

AN ACT

RELATING TO FINANCING OF HIGHWAY PROJECTS; CREATING THE HIGHWAY INFRASTRUCTURE FUND; PROVIDING FOR DISTRIBUTION OF CERTAIN FEES AND TAX PROCEEDS TO THE FUND TO ENSURE NECESSARY FUNDS FOR CERTAIN HIGHWAY PROJECTS AUTHORIZED BY LAWS 1998, CHAPTER 84 AND LAWS 1998, CHAPTER 85; ADJUSTING THE RATE OF THE PETROLEUM PRODUCTS LOADING FEE; AMENDING AND REPEALING SECTIONS OF LAWS 1995, CHAPTER 6; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

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

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

A. to the local governments road fund an amount equal to the net receipts attributable to a fee of forty dollars (\$40.00) per load;

B. to the highway infrastructure fund an amount equal to the net receipts attributable to a fee of thirty dollars (\$30.00) per load; and

C. to the corrective action fund the balance, if any, of the net receipts."

Section 2. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--GASOLINE TAX--HIGHWAY INFRASTRUCTURE

FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the highway infrastructure fund in an amount equal to five and eighty-eight hundredths percent of the net receipts attributable to the gasoline tax."

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

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

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

B. For the privilege of importing gasoline or special fuel into this state for resale or consumption in this state there is imposed a fee determined as provided in Subsection C of this section on each load of gasoline or special fuel imported into New Mexico for resale or consumption on which the petroleum products loading fee has not been previously paid. For the purposes of this section, "load" means eight thousand gallons of gasoline or special fuel. To determine how many loads a person is to report under the provisions of this section, the person shall divide by eight thousand the total gallons of gasoline reported for the purposes of Section 7-13-3 NMSA 1978 as adjusted under the provisions of Section 7-13-4 NMSA 1978 and the total gallons of special fuels received in New Mexico less any gallons exempted under Section 7-13A-4 NMSA

1978. Loads shall be calculated to the nearest one-hundredth of a load.

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

(1) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year equals or exceeds eighteen million dollars (\$18,000,000), the fee shall be set at seventy dollars (\$70.00) per load;

(2) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year exceeds twelve million dollars (\$12,000,000) but is less than eighteen million dollars (\$18,000,000), the fee shall be set at one hundred ten dollars (\$110.00) per load; and

(3) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year is less than twelve million dollars (\$12,000,000), the fee shall be set at one hundred fifty dollars (\$150) per load.

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

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

fund."

Section 4. Section 7-14A-10 NMSA 1978 (being Laws 1991, Chapter 197, Section 14) is amended to read:

"7-14A-10. DISTRIBUTION OF PROCEEDS.--At the end of each month, the net receipts attributable to the leased vehicle gross receipts tax and any associated penalties and interest shall be distributed to the highway infrastructure fund."

Section 5. Section 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended) is amended to read:

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

A. After the necessary disbursements for refunds and other purposes have been made, the money remaining, except for remittances received within the previous two months that are unidentified as to source or disposition, shall be distributed as follows:

(1) to each municipality, county or fee agent operating a motor vehicle field office, an amount equal to six dollars (\$6.00) per driver's license and three dollars (\$3.00) per identification card or motor vehicle or motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population in excess of three hundred thousand or a municipality with a population in excess of three hundred thousand within a class A county, operating a motor vehicle field office, an amount equal to fifty cents (\$.50) for each administrative service fee remitted by that county or municipality to the department pursuant to the provisions of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to one-half of each fee received from motorcycle endorsements; and

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

(4) to the local governments road fund, the amount of the fees provided for in Subsection A of Section 66-5-408 NMSA 1978;

(5) to the division:

(a) an amount equal to one-half of each fee received from motorcycle endorsements;

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

(c) an amount equal to the fees provided for in Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

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

(7) to the highway infrastructure fund, all tire recycling fees collected pursuant to the provisions of Sections 66-6-1, 66-6-2, 66-6-4, 66-6-5 and 66-6-8 NMSA 1978.

B. The balance, exclusive of unidentified

remittances, after having been reduced by the distributions required by Subsection A of this section, shall be further reduced by a distribution of forty-three percent of the balance to the state road fund, and the remainder of the balance shall be transferred or distributed by the state treasurer on or before the last day of the month next after its receipt, as follows:

(1) forty-one and three-tenths percent shall be distributed to the state road fund;

(2) seventeen and six-tenths percent shall be transferred to each county in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties;

(3) seventeen and six-tenths percent shall be transferred to the counties, each county receiving an amount equal to the proportion, determined by the secretary of highway and transportation in accordance with Subsection E of this section, that the mileage of public roads maintained by the county is to the total mileage of public roads maintained by all counties of the state. Amounts distributed to each county in accordance with this paragraph shall be credited to the respective county road fund and be used for the improvement and maintenance of the public roads in the county and to pay for the acquisition of rights of way and material pits. For this purpose, the board of county commissioners of each of the respective counties shall certify by April 1 of each year to the secretary of highway and transportation the total mileage as of April 1

of that year; provided that in their report, the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By agreement and in cooperation with the state highway and transportation department, the boards of county commissioners of the various counties may use or designate any of the funds provided in this paragraph for any federal aid program;

(4) nine and four-tenths percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the sum of net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, determined for the incorporated municipality is to the sum of net taxable value plus assessed value determined for all incorporated municipalities within the county. Amounts transferred to incorporated municipalities under the provisions of this paragraph shall be used for the construction, maintenance and repair of streets within the municipality and for payment of paving assessments against property owned by federal, county or municipal governments. In any county in

which there are no incorporated municipalities, the amount allocated under this paragraph shall be transferred to the county road fund and used in accordance with the provisions of Paragraph (3) of this subsection; and

(5) fourteen and one-tenth percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the county and incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the computed taxes due for the county and each incorporated municipality within the county bear to the total computed taxes due for the county and incorporated municipalities within the county. For the purposes of this paragraph, the term "computed taxes due" for any jurisdiction means the sum of the net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, for that jurisdiction multiplied by an average of the rates for residential and nonresidential property imposed for that jurisdiction pursuant to Subsection B of Section 7-37-7 NMSA 1978.

C. To carry out the provisions of this section, during the month of June of each year:

(1) the department shall determine and certify to the department of finance and administration the

proportions that the department is required to determine by Subsection B of this section using information for the preceding calendar year on the number of vehicles registered in each county based on the address of the owner or place where the vehicle is principally located, the registration fees for the vehicles registered in each county, the total number of vehicles registered in the state and the total registration fees for all vehicles registered in the state; and

(2) the department of finance and administration shall determine the proportions that the department of finance and administration is required to determine by Subsection B of this section based upon the net taxable value, as that term is defined in the Property Tax Code, and assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act, for the preceding tax year and the tax rates imposed pursuant to Subsection B of Section 7-37-7 NMSA 1978 in the preceding September.

D. By June 30 of each year, the department of finance and administration shall determine the appropriate percentage of money to be transferred to each county and municipality for each purpose in accordance with Subsection A of this section based upon the proportions determined by or certified to the department of finance and administration. The percentages determined shall be used to compute the amounts to be transferred to the counties and municipalities during the succeeding fiscal year.

E. The board of county commissioners of each of the respective counties shall, by April 1 of every year,

certify reports to the secretary of highway and transportation of the total mileage of public roads maintained by each county as of April 1 of every year; provided that in their reports, the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By July 1 of every year, the secretary of highway and transportation shall verify the reports of the counties and revise, if necessary, the total mileage of public roads maintained by each county and the mileage verified by the secretary of highway and transportation shall be the official mileage of public roads maintained by each county. Distribution of amounts to any county for road purposes shall be made in accordance with this section.

F. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by April 1 of any year, the secretary of highway and transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties that have certified mileages.

G. The secretary shall review, at the end of each fiscal year, the aggregate total of motor vehicle transactions performed by each municipality, county or fee agent operating a motor vehicle field office, and for each office exceeding ten thousand aggregate transactions per

year, that municipality, county or fee agent shall be paid an additional one dollar (\$1.00) per identification card, driver's license, registration or title transaction performed during the next fiscal year."

Section 6. A new section of Chapter 67, Article 3 NMSA 1978 is enacted to read:

"HIGHWAY INFRASTRUCTURE FUND CREATED--PURPOSE.--

A. The "highway infrastructure fund" is created in the state treasury and shall be administered by the department. The fund shall consist of money from various fees and taxes distributed to the fund. Earnings on investment of the fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert and shall remain in the fund for the purposes authorized in this section.

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

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

Section 7. Section 67-3-59.1 NMSA 1978 (being Laws 1989, Chapter 157, Section 1, as amended) is amended to

read:

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

A. In order to provide funds to finance state highway projects, including state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement or payment as authorized by federal legislation, the state highway commission is authorized, subject to the limitations of this section, to issue bonds from time to time, payable from federal funds not otherwise obligated that are paid into the state road fund, the proceeds of the collection of taxes and fees that are required by law to be paid into the state road fund and not otherwise pledged solely to the payment of outstanding bonds and debentures.

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

(1) the total aggregate outstanding principal amount of bonds issued for state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement or payment as

authorized by federal legislation shall not exceed one hundred million dollars (\$100,000,000); and

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

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

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

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

federal reimbursement; and

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

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

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

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

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

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

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

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

G. The bonds shall be executed with the manual or facsimile signature of the chairman of the state highway commission, countersigned by the state treasurer and

attested to by the secretary of the state highway commission, with the seal of the state highway commission imprinted or otherwise affixed to the bonds.

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

I. The bonds may be sold at a public or negotiated sale at, above or below par or through the New Mexico finance authority. Any negotiated sale shall be made with one or more investment banker whose services are obtained through a competitive proposal process. For any sale, the state highway commission or the New Mexico finance authority shall also procure the services of any financial advisor or bond counsel through a competitive proposal process. If sold at public sale, a notice of the time and place of sale shall be published in a newspaper of general circulation in the state, and in any other newspaper determined in the resolution authorizing the issuance of the bonds, once each week for two consecutive weeks prior to the date of sale. The bonds may be purchased by the state treasurer or state investment officer.

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

value.

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

L. Any law authorizing the imposition or distribution of taxes or fees paid into the state road fund or the highway infrastructure fund or that affects those taxes and fees shall not be amended or repealed or otherwise directly or indirectly modified so as to impair any outstanding bonds secured by a pledge of revenues from those taxes and fees paid into the state road fund or the highway infrastructure fund, unless the bonds have been discharged in full or provisions have been made for a full discharge. In addition, while any bonds issued by the state highway commission pursuant to the provisions of this section remain outstanding, the powers or duties of the commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holder of such bonds.

M. In contracting for state highway projects to be paid in whole or in part with proceeds of bonds authorized by this section, the state highway and transportation department shall require that any sand, gravel, caliche or similar material needed for the project shall, if practicable, be mined from state lands. Each contract shall provide that the contractor notify the commissioner of public lands of the need for the material

and that, through lease or purchase, the material will be mined from state lands if:

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

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

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

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

Section 8. Laws 1995, Chapter 6, Section 23 is amended to read:

"Section 23. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 10 and 12 through 14 of this act is July 1, 1995.

B. The effective date of the provisions of Sections 1 through 9 and 21 of this act is August 1, 1995."

Section 9. REPEAL.--Laws 1995, Chapter 6, Section 11 is repealed.

Section 10. EFFECTIVE DATES.--

A. The effective date of the provisions of Sections 3 through 7 of this act is July 1, 1999.

B. The effective date of the provisions of Section 1 of this act is August 1, 1999.

C. The effective date of the provisions of
Section 2 of this act is August 1, 2003.

Section 11. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect
immediately. _____

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