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HOUSE BILL 548

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Jeff Steinborn

AN ACT

RELATING TO RECYCLING; ENACTING THE RECYCLING DEVELOPMENT ACT;
ESTABLISHING A RECYCLING FEE; ESTABLISHING A RECYCLING
INFRASTRUCTURE AND OPPORTUNITY FUND TO ESTABLISH OR ENHANCE
RECYCLING PROGRAMS AND PROVIDE RECYCLING FEE DISTRIBUTIONS TO
PERSONS OPERATING LANDFILL DISPOSAL FACILITIES; MAKING AN
APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 5 of this act may be cited as the "Recycling
Development Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Recycling Development Act:

A. "alliance" means the recycling and illegal
dumping alliance;

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1 B. "bureau" means the solid waste bureau of the
2 department;

3 C. "department" means the department of
4 environment;

5 D. "eligible persons" means those entities that may
6 receive recycling infrastructure and opportunity funds, limited
7 to counties, municipalities, the Indian affairs department,
8 land grant communities, cooperative associations, post-
9 secondary educational institutions, school districts, solid
10 waste authorities or districts or other political subdivisions;

11 E. "grant coordinator" means an individual employed
12 by the bureau pursuant to the Recycling Development Act to:

13 (1) coordinate with recycling outreach
14 coordinators and the recycled markets coordinator on the
15 promotion of recycling throughout the state; and

16 (2) conduct outreach on and assist persons in
17 applying for grants pursuant to the recycling infrastructure
18 and opportunity grant program;

19 F. "landfill disposal facility" means an area of
20 land or an excavation in which wastes are placed for permanent
21 disposal;

22 G. "recyclable material" means a solid waste that
23 can be collected, separated or processed and reused or returned
24 to use in the form of raw materials or products after its
25 initial use;

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1 H. "recycled markets coordinator" means an
2 individual employed by the bureau pursuant to the Recycling
3 Development Act to conduct ongoing research and document
4 opportunities to sell or use recyclable materials throughout
5 the state;

6 I. "recycling" means any process by which
7 recyclable materials are collected, separated or processed and
8 reused or returned to use in the form of raw materials or
9 products;

10 J. "recycling outreach coordinator" means an
11 individual employed by the bureau pursuant to the provisions of
12 the Recycling Development Act to conduct outreach to
13 communities statewide to start or enhance their recycling
14 programs and assist applicants for recycling infrastructure
15 grants to establish and strengthen recycling and waste
16 diversion programs throughout the state;

17 K. "secretary" means the secretary of environment;

18 L. "solid waste" means refuse and refuse-derived
19 fuel collected from the general public and from residential,
20 commercial, institutional and industrial sources consisting of
21 paper, wood, yard wastes, food wastes, plastics, leather,
22 rubber and other combustible materials and non-combustible
23 materials such as metal, glass and rock and excludes industrial
24 process wastes or medical wastes that are segregated from other
25 wastes; and

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1 M. "solid waste facility" means any public or
2 private system, facility, location, improvements on the land,
3 structures or other appurtenances or methods used for
4 processing, transformation, recycling or disposal of solid
5 waste, including landfill disposal facilities, transfer
6 stations, resource recovery facilities, incinerators and other
7 similar facilities not specified, but does not include
8 equipment specifically approved by order of the director of the
9 environmental improvement division of the department to render
10 medical waste non-infectious or a facility that is permitted
11 pursuant to the provisions of the Hazardous Waste Act and does
12 not apply to a facility fueled by a densified-refuse-derived
13 fuel that accepts no other solid waste.

14 Section 3. [NEW MATERIAL] RECYCLING FEE--AMOUNT--
15 COLLECTION--DISTRIBUTION.--

16 A. A recycling fee of sixty cents (\$.60) per ton
17 shall be imposed on a person that disposes of solid waste at a
18 landfill disposal facility upon the disposal of solid waste at
19 the facility, unless the waste has previously been assessed a
20 fee at another solid waste facility.

21 B. The fee imposed by this section shall be in
22 addition to all other fees and taxes levied by law.

23 C. The fee imposed by this section shall be paid by
24 the person that disposes of the solid waste at the landfill
25 disposal facility. It shall be collected by the person

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1 operating the landfill disposal facility, held in trust in a
2 separate account for the benefit of the state and remitted to
3 the taxation and revenue department. The fee accrues at the
4 time the solid waste is disposed of in a landfill disposal
5 facility. The fee imposed by this section shall be
6 administered as if it were a tax in accordance with the
7 provisions of the Tax Administration Act and shall be remitted
8 within twenty-five days from the end of the month in which the
9 fee is collected.

10 D. Distributions pursuant to the Tax Administration
11 Act of the net proceeds of the fees collected pursuant to this
12 section shall be made as follows:

13 (1) fifteen percent shall go to the bureau for
14 creation of at least four full-time positions:

15 (a) at least two full-time positions for
16 recycling outreach coordinators, who shall conduct outreach and
17 serve as a point of contact to New Mexico communities and
18 assist applicants for recycling infrastructure and opportunity
19 grants to establish and strengthen recycling and waste
20 diversion programs throughout the state;

21 (b) at least one full-time position for
22 a recycled markets coordinator, who shall research and document
23 recyclable market opportunities relevant to eligible persons
24 throughout the state. This market research shall encompass a
25 broad spectrum of recyclable materials. These recyclable

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1 market opportunities shall be communicated to existing and
2 developing recycling programs. The recycled markets
3 coordinator shall also work to build collaborative market
4 approaches involving multiple recycling programs; and

5 (c) one full-time position for a grant
6 coordinator, who shall assist prospective applicants for grants
7 pursuant to the recycling infrastructure and opportunity grant
8 program, conduct outreach to applicant sites and coordinate
9 with recycling outreach coordinators and the recycled markets
10 coordinator;

11 (2) seven percent shall go to the bureau,
12 which shall use the funds to develop and implement a statewide
13 waste diversion and recycling public outreach program to
14 educate the public of the importance of recycling and waste
15 diversion; and

16 (3) seventy-eight percent shall go to the
17 recycling infrastructure and opportunity fund.

18 Section 4. [NEW MATERIAL] RECYCLING INFRASTRUCTURE AND
19 OPPORTUNITY GRANT PROGRAM--RECYCLING FEE DISTRIBUTIONS--DUTIES
20 OF BUREAU--APPLICATION PROCESS--ELIGIBILITY.--

21 A. In consultation with the alliance, the bureau
22 shall:

23 (1) establish a recycling infrastructure and
24 opportunity grant program to make grants to eligible persons,
25 individually or jointly, for the establishment or modification

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1 of infrastructure for:

2 (a) the recycling, marketing and sale of
3 recyclable materials;

4 (b) public education by local
5 communities throughout the state on the importance of recycling
6 and waste diversion conducted; and

7 (c) end-use research into innovative
8 uses for recyclable materials;

9 (2) prepare an annual report to the governor
10 and the legislature on the recycling infrastructure and
11 opportunity grant program; and

12 (3) award grants only to eligible persons that
13 meet the criteria established pursuant to Subsection C of this
14 section and by the bureau.

15 B. The secretary of Indian affairs, or the
16 secretary's designee, shall apply for grants on behalf of
17 recycling programs located on Indian nations, pueblos or land
18 belonging to tribes and shall distribute any grant that it
19 receives pursuant to the Recycling Development Act to those
20 programs.

21 C. The secretary shall promulgate rules regarding
22 the applications, including funding priorities and criteria for
23 awarding of grants pursuant to this section, provided that
24 priority shall be given to applications involving multiple
25 jurisdictions or regional collaborative approaches.

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1 D. The alliance shall make recommendations to the
2 secretary as to which eligible persons shall be awarded grants.
3 All grants shall be allocated for recycling programs.

4 E. In consultation with the alliance, the secretary
5 shall promulgate rules and develop a formula for paying the
6 recycling fee distributions to persons operating landfill
7 disposal facilities that have remitted recycling fees paid by
8 persons disposing of solid waste pursuant to Section 3 of the
9 Recycling Development Act. The distribution shall be paid, as
10 the availability of funds permits, from the recycling
11 infrastructure and opportunity fund according to the recycling
12 fee distribution formula in proportion to the solid waste the
13 facility demonstrates it has received and from which it
14 demonstrates it has produced recyclable materials at the site
15 where the recycling fee was collected for disposal of that
16 waste. The distribution shall be calculated in accordance with
17 the formula developed by the secretary on a per-ton basis with
18 differential rates for different recycled commodities and paid
19 in accordance with the availability of funds in accordance with
20 rules promulgated by the secretary.

21 F. A person shall not receive a distribution that
22 exceeds the amount the person has paid in recycling fees.

23 Section 5. [NEW MATERIAL] RECYCLING INFRASTRUCTURE AND
24 OPPORTUNITY FUND CREATED--ADMINISTRATION.--

25 A. The "recycling infrastructure and opportunity

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1 fund" is created as a nonreverting fund in the state treasury.
2 Seventy-eight percent of fees collected pursuant to Section 3
3 of the Recycling Development Act shall be deposited into the
4 fund. The bureau shall administer the fund. Money is
5 appropriated to the bureau to make grants and recycling fee
6 distributions from the fund pursuant to the Recycling
7 Development Act. Money from the fund shall be expended on
8 warrants drawn by the secretary of finance and administration
9 pursuant to vouchers signed by the secretary of environment.

10 B. State money appropriated to the bureau to carry
11 out the provisions of this section may be used to match any
12 eligible federal funds allocated to the state for the purpose
13 of making grants to eligible persons to implement recycling
14 incentive programs pursuant to the Recycling Development Act
15 and rules the bureau has promulgated.

16 C. Eighty-seven percent of the recycling
17 infrastructure and opportunity fund shall be distributed in
18 grants for the purchase of equipment to be used in recycling
19 solid waste.

20 D. Four percent of the recycling infrastructure and
21 opportunity fund shall be distributed to eligible persons that
22 apply for grants to fund public education regarding the
23 importance of recycling and waste diversion in their local
24 communities.

25 E. Six percent of the recycling infrastructure and

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1 opportunity fund shall be distributed in the form of recycling
2 fee distributions to landfill disposal facilities pursuant to
3 Section 4 of the Recycling Development Act.

4 F. Three percent of the recycling infrastructure
5 and opportunity fund shall be distributed to eligible persons
6 in grants for end-use research, which is research into
7 innovative uses for recyclable materials.

8 Section 6. Section 7-1-2 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 2, as amended) is amended to read:

10 "7-1-2. APPLICABILITY.--The Tax Administration Act
11 applies to and governs:

12 A. the administration and enforcement of the
13 following taxes or tax acts as they now exist or may hereafter
14 be amended:

- 15 (1) Income Tax Act;
- 16 (2) Withholding Tax Act;
- 17 (3) Venture Capital Investment Act;
- 18 (4) Gross Receipts and Compensating Tax Act
19 and any state gross receipts tax;
- 20 (5) Liquor Excise Tax Act;
- 21 (6) Local Liquor Excise Tax Act;
- 22 (7) any municipal local option gross receipts
23 tax;
- 24 (8) any county local option gross receipts
25 tax;

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- 1 (9) Special Fuels Supplier Tax Act;
2 (10) Gasoline Tax Act;
3 (11) petroleum products loading fee, which fee
4 shall be considered a tax for the purpose of the Tax
5 Administration Act;
6 (12) Alternative Fuel Tax Act;
7 (13) Cigarette Tax Act;
8 (14) Estate Tax Act;
9 (15) Railroad Car Company Tax Act;
10 (16) Investment Credit Act, rural job tax
11 credit, Laboratory Partnership with Small Business Tax Credit
12 Act, Technology Jobs Tax Credit Act, film production tax
13 credit, New Mexico filmmaker tax credit, Affordable Housing Tax
14 Credit Act, high-wage jobs tax credit and Research and
15 Development Small Business Tax Credit Act;
16 (17) Corporate Income and Franchise Tax Act;
17 (18) Uniform Division of Income for Tax
18 Purposes Act;
19 (19) Multistate Tax Compact;
20 (20) Tobacco Products Tax Act; and
21 (21) the telecommunications relay service
22 surcharge imposed by Section 63-9F-11 NMSA 1978, which
23 surcharge shall be considered a tax for the purposes of the Tax
24 Administration Act;

25 B. the administration and enforcement of the

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1 following taxes, surtaxes, advanced payments or tax acts as
2 they now exist or may hereafter be amended:

- 3 (1) Resources Excise Tax Act;
- 4 (2) Severance Tax Act;
- 5 (3) any severance surtax;
- 6 (4) Oil and Gas Severance Tax Act;
- 7 (5) Oil and Gas Conservation Tax Act;
- 8 (6) Oil and Gas Emergency School Tax Act;
- 9 (7) Oil and Gas Ad Valorem Production Tax Act;
- 10 (8) Natural Gas Processors Tax Act;
- 11 (9) Oil and Gas Production Equipment Ad
12 Valorem Tax Act;
- 13 (10) Copper Production Ad Valorem Tax Act;
- 14 (11) any advance payment required to be made
15 by any act specified in this subsection, which advance payment
16 shall be considered a tax for the purposes of the Tax
17 Administration Act;
- 18 (12) Enhanced Oil Recovery Act;
- 19 (13) Natural Gas and Crude Oil Production
20 Incentive Act; and
- 21 (14) intergovernmental production tax credit
22 and intergovernmental production equipment tax credit;

23 C. the administration and enforcement of the
24 following taxes, surcharges, fees or acts as they now exist or
25 may hereafter be amended:

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- 1 (1) Weight Distance Tax Act;
- 2 (2) the workers' compensation fee authorized
- 3 by Section 52-5-19 NMSA 1978, which fee shall be considered a
- 4 tax for purposes of the Tax Administration Act;
- 5 (3) Uniform Unclaimed Property Act (1995);
- 6 (4) 911 emergency surcharge and the network
- 7 and database surcharge, which surcharges shall be considered
- 8 taxes for purposes of the Tax Administration Act;
- 9 (5) the solid waste assessment fee authorized
- 10 by the Solid Waste Act, which fee shall be considered a tax for
- 11 purposes of the Tax Administration Act;
- 12 (6) the water conservation fee imposed by
- 13 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
- 14 for the purposes of the Tax Administration Act; ~~[and]~~
- 15 (7) the gaming tax imposed pursuant to the
- 16 Gaming Control Act; and
- 17 (8) the recycling fee imposed pursuant to the
- 18 Recycling Development Act; and

19 D. the administration and enforcement of all other

20 laws, with respect to which the department is charged with

21 responsibilities pursuant to the Tax Administration Act, but

22 only to the extent that the other laws do not conflict with the

23 Tax Administration Act."

24 Section 7. A new section of the Tax Administration Act is

25 enacted to read:

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1 "[NEW MATERIAL] DISTRIBUTION--RECYCLING FEES.--A
2 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
3 made to the recycling infrastructure and opportunity fund of
4 the net receipts attributable to the recycling fee imposed
5 pursuant to the Recycling Development Act."

6 Section 8. Section 74-13-7 NMSA 1978 (being Laws 2005,
7 Chapter 171, Section 7) is amended to read:

8 "74-13-7. RECYCLING AND ILLEGAL DUMPING ALLIANCE.--

9 A. The "recycling and illegal dumping alliance" is
10 created and is comprised of two recycling outreach coordinators
11 pursuant to the Recycling Development Act and one member from
12 each of the following:

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

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- 1 (14) an organization representing public
2 schools;
- 3 (15) a recycling advocacy organization;
4 (16) a land grant community;
5 (17) a cooperative association;
6 (18) a solid waste authority or district;
7 (19) the Indian affairs department;
8 (20) a grant coordinator pursuant to the
9 Recycling Development Act; and
- 10 (21) a recycled markets coordinator pursuant
11 to the Recycling Development Act.

12 B. The secretary shall appoint members of the
13 alliance to serve two-year terms as volunteers with no
14 compensation from the state.

15 C. The alliance shall:

16 (1) develop strategies to increase recycling
17 and decrease illegal dumping in New Mexico;

18 (2) create a state recycling plan, as a
19 component of the New Mexico solid waste management plan, to
20 establish programs and goals and update the plan every three
21 years to measure progress and modify strategies; ~~[and]~~

22 (3) review and make recommendations for
23 funding grant applications from the recycling and illegal
24 dumping fund;

25 (4) review and make recommendations to the

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1 secretary for rulemaking and funding for grant and loan
2 applications from the recycling infrastructure and opportunity
3 fund pursuant to the Recycling Development Act; and

4 (5) review and make recommendations to the
5 secretary for rulemaking for and the devising of a formula for
6 making distributions from the recycling infrastructure and
7 opportunity fund pursuant to the Recycling Development Act."

8 Section 9. Section 74-13-17 NMSA 1978 (being Laws 2005,
9 Chapter 171, Section 17) is amended to read:

10 "74-13-17. GRANTS--ELIGIBILITY--APPLICATIONS.--

11 A. A municipality, county, Indian nation, pueblo or
12 tribe, land grant community, cooperative association, ~~[or]~~
13 solid waste authority or district, state educational
14 institution, public school district or other political
15 subdivision or the Indian affairs department that meets
16 eligibility requirements established by the board may apply for
17 a grant for providing funds to public landfills to offset the
18 cost of collecting or recycling of tires or submit a
19 competitive bid for a loan or contract for development costs or
20 operating costs to establish a recycling facility, purchase
21 equipment, perform marketing, purchase products produced by a
22 recycling facility, provide educational outreach, develop
23 recycling infrastructure, abate illegal dumpsites or contract
24 with vendors to promote recycling and to abate illegal
25 dumpsites consistent with provisions of the Recycling and

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1 Illegal Dumping Act. The first priority for funding shall be
2 abatement of illegal scrap tire dumpsites and the recycling of
3 scrap tires.

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

8 C. Nothing in this section prohibits a
9 municipality, county, Indian nation, pueblo or tribe, land
10 grant community, ~~[or]~~ cooperative association or other
11 political subdivision from contracting for services to complete
12 an abatement action.

13 D. At least two-thirds of budgeted grant money in
14 each fiscal year shall be allocated to tire abatement and
15 recycling programs, and one-third of budgeted grant money in
16 each fiscal year shall be allocated to abatement of illegal
17 dumping and recycling of other solid wastes."