

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 142

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE RECYCLING AND ILLEGAL
DUMPING ACT; EXPANDING THE TIRE RECYCLING PROGRAM; PROVIDING
PROHIBITIONS; PROVIDING FOR INSPECTIONS OF PREMISES; PROVIDING
FOR COMPLIANCE ORDERS AND FIELD CITATIONS; CREATING THE
RECYCLING AND ILLEGAL DUMPING ALLIANCE; AMENDING, REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES;
MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 20 of this act may be cited as the "Recycling and
Illegal Dumping Act".

Section 2. [NEW MATERIAL] LEGISLATIVE PURPOSES. -- The
purposes of the Recycling and Illegal Dumping Act are to:

A. protect the health and welfare of current and

1 future residents of New Mexico by providing for the prevention
2 and abatement of illegal dumpsites;

3 B. promote environmentally sound methods for reuse
4 and recycling;

5 C. create a statewide recycling alliance involving
6 the cooperation of cities, counties, state agencies, tribal
7 governments, land grant communities and private business to
8 encourage economic development, community development and
9 collaboration that foster sustainable use of resources,
10 increased recycling and a cleaner and healthier environment;
11 and

12 D. enhance and coordinate existing highway litter
13 control and removal and recycling efforts that include the
14 recycling of tires, glass, plastic, metal, paper products,
15 electronic waste and construction and demolition materials.

16 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
17 Recycling and Illegal Dumping Act:

18 A. "abatement" means to reduce in amount, degree or
19 intensity or to eliminate;

20 B. "agricultural use" means the beneficial use of
21 scrap tires in conjunction with the operations of a farm or
22 ranch that includes construction projects and aids in the
23 storage of feed;

24 C. "alliance" means the recycling and illegal
25 dumping alliance;

1 D. "board" means the environmental improvement
2 board;

3 E. "civil engineering application" means the use of
4 scrap tires or other recycled material in conjunction with
5 other aggregate materials in engineering applications;

6 F. "composting" means the process by which
7 biological decomposition of organic material is carried out
8 under controlled conditions and the process stabilizes the
9 organic fraction into a material that can be easily and safely
10 stored, handled and used in an environmentally acceptable
11 manner;

12 G. "cooperative association" means a refuse
13 disposal district created pursuant to the Refuse Disposal Act,
14 a sanitation district created pursuant to the Water and
15 Sanitation District Act, a special district created pursuant to
16 the Special District Procedures Act or other associations
17 created pursuant to the Joint Powers Agreements Act or the
18 Solid Waste Authority Act;

19 H. "department" means the department of
20 environment;

21 I. "dispose" means to deposit scrap tires or solid
22 waste into or on any land or water;

23 J. "household" means any single and multiple
24 residence, hotel or motel, bunkhouse, ranger station, crew
25 quarters, campground, picnic ground or day-use recreation area;

. 156626. 2

1 K. "illegal dumping" means disposal of trash, scrap
2 tires or any solid waste in a manner that violates the Solid
3 Waste Act or the Recycling and Illegal Dumping Act;

4 L. "illegal dumpsite" means a place where illegal
5 dumping has occurred;

6 M. "market development" means activities to expand
7 or create markets for recyclable and reusable materials;

8 N. "motor vehicle" means a vehicle or device that
9 is propelled by an internal combustion engine or electric motor
10 power that is used or may be used on the public highways for
11 the purpose of transporting persons or property and includes
12 any connected trailer or semi trailer;

13 O. "processing" means techniques to change
14 physical, chemical or biological character or composition of
15 solid waste but does not include composting, transformation or
16 open burning;

17 P. "recycling" means any process by which
18 recyclable materials are collected, separated or processed and
19 reused or returned to use in the form of raw materials or
20 products;

21 Q. "reuse" means the return of a commodity into the
22 economic stream without a change to its original form;

23 R. "scrap tire" means a tire that is no longer
24 suitable for its originally intended purpose because of wear,
25 damage or defect;

1 S. "scrap tire baling" means the process by which
2 scrap tires are mechanically compressed and bound into block
3 form;

4 T. "scrap tire generator" means a person who
5 generates scrap tires, including retail tire dealers,
6 retreaders, scrap tire processors, automobile dealers,
7 automobile salvage yards, private company vehicle maintenance
8 shops, garages, service stations and city, county and state
9 government, but does not include persons who generate scrap
10 tires in a household or in agricultural operations;

11 U. "scrap tire hauler" means a person who
12 transports scrap tires for hire for the purpose of recycling,
13 disposal, transformation or use in a civil engineering
14 application;

15 V. "secretary" means the secretary of environment;

16 W. "tire" means a continuous solid or pneumatic
17 rubber covering that encircles the wheel of a motor vehicle;

18 X. "tire-derived fuel" means whole or chipped tires
19 that produce a low sulfur, high-heating-value fuel;

20 Y. "tire-derived product" means a usable product
21 produced from the processing of a scrap tire but does not
22 include baled tires;

23 Z. "tire recycling" means a process in which scrap
24 tires are collected, stored, separated or reprocessed for reuse
25 as a different product or shredded into a form suitable for use

. 156626. 2

1 in rubberized asphalt or as raw material for the manufacture of
2 other products; and

3 AA. "tire recycling facility" means a place
4 operated or maintained for tire recycling but does not
5 include:

6 (1) retail business premises where tires are
7 sold, if no more than five hundred loose scrap tires or two
8 thousand scrap tires, if left in a closed conveyance or
9 enclosure, are kept on the premises at one time;

10 (2) the premises of a tire retreading
11 business, if no more than three thousand scrap tires are kept
12 on the premises at one time;

13 (3) premises where tires are removed from
14 motor vehicles in the ordinary course of business, if no more
15 than five hundred scrap tires are kept on the premises at one
16 time;

17 (4) a solid waste facility having a valid
18 permit or registration issued pursuant to the provisions of the
19 Solid Waste Act or regulations adopted pursuant to that act or
20 registration issued pursuant to the Environmental Improvement
21 Act; or

22 (5) a site where tires are stored or used for
23 agricultural uses.

24 Section 4. [NEW MATERIAL] PROHIBITED ACTS. --

25 A. A person shall not store or use in a civil

1 engineering application, except for agricultural use, more than
2 one hundred scrap tires anywhere in this state, unless the
3 person has a valid permit or registration from the department.

4 B. A person shall not operate or maintain a tire
5 recycling facility unless the facility has a valid permit
6 issued pursuant to the provisions of the Recycling and Illegal
7 Dumping Act or is a facility where tires are stored and used
8 for agricultural uses and complies with rules enacted pursuant
9 to the Recycling and Illegal Dumping Act.

10 C. A person shall not transport scrap tires for
11 hire to a place other than a tire recycling facility unless the
12 place is specifically excluded from the definition of a "tire
13 recycling facility".

14 D. A person shall not transport scrap tires for
15 hire either for disposal or recycling purposes without being
16 registered as a scrap tire hauler by the department pursuant to
17 rules adopted in accordance with the Recycling and Illegal
18 Dumping Act.

19 E. A scrap tire generator shall not release scrap
20 tires to a person other than a registered scrap tire hauler
21 pursuant to the Recycling and Illegal Dumping Act or a
22 registered commercial waste hauler pursuant to the Solid Waste
23 Act.

24 F. A person shall not engage in the open burning of
25 scrap tires.

. 156626. 2

1 G. A person shall not store or dispose of scrap
2 tires or tire-derived products in a manner that creates a
3 public nuisance, promotes the breeding or harboring of disease
4 vectors or creates a potential for fire or other health or
5 environmental hazards.

6 H. Except for agricultural uses, a person shall not
7 store scrap tires or tire-derived products for a period
8 exceeding twelve months unless specifically authorized by the
9 secretary.

10 I. A scrap tire hauler shall not transport scrap
11 tires without possessing a New Mexico scrap tire manifest
12 approved by the department.

13 J. A person shall not engage in, maintain or allow
14 illegal dumping.

15 Section 5. [NEW MATERIAL] FACILITIES--ENTRY BY
16 DEPARTMENT--AVAILABILITY OF RECORDS TO DEPARTMENT AND OTHERS.--

17 A. The secretary or any authorized representative,
18 employee or agent of the department may:

19 (1) enter a facility of a scrap tire
20 generator, scrap tire hauler or tire recycling facility at any
21 reasonable time for the purpose of making a routine inspection
22 or investigation of scrap tire management practices based on
23 reasonable evidence of a violation of the Recycling and Illegal
24 Dumping Act;

25 (2) take and analyze samples of the facility's

underscored material = new
[bracketed material] = delete

1 waste, soil, air or water in order to detect the nature and
2 concentration of contaminants, including those produced by
3 leaching, natural decomposition, gas production or hazardous
4 products in the facility, and the owner or operator shall have
5 the right to split the sample and conduct the owner or
6 operator's own analysis;

7 (3) for the purposes of developing or
8 assisting in the development of rules, conducting a study,
9 taking corrective action or enforcing the provisions of the
10 Recycling and Illegal Dumping Act, conduct monitoring or
11 testing of the equipment, contents or surrounding soil, air,
12 surface water or ground water at the facility of a scrap tire
13 generator, scrap tire hauler or tire recycling facility; and

14 (4) in coordination with the secretary of
15 transportation, conduct at weigh stations or any other adequate
16 site or facility inspections of scrap tire haulers.

17 B. Records, reports or information obtained by the
18 department pursuant to this section shall be available to the
19 public, except that information shall be treated confidentially
20 upon a showing, satisfactory to the department, that records,
21 reports or information or a particular part of the records,
22 reports or information, if made public, would divulge
23 information entitled to protection under the provisions of 18
24 USCA Section 1905. That record, report or information may be
25 disclosed to officers, employees or authorized representatives

. 156626. 2

1 of the United States concerned with carrying out the
2 federal Resource Conservation and Recovery Act of 1976 or to
3 officers, employees or authorized representatives of the state
4 when relevant in any proceedings pursuant to the Solid Waste
5 Act.

6 C. A person not subject to the provisions of 18
7 USCA Section 1905 who knowingly and willfully divulges or
8 discloses information entitled to protection pursuant to this
9 section shall, upon conviction, be subject to a fine of not
10 more than five thousand dollars (\$5,000) or to imprisonment not
11 to exceed one year or both.

12 D. In submitting data pursuant to the Recycling and
13 Illegal Dumping Act, a person required to provide such data
14 may:

15 (1) designate, in writing and in such manner
16 as the secretary may prescribe, the data the person believes is
17 entitled to protection pursuant to this section; and

18 (2) submit the designated data separately from
19 other data submitted pursuant to the Recycling and Illegal
20 Dumping Act.

21 Section 6. [NEW MATERIAL] ADMINISTRATION OF ACT. -- The
22 department is responsible for the administration and
23 enforcement of the provisions of the Recycling and Illegal
24 Dumping Act and of all rules adopted by the board pursuant to
25 the provisions of that act. The department is delegated all

1 authority necessary and appropriate to carry out its
2 responsibilities.

3 Section 7. [NEW MATERIAL] RECYCLING AND ILLEGAL DUMPING
4 ALLIANCE. --

5 A. The "recycling and illegal dumping alliance" is
6 created and is comprised of one member from each of the
7 following:

- 8 (1) state government;
- 9 (2) local government;
- 10 (3) a solid waste authority;
- 11 (4) an industry waste generator;
- 12 (5) a tribal government;
- 13 (6) a nonprofit organization;
- 14 (7) a recycling company;
- 15 (8) a retailer;
- 16 (9) an agricultural producer;
- 17 (10) a soil and water conservation district;

18 and

- 19 (11) a waste management company.

20 B. The secretary shall appoint members of the
21 alliance to serve two-year terms as volunteers with no
22 compensation from the state.

23 C. The alliance shall:

- 24 (1) develop strategies to increase recycling
25 and decrease illegal dumping in New Mexico;

. 156626. 2

1 (2) create a state recycling plan, as a
2 component of the New Mexico solid waste management plan, to
3 establish programs and goals and update the plan every three
4 years to measure progress and modify strategies; and

5 (3) review and make recommendations for
6 funding grant applications from the recycling and illegal
7 dumping fund.

8 Section 8. [NEW MATERIAL] RULES-- AUTHORITY AND CONTENT. --

9 The board shall adopt rules to implement the provisions of the
10 Recycling and Illegal Dumping Act. The rules shall be adopted
11 pursuant to the provisions of the Environmental Improvement Act
12 and shall include:

13 A. requirements and procedures for the issuance of
14 permits and registrations to tire recycling facilities, civil
15 engineering applications, scrap tire generators and scrap tire
16 haulers;

17 B. standards and requirements for tire recycling
18 and scrap tire storage and processing;

19 C. record-keeping requirements for tire recycling
20 facilities, scrap tire haulers and scrap tire generators;

21 D. financial assurance criteria for tire recycling
22 facilities;

23 E. fire rules for storage of scrap tires and tire-
24 derived products that are consistent with the rules or
25 recommendations adopted by the state fire marshal;

1 F. criteria and procedures for making disbursements
 2 pursuant to grant and loan programs authorized from the
 3 recycling and illegal dumping fund;

4 G. requirements and procedures for contracting with
 5 counties, municipalities, Indian nations, pueblos and tribes,
 6 land grant communities and cooperative associations for the
 7 abatement of illegal dumpsites and recycling;

8 H. requirements and procedures for a scrap tire
 9 manifest system;

10 I. a fee schedule applicable to scrap tire haulers
 11 and tire recycling facilities not exceeding the estimated cost
 12 of investigating and issuing permits and registrations and
 13 conducting regulatory oversight of permitted and registered
 14 activities; and

15 J. a fee schedule applicable to scrap tire
 16 generators not exceeding the estimated cost of conducting
 17 regulatory oversight of scrap tire generators.

18 Section 9. [NEW MATERIAL] SCRAP TIRE MANIFEST SYSTEM -- A
 19 scrap tire generator who transports or offers for
 20 transportation, scrap tires for offsite handling, altering,
 21 storage, disposal or for any combination thereof shall complete
 22 a scrap tire manifest pursuant to rules adopted by the board.
 23 Upon demand, the manifest for every generator whose scrap tire
 24 load is transported shall be shown to an officer of the motor
 25 transportation division of the department of public safety,

. 156626. 2

1 the New Mexico state police, a local law enforcement officer or
2 the secretary or the secretary's designee.

3 Section 10. [NEW MATERIAL] SOLID WASTE PERMIT
4 EXEMPTION. --A person operating a tire recycling facility under
5 a permit issued pursuant to the Recycling and Illegal Dumping
6 Act shall not be required to obtain a permit for that facility
7 pursuant to the Solid Waste Act.

8 Section 11. [NEW MATERIAL] ABATEMENT OF ILLEGAL
9 DUMPSITE. --

10 A. The department may bring an abatement action
11 pursuant to the provisions of Section 30-8-8 NMSA 1978 to
12 eliminate an illegal dumpsite.

13 B. The secretary may act administratively to
14 eliminate illegal dumpsites pursuant to the provisions of the
15 Recycling and Illegal Dumping Act.

16 C. Nothing in this section shall prohibit a
17 municipality, county, Indian nation, pueblo or tribe, land
18 grant community or cooperative association from contracting for
19 services to complete an abatement action.

20 Section 12. [NEW MATERIAL] AUTHORIZATION FOR ABATEMENT
21 CONTRACTS. --The secretary may contract with the governing body
22 of a county, municipality, Indian nation, pueblo or tribe, land
23 grant community or cooperative association for the abatement of
24 illegal dumpsites located within the boundaries of the county,
25 municipality, Indian nation, pueblo or tribe, land grant

1 community or cooperative association. The contract shall
 2 provide for the reimbursement of the county, municipality,
 3 Indian nation, pueblo or tribe, land grant community or
 4 cooperative association for expenses incurred in bringing an
 5 abatement action, including court costs, reasonable attorney
 6 fees and the actual expense of elimination of the illegal
 7 dumpsite if that expense is not recovered from and paid by the
 8 owner or operator of the illegal dumpsite as a result of the
 9 abatement action.

10 Section 13. [NEW MATERIAL] ENFORCEMENT-- COMPLIANCE
 11 ORDERS. --

12 A. Whenever the secretary determines that a person
 13 has violated or is violating any requirement or prohibition of
 14 the Recycling and Illegal Dumping Act, a rule adopted pursuant
 15 to that act or a condition of a permit issued pursuant to that
 16 act, the secretary may:

17 (1) issue a compliance order stating with
 18 reasonable specificity the nature of the violation and
 19 requiring compliance immediately or within a specified time
 20 period or assessing a civil penalty for any past or current
 21 violation or both; and

22 (2) commence a civil action in district court
 23 for appropriate relief, including a temporary or permanent
 24 injunction.

25 B. A compliance order issued pursuant to this

. 156626. 2

1 section may include a suspension or revocation of a permit or
2 portion of the permit issued by the secretary. A penalty
3 assessed in the compliance order shall not exceed five thousand
4 dollars (\$5,000) per day of noncompliance for each violation.

5 C. A compliance order issued pursuant to this
6 section shall state with reasonable specificity the nature of
7 the required corrective action or other response measure and
8 shall specify a time for compliance.

9 D. A compliance order issued pursuant to this
10 section, an enforcement proceeding initiated pursuant to this
11 section or a claim for personal or property injury arising from
12 conduct for which financial responsibility must be provided may
13 be issued to or taken against the insurer or guarantor of an
14 owner or operator of a tire recycling facility if:

15 (1) the owner or operator is in bankruptcy,
16 reorganization or arrangement pursuant to federal bankruptcy
17 law; or

18 (2) the jurisdiction in a state or federal
19 court cannot with reasonable diligence be obtained over an
20 owner or operator likely to be solvent at the time of
21 judgment.

22 E. A compliance order issued pursuant to this
23 section shall become final unless, no later than thirty days
24 after the order is served, the person named in the order
25 submits a written request to the secretary for a public

1 hearing. Upon a request, the secretary promptly shall conduct
 2 a public hearing. The secretary shall appoint an independent
 3 hearing officer to preside over the public hearing. The
 4 hearing officer shall make and preserve a complete record of
 5 the proceedings and forward a recommendation to the secretary,
 6 who shall make the final decision.

7 F. The secretary may seek enforcement of the order
 8 by filing an action for enforcement in the district court.

9 G. Upon request of a party, the secretary may issue
 10 subpoenas for the attendance and testimony of witnesses at the
 11 hearing and for the production of relevant documents. The
 12 secretary shall adopt procedural rules for the conduct of the
 13 hearing, including provisions for discovery.

14 H. In determining the amount of a penalty
 15 authorized to be assessed pursuant to this section, the
 16 secretary shall take into account the seriousness of the
 17 violation, good-faith efforts of the violator to comply with
 18 applicable requirements of the Recycling and Illegal Dumping
 19 Act or rules issued pursuant to its provisions and other
 20 relevant factors.

21 Section 14. [NEW MATERIAL] ENFORCEMENT-- FIELD
 22 CITATIONS.--

23 A. The board shall implement a field citation
 24 program by adopting rules establishing appropriate minor
 25 violations for which field citations assessing civil penalties

. 156626. 2

1 not to exceed one thousand dollars (\$1,000) per day of
2 violation may be issued by local government authorities or
3 employees of the department as designated by the secretary.

4 B. A field citation issued pursuant to this section
5 shall be final unless the person named in the citation files a
6 written request for a public hearing with the secretary no
7 later than fifteen days after the date on which the field
8 citation is served on the person, in which case the enforcement
9 of the field citation shall be suspended pending the issuance
10 of a final compliance order of the secretary after a public
11 hearing. The procedures for scheduling and conducting a
12 hearing on and for final disposition of a field citation shall
13 be the same as those provided for a compliance order pursuant
14 to the Recycling and Illegal Dumping Act.

15 C. Payment of a civil penalty required by a field
16 citation issued pursuant to this section shall not be a defense
17 to further enforcement by the department to correct a violation
18 or to assess the maximum statutory penalty pursuant to the
19 provisions of the Recycling and Illegal Dumping Act if the
20 violation continues.

21 D. In determining the amount of a penalty to be
22 assessed pursuant to this section, the secretary or the person
23 issuing a field citation shall take into account the
24 seriousness of the violation, good-faith efforts of the
25 violator to comply with the applicable requirements of the

1 Recycling and Illegal Dumping Act or rules issued pursuant to
2 its provisions and other relevant factors.

3 E. In connection with a proceeding pursuant to this
4 section, the secretary may issue subpoenas for the attendance
5 and testimony of witnesses and the production of relevant
6 papers, books and documents and may adopt rules for
7 discovery.

8 Section 15. [NEW MATERIAL] JUDICIAL REVIEW OF
9 ADMINISTRATIVE ACTIONS. --

10 A. A person adversely affected by an administrative
11 action taken by the secretary pursuant to the provisions of the
12 Recycling and Illegal Dumping Act may appeal the action to the
13 court of appeals. The appeal shall be on the record made at
14 the hearing. To support the appeal, the appellant shall make
15 arrangements with the department for a sufficient number of
16 transcripts of the record of the hearing on which the appeal is
17 based. The appellant shall pay for the preparation of the
18 transcripts.

19 B. On appeal, the court of appeals shall set aside
20 the administrative action only if it is found to be:

- 21 (1) arbitrary, capricious or an abuse of
22 discretion;
23 (2) not supported by substantial evidence in
24 the record; or
25 (3) otherwise not in accordance with law.

. 156626. 2

1 Section 16. [NEW MATERIAL] PENALTY-- CRIMINAL. --

2 A. A person who knowingly violates Section 4 of the
3 Recycling and Illegal Dumping Act:

4 (1) is guilty of a misdemeanor if the
5 violation involves a quantity of scrap tires or tire-derived
6 products that is less than five thousand pounds and shall be
7 sentenced pursuant to the provisions of Section 31-19-1 NMSA
8 1978; or

9 (2) is guilty of a fourth degree felony if the
10 violation involves a quantity of scrap tires or tire-derived
11 products that is five thousand pounds or greater and shall be
12 sentenced pursuant to the provisions of Section 31-18-15 NMSA
13 1978.

14 B. A person who is convicted of a second or
15 subsequent violation of Section 4 of the Recycling and Illegal
16 Dumping Act is guilty of a third degree felony and shall be
17 sentenced pursuant to the provisions of Section 31-18-15 NMSA
18 1978.

19 C. A person who knowingly omi ts any substantive
20 information or knowingly makes a false substantive statement or
21 representation required pursuant to the Recycling and Illegal
22 Dumping Act or rule adopted pursuant to the provisions of that
23 act is guilty of a fourth degree felony and shall be sentenced
24 in accordance with the provisions of Section 31-18-15 NMSA
25 1978.

1 D. The court may also allow the prevailing party,
2 as part of the costs, the money paid for reasonable attorney
3 fees in the district, appellate and supreme courts.

4 Section 17. [NEW MATERIAL] GRANTS-- ELIGIBILITY--
5 APPLICATIONS.--

6 A. A municipality, county, Indian nation, pueblo or
7 tribe, land grant community or cooperative association that
8 meets eligibility requirements established by the board may
9 apply for a grant or submit a competitive bid for a loan or
10 contract for development costs or operating costs to establish
11 a recycling facility, purchase equipment, perform marketing,
12 purchase products produced by a recycling facility, provide
13 educational outreach, develop recycling infrastructure, abate
14 illegal dumpsites or contract with vendors to promote recycling
15 and to abate illegal dumpsites consistent with provisions of
16 the Recycling and Illegal Dumping Act. The first priority for
17 funding shall be abatement of illegal scrap tire dumpsites and
18 the recycling of scrap tires.

19 B. A grant, loan or contract for processing shall
20 not be awarded pursuant to the Recycling and Illegal Dumping
21 Act to a person who receives less than ninety-five percent of
22 recyclable materials from sources in New Mexico.

23 C. Nothing in this section prohibits a
24 municipality, county, Indian nation, pueblo or tribe, land
25 grant community or cooperative association from contracting for

. 156626. 2

1 services to complete an abatement action.

2 D. At least two-thirds of budgeted grant money in
3 each fiscal year shall be allocated to tire abatement and
4 recycling programs, and one-third of budgeted grant money in
5 each fiscal year shall be allocated to abatement of illegal
6 dumping and recycling of other solid wastes.

7 Section 18. [NEW MATERIAL] RUBBERIZED ASPHALT PROGRAM --

8 The department of transportation may use rubberized asphalt in
9 paving mixtures for state and local highway projects and to pay
10 added expenses that may result from using rubberized asphalt.
11 The department of transportation shall adopt rules for the
12 administration of the rubberized asphalt program, including the
13 development of procedures for disbursement of money to
14 municipalities and counties for the use of rubberized asphalt
15 in paving mixtures and shall develop paving specifications for
16 the use of rubberized asphalt.

17 Section 19. [NEW MATERIAL] RECYCLING AND ILLEGAL DUMPING
18 FUND CREATED.--The "recycling and illegal dumping fund" is
19 created in the state treasury. Fees and penalties collected
20 pursuant to the Recycling and Illegal Dumping Act shall be
21 deposited into the fund. Money in the fund is appropriated to
22 the department for abatement of illegal dumpsites, for
23 processing, transportation or recycling of all recyclable
24 materials and scrap tires and for carrying out the provisions
25 of the Recycling and Illegal Dumping Act. Any unexpended or

1 unencumbered balance or income earned from the money in the
 2 recycling and illegal dumping fund remaining at the end of a
 3 fiscal year shall not revert to the general fund.

4 Disbursements from the fund shall be by warrant drawn by the
 5 secretary of finance and administration pursuant to vouchers
 6 signed by the secretary of environment or the secretary's
 7 designee.

8 Section 20. [NEW MATERIAL] RUBBERIZED ASPHALT FUND

9 CREATED. --The "rubberized asphalt fund" is created in the state
 10 treasury. Money in the fund is appropriated to the department
 11 of transportation to pay additional expenses that might result
 12 from using rubberized asphalt paving mixes, to allocate at
 13 least fifty percent of the fund to local governments for that
 14 purpose and to carry out the provisions of the rubberized
 15 asphalt program, including hiring a term employee to administer
 16 the program. Disbursements from the fund shall be by warrant
 17 drawn by the secretary of finance and administration pursuant
 18 to vouchers signed by the secretary of transportation or the
 19 secretary's designee. Any unexpended or unencumbered balance
 20 remaining in the rubberized asphalt fund at the end of a fiscal
 21 year shall not revert to the general fund.

22 Section 21. Section 66-6-23 NMSA 1978 (being Laws 1978,
 23 Chapter 35, Section 358, as amended) is amended to read:

24 "66-6-23. DISPOSITION OF FEES. --

25 A. After the necessary disbursements for refunds

. 156626. 2

1 and other purposes have been made, the money remaining in the
2 motor vehicle suspense fund, except for remittances received
3 within the previous two months that are unidentified as to
4 source or disposition, shall be distributed as follows:

5 (1) to each municipality, county or fee agent
6 operating a motor vehicle field office:

7 (a) an amount equal to six dollars
8 (\$6.00) per driver's license and three dollars (\$3.00) per
9 identification card or motor vehicle or motorboat registration
10 or title transaction performed; and

11 (b) for each such agent determined by
12 the secretary pursuant to Section 66-2-16 NMSA 1978 to have
13 performed ten thousand or more transactions in the preceding
14 fiscal year, other than a class A county with a population
15 exceeding three hundred thousand or a municipality with a
16 population exceeding three hundred thousand that has been
17 designated as an agent pursuant to Section 66-2-14.1 NMSA 1978,
18 an amount equal to one dollar (\$1.00) in addition to the amount
19 distributed pursuant to Subparagraph (a) of this paragraph for
20 each driver's license, identification card, motor vehicle
21 registration, motorboat registration or title transaction
22 performed;

23 (2) to each municipality or county, other than
24 a class A county with a population exceeding three hundred
25 thousand or a municipality with a population exceeding three

1 hundred thousand that has been designated as an agent pursuant
2 to Section 66-2-14.1 NMSA 1978, operating a motor vehicle field
3 office, an amount equal to fifty cents (\$.50) for each
4 administrative service fee remitted by that county or
5 municipality to the department pursuant to the provisions of
6 Subsection A of Section 66-2-16 NMSA 1978;

7 (3) to the state road fund:

8 (a) an amount equal to the fees
9 collected pursuant to Section 66-7-413.4 NMSA 1978;

10 (b) an amount equal to the fee collected
11 pursuant to Section 66-3-417 NMSA 1978;

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

18 (d) an amount equal to fifty percent of
19 the fees collected pursuant to Section 66-6-19 NMSA 1978;

20 (4) to the local governments road fund, the
21 amount of the fees collected pursuant to Subsection B of
22 Section 66-5-33.1 NMSA 1978 and the remainder of the fees
23 collected pursuant to Subsection A of Section 66-5-408 NMSA
24 1978;

25 (5) to the department:

. 156626. 2

1 (a) any amounts reimbursed to the
2 department pursuant to Subsection C of Section 66-2-14.1 NMSA
3 1978;

4 (b) an amount equal to two dollars
5 (\$2.00) of each motorcycle registration fee collected pursuant
6 to Section 66-6-1 NMSA 1978;

7 (c) an amount equal to the fees provided
8 for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E
9 of Section 66-2-16 NMSA 1978, Subsections J and K of Section
10 66-3-6 NMSA 1978 other than the administrative fee, Subsection
11 C of Section 66-5-44 NMSA 1978 and Subsection B of Section
12 66-5-408 NMSA 1978;

13 (d) the amounts due to the department
14 for the manufacture and issuance of a special registration
15 plate collected pursuant to the section of law authorizing the
16 issuance of the specialty plate; and

17 (e) an amount equal to the registration
18 fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the
19 purposes of enforcing the provisions of the Mandatory Financial
20 Responsibility Act and for creating and maintaining a
21 multilanguage noncommercial driver's license testing program;

22 (6) to each New Mexico institution of higher
23 education, an amount equal to that part of the fees distributed
24 pursuant to Paragraph (2) of Subsection D of Section 66-3-416
25 NMSA 1978 proportionate to the number of special registration

1 plates issued in the name of the institution to all such
 2 special registration plates issued in the name of all
 3 institutions;

4 (7) to the armed forces veterans license fund,
 5 the amount to be distributed pursuant to Paragraph (2) of
 6 Subsection E of Section 66-3-419 NMSA 1978;

7 (8) to the children's trust fund, the amount
 8 to be distributed pursuant to Paragraph (2) of Subsection D of
 9 Section 66-3-420 NMSA 1978;

10 (9) to the department of transportation, an
 11 amount equal to the fees collected pursuant to Section 66-5-35
 12 NMSA 1978;

13 (10) to the state equalization guarantee
 14 distribution made annually pursuant to the general
 15 appropriation act, an amount equal to one hundred percent of
 16 the driver safety fee collected pursuant to Subsection D of
 17 Section 66-5-44 NMSA 1978;

18 (11) to the motorcycle training fund, two
 19 dollars (\$2.00) of each motorcycle registration fee collected
 20 pursuant to Section 66-6-1 NMSA 1978;

21 (12) to the ~~[tire recycling fund]~~ recycling
 22 and illegal dumping fund;

23 (a) fifty cents (\$.50) of the tire
 24 recycling fee collected pursuant to the provisions of Section
 25 66-6-1 NMSA 1978;

. 156626. 2

1 (b) fifty cents (\$.50) of each of the
2 tire recycling fees collected pursuant to the provisions of
3 Sections 66-6-2 and 66-6-4 NMSA 1978; and

4 (c) twenty-five cents (\$.25) of each of
5 the tire recycling fees collected pursuant to Sections 66-6-5
6 and 66-6-8 NMSA 1978;

7 (13) to the highway infrastructure fund:

8 (a) fifty cents (\$.50) of the tire
9 recycling fee collected pursuant to the provisions of Section
10 66-6-1 NMSA 1978;

11 (b) one dollar (\$1.00) of each of the
12 tire recycling fees collected pursuant to the provisions of
13 Sections 66-6-2 and 66-6-4 NMSA 1978; and

14 (c) twenty-five cents (\$.25) of each of
15 the tire recycling fees collected pursuant to Sections 66-6-5
16 and 66-6-8 NMSA 1978;

17 (14) to each county, an amount equal to fifty
18 percent of the fees collected pursuant to Section 66-6-19 NMSA
19 1978 multiplied by a fraction, the numerator of which is the
20 total mileage of public roads maintained by the county and the
21 denominator of which is the total mileage of public roads
22 maintained by all counties in the state;

23 (15) to the litter control and beautification
24 fund, an amount equal to the fees collected pursuant to Section
25 66-6-6.2 NMSA 1978; and

1 (16) to the local government division of the
 2 department of finance and administration, an amount equal to
 3 the fees collected pursuant to Section 66-3-424.3 NMSA 1978 for
 4 distribution to each county to support animal control spaying
 5 and neutering programs in an amount proportionate to the number
 6 of residents of that county who have purchased pet care special
 7 registration plates pursuant to Section 66-3-424.3 NMSA 1978.

8 B. The balance, exclusive of unidentified
 9 remittances, shall be distributed in accordance with Section
 10 66-6-23.1 NMSA 1978.

11 C. If any of the paragraphs, subsections or
 12 sections referred to in Subsection A of this section are
 13 recompiled or otherwise redesignated without a corresponding
 14 change to Subsection A of this section, the reference in
 15 Subsection A of this section shall be construed to be the
 16 recompiled or redesignated paragraph, subsection or section."

17 Section 22. SAVING CLAUSE--CONTINUING EFFECT OF PRIOR
 18 ACTIONS.--Repeal of the Tire Recycling Act does not affect the
 19 validity of regulations enacted pursuant to the Tire Recycling
 20 Act, which shall continue in force and effect until amended or
 21 repealed. Repeal of the Tire Recycling Act does not affect
 22 prior violations of the Tire Recycling Act or regulations
 23 enacted pursuant to the Tire Recycling Act. All permits and
 24 registrations issued pursuant to the Tire Recycling Act shall
 25 remain in effect until they expire or they are suspended,

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