 B. A compliance order issued pursuant to this

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1 section may include a suspension or revocation of a permit or  
2 portion of the permit issued by the secretary. A penalty  
3 assessed in the compliance order shall not exceed five thousand  
4 dollars (\$5,000) per day of noncompliance for each violation.

5 C. A compliance order issued pursuant to this  
6 section shall state with reasonable specificity the nature of  
7 the required corrective action or other response measure and  
8 shall specify a time for compliance.

9 D. A compliance order issued pursuant to this  
10 section shall become final unless, no later than thirty days  
11 after the order is served, the person named in the order  
12 submits a written request to the secretary for a public  
13 hearing. Upon a request, the secretary promptly shall conduct  
14 a public hearing. The secretary shall appoint an independent  
15 hearing officer to preside over the public hearing. The  
16 hearing officer shall make and preserve a complete record of  
17 the proceedings and forward a recommendation to the secretary,  
18 who shall make the final decision.

19 E. The secretary may seek enforcement of the order  
20 by filing an action for enforcement in the district court.

21 F. Upon request of a party, the secretary may issue  
22 subpoenas for the attendance and testimony of witnesses at the  
23 hearing and for the production of relevant documents. The  
24 secretary shall adopt procedural rules for the conduct of the  
25 hearing, including provisions for discovery.

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1           G. In determining the amount of a penalty  
 2 authorized to be assessed pursuant to this section, the  
 3 secretary shall take into account the seriousness of the  
 4 violation, good-faith efforts of the violator to comply with  
 5 applicable requirements of the Recycling and Illegal Dumping  
 6 Act or rules issued pursuant to its provisions and other  
 7 relevant factors.

8           Section 14. [NEW MATERIAL] ENFORCEMENT--FIELD  
 9 CITATIONS.--

10           A. The board shall implement a field citation  
 11 program by adopting rules establishing appropriate minor  
 12 violations for which field citations assessing civil penalties  
 13 not to exceed one thousand dollars (\$1,000) per day of  
 14 violation may be issued by local government authorities or  
 15 employees of the department as designated by the secretary.

16           B. A field citation issued pursuant to this section  
 17 shall be final unless the person named in the citation files a  
 18 written request for a public hearing with the secretary no  
 19 later than fifteen days after the date on which the field  
 20 citation is served on the person, in which case the enforcement  
 21 of the field citation shall be suspended pending the issuance  
 22 of a final order of the secretary after a public hearing. The  
 23 procedures for scheduling and conducting a hearing on and for  
 24 final disposition of a field citation shall be the same as  
 25 those provided for a compliance order pursuant to the Recycling

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1 and Illegal Dumping Act.

2 C. Payment of a civil penalty required by a field  
3 citation issued pursuant to this section shall not be a defense  
4 to further enforcement by the department to correct a  
5 continuing violation or to assess the maximum statutory penalty  
6 pursuant to the provisions of the Recycling and Illegal Dumping  
7 Act if the violation continues.

8 D. In determining the amount of a penalty to be  
9 assessed pursuant to this section, the secretary or the person  
10 issuing a field citation shall take into account the  
11 seriousness of the violation, good-faith efforts of the  
12 violator to comply with the applicable requirements of the  
13 Recycling and Illegal Dumping Act or rules issued pursuant to  
14 its provisions and other relevant factors.

15 E. In connection with a proceeding pursuant to this  
16 section, the secretary may issue subpoenas for the attendance  
17 and testimony of witnesses and the production of relevant  
18 papers, books and documents and may adopt rules for  
19 discovery.

20 Section 15. [NEW MATERIAL] JUDICIAL REVIEW OF  
21 ADMINISTRATIVE ACTIONS.--A person adversely affected by an  
22 administrative action taken by the secretary pursuant to the  
23 provisions of the Recycling and Illegal Dumping Act may appeal  
24 the action pursuant to Section 39-3-1.1 NMSA 1978.

25 Section 16. [NEW MATERIAL] PENALTY--CRIMINAL.--

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1           A. A person who knowingly violates Section 4 of the  
2 Recycling and Illegal Dumping Act:

3                   (1) is guilty of a misdemeanor if the  
4 violation involves a quantity of scrap tires or tire-derived  
5 products that is less than five thousand pounds and shall be  
6 sentenced pursuant to the provisions of Section 31-19-1 NMSA  
7 1978; or

8                   (2) is guilty of a fourth degree felony if the  
9 violation involves a quantity of scrap tires or tire-derived  
10 products that is five thousand pounds or greater and shall be  
11 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
12 1978.

13           B. A person who knowingly omits any substantive  
14 information or knowingly makes a false substantive statement or  
15 representation required pursuant to the Recycling and Illegal  
16 Dumping Act or rule adopted pursuant to the provisions of that  
17 act is guilty of a fourth degree felony and shall be sentenced  
18 in accordance with the provisions of Section 31-18-15 NMSA  
19 1978.

20           Section 17. [NEW MATERIAL] GRANTS--ELIGIBILITY--  
21 APPLICATIONS.--

22           A. A municipality, county, Indian nation, pueblo or  
23 tribe, land grant community, cooperative association or solid  
24 waste authority that meets eligibility requirements established  
25 by the board may apply for a grant for providing funds to

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1 public landfills to offset the cost of collecting or recycling  
2 of tires or submit a competitive bid for a loan or contract for  
3 development costs or operating costs to establish a recycling  
4 facility, purchase equipment, perform marketing, purchase  
5 products produced by a recycling facility, provide educational  
6 outreach, develop recycling infrastructure, abate illegal  
7 dumpsites or contract with vendors to promote recycling and to  
8 abate illegal dumpsites consistent with provisions of the  
9 Recycling and Illegal Dumping Act. The first priority for  
10 funding shall be abatement of illegal scrap tire dumpsites and  
11 the recycling of scrap tires.

12 B. A grant, loan or contract for processing shall  
13 not be awarded pursuant to the Recycling and Illegal Dumping  
14 Act to a person who receives less than ninety-five percent of  
15 recyclable materials from sources in New Mexico.

16 C. Nothing in this section prohibits a  
17 municipality, county, Indian nation, pueblo or tribe, land  
18 grant community or cooperative association from contracting for  
19 services to complete an abatement action.

20 D. At least two-thirds of budgeted grant money in  
21 each fiscal year shall be allocated to tire abatement and  
22 recycling programs, and one-third of budgeted grant money in  
23 each fiscal year shall be allocated to abatement of illegal  
24 dumping and recycling of other solid wastes.

25 Section 18. [NEW MATERIAL] RUBBERIZED ASPHALT PROGRAM.--

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1 The department of transportation may use rubberized asphalt in  
2 paving mixtures for state and local highway projects and to pay  
3 added expenses that may result from using rubberized asphalt.

4 The department of transportation shall adopt rules for the  
5 administration of the rubberized asphalt program, including the  
6 development of procedures for disbursement of money to  
7 municipalities and counties for the use of rubberized asphalt  
8 in paving mixtures and shall develop paving specifications for  
9 the use of rubberized asphalt.

10 Section 19. [NEW MATERIAL] RECYCLING AND ILLEGAL DUMPING  
11 FUND CREATED.--The "recycling and illegal dumping fund" is  
12 created in the state treasury. Fees and penalties collected  
13 pursuant to the Recycling and Illegal Dumping Act shall be  
14 deposited into the fund. Money in the fund is appropriated to  
15 the department for abatement of illegal dumpsites, for  
16 processing, transportation or recycling of all recyclable  
17 materials and scrap tires, for providing funds to public  
18 landfills in New Mexico to offset the cost of collecting or  
19 recycling of tires and for carrying out the provisions of the  
20 Recycling and Illegal Dumping Act. Any unexpended or  
21 unencumbered balance or income earned from the money in the  
22 recycling and illegal dumping fund remaining at the end of a  
23 fiscal year shall not revert to the general fund.  
24 Disbursements from the fund shall be by warrant drawn by the  
25 secretary of finance and administration pursuant to vouchers

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1 signed by the secretary of environment or the secretary's  
2 designee.

3 Section 20. [NEW MATERIAL] RUBBERIZED ASPHALT FUND  
4 CREATED.--The "rubberized asphalt fund" is created in the state  
5 treasury. Money in the fund is appropriated to the department  
6 of transportation to pay additional expenses that might result  
7 from using rubberized asphalt paving mixes, to allocate at  
8 least fifty percent of the fund to local governments for that  
9 purpose and to carry out the provisions of the rubberized  
10 asphalt program, including hiring a term employee to administer  
11 the program. Disbursements from the fund shall be by warrant  
12 drawn by the secretary of finance and administration pursuant  
13 to vouchers signed by the secretary of transportation or the  
14 secretary's designee. Any unexpended or unencumbered balance  
15 remaining in the rubberized asphalt fund at the end of a fiscal  
16 year shall not revert to the general fund.

17 Section 21. Section 66-6-23 NMSA 1978 (being Laws 1978,  
18 Chapter 35, Section 358, as amended) is amended to read:

19 "66-6-23. DISPOSITION OF FEES.--

20 A. After the necessary disbursements for refunds  
21 and other purposes have been made, the money remaining in the  
22 motor vehicle suspense fund, except for remittances received  
23 within the previous two months that are unidentified as to  
24 source or disposition, shall be distributed as follows:

25 (1) to each municipality, county or fee agent

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1 operating a motor vehicle field office:

2 (a) an amount equal to six dollars  
3 (\$6.00) per driver's license and three dollars (\$3.00) per  
4 identification card or motor vehicle or motorboat registration  
5 or title transaction performed; and

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

18 (2) to each municipality or county, other than  
19 a class A county with a population exceeding three hundred  
20 thousand or a municipality with a population exceeding three  
21 hundred thousand that has been designated as an agent pursuant  
22 to Section 66-2-14.1 NMSA 1978, operating a motor vehicle field  
23 office, an amount equal to fifty cents (\$.50) for each  
24 administrative service fee remitted by that county or  
25 municipality to the department pursuant to the provisions of

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1 Subsection A of Section 66-2-16 NMSA 1978;

2 (3) to the state road fund:

3 (a) an amount equal to the fees  
4 collected pursuant to Section 66-7-413.4 NMSA 1978;

5 (b) an amount equal to the fee collected  
6 pursuant to Section 66-3-417 NMSA 1978;

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

13 (d) an amount equal to fifty percent of  
14 the fees collected pursuant to Section 66-6-19 NMSA 1978;

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

20 (5) to the department:

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

24 (b) an amount equal to two dollars  
25 (\$2.00) of each motorcycle registration fee collected pursuant  
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1 to Section 66-6-1 NMSA 1978;

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

8 (d) the amounts due to the department  
9 for the manufacture and issuance of a special registration  
10 plate collected pursuant to the section of law authorizing the  
11 issuance of the specialty plate; and

12 (e) an amount equal to the registration  
13 fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the  
14 purposes of enforcing the provisions of the Mandatory Financial  
15 Responsibility Act and for creating and maintaining a  
16 multilanguage noncommercial driver's license testing program;

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

24 (7) to the armed forces veterans license fund,  
25 the amount to be distributed pursuant to Paragraph (2) of

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1 Subsection E of Section 66-3-419 NMSA 1978;

2 (8) to the children's trust fund, the amount  
3 to be distributed pursuant to Paragraph (2) of Subsection D of  
4 Section 66-3-420 NMSA 1978;

5 (9) to the department of transportation, an  
6 amount equal to the fees collected pursuant to Section 66-5-35  
7 NMSA 1978;

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

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

16 (12) to the ~~[tire recycling fund]~~ recycling  
17 and illegal dumping fund;

18 (a) fifty cents (\$.50) of the tire  
19 recycling fee collected pursuant to the provisions of Section  
20 66-6-1 NMSA 1978;

21 (b) fifty cents (\$.50) of each of the  
22 tire recycling fees collected pursuant to the provisions of  
23 Sections 66-6-2 and 66-6-4 NMSA 1978; and

24 (c) twenty-five cents (\$.25) of each of  
25 the tire recycling fees collected pursuant to Sections 66-6-5

1 and 66-6-8 NMSA 1978;

2 (13) to the highway infrastructure fund:

3 (a) fifty cents (\$.50) of the tire  
4 recycling fee collected pursuant to the provisions of Section  
5 66-6-1 NMSA 1978;

6 (b) one dollar (\$1.00) of each of the  
7 tire recycling fees collected pursuant to the provisions of  
8 Sections 66-6-2 and 66-6-4 NMSA 1978; and

9 (c) twenty-five cents (\$.25) of each of  
10 the tire recycling fees collected pursuant to Sections 66-6-5  
11 and 66-6-8 NMSA 1978;

12 (14) to each county, an amount equal to fifty  
13 percent of the fees collected pursuant to Section 66-6-19 NMSA  
14 1978 multiplied by a fraction, the numerator of which is the  
15 total mileage of public roads maintained by the county and the  
16 denominator of which is the total mileage of public roads  
17 maintained by all counties in the state;

18 (15) to the litter control and beautification  
19 fund, an amount equal to the fees collected pursuant to Section  
20 66-6-6.2 NMSA 1978; and

21 (16) to the local government division of the  
22 department of finance and administration, an amount equal to  
23 the fees collected pursuant to Section 66-3-424.3 NMSA 1978 for  
24 distribution to each county to support animal control spaying  
25 and neutering programs in an amount proportionate to the number  
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1 of residents of that county who have purchased pet care special  
2 registration plates pursuant to Section 66-3-424.3 NMSA 1978.

3 B. The balance, exclusive of unidentified  
4 remittances, shall be distributed in accordance with Section  
5 66-6-23.1 NMSA 1978.

6 C. If any of the paragraphs, subsections or  
7 sections referred to in Subsection A of this section are  
8 recompiled or otherwise redesignated without a corresponding  
9 change to Subsection A of this section, the reference in  
10 Subsection A of this section shall be construed to be the  
11 recompiled or redesignated paragraph, subsection or section."

12 Section 22. SAVING CLAUSE--CONTINUING EFFECT OF PRIOR  
13 ACTIONS.--Repeal of the Tire Recycling Act does not affect the  
14 validity of regulations enacted pursuant to the Tire Recycling  
15 Act, which shall continue in force and effect until amended or  
16 repealed. Repeal of the Tire Recycling Act does not affect  
17 prior violations of the Tire Recycling Act or regulations  
18 enacted pursuant to the Tire Recycling Act. All permits and  
19 registrations issued pursuant to the Tire Recycling Act shall  
20 remain in effect until they expire or they are suspended,  
21 revoked or otherwise modified.

22 Section 23. REPEAL.--Sections 74-11-1 through 74-11-17  
23 NMSA 1978 (being Laws 1994, Chapter 117, Sections 1 through 17  
24 and Laws 1994, Chapter 126, Sections 1 through 17, as amended)  
25 are repealed.

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