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HOUSE BILL 391

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO STATE TRANSPORTATION PROJECT BONDS; REMOVING THE  
NEW MEXICO FINANCE AUTHORITY AS THE ISSUER OF BONDS ON BEHALF  
OF THE STATE TRANSPORTATION COMMISSION; MAKING THE STATE  
TRANSPORTATION COMMISSION THE CONTRACTING PARTY IN INTEREST FOR  
CURRENTLY ISSUED STATE TRANSPORTATION PROJECT BONDS.

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

SECTION 1. 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

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1 legislation, the state transportation commission is authorized,  
2 subject to the limitations of this section, to issue bonds from  
3 time to time, payable from federal funds not otherwise  
4 obligated that are paid into the state road fund and the  
5 proceeds of the collection of taxes and fees that are required  
6 by law to be paid into the state road fund and not otherwise  
7 pledged solely to the payment of outstanding bonds and  
8 debentures.

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

19 (1) the total aggregate outstanding principal  
20 amount of bonds issued for state highway projects that are  
21 required for the waste isolation pilot project and are eligible  
22 for federal reimbursement or payment as authorized by federal  
23 legislation shall not exceed one hundred million dollars  
24 (\$100,000,000); and

25 (2) the total aggregate outstanding principal

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

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

15 (1) an aggregate outstanding principal amount  
16 of bonds, not to exceed six hundred twenty-four million dollars  
17 (\$624,000,000), for major highway infrastructure projects for  
18 which the department has, prior to January 1, 1998, submitted  
19 or initiated the process of submitting a plan to the federal  
20 highway administration for innovative financing pursuant to 23  
21 USCA Sections 122 and 307;

22 (2) an aggregate outstanding principal amount  
23 of bonds, not to exceed one hundred million dollars  
24 (\$100,000,000), for state highway projects that are required  
25 for the waste isolation pilot project and are eligible for

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1 federal reimbursement; and

2 (3) an aggregate outstanding principal amount  
3 of bonds, not to exceed four hundred million dollars  
4 (\$400,000,000), for other state highway projects.

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

9 (1) three hundred million dollars  
10 (\$300,000,000) prior to July 1, 1999;

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

13 (3) nine hundred million dollars  
14 (\$900,000,000) from July 1, 2000 through June 30, 2001; and

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

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

20 F. Each series of bonds shall have a maturity of no  
21 more than twenty-five years from the date of issuance. The  
22 state transportation commission shall determine all other  
23 terms, covenants and conditions of the bonds; provided that the  
24 bonds shall not be issued pursuant to this section unless the  
25 state board of finance approves the issuance of the bonds and

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1 the principal amount of and interest rate or maximum net  
2 effective interest rate on the bonds.

3 G. The bonds shall be executed with the manual or  
4 facsimile signature of the [~~chairman~~] chair of the state  
5 transportation commission, countersigned by the state treasurer  
6 and attested to by the secretary of the state transportation  
7 commission, with the seal of the state transportation  
8 commission imprinted or otherwise affixed to the bonds.

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

15 I. The bonds may be sold at a public or negotiated  
16 sale at, above or below par [~~or through the New Mexico finance~~  
17 ~~authority~~]. A negotiated sale shall be made with one or more  
18 investment bankers whose services are obtained through a  
19 competitive proposal process. For any sale, the state  
20 transportation commission [~~or the New Mexico finance authority~~]  
21 shall also procure the services of any financial advisor or  
22 bond counsel through a competitive proposal process. If sold  
23 at public sale, a notice of the time and place of sale shall be  
24 published in a newspaper of general circulation in the state,  
25 and in any other newspaper determined in the resolution

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1 authorizing the issuance of the bonds, once each week for two  
2 consecutive weeks prior to the date of sale. The bonds may be  
3 purchased by the state treasurer or state investment officer.

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

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

14 L. Any law authorizing the imposition or  
15 distribution of taxes or fees paid into the state road fund or  
16 the highway infrastructure fund or that affects those taxes and  
17 fees shall not be amended or repealed or otherwise directly or  
18 indirectly modified so as to impair outstanding bonds secured  
19 by a pledge of revenues from those taxes and fees paid into the  
20 state road fund or the highway infrastructure fund, unless the  
21 bonds have been discharged in full or provisions have been made  
22 for a full discharge. In addition, while any bonds issued by  
23 the state transportation commission pursuant to the provisions  
24 of this section remain outstanding, the powers or duties of the  
25 commission shall not be diminished or impaired in any manner

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1 that will affect adversely the interests and rights of the  
2 holder of such bonds.

3 M. In contracting for state highway projects to be  
4 paid in whole or in part with proceeds of bonds authorized by  
5 this section, the department shall require that any sand,  
6 gravel, caliche or similar material needed for the project  
7 shall, if practicable, be mined from state lands. Each  
8 contract shall provide that the contractor notify the  
9 commissioner of public lands of the need for the material and  
10 that, through lease or purchase, the material shall be mined  
11 from state lands if:

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

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

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

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

25 SECTION 2. Section 67-3-59.3 NMSA 1978 (being Laws 2003

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1 (1st S.S.), Chapter 3, Section 24) is amended to read:

2 "67-3-59.3. STATE TRANSPORTATION PROJECT BONDS--  
3 ISSUANCE--PROCEDURES--APPROVAL.--

4 A. In order to provide funds to finance state  
5 transportation projects, [~~the New Mexico finance authority,~~  
6 ~~when directed by~~] the state transportation commission is  
7 authorized, subject to the limitations of this section and  
8 Section [~~26 of this 2003 act~~] 67-3-59.4 NMSA 1978, to issue  
9 bonds from time to time, payable from:

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

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

16 (3) taxes and fees required by law to be paid  
17 into the highway infrastructure fund.

18 B. The [~~New Mexico finance authority, when directed~~  
19 ~~by the~~] state transportation commission may issue bonds to  
20 refund other bonds issued by [~~or at the direction of~~] the state  
21 transportation commission pursuant to this section or Section  
22 67-3-59.1 NMSA 1978 by exchange or current or advance  
23 refunding.

24 C. [~~In consultation with~~] The state transportation  
25 commission [~~the New Mexico finance authority~~] shall determine

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1 all terms, covenants and conditions of the bonds; provided that  
2 the project design life of a project meets or exceeds the life  
3 of the bond issued for that project, and each series of bonds  
4 shall be sold, executed and delivered [~~in accordance with the~~  
5 ~~provisions of the New Mexico Finance Authority Act. The New~~  
6 ~~Mexico finance authority~~] pursuant to Subsections F, G and H of  
7 Section 67-3-59.1 NMSA 1978. The state transportation  
8 commission may enter into interest rate exchange agreements,  
9 interest rate swap contracts, insurance agreements, remarketing  
10 agreements and any other agreements deemed necessary in  
11 connection with the issuance of the bonds.

12 D. Proceeds of the bonds and amounts on deposit in  
13 the state road fund and the highway infrastructure fund may be  
14 used to pay expenses incurred in the preparation,  
15 administration, issuance and sale of the bonds and, together  
16 with the earnings on the proceeds of the bonds, may be used to  
17 pay rebate, penalty, interest and other obligations relating to  
18 the bonds and the proceeds of the bonds under the Internal  
19 Revenue Code of 1986, as amended.

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

25 F. The bonds shall be legal investments for a

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1 person or board charged with the investment of public funds and  
2 may be accepted as security for a deposit of public money and,  
3 with the interest thereon, are exempt from taxation by the  
4 state and a political subdivision or agency of the state.

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

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

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1 that, through lease or purchase, the material shall be mined  
2 from state lands if:

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

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

8 (3) the cost to the contractor for the  
9 material, including the costs of transportation, is competitive  
10 with other available material from nonstate lands.

11 I. Bonds issued pursuant to this section shall be  
12 paid solely from federal funds not otherwise obligated and  
13 taxes and fees deposited into the state road fund and the  
14 highway infrastructure fund and shall not constitute a general  
15 obligation of the state.

16 J. For purposes of this section, "state  
17 transportation project bonds" includes only those bonds issued  
18 pursuant to this section and excludes transportation bonds as  
19 defined in Section 67-3-72 NMSA 1978.

20 K. To effect economies, reduce costs and streamline  
21 the management of its debt portfolio, and recognizing that the  
22 ultimate source of repayment of bonds and other contractual  
23 obligations in the debt portfolio shall remain unchanged and  
24 unimpaired, the state transportation commission shall be deemed  
25 to have succeeded, superseded and replaced the New Mexico

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1 finance authority as the contracting party in interest in all  
2 bonds and the related indentures, resolutions, interest rate  
3 swap contracts, insurance agreements, remarketing agreements  
4 and other agreements deemed necessary in connection with the  
5 issuance of bonds entered into by the New Mexico finance  
6 authority on behalf of the state transportation commission  
7 pursuant to Section 67-3-59.3 NMSA 1978 prior to July 1, 2013.  
8 To ensure that this action with respect to the state  
9 transportation commission does not impair the contractual  
10 rights of any bondholders or contractual counterparties, the  
11 state transportation commission's replacement of the New Mexico  
12 finance authority as the contracting party as described herein  
13 shall become effective on July 1, 2013. Before July 1, 2013,  
14 the state transportation commission shall deliver a transition  
15 plan to the state board of finance that shall include evidence  
16 of:

17 (1) the state transportation commission's  
18 notification to all bondholders and contractual counterparties  
19 of this 2013 act and amendments, if any, to indentures of  
20 trust, resolutions, interest rate exchange agreements, interest  
21 rate swap contracts, insurance agreements, remarketing  
22 agreements and any other agreements deemed necessary in  
23 connection with the issuance of bonds;

24 (2) a plan for transitioning audit and related  
25 financial statement functions related to the bonds; and

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1                   (3) evidence that any ratings associated with  
2 bonds issued by the New Mexico finance authority at the request  
3 of the state transportation commission will not be adversely  
4 impacted by this 2013 act becoming effective."

5           SECTION 3. Section 67-3-59.4 NMSA 1978 (being Laws 2003  
6 (1st S.S.), Chapter 3, Section 26) is amended to read:

7           "67-3-59.4. STATE TRANSPORTATION PROJECT BONDS--  
8 AUTHORIZATION AND APPROPRIATION--PRIORITIES--CRITERIA--  
9 REPORTS.--

10           A. It is the intent of the legislature to authorize  
11 the [~~New Mexico finance authority~~] state transportation  
12 commission to issue state transportation bonds for projects  
13 specified in Laws 2003 (1st S.S.), Chapter 3, Sections 27 and  
14 28 [~~of this 2003 act~~] in the total aggregate principal amount  
15 of one billion five hundred eighty-five million dollars  
16 (\$1,585,000,000) in annual increments of three hundred fifty  
17 million dollars (\$350,000,000) beginning with the appropriation  
18 for 2003 provided for in Subsection B of this section.

19           B. After [~~the effective date of this act~~] February  
20 3, 2004, the state [~~transporation~~] transportation commission  
21 may [~~authorize the New Mexico finance authority to~~] issue and  
22 sell state transportation bonds. The proceeds of the bonds are  
23 appropriated to the department of transportation for projects  
24 listed in Laws 2003 (1st S.S.), Chapter 3, Sections 27 and 28  
25 [~~of this 2003 act~~].

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1           C. The department of transportation shall provide  
2 to the legislature and the governor a report on transportation  
3 priorities and progress. The report shall include:

4                   (1) justification of priority ranking of  
5 projects, including the following for each highway project  
6 enumerated in Laws 2003 (1st S.S.), Chapter 3, Sections 27 and  
7 28 [~~of this 2003 act~~]:

8                           (a) traffic counts and accident rates  
9 and the expected improvements to traffic flow, health and  
10 safety;

11                           (b) the ranking of the pavement and  
12 substructure conditions;

13                           (c) an assessment of economic  
14 development impacts; and

15                           (d) other information deemed significant  
16 by the department;

17                   (2) the expected life of the proposed  
18 improvement;

19                   (3) sufficiency of revenue to pay the  
20 principal and interest of all outstanding and proposed bonds  
21 based on a five- and twenty-year financial forecast for the  
22 state road fund and the effect of the bond program on the  
23 department's construction and maintenance program;

24                   (4) status report of ongoing major  
25 construction;

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1 (5) the relationship between the requested  
2 projects and the statewide transportation improvement program;  
3 and

4 (6) any other information requested by the  
5 legislature or the executive.

6 D. The department of transportation shall provide  
7 quarterly progress reports to the department of finance and  
8 administration and the legislative finance committee.

9 E. The department of transportation shall adopt and  
10 enforce rules with the goal that no less than seventy percent  
11 of the work force of an exclusively state-funded project  
12 authorized in Laws 2003 (1st S.S.), Chapter 3, Sections 27 and  
13 28 [~~of this 2003 act~~] shall be residents of New Mexico."

14 SECTION 4. TEMPORARY PROVISION--OUTSTANDING STATE  
15 TRANSPORTATION PROJECT BONDS.--

16 A. Nothing in this act shall be deemed to impair  
17 state transportation project bonds previously issued by the New  
18 Mexico finance authority on behalf of the state transportation  
19 commission and outstanding on the effective date of this act.

20 B. If required by the terms, covenants and  
21 provisions of state transportation project bonds previously  
22 issued by the New Mexico finance authority on behalf of the  
23 state transportation commission and outstanding on the  
24 effective date of this act, additional bonds issued by the  
25 state transportation commission pursuant to this act shall

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1 contain any required terms, covenants and provisions required  
2 to avoid impairment of the previously issued bonds.

3 SECTION 5. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2013.

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