

1 SENATE BILL 147

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

4 John Pinto

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10 AN ACT

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

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

22 A. A distribution pursuant to Section 7-1-6.1 NMSA
23 1978 shall be made to the state road fund in an amount equal to
24 the net receipts attributable to the taxes, surcharges,
25 penalties and interest imposed pursuant to the Gasoline Tax

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1 Act, except the highway 491 gasoline surtax, and to the taxes,
2 surtaxes, fees, penalties and interest imposed pursuant to the
3 Special Fuels Supplier Tax Act, except the highway 491 special
4 fuel surtax, and the Alternative Fuel Tax Act, less:

5 (1) the amount distributed to the state
6 aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA
7 1978;

8 (2) the amount distributed to the motorboat
9 fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

10 (3) the amount distributed to municipalities
11 and counties pursuant to Subsection A of Section 7-1-6.9 NMSA
12 1978;

13 (4) the amount distributed to the county
14 government road fund pursuant to Section 7-1-6.19 NMSA 1978;

15 (5) the amount distributed to the local
16 governments road fund pursuant to Section 7-1-6.39 NMSA 1978;

17 (6) the amount distributed to the
18 municipalities pursuant to Section 7-1-6.27 NMSA 1978;

19 (7) the amount distributed to the municipal
20 arterial program of the local governments road fund pursuant to
21 Section 7-1-6.28 NMSA 1978;

22 (8) the amount distributed to a qualified
23 tribe pursuant to a gasoline tax sharing agreement entered into
24 between the secretary of transportation and the qualified tribe
25 pursuant to the provisions of Section 67-3-8.1 NMSA 1978; and

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1 (9) the amount distributed to the general fund
2 pursuant to Section 7-1-6.44 NMSA 1978.

3 B. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 shall be made to the state road fund in an amount equal to
5 the net receipts attributable to the taxes, interest and
6 penalties from the Weight Distance Tax Act."

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

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

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

17 "[NEW MATERIAL] HIGHWAY 491 GASOLINE SURTAX--FIFTEEN-YEAR
18 PERIOD.--

19 A. For the privilege of receiving gasoline in this
20 state, a surtax of one cent (\$.01) per gallon in addition to
21 the gasoline tax shall be imposed on each gallon of gasoline
22 received in New Mexico that is subject to the gasoline tax
23 imposed pursuant to Section 7-13-3 NMSA 1978. The surtax
24 imposed by this section may be called the "highway 491 gasoline
25 surtax".

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1 B. The highway 491 gasoline surtax shall be imposed
2 from July 1, 2014 through June 30, 2029."

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

5 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the
6 gasoline tax and the highway 491 gasoline surtax due, the
7 following amounts of gasoline may be deducted from the total
8 amount of gasoline received in New Mexico during the tax
9 period, provided satisfactory proof thereof is furnished to the
10 department:

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

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

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

22 (3) the destination state's gasoline or
23 equivalent fuel tax is paid to New Mexico in accordance with
24 the terms of an agreement entered into pursuant to Section
25 9-11-12 NMSA 1978 with the destination state;

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

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

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

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

23 (1) the sale occurs on the Indian reservation,
24 pueblo grant or trust land of the distributor's Indian nation,
25 tribe or pueblo;

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

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

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

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

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

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

17 "[NEW MATERIAL] HIGHWAY 491 SPECIAL FUEL SURTAX--FIFTEEN-
18 YEAR PERIOD.--

19 A. For the privilege of receiving or using special
20 fuel in this state, a surtax of one cent (\$.01) per gallon in
21 addition to the special fuel excise tax shall be imposed on
22 each gallon of special fuel received or used in New Mexico that
23 is subject to the special fuel excise tax imposed pursuant to
24 Section 7-16A-3 NMSA 1978. The surtax imposed by this section
25 may be called the "highway 491 special fuel surtax".

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1 B. The highway 491 special fuel surtax shall be
2 imposed from July 1, 2014 through June 30, 2029."

3 SECTION 6. Section 7-16A-10 NMSA 1978 (being Laws 1992,
4 Chapter 51, Section 10, as amended) is amended to read:

5 "7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL
6 FUEL SUPPLIERS.--In computing the special fuel excise tax and
7 the highway 491 special fuel surtax due, the following amounts
8 of special fuel may be deducted from the total amount of
9 special fuel received in New Mexico during the tax period,
10 provided that satisfactory proof thereof is furnished to the
11 department:

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

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

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

23 (3) the destination state's special fuel or
24 equivalent fuel tax is paid to New Mexico in accordance with
25 the terms of an agreement entered into pursuant to Section

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1 9-11-12 NMSA 1978 with the destination state;

2 B. special fuel sold to the United States or any
3 agency or instrumentality thereof for the exclusive use of the
4 United States or any agency or instrumentality thereof.

5 Special fuel sold to the United States includes special fuel
6 delivered into the supply tank of a government-licensed
7 vehicle;

8 C. special fuel sold to the state of New Mexico or
9 any political subdivision, agency or instrumentality thereof
10 for the exclusive use of the state of New Mexico or any
11 political subdivision, agency or instrumentality thereof.

12 Special fuel sold to the state of New Mexico includes special
13 fuel delivered into the supply tank of a government-licensed
14 vehicle;

15 D. special fuel sold to an Indian nation, tribe or
16 pueblo or any agency or instrumentality thereof for the
17 exclusive use of the Indian nation, tribe or pueblo or any
18 agency or instrumentality thereof. Special fuel sold to an
19 Indian nation, tribe or pueblo includes special fuel delivered
20 into the supply tank of a government-licensed vehicle;

21 E. special fuel dyed in accordance with federal
22 regulations;

23 F. special fuel that is number 2 diesel fuel sold
24 for the generation of power to propel a vehicle authorized by
25 contract with the public education department as a school bus;

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1 provided that the fuel has a distillation temperature of five
2 hundred degrees Fahrenheit at a ten percent recovery point and
3 six hundred forty degrees Fahrenheit at a ninety percent
4 recovery point;

5 G. special fuel received in New Mexico on which New
6 Mexico special fuel excise tax was paid by the out-of-state
7 terminal at which the special fuel was loaded, provided that
8 documentation that the special fuel was to be imported into New
9 Mexico was provided to the terminal operator by the person
10 receiving the fuel; and

11 H. special fuel received in New Mexico that:

12 (1) prior to July 1, 2014, consists of at
13 least ninety-nine percent vegetable oil or animal fat; provided
14 that the use is restricted to an auxiliary fuel system that is
15 subject to a certificate of conformity pursuant to the federal
16 Clean Air Act; or

17 (2) is biodiesel received or manufactured and
18 delivered to a rack operator that is within the state for
19 blending or resale."

20 SECTION 7. A new Section 67-3-59.5 NMSA 1978 is enacted
21 to read:

22 "67-3-59.5. [NEW MATERIAL] HIGHWAY 491 PROJECT FUND
23 CREATED--USE.--

24 A. The "highway 491 project fund" is created in the
25 state treasury and shall be administered by the department.

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1 The fund shall consist of money from taxes distributed to the
2 fund. Earnings on investment of the fund shall be credited to
3 the fund. Balances in the fund at the end of any fiscal year
4 shall revert to the state road fund after all required debt
5 service payments and other required debt service and reserve
6 fund deposits have been made for bonds issued pursuant to
7 Section 67-3-59.6 NMSA 1978; provided that when the New Mexico
8 finance authority certifies to the department of transportation
9 and to the department of finance and administration that bonds
10 issued pursuant to Section 67-3-59.6 NMSA 1978 have been
11 retired, balances in the fund shall revert to the state road
12 fund. The amounts that revert to the state road fund shall be
13 used for the acquisition of rights of way, planning, design,
14 engineering, construction, improvement and maintenance for
15 state highway projects.

16 B. Except as provided in Subsection E of Section
17 67-3-59.6 NMSA 1978, money in the fund shall be used solely for
18 payments and other deposits of debt service or for reserve
19 requirements for the bonds issued for the purpose of the
20 completion of reconstruction and improvement of United States
21 highway 491. The bonds authorized by this section may be
22 called "highway 491 project bonds".

23 C. The taxes required by law to be distributed to
24 the highway 491 project fund may be pledged for the payment of
25 highway 491 project bonds issued pursuant to Section 67-3-59.6

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1 NMSA 1978 for the highway 491 project authorized in Subsection
2 B of this section.

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

17 SECTION 8. A new Section 67-3-59.6 NMSA 1978 is enacted
18 to read:

19 "67-3-59.6. [NEW MATERIAL] HIGHWAY 491 PROJECT BONDS--
20 ISSUANCE--LIMITS--APPROVAL.--

21 A. In order to provide funds to finance the highway
22 491 project identified in Section 67-3-59.5 NMSA 1978, the New
23 Mexico finance authority, when directed by the state
24 transportation commission, is authorized, subject to the
25 limitations of this section and Section 67-3-59.5 NMSA 1978, to
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1 issue highway 491 project bonds from time to time, payable
2 from:

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

5 (2) proceeds from the collection of taxes and
6 fees that are required to be paid into the state road fund and
7 that are not otherwise pledged exclusively to the payment of
8 outstanding bonds and debentures; and

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

11 B. The New Mexico finance authority, when directed
12 by the state transportation commission, may issue bonds to
13 refund other bonds issued at the direction of the state
14 transportation commission pursuant to this section or by
15 exchange or current or advance refunding.

16 C. The total aggregate outstanding principal amount
17 of bonds issued from time to time pursuant to this section
18 shall not, without additional authorization of the state
19 legislature, exceed one hundred twenty-three million dollars
20 (\$123,000,000).

21 D. In consultation with the state transportation
22 commission, the New Mexico finance authority shall determine
23 all terms, covenants and conditions of the bonds; provided that
24 the project design life of the highway 491 project meets or
25 exceeds the life of the bonds issued for that project and

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1 further provided that each series of bonds shall be sold,
2 executed and delivered in accordance with the provisions of the
3 New Mexico Finance Authority Act. The New Mexico finance
4 authority may enter into interest rate exchange agreements,
5 interest rate swap contracts, insurance agreements, remarketing
6 agreements and any other agreements deemed necessary in
7 connection with the issuance of the bonds.

8 E. Proceeds of the bonds and amounts on deposit in
9 the highway 491 project fund may be used to pay expenses
10 incurred in the preparation, administration, issuance and sale
11 of the bonds and, together with the earnings on the proceeds of
12 the bonds, may be used to pay rebate, penalty, interest and
13 other obligations relating to the bonds and the proceeds of the
14 bonds under the federal Internal Revenue Code of 1986, as
15 amended.

16 F. This section is full authority for the issuance
17 and sale of the bonds, and the bonds shall not be invalid for
18 any irregularity or defect in the proceedings for their
19 issuance and sale and shall be incontestable in the hands of
20 bona fide purchasers or holders of the bonds for value.

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

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

15 I. Bonds issued pursuant to this section shall not
16 constitute a general obligation of the state and shall be paid
17 solely from federal funds not otherwise obligated and taxes and
18 fees deposited into the state road fund and the highway 491
19 project fund.

20 J. For purposes of this section, "highway 491
21 project bonds" includes only those bonds issued pursuant to
22 this section and excludes transportation bonds as defined in
23 Section 67-3-72 NMSA 1978 and state transportation project
24 bonds as defined in Section 67-3-59.3 NMSA 1978."

25 **SECTION 9. APPLICABILITY.**--The distribution pursuant to

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1 Section 2 of this act applies to receipts from the highway 491
2 gasoline surtax and the highway 491 special fuel surtax that
3 are attributable to sales subject to those taxes on or after
4 July 1, 2014.

5 SECTION 10. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2014.

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