

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 358

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
INCREASING THE GASOLINE TAX AND SPECIAL FUEL EXCISE TAX FOR A
PERIOD OF FIVE YEARS; DISTRIBUTING THE INCREMENTAL INCREASE IN
THE GASOLINE AND SPECIAL FUEL EXCISE TAXES TO THE HIGHWAY
DISTRICT PROJECT FUND; CHANGING DISTRIBUTION AMOUNTS; CREATING
THE HIGHWAY DISTRICT PROJECT FUND; PROVIDING FOR THE EQUAL
EXPENDITURE OF HIGHWAY DISTRICT PROJECT FUND RECEIPTS BY
HIGHWAY CONSTRUCTION DISTRICTS FOR HIGHWAY PROJECTS;
PROHIBITING THE PLEDGE OF HIGHWAY DISTRICT PROJECT FUND
RECEIPTS TO RETIRE DEBT; MAKING AN APPROPRIATION.

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

SECTION 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994,
Chapter 5, Section 2, as amended by Laws 2007, Chapter 297,
Section 1 and by Laws 2007, Chapter 298, Section 1) is amended

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underscored material = new
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1 to read:

2 "7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

3 A. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 shall be made to the state aviation fund in an amount
5 equal to four and seventy-nine hundredths percent of the
6 taxable gross receipts attributable to the sale of fuel
7 specially prepared and sold for use in turboprop or jet-type
8 engines as determined by the department.

9 B. A distribution pursuant to Section 7-1-6.1 NMSA
10 1978 shall be made to the state aviation fund in an amount
11 equal to twenty-six hundredths percent of gasoline taxes,
12 exclusive of penalties and interest, collected pursuant to the
13 Gasoline Tax Act, except that from July 1, 2012 through the
14 collection of taxes for June 2017, a distribution pursuant to
15 Section 7-1-6.1 NMSA 1978 shall be made to the state aviation
16 fund in an amount equal to twenty-one hundredths percent of
17 gasoline taxes, exclusive of penalties and interest, collected
18 pursuant to the Gasoline Tax Act.

19 C. From July 1, 2002 through June 30, 2012, a
20 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
21 made to the state aviation fund in an amount equal to forty-six
22 thousandths percent of the net receipts attributable to the
23 gross receipts tax distributable to the general fund.

24 D. A distribution pursuant to Section 7-1-6.1 NMSA
25 1978 shall be made to the state aviation fund from the net

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1 receipts attributable to the gross receipts tax distributable
2 to the general fund in an amount equal to:

3 (1) eighty thousand dollars (\$80,000) monthly
4 from July 1, 2007 through June 30, 2008;

5 (2) one hundred sixty-seven thousand dollars
6 (\$167,000) monthly from July 1, 2008 through June 30, 2009; and

7 (3) two hundred fifty thousand dollars
8 (\$250,000) monthly after July 1, 2009."

9 SECTION 2. Section 7-1-6.8 NMSA 1978 (being Laws 1983,
10 Chapter 211, Section 13, as amended) is amended to read:

11 "7-1-6.8. DISTRIBUTION--MOTORBOAT FUEL TAX FUND.--A
12 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
13 made to the motorboat fuel tax fund in an amount equal to
14 thirteen hundredths [~~of one~~] percent of the net receipts
15 attributable to the gasoline tax, except that from July 1, 2012
16 through the collection of taxes for June 2017, a distribution
17 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the
18 motorboat fuel tax fund in an amount equal to eleven hundredths
19 percent of the net receipts attributable to the gasoline tax."

20 SECTION 3. Section 7-1-6.9 NMSA 1978 (being Laws 1991,
21 Chapter 9, Section 11, as amended) is amended to read:

22 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO
23 MUNICIPALITIES AND COUNTIES.--

24 A. A distribution pursuant to Section 7-1-6.1 NMSA
25 1978 shall be made in an amount equal to ten and thirty-eight

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1 hundredths percent of the net receipts attributable to the
2 taxes, exclusive of penalties and interest, imposed by the
3 Gasoline Tax Act, except that from July 1, 2012 through the
4 collection of taxes for June 2017, a distribution pursuant to
5 Section 7-1-6.1 NMSA 1978 shall be made in an amount equal to
6 eight and four-tenths percent of the net receipts attributable
7 to the taxes, exclusive of penalties and interest, imposed by
8 the Gasoline Tax Act.

9 B. ~~[Except as provided in Subsection D of this~~
10 ~~section]~~ The amount determined in Subsection A of this section
11 shall be distributed as follows:

12 (1) ninety percent of the amount shall be paid
13 to the treasurers of municipalities and H class counties in the
14 proportion that the taxable motor fuel sales in each of the
15 municipalities and H class counties bears to the aggregate
16 taxable motor fuel sales in all of these municipalities and H
17 class counties; and

18 (2) ten percent of the amount shall be paid to
19 the treasurers of the counties, including H class counties, in
20 the proportion that the taxable motor fuel sales outside of
21 incorporated municipalities in each of the counties bears to
22 the aggregate taxable motor fuel sales outside of incorporated
23 municipalities in all of the counties.

24 C. Except as provided in Subsection D of this
25 section, this distribution shall be paid into a separate road

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1 fund in the municipal treasury or county road fund for
 2 expenditure only for construction, reconstruction, resurfacing
 3 or other improvement or maintenance of public roads, streets,
 4 alleys or bridges, including right-of-way and materials
 5 acquisition. Money distributed pursuant to this section may be
 6 used by a municipality or county to provide matching funds for
 7 projects subject to cooperative agreements entered into with
 8 the [~~state highway and~~] department of transportation
 9 [~~department~~] pursuant to Section 67-3-28 NMSA 1978. Any
 10 municipality or H class county that has created or that creates
 11 a "street improvement fund" to which gasoline tax revenues or
 12 distributions are irrevocably pledged under Sections 3-34-1
 13 through 3-34-4 NMSA 1978 or that has pledged all or a portion
 14 of gasoline tax revenues or distributions to the payment of
 15 bonds shall receive its proportion of the distribution of
 16 revenues under this section impressed with and subject to these
 17 pledges.

18 D. This distribution may be paid into a separate
 19 road fund or the general fund of the municipality or county if
 20 the municipality has a population less than three thousand or
 21 the county has a population less than four thousand."

22 SECTION 4. Section 7-1-6.10 NMSA 1978 (being Laws 1983,
 23 Chapter 211, Section 15, as amended) is amended to read:

24 "7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

25 A. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 shall be made to the state road fund in an amount equal to
2 the net receipts attributable to the taxes, surcharges,
3 penalties and interest imposed pursuant to the Gasoline Tax Act
4 and to the taxes, surtaxes, fees, penalties and interest
5 imposed pursuant to the Special Fuels Supplier Tax Act and the
6 Alternative Fuel Tax Act less:

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

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

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

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

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

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

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

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

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1 between the secretary of transportation and the qualified tribe
 2 pursuant to the provisions of Section 67-3-8.1 NMSA 1978; ~~and~~

3 (9) the amount distributed to the general fund
 4 pursuant to Section 7-1-6.44 NMSA 1978; and

5 (10) the amount distributed to the highway
 6 district project fund pursuant to Section 9 of this 2012 act.

7 B. A distribution pursuant to Section 7-1-6.1 NMSA
 8 1978 shall be made to the state road fund in an amount equal to
 9 the net receipts attributable to the taxes, interest and
 10 penalties from the Weight Distance Tax Act."

11 SECTION 5. Section 7-1-6.19 NMSA 1978 (being Laws 1991,
 12 Chapter 9, Section 15, as amended) is amended to read:

13 "7-1-6.19. DISTRIBUTION--COUNTY GOVERNMENT ROAD FUND
 14 CREATED.--

15 A. There is created in the state treasury the
 16 "county government road fund".

17 B. A distribution pursuant to Section 7-1-6.1 NMSA
 18 1978 shall be made to the county government road fund in an
 19 amount equal to five and seventy-six hundredths percent of the
 20 net receipts attributable to the gasoline tax, except that from
 21 July 1, 2012 through the collection of taxes for June 2017, a
 22 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
 23 made to the county government road fund in an amount equal to
 24 four and sixty-six hundredths percent of the net receipts
 25 attributable to the gasoline tax."

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1 SECTION 6. Section 7-1-6.27 NMSA 1978 (being Laws 1991,
2 Chapter 9, Section 20, as amended) is amended to read:

3 "7-1-6.27. DISTRIBUTION--MUNICIPAL ROADS.--

4 A. A distribution pursuant to Section 7-1-6.1 NMSA
5 1978 shall be made to municipalities for the purposes and
6 amounts specified in this section in an aggregate amount equal
7 to five and seventy-six hundredths percent of the net receipts
8 attributable to the gasoline tax, except that from July 1, 2012
9 through the collection of taxes for June 2017, a distribution
10 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to
11 municipalities for the purposes and amounts specified in this
12 section in an aggregate amount equal to four and sixty-six
13 hundredths percent of the net receipts attributable to the
14 gasoline tax.

15 B. The distribution authorized in this section
16 shall be used for the following purposes:

17 (1) reconstructing, resurfacing, maintaining,
18 repairing or otherwise improving existing alleys, streets,
19 roads or bridges, or any combination of the foregoing; or
20 laying off, opening, constructing or otherwise acquiring new
21 alleys, streets, roads or bridges, or any combination of the
22 foregoing; provided that any of the foregoing improvements may
23 include, but are not limited to, the acquisition of rights of
24 way;

25 (2) to provide matching funds for projects

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1 subject to cooperative agreements with the [~~state highway and~~
2 department of transportation [~~department~~] pursuant to Section
3 67-3-28 NMSA 1978; and

4 (3) for expenses of purchasing, maintaining
5 and operating transit operations and facilities, for the
6 operation of a transit authority established by the Municipal
7 Transit Law and for the operation of a vehicle emission
8 inspection program. A municipality may engage in the business
9 of the transportation of passengers and property within the
10 political subdivision by whatever means the municipality may
11 decide and may acquire cars, trucks, motor buses and other
12 equipment necessary for operating the business. A municipality
13 may acquire land, erect buildings and equip the buildings with
14 all the necessary machinery and facilities for the operation,
15 maintenance, modification, repair and storage of the cars,
16 trucks, motor buses and other equipment needed. A municipality
17 may do all things necessary for the acquisition and the conduct
18 of the business of public transportation.

19 C. For the purposes of this section:

20 (1) "computed distribution amount" means the
21 distribution amount calculated for a municipality for a month
22 pursuant to Paragraph (2) of Subsection D of this section prior
23 to any adjustments to the amount due to the provisions of
24 Subsections E and F of this section;

25 (2) "floor amount" means four hundred

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1 seventeen dollars (\$417);

2 (3) "floor municipality" means a municipality
3 whose computed distribution amount is less than the floor
4 amount; and

5 (4) "full distribution municipality" means a
6 municipality whose population at the last federal decennial
7 census was at least two hundred thousand.

8 D. Subject to the provisions of Subsections E and F
9 of this section, each municipality shall be distributed a
10 portion of the aggregate amount distributable under this
11 section in an amount equal to the greater of:

12 (1) the floor amount; or

13 (2) eighty-five percent of the aggregate
14 amount distributable under this section times a fraction, the
15 numerator of which is the municipality's reported taxable
16 gallons of gasoline for the immediately preceding state fiscal
17 year and the denominator of which is the reported total taxable
18 gallons for all municipalities for the same period.

19 E. Fifteen percent of the aggregate amount
20 distributable under this section shall be referred to as the
21 "redistribution amount". Beginning in August 1990, and each
22 month thereafter, from the redistribution amount there shall be
23 taken an amount sufficient to increase the computed
24 distribution amount of every floor municipality to the floor
25 amount. In the event that the redistribution amount is

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1 insufficient for this purpose, the computed distribution amount
 2 for each floor municipality shall be increased by an amount
 3 equal to the redistribution amount times a fraction, the
 4 numerator of which is the difference between the floor amount
 5 and the municipality's computed distribution amount and the
 6 denominator of which is the difference between the product of
 7 the floor amount multiplied by the number of floor
 8 municipalities and the total of the computed distribution
 9 amounts for all floor municipalities.

10 F. If a balance remains after the redistribution
 11 amount has been reduced pursuant to Subsection E of this
 12 section, there shall be added to the computed distribution
 13 amount of each municipality that is neither a full distribution
 14 municipality nor a floor municipality an amount that equals the
 15 balance of the redistribution amount times a fraction, the
 16 numerator of which is the computed distribution amount of the
 17 municipality and the denominator of which is the sum of the
 18 computed distribution amounts of all municipalities that are
 19 neither full distribution municipalities nor floor
 20 municipalities."

21 SECTION 7. Section 7-1-6.28 NMSA 1978 (being Laws 1991,
 22 Chapter 9, Section 22, as amended) is amended to read:

23 "7-1-6.28. DISTRIBUTION--MUNICIPAL ARTERIAL PROGRAM OF
 24 LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to
 25 Section 7-1-6.1 NMSA 1978 shall be made to the municipal

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1 arterial program of the local governments road fund created in
2 Section 67-3-28.2 NMSA 1978 in an amount equal to one and
3 forty-four hundredths percent of the net receipts attributable
4 to the gasoline tax, except that from July 1, 2012 through the
5 collection of taxes for June 2017, a distribution pursuant to
6 Section 7-1-6.1 NMSA 1978 shall be made to the municipal
7 arterial program of the local governments road fund created in
8 Section 67-3-28.2 NMSA 1978 in an amount equal to one and
9 seventeen hundredths percent of the net receipts attributable
10 to the gasoline tax."

11 SECTION 8. Section 7-1-6.39 NMSA 1978 (being Laws 1995,
12 Chapter 6, Section 9, as amended) is amended to read:

13 "7-1-6.39. DISTRIBUTION OF SPECIAL FUEL EXCISE TAX TO
14 LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to
15 Section 7-1-6.1 NMSA 1978 shall be made to the local
16 governments road fund in an amount equal to nine and fifty-two
17 hundredths percent of the net receipts attributable to the
18 taxes, exclusive of penalties and interest, from the special
19 fuel excise tax imposed by the Special Fuels Supplier Tax Act,
20 except that from July 1, 2012 through the collection of taxes
21 for June 2017, a distribution pursuant to Section 7-1-6.1 NMSA
22 1978 shall be made to the local governments road fund in an
23 amount equal to eight percent of the net receipts attributable
24 to the taxes, exclusive of penalties and interest, from the
25 special fuel excise tax imposed by the Special Fuels Supplier

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1 Tax Act."

2 SECTION 9. A new section of the Tax Administration Act is
3 enacted to read:

4 "[NEW MATERIAL] DISTRIBUTION--HIGHWAY DISTRICT PROJECT
5 FUND.--

6 A. Beginning July 1, 2012 and ending with the
7 receipts collected for June 2017, a distribution pursuant to
8 Section 7-1-6.1 NMSA 1978 shall be made to the highway district
9 project fund created in Section 67-3-65.2 NMSA 1978 in an
10 amount equal to nineteen percent of the net receipts
11 attributable to the gasoline tax.

12 B. Beginning July 2012 and ending with the receipts
13 collected in June 2017, a distribution pursuant to Section
14 7-1-6.1 NMSA 1978 shall be made to the highway district project
15 fund created in Section 67-3-65.2 NMSA 1978 in an amount equal
16 to sixteen percent of the net receipts attributable to the
17 special fuel excise tax."

18 SECTION 10. Section 7-13-3 NMSA 1978 (being Laws 1971,
19 Chapter 207, Section 3, as amended) is amended to read:

20 "7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
21 "GASOLINE TAX".--

22 A. For the privilege of receiving gasoline in this
23 state, there is imposed an excise tax at a rate provided in
24 Subsection B of this section on each gallon of gasoline
25 received in New Mexico.

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1 B. The tax imposed by Subsection A of this section
2 shall be seventeen cents (\$.17) per gallon received in New
3 Mexico, except that from July 1, 2012 through June 30, 2017,
4 the tax imposed by Subsection A of this section shall be
5 twenty-one cents (\$.21) per gallon received in New Mexico.

6 C. The tax imposed by this section may be called
7 the "gasoline tax".

8 **SECTION 11.** Section 7-16A-3 NMSA 1978 (being Laws 1992,
9 Chapter 51, Section 3, as amended) is amended to read:

10 "7-16A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
11 SPECIAL FUEL EXCISE TAX.--

12 A. For the privilege of receiving or using special
13 fuel in this state, there is imposed an excise tax at a rate
14 provided in Subsection B of this section on each gallon of
15 special fuel received in New Mexico.

16 B. The tax imposed by Subsection A of this section
17 shall be twenty-one cents (\$.21) per gallon of special fuel
18 received or used in New Mexico, except that from July 1, 2012
19 through June 30, 2017, the tax imposed by Subsection A of this
20 section shall be twenty-five cents (\$.25) per gallon received
21 or used in New Mexico.

22 C. The tax imposed by this section may be called
23 the "special fuel excise tax".

24 **SECTION 12.** A new Section 67-3-65.2 NMSA 1978 is enacted
25 to read:

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underscored material = new
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1 "67-3-65.2. [NEW MATERIAL] HIGHWAY DISTRICT PROJECT FUND
2 CREATED--USE--LIMITATION.--

3 A. The "highway district project fund" is created
4 as a nonreverting fund in the state treasury. The fund
5 consists of money from taxes distributed to the fund and
6 earnings on investment of the fund. Money in the fund shall
7 not be transferred to any other fund. The department of
8 transportation shall administer the fund, and money in the fund
9 is appropriated to the department of transportation for
10 expenditures as provided in this section. Disbursements from
11 the fund shall be by warrant of the secretary of finance and
12 administration on vouchers signed by the secretary of
13 transportation or the secretary of transportation's authorized
14 representative.

15 B. The highway district project fund shall be used
16 solely for the acquisition of rights of way or for state
17 highway project planning, designing, engineering, construction,
18 improvement or maintenance of state highway projects.
19 Annually, the department of transportation shall estimate
20 distributions to the fund and shall select state highway
21 projects in each of the department's six highway construction
22 districts so that an equal amount from the fund is expended in
23 each district; provided, that none of the amounts distributed
24 pursuant to this section shall be pledged for the repayment of
25 bonds or for any other debt service."

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