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HOUSE BILL 272

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

INTRODUCED BY

Sandra D. Jeff

AN ACT

RELATING TO TAXATION; IMPOSING A ONE-CENT (\$.01) GASOLINE SURTAX AND A ONE-CENT (\$.01) SPECIAL FUEL SURTAX TO FUND THE COMPLETION OF THE UNITED STATES HIGHWAY 491 FOUR-LANE PROJECT; CREATING THE HIGHWAY 491 PROJECT FUND; AUTHORIZING THE ISSUANCE OF STATE HIGHWAY BONDS FOR THE HIGHWAY 491 PROJECT; MAKING AN APPROPRIATION.

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

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

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

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the ~~[taxes, surcharges]~~ gasoline tax, penalties and interest imposed pursuant to the

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1 Gasoline Tax Act and to the [~~taxes, surtaxes~~] special fuel  
2 excise tax, fees, penalties and interest imposed pursuant to  
3 the Special Fuels Supplier Tax Act and the Alternative Fuel Tax  
4 Act, but excluding the highway 491 gasoline surtax and the  
5 highway 491 special fuel surtax imposed pursuant to Sections 3  
6 and 5 of this 2012 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.

5 B. A distribution pursuant to Section 7-1-6.1 NMSA  
6 1978 shall be made to the state road fund in an amount equal to  
7 the net receipts attributable to the taxes, interest and  
8 penalties from the Weight Distance Tax Act."

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

11 "[NEW MATERIAL] ADDITIONAL DISTRIBUTION--HIGHWAY 491  
12 PROJECT FUND.--A distribution pursuant to Section 7-1-6.1 NMSA  
13 1978 shall be made to the highway 491 project fund in an amount  
14 equal to the net receipts attributable to the highway 491  
15 gasoline surtax and an amount equal to the net receipts  
16 attributable to the highway 491 special fuel surtax."

17 SECTION 3. A new section of the Gasoline Tax Act is  
18 enacted to read:

19 "[NEW MATERIAL] HIGHWAY 491 GASOLINE SURTAX--FIFTEEN-YEAR  
20 PERIOD.--

21 A. For the privilege of receiving gasoline in this  
22 state, a surtax of one cent (\$.01) per gallon in addition to  
23 the gasoline tax shall be imposed on each gallon of gasoline  
24 received in New Mexico that is subject to the gasoline tax  
25 imposed pursuant to Section 7-13-3 NMSA 1978. The surtax

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1 imposed by this section may be called the "highway 491 gasoline  
2 surtax".

3 B. The highway 491 gasoline surtax shall be imposed  
4 from July 1, 2012 through June 30, 2027."

5 SECTION 4. Section 7-13-4 NMSA 1978 (being Laws 1991,  
6 Chapter 9, Section 32, as amended) is amended to read:

7 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the  
8 gasoline tax and the highway 491 gasoline surtax due, the  
9 following amounts of gasoline may be deducted from the total  
10 amount of gasoline received in New Mexico during the tax  
11 period, provided satisfactory proof thereof is furnished to the  
12 department:

13 A. gasoline received in New Mexico, but exported  
14 from this state by a rack operator, distributor or wholesaler  
15 other than in the fuel supply tank of a motor vehicle or sold  
16 for export by a rack operator or distributor; provided that, in  
17 either case:

18 (1) the person exporting the gasoline is  
19 registered in or licensed by the destination state to pay that  
20 state's gasoline or equivalent fuel tax;

21 (2) proof is submitted that the destination  
22 state's gasoline or equivalent fuel tax has been paid or is not  
23 due with respect to the gasoline; or

24 (3) the destination state's gasoline or  
25 equivalent fuel tax is paid to New Mexico in accordance with

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1 the terms of an agreement entered into pursuant to Section  
2 9-11-12 NMSA 1978 with the destination state;

3 B. gasoline received in New Mexico sold to the  
4 United States or an agency or instrumentality thereof for the  
5 exclusive use of the United States or an agency or  
6 instrumentality thereof. Gasoline sold to the United States  
7 includes gasoline delivered into the supply tank of a  
8 government-licensed vehicle of the United States;

9 C. gasoline received in New Mexico sold to an  
10 Indian nation, tribe or pueblo or a political subdivision,  
11 agency or instrumentality of that Indian nation, tribe or  
12 pueblo for the exclusive use of the Indian nation, tribe or  
13 pueblo or a political subdivision, agency or instrumentality  
14 thereof. Gasoline sold to an Indian nation, tribe or pueblo  
15 includes gasoline delivered into the supply tank of a  
16 government-licensed vehicle of the Indian nation, tribe or  
17 pueblo;

18 D. gasoline received in New Mexico, dyed in  
19 accordance with department regulations and used in a manner  
20 other than for propulsion of motor vehicles on the highways of  
21 this state or motorboats or activities ancillary to that  
22 propulsion;

23 E. gasoline received in New Mexico and sold at  
24 retail by a registered Indian tribal distributor if:

25 (1) the sale occurs on the Indian reservation,

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1 pueblo grant or trust land of the distributor's Indian nation,  
2 tribe or pueblo;

3 (2) the gasoline is placed into the fuel  
4 supply tank of a motor vehicle on that reservation, pueblo  
5 grant or trust land; and

6 (3) the Indian nation, tribe or pueblo has  
7 certified to the department that it has in effect an excise  
8 ~~[privilege or similar tax on the gasoline]~~ or privilege tax  
9 similar to the gasoline tax and the highway 491 gasoline  
10 surtax; provided that the volume of gasoline deducted pursuant  
11 to this subsection shall be the total gallons sold in  
12 accordance with the provisions of this subsection multiplied by  
13 a fraction the numerator of which is the rate of the tribal tax  
14 certified to the department by the Indian nation, tribe or  
15 pueblo and the denominator of which is the combined rate of the  
16 gasoline tax and the highway 491 gasoline surtax imposed  
17 pursuant to the Gasoline Tax Act, but if the fraction exceeds  
18 one, it shall be one for purposes of determining the deduction;

19 F. gasoline received in New Mexico and sold by a  
20 registered Indian tribal distributor from a nonmobile storage  
21 container located within that distributor's Indian reservation,  
22 pueblo grant or trust land for resale outside that  
23 distributor's Indian reservation, pueblo grant or trust land;  
24 provided the department certifies that the distributor claiming  
25 the deduction sold no less than one million gallons of gasoline

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1 from a nonmobile storage container located within that  
2 distributor's Indian reservation, pueblo grant or trust land  
3 for resale outside that distributor's Indian reservation,  
4 pueblo grant or trust land during the period of May through  
5 August 1998; and provided further that the amount of gasoline  
6 deducted by a registered Indian tribal distributor pursuant to  
7 this subsection shall not exceed two million five hundred  
8 thousand gallons per month, calculated as a monthly average  
9 during the calendar year. Volumes deducted pursuant to  
10 Subsection E of this section shall not be deducted pursuant to  
11 this subsection; and

12 G. gasoline received in New Mexico on which New  
13 Mexico gasoline tax was paid by the out-of-state terminal at  
14 which the gasoline was loaded, provided that documentation that  
15 the gasoline was to be imported into New Mexico was provided to  
16 the terminal operator by the person receiving the fuel."

17 SECTION 5. A new section of the Special Fuels Supplier  
18 Tax Act is enacted to read:

19 "[NEW MATERIAL] HIGHWAY 491 SPECIAL FUEL SURTAX--FIFTEEN-  
20 YEAR PERIOD.--

21 A. For the privilege of receiving or using special  
22 fuel in this state, a surtax of one cent (\$.01) per gallon in  
23 addition to the special fuel excise tax shall be imposed on  
24 each gallon of special fuel received or used in New Mexico that  
25 is subject to the special fuel excise tax imposed pursuant to

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1 Section 7-16A-3 NMSA 1978. The surtax imposed by this section  
2 may be called the "highway 491 special fuel surtax".

3 B. The highway 491 special fuel surtax shall be  
4 imposed from July 1, 2012 through June 30, 2027."

5 SECTION 6. A new Section 67-3-59.5 NMSA 1978 is enacted  
6 to read:

7 "67-3-59.5. [NEW MATERIAL] HIGHWAY 491 PROJECT FUND  
8 CREATED--USE.--

9 A. The "highway 491 project fund" is created in the  
10 state treasury and shall be administered by the department.  
11 The fund shall consist of money from taxes distributed to the  
12 fund. Earnings on investment of the fund shall be credited to  
13 the fund. Balances in the fund at the end of any fiscal year  
14 shall revert to the state road fund after all required debt  
15 service payments and other required debt service and reserve  
16 fund deposits have been made for bonds issued pursuant to  
17 Section 67-3-59.6 NMSA 1978; provided that when the New Mexico  
18 finance authority certifies to the department of transportation  
19 and to the department of finance and administration that bonds  
20 issued pursuant to Section 67-3-59.6 NMSA 1978 have been  
21 retired, balances in the fund shall revert to the state road  
22 fund. The amounts that revert to the state road fund shall be  
23 used for the acquisition of rights of way, planning, design,  
24 engineering, construction, improvement and maintenance for  
25 state highway projects.

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1           B. Except as provided in Subsection E of Section  
2     67-3-59.6 NMSA 1978, money in the fund shall be used solely for  
3     payments and other deposits of debt service or for reserve  
4     requirements for the bonds issued for the purpose of the  
5     completion of reconstruction and improvement of United States  
6     highway 491. The bonds authorized by this section may be  
7     called "highway 491 project bonds".

8           C. The taxes required by law to be distributed to  
9     the highway 491 project fund may be pledged for the payment of  
10    highway 491 project bonds issued pursuant to Section 67-3-59.6  
11    NMSA 1978 for the highway 491 project authorized in Subsection  
12    B of this section.

13           D. The New Mexico finance authority may issue and  
14    sell highway 491 project bonds in compliance with the  
15    provisions of Section 67-3-59.6 NMSA 1978 in an amount not to  
16    exceed one hundred twenty-three million dollars (\$123,000,000)  
17    when the state transportation commission determines the need  
18    for the issuance of the bonds. The New Mexico finance  
19    authority shall schedule the issuance and sale of the bonds in  
20    the most expeditious and economical manner possible upon a  
21    finding by the commission that the project has been developed  
22    sufficiently to justify the issuance and that the project can  
23    proceed to contract within a reasonable time. The proceeds  
24    from the sale of the bonds are appropriated to the department  
25    for the purposes described in this section and in Section

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1 67-3-59.6 NMSA 1978."

2 SECTION 7. A new Section 67-3-59.6 NMSA 1978 is enacted  
3 to read:

4 "67-3-59.6. [NEW MATERIAL] HIGHWAY 491 PROJECT BONDS--  
5 ISSUANCE--LIMITS--APPROVAL.--

6 A. In order to provide funds to finance the highway  
7 491 project identified in Section 67-3-59.5 NMSA 1978, the New  
8 Mexico finance authority, when directed by the state  
9 transportation commission, is authorized, subject to the  
10 limitations of this section and Section 67-3-59.5 NMSA 1978, to  
11 issue highway 491 project bonds from time to time, payable  
12 from:

13 (1) federal funds not otherwise obligated that  
14 are paid into the state road fund;

15 (2) proceeds from the collection of taxes and  
16 fees that are required to be paid into the state road fund and  
17 that are not otherwise pledged exclusively to the payment of  
18 outstanding bonds and debentures; and

19 (3) taxes required by law to be paid into the  
20 highway 491 project fund.

21 B. The New Mexico finance authority, when directed  
22 by the state transportation commission, may issue bonds to  
23 refund other bonds issued at the direction of the state  
24 transportation commission pursuant to this section or by  
25 exchange or current or advance refunding.

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1           C. The total aggregate outstanding principal amount  
2 of bonds issued from time to time pursuant to this section  
3 shall not, without additional authorization of the state  
4 legislature, exceed one hundred twenty-three million dollars  
5 (\$123,000,000).

6           D. In consultation with the state transportation  
7 commission, the New Mexico finance authority shall determine  
8 all terms, covenants and conditions of the bonds; provided that  
9 the project design life of the highway 491 project meets or  
10 exceeds the life of the bonds issued for that project and  
11 further provided that each series of bonds shall be sold,  
12 executed and delivered in accordance with the provisions of the  
13 New Mexico Finance Authority Act. The New Mexico finance  
14 authority may enter into interest rate exchange agreements,  
15 interest rate swap contracts, insurance agreements, remarketing  
16 agreements and any other agreements deemed necessary in  
17 connection with the issuance of the bonds.

18           E. Proceeds of the bonds and amounts on deposit in  
19 the highway 491 project fund may be used to pay expenses  
20 incurred in the preparation, administration, issuance and sale  
21 of the bonds and, together with the earnings on the proceeds of  
22 the bonds, may be used to pay rebate, penalty, interest and  
23 other obligations relating to the bonds and the proceeds of the  
24 bonds under the Internal Revenue Code of 1986, as amended.

25           F. This section is full authority for the issuance

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

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

10 H. Any law authorizing the imposition or  
11 distribution of taxes or fees paid into the state road fund or  
12 the highway 491 project fund or that affects those taxes and  
13 fees shall not be amended or repealed or otherwise directly or  
14 indirectly modified so as to impair outstanding bonds secured  
15 by a pledge of revenues from those taxes and fees paid into the  
16 state road fund or the highway 491 project fund, unless the  
17 bonds have been discharged in full or provisions have been made  
18 for a full discharge. In addition, while any bonds issued by  
19 the New Mexico finance authority pursuant to the provisions of  
20 this section remain outstanding, the powers or duties of the  
21 state transportation commission or the authority shall not be  
22 diminished or impaired in any manner that will affect adversely  
23 the interests and rights of the holder of such bonds.

24 I. Bonds issued pursuant to this section shall not  
25 constitute a general obligation of the state and shall be paid

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1 solely from federal funds not otherwise obligated and taxes and  
2 fees deposited into the state road fund and the highway 491  
3 project fund.

4 J. For purposes of this section, "highway 491  
5 project bonds" includes only those bonds issued pursuant to  
6 this section and excludes transportation bonds as defined in  
7 Section 67-3-72 NMSA 1978 and state transportation project  
8 bonds as defined in Section 67-3-59.3 NMSA 1978."

9 SECTION 8. APPLICABILITY.--The distribution pursuant to  
10 Section 2 of this act applies to receipts from the highway 491  
11 gasoline surtax and the highway 491 special fuel surtax that  
12 are attributable to sales subject to those taxes on or after  
13 July 1, 2012.

14 SECTION 9. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2012.