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Santa Teresa Port of Entry Tolling & User-Fee Structures

Executive briefing | Legal feasibility analysis

Based on the report prepared for the New Mexico Border Authority
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Prepared for leadership discussion — not a legal opinion

Executive takeaway

A path may exist

New Mexico may have legally viable ways to toll state-provided transportation facilities serving Santa Teresa.

Not a border-crossing tax

A fee imposed simply for the privilege of crossing the international border presents substantial constitutional concerns.

Structure determines feasibility

Facility ownership, statutory authority, federal-aid history, rate design, revenue uses and federal approvals are decisive.

Core conclusion

The strongest legal approach identified is a properly authorized toll on identifiable, state-provided transportation infrastructure outside the federally controlled land port of entry, with rates and revenues tied to facilities and services benefiting users.

The report does not conclude that any specific agency currently has authority to implement a Santa Teresa toll.

The legal distinction that drives the analysis

FOUNDATIONAL ISSUE

Higher legal risk | Charge for crossing the border

- Charge triggered by entering or leaving the United States
- May be characterized as a tax on foreign commerce
- Strong federal interests govern international border activity
- Report identifies no legally secure basis for a stand-alone state border-crossing charge

Stronger legal basis | Toll for a state facility or service

- Charge for use of identifiable state transportation infrastructure
- Must be supported by clear state authorization
- Amount should bear a defensible relationship to facilities or services provided
- Revenues should be tied to permissible transportation purposes

Changing the label or moving the collection point onto a state road is not enough. The actual project structure controls the legal analysis. Federal congressional authority—something like the International Bridge Act—would remove most of the constitutional uncertainty.

State authority is not settled

New Mexico Border Authority (NMBA)

Has statutory authority to charge tolls and fees for use of, or services rendered by, an Authority facility, program or service. The report finds no clear basis to toll NM 136, which is an NMDOT state highway.

NMDOT

Has broad authority over the state highway system, including construction and maintenance. The report does not identify a general statutory grant allowing NMDOT to toll existing state highways.

What the report identifies as the clearest legislative path

Enact express state legislation authorizing the selected tolling structure.

Define the roles of NMDOT and NMBA, including ownership/control, toll setting and collection.

Address financing, maintenance, administration and permissible revenue uses.

New Mexico constitutional considerations

Article IV, Section 24

Restricts local or special laws “chartering or licensing” toll roads. It does not categorically prohibit toll roads or general legislation concerning tolling.

The report sees a substantial basis for treating legislation granting tolling powers to a state agency as general legislation—not a private toll-road charter.

Remaining uncertainty

No New Mexico appellate court has decided whether legislation conferring tolling authority on a state agency falls within the “chartering or licensing” prohibition.

The report therefore describes the legal basis as reasonable, but not settled.

Implication: any enabling legislation should be structured as a generally applicable statutory framework, subject to review by state legal counsel.

Federal and constitutional constraints

Foreign commerce

The Dormant Commerce Clause and Import-Export Clause raise concerns if a toll discriminates against, or functions as a tax on, foreign commerce. A reasonable user charge for state facilities is materially different.

Federal-aid highways

23 U.S.C. § 301 generally requires Title 23 highways to remain toll-free, subject to exceptions. 23 U.S.C. § 129 permits tolling in specified project categories; applicability depends on facility history and project facts.

Federal property & operations

The report identifies no existing legal basis for New Mexico to collect its own toll within the federally controlled LPOE. Federal property, inspection operations and traffic circulation require federal coordination/authority.

The report also reviews the right to travel and Compact Clause. Its principal feasibility concerns center on foreign commerce, federal-aid restrictions and federal control of the LPOE.

Where a toll is collected matters

STATE-CONTROLLED ROAD / FACILITY

Potentially feasible with clear authority

FEDERAL LPOE BOUNDARY

State toll collection not supported under existing law

LARGER PORT REDEVELOPMENT

Requires federal participation and project agreements
Pres

The report's potential structures all contemplate collection on state-controlled infrastructure outside the federal LPOE. A toll collected inside the federal port is not identified as a legally supported option under current law.

Potential project structures

ALTERNATIVES IN THE REPORT

1 | Toll existing NM 136

Narrowest concept.

- Toll on existing state roadway outside the federal LPOE
- Additional state legislation likely needed
- Confirm federal-aid history and § 129 eligibility
- Define NMDOT / NMBA responsibilities

2 | Create a border transportation facility

Broader state-controlled facility or service.

- Requires a clearly defined facility and ownership/control structure
- Requires enabling authority and project-specific agreements
- Rate and revenue design must connect to user benefits

3 | Integrate with LPOE redevelopment

Most complex concept.

- Toll revenues could be part of a larger project
- Federal participation and agreements required
- Address construction, financing, ownership, security, maintenance and operations
- Presidential Permit may apply to physical changes

These are potential structures—not approved projects or confirmation that existing agency authority is sufficient.

Federal coordination and approvals

FHWA: Confirm the proposed facility's federal-aid status, funding history and applicable tolling authority under 23 U.S.C. §§ 301 and 129; seek early written clarification.

GSA and CBP: Coordinate where a project affects federal land, LPOE facilities, inspection lanes, traffic circulation or federal operations.

Presidential Permit: Evaluate early if the project substantially modifies or expands the international crossing.

Other governmental entities: Identify necessary state/local agreements; a binational arrangement is not automatically required for a toll on a New Mexico transportation facility, but would raise additional legal issues.

Federal LPOE financing: Federal law provides mechanisms for accepting certain donations and improvements; those mechanisms do not transfer federal property or inspection control to the State.

Recommended next steps

1	**Select the facility**	Define exactly what infrastructure or service would be tolled, where it is located, and who owns/controls it.
2	**Confirm authority**	Obtain legal review of NMBA/NMDOT authority and identify required enabling legislation.
3	**Verify federal status**	Document NM 136 or other facility's federal-aid history; consult FHWA on § 129 eligibility.
4	**Design defensible tolling**	Develop a rate methodology and restrict revenue uses to purposes tied to the facility and user benefits.
5	**Engage federal partners**	Begin coordination with FHWA, GSA and CBP; assess Presidential Permit, Congressional Statutory Authority for tolling, and other approvals.

BOTTOM LINE

Without a Congressional Authority, a legally defensible tolling option may be possible—but only if the project is built around a state-provided transportation facility, not the act of crossing the border.

Leadership focus

Do not treat existing law as clear authority to toll NM 136.

Prioritize a defined facility, express legislative authority and defensible revenue uses.

Resolve federal-aid and federal LPOE issues before selecting a tolling model.

This briefing summarizes the September 2026 NMSU legal feasibility report; it is not legal advice or a legal opinion.

Economic analysis: the objective is revenue without losing competitiveness

Infrastructure pressure

Freight growth increases pavement, safety and capacity demands on NM 136 / Pete Domenici Highway, local connectors and planned corridor facilities.

Regional economic role

Santa Teresa supports manufacturing, warehousing, logistics and agriculture, including industrial parks, the intermodal terminal and regional airport.

Economic trade-off

A user fee can help fund improvements, but it also increases the cost of using the port and may change routing, local spending and business-location decisions.

The study evaluates fee sensitivity by traffic type—not just total truck counts.

Freight serving Santa Teresa businesses has a direct connection to local production and employment.

El Paso-bound pass-through freight contributes less directly to New Mexico's local economy, while adding road wear.

Passenger trips support local shopping and other activity; even modest fees may discourage discretionary trips.

Economic recommendation: begin with a commercial-only fee

$4.50 / axle

Prepaid commercial rate, matching current Ysleta-Zaragoza pricing.

$5.00 / axle

Cash commercial rate, matching current Ysleta-Zaragoza pricing.

$22.50–$25.00

Illustrative five-axle truck charge (prepaid / cash).

Why the study favors this starting point

Rates are below the study's estimated switching thresholds for freight serving Santa Teresa and longer-haul freight.

A commercial-only fee supports infrastructure funding without adding a charge to local passenger trips.

Higher rates would narrow Santa Teresa's routing advantage and increase diversion risk.

Traffic sensitivity: not all users respond the same way

Illustrative fee thresholds at which an alternative route becomes equally economical

Traffic group	Current threshold	After BOTA commercial closure
Commercial to Santa Teresa industrial area	~$82 / truck	Higher; table estimate ~$119
Commercial to west El Paso	~$7 / truck	~$22 / truck
Commercial beyond the region	~$53 / truck	~$68 / truck
Passenger to Santa Teresa area	~$19 / vehicle	~$19 / vehicle

BOTA's planned loss of commercial cargo operations changes the alternative-route economics. Thresholds are estimates from the study, not guaranteed diversion points; values are rounded where the report's narrative and tables differ.

Potential annual revenue: commercial fee scenario

Commercial fee aligned with current Ysleta-Zaragoza rates

2028 estimate

$5.0 million annually

2040 estimate

$9.4 million annually

Forecast assumptions

Truck traffic growth assumption: 5% annually (based on 5.33% CAGR since 2015).

Revenue estimates assume continued growth and limited traffic diversion; they are gross projections, not net proceeds.

Passenger fees: additional revenue, but greater local-spending risk

2028 scenario

$2.4 million annual revenue if passenger fees match City of El Paso rates.

2040 scenario

$3.0 million annual revenue under the study's forecast assumptions.

Study recommendation

Do not begin with passenger fees. If later considered, do not exceed comparable City of El Paso rates.

Recommended revenue priorities

Road maintenance and pavement preservation on NM 136 / Pete Domenici Highway and connecting roads.

Corridor safety and capacity improvements, including planned transportation connections.

Where legally and operationally feasible, longer port hours and additional open lanes to reduce delay.

Economic implementation issues requiring resolution

Collection-direction inconsistency

The report's Executive Summary recommends northbound-only collection. Its detailed Fee Recommendations section (page 20) instead describes southbound-only collection as typical. This conflict must be resolved before a fee direction is selected.

Avoid double-charging Santa Teresa freight

If fees apply in both directions, the report recommends an industrial-park / overweight-zone account or annual permit to avoid charging both legs of deliveries followed by empty returns.

Financial and operational caveats

Revenue forecasts assume limited diversion and do not establish net revenue after collection, staffing, administration, enforcement and operating costs.

Use of existing federal facilities requires confirmation of legal authority and coordination with responsible agencies.

Rate design should protect industrial-park freight and local passenger activity while targeting traffic with lower local economic benefit.