

1 SENATE BILL 436

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Pete Campos

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10 AN ACT

11 RELATING TO TAXATION; INCREASING THE GASOLINE AND SPECIAL FUEL
12 EXCISE TAXES BY SIX CENTS (\$.06); DISTRIBUTING ONE-THIRD OF THE
13 NEW REVENUE TO THE PRE-KINDERGARTEN FUNDS, ONE-THIRD TO THE
14 GENERAL FUND AND ONE-THIRD TO THE STATE ROAD FUND AND THE LOCAL
15 GOVERNMENTS ROAD FUND; CONFORMING SECTION 67-3-28.2 NMSA 1978
16 (BEING LAWS 1986, CHAPTER 20, SECTION 125, AS AMENDED); MAKING
17 AN APPROPRIATION.

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

20 SECTION 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994,
21 Chapter 5, Section 2, as amended) is amended to read:

22 "7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

23 A. A distribution pursuant to Section 7-1-6.1 NMSA
24 1978 shall be made to the state aviation fund in an amount
25 equal to four and seventy-nine hundredths percent of the

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1 taxable gross receipts attributable to the sale of fuel
2 specially prepared and sold for use in turboprop or jet-type
3 engines as determined by the department.

4 B. A distribution pursuant to Section 7-1-6.1 NMSA
5 1978 shall be made to the state aviation fund in an amount
6 equal to [~~twenty-six hundredths~~] one hundred ninety-three
7 thousandths percent of gasoline taxes, exclusive of penalties
8 and interest, collected pursuant to the Gasoline Tax Act.

9 C. From July 1, 2013 through June 30, 2021, a
10 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
11 made to the state aviation fund in an amount equal to forty-six
12 thousandths percent of the net receipts attributable to the
13 gross receipts tax distributable to the general fund.

14 D. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to the state aviation fund from the net
16 receipts attributable to the gross receipts tax distributable
17 to the general fund in an amount equal to

18 [~~(1) eighty thousand dollars (\$80,000) monthly~~
19 ~~from July 1, 2007 through June 30, 2008;~~

20 ~~(2) one hundred sixty-seven thousand dollars~~
21 ~~(\$167,000) monthly from July 1, 2008 through June 30, 2009; and~~

22 ~~(3)] two hundred fifty thousand dollars~~
23 ~~(\$250,000) [monthly after July 1, 2009]."~~

24 SECTION 2. Section 7-1-6.8 NMSA 1978 (being Laws 1983,
25 Chapter 211, Section 13, as amended) is amended to read:

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1 "7-1-6.8. DISTRIBUTION--MOTORBOAT FUEL TAX FUND.--A
2 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
3 made to the motorboat fuel tax fund in an amount equal to
4 [~~thirteen hundredths of one~~] ninety-six thousandths percent of
5 the net receipts attributable to the gasoline tax."

6 SECTION 3. Section 7-1-6.9 NMSA 1978 (being Laws 1991,
7 Chapter 9, Section 11, as amended) is amended to read:

8 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO
9 MUNICIPALITIES AND COUNTIES.--

10 A. A distribution pursuant to Section 7-1-6.1 NMSA
11 1978 shall be made in an amount equal to [~~ten and thirty-eight~~]
12 seven and sixty-eight hundredths percent of the net receipts
13 attributable to the taxes, exclusive of penalties and interest,
14 imposed by the Gasoline Tax Act.

15 B. [~~Except as provided in Subsection D of this~~
16 ~~section~~] The amount determined in Subsection A of this section
17 shall be distributed as follows:

18 (1) ninety percent of the amount shall be paid
19 to the treasurers of municipalities and H class counties in the
20 proportion that the taxable motor fuel sales in each of the
21 municipalities and H class counties bears to the aggregate
22 taxable motor fuel sales in all of these municipalities and H
23 class counties; and

24 (2) ten percent of the amount shall be paid to
25 the treasurers of the counties, including H class counties, in

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1 the proportion that the taxable motor fuel sales outside of
2 incorporated municipalities in each of the counties bears to
3 the aggregate taxable motor fuel sales outside of incorporated
4 municipalities in all of the counties.

5 C. Except as provided in Subsection D of this
6 section, this distribution shall be paid into a separate road
7 fund in the municipal treasury or county road fund for
8 expenditure only for construction, reconstruction, resurfacing
9 or other improvement or maintenance of public roads, streets,
10 alleys or bridges, including right-of-way and materials
11 acquisition. Money distributed pursuant to this section may be
12 used by a municipality or county to provide matching funds for
13 projects subject to cooperative agreements entered into with
14 the [~~state highway and~~ department of transportation
15 [~~department~~] pursuant to Section 67-3-28 NMSA 1978. Any
16 municipality or H class county that has created or that creates
17 a "street improvement fund" to which gasoline tax revenues or
18 distributions are irrevocably pledged under Sections 3-34-1
19 through 3-34-4 NMSA 1978 or that has pledged all or a portion
20 of gasoline tax revenues or distributions to the payment of
21 bonds shall receive its proportion of the distribution of
22 revenues under this section impressed with and subject to these
23 pledges.

24 D. This distribution may be paid into a separate
25 road fund or the general fund of the municipality or county if

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1 the municipality has a population less than three thousand or
2 the county has a population less than four thousand."

3 SECTION 4. Section 7-1-6.10 NMSA 1978 (being Laws 1983,
4 Chapter 211, Section 15, as amended) is amended to read:

5 "7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

6 A. A distribution pursuant to Section 7-1-6.1 NMSA
7 1978 shall be made to the state road fund in an amount equal to
8 the net receipts attributable to the taxes, surcharges,
9 penalties and interest imposed pursuant to the Gasoline Tax Act
10 and to the taxes, surtaxes, fees, penalties and interest
11 imposed pursuant to the Special Fuels Supplier Tax Act and the
12 Alternative Fuel Tax Act less:

13 (1) the amount distributed to the state
14 aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA
15 1978;

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

18 (3) the amount distributed to municipalities
19 and counties pursuant to Subsection A of Section 7-1-6.9 NMSA
20 1978;

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

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

25 (6) the amount distributed to the

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1 municipalities pursuant to Section 7-1-6.27 NMSA 1978;

2 (7) the amount distributed to the municipal
3 arterial program of the local governments road fund pursuant to
4 Section 7-1-6.28 NMSA 1978;

5 (8) the amount distributed to a qualified
6 tribe pursuant to [~~a gasoline tax sharing agreement entered
7 into between the secretary of transportation and the qualified
8 tribe pursuant to the provisions~~] Subsection A of Section
9 [~~67-3-8.1~~] 7-1-6.44 NMSA 1978; [~~and~~]

10 (9) the amount distributed to the general fund
11 pursuant to Subsection B of Section 7-1-6.44 NMSA 1978;

12 (10) the amount distributed to the public pre-
13 kindergarten fund and the children, youth and families pre-
14 kindergarten fund pursuant to Section 9 of this 2017 act; and

15 (11) the amount distributed to the general
16 fund pursuant to Section 10 of this 2017 act.

17 B. A distribution pursuant to Section 7-1-6.1 NMSA
18 1978 shall be made to the state road fund in an amount equal to
19 the net receipts attributable to the taxes, interest and
20 penalties from the Weight Distance Tax Act."

21 SECTION 5. Section 7-1-6.19 NMSA 1978 (being Laws 1991,
22 Chapter 9, Section 15, as amended) is amended to read:

23 "7-1-6.19. DISTRIBUTION--COUNTY GOVERNMENT ROAD FUND
24 CREATED.--

25 A. There is created in the state treasury the

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1 "county government road fund".

2 B. A distribution pursuant to Section 7-1-6.1 NMSA
3 1978 shall be made to the county government road fund in an
4 amount equal to [~~five and seventy-six~~] four and twenty-six
5 hundredths percent of the net receipts attributable to the
6 gasoline tax."

7 SECTION 6. Section 7-1-6.27 NMSA 1978 (being Laws 1991,
8 Chapter 9, Section 20, as amended) is amended to read:

9 "7-1-6.27. DISTRIBUTION--MUNICIPAL ROADS.--

10 A. A distribution pursuant to Section 7-1-6.1 NMSA
11 1978 shall be made to municipalities for the purposes and
12 amounts specified in this section in an aggregate amount equal
13 to [~~five and seventy-six~~] four and twenty-six hundredths
14 percent of the net receipts attributable to the gasoline tax.

15 B. The distribution authorized in this section
16 shall be used for the following purposes:

17 (1) reconstructing, resurfacing, maintaining,
18 repairing or otherwise improving existing alleys, streets,
19 roads or bridges, or any combination of the foregoing; or
20 laying off, opening, constructing or otherwise acquiring new
21 alleys, streets, roads or bridges, or any combination of the
22 foregoing; provided that any of the foregoing improvements may
23 include [~~but are not limited to~~] the acquisition of rights of
24 way;

25 (2) to provide matching funds for projects

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1 subject to cooperative agreements with the [~~state highway and~~
2 department of transportation [~~department~~] pursuant to Section
3 67-3-28 NMSA 1978; and

4 (3) for expenses of purchasing, maintaining
5 and operating transit operations and facilities, for the
6 operation of a transit authority established by the Municipal
7 Transit Law and for the operation of a vehicle emission
8 inspection program. A municipality may engage in the business
9 of the transportation of passengers and property within the
10 political subdivision by whatever means the municipality may
11 decide and may acquire cars, trucks, motor buses and other
12 equipment necessary for operating the business. A municipality
13 may acquire land, erect buildings and equip the buildings with
14 all the necessary machinery and facilities for the operation,
15 maintenance, modification, repair and storage of the cars,
16 trucks, motor buses and other equipment needed. A municipality
17 may do all things necessary for the acquisition and the conduct
18 of the business of public transportation.

19 C. For the purposes of this section:

20 (1) "computed distribution amount" means the
21 distribution amount calculated for a municipality for a month
22 pursuant to Paragraph (2) of Subsection D of this section prior
23 to any adjustments to the amount due to the provisions of
24 Subsections E and F of this section;

25 (2) "floor amount" means four hundred

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1 seventeen dollars (\$417);

2 (3) "floor municipality" means a municipality
3 whose computed distribution amount is less than the floor
4 amount; and

5 (4) "full distribution municipality" means a
6 municipality whose population at the last federal decennial
7 census was at least two hundred thousand.

8 D. Subject to the provisions of Subsections E and F
9 of this section, each municipality shall be distributed a
10 portion of the aggregate amount distributable under this
11 section in an amount equal to the greater of:

12 (1) the floor amount; or

13 (2) eighty-five percent of the aggregate
14 amount distributable under this section times a fraction, the
15 numerator of which is the municipality's reported taxable
16 gallons of gasoline for the immediately preceding state fiscal
17 year and the denominator of which is the reported total taxable
18 gallons for all municipalities for the same period.

19 E. Fifteen percent of the aggregate amount
20 distributable under this section shall be referred to as the
21 "redistribution amount". Beginning in August 1990, and each
22 month thereafter, from the redistribution amount there shall be
23 taken an amount sufficient to increase the computed
24 distribution amount of every floor municipality to the floor
25 amount. In the event that the redistribution amount is

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1 insufficient for this purpose, the computed distribution amount
2 for each floor municipality shall be increased by an amount
3 equal to the redistribution amount times a fraction, the
4 numerator of which is the difference between the floor amount
5 and the municipality's computed distribution amount and the
6 denominator of which is the difference between the product of
7 the floor amount multiplied by the number of floor
8 municipalities and the total of the computed distribution
9 amounts for all floor municipalities.

10 F. If a balance remains after the redistribution
11 amount has been reduced pursuant to Subsection E of this
12 section, there shall be added to the computed distribution
13 amount of each municipality that is neither a full distribution
14 municipality nor a floor municipality an amount that equals the
15 balance of the redistribution amount times a fraction, the
16 numerator of which is the computed distribution amount of the
17 municipality and the denominator of which is the sum of the
18 computed distribution amounts of all municipalities that are
19 neither full distribution municipalities nor floor
20 municipalities."

21 SECTION 7. Section 7-1-6.28 NMSA 1978 (being Laws 1991,
22 Chapter 9, Section 22, as amended) is amended to read:

23 "7-1-6.28. DISTRIBUTION--MUNICIPAL ARTERIAL PROGRAM OF
24 LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to
25 Section 7-1-6.1 NMSA 1978 shall be made to the municipal

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1 arterial program of the local governments road fund created in
2 Section 67-3-28.2 NMSA 1978 in an amount equal to [~~one and~~
3 ~~forty-four hundredths~~] one and sixty-five hundredths percent of
4 the net receipts attributable to the gasoline tax."

5 SECTION 8. Section 7-1-6.39 NMSA 1978 (being Laws 1995,
6 Chapter 6, Section 9, as amended) is amended to read:

7 "7-1-6.39. DISTRIBUTION OF GASOLINE TAX AND SPECIAL FUEL
8 EXCISE TAX TO LOCAL GOVERNMENTS ROAD FUND.--

9 A. A distribution pursuant to Section 7-1-6.1 NMSA
10 1978 shall be made to the local governments road fund in an
11 amount equal to four and three hundred forty-five thousandths
12 percent of the net receipts attributable to the gasoline tax.

13 B. A distribution pursuant to Section 7-1-6.1 NMSA
14 1978 shall be made to the local governments road fund in an
15 amount equal to [~~nine and fifty-two hundredths~~] eleven and one
16 hundred eight thousandths percent of the net receipts
17 attributable to the taxes, exclusive of penalties and interest,
18 from the special fuel excise tax imposed by the Special Fuels
19 Supplier Tax Act."

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

22 "[NEW MATERIAL] DISTRIBUTION--GASOLINE TAX AND SPECIAL
23 FUEL EXCISE TAX--PUBLIC PRE-KINDERGARTEN FUND AND CHILDREN,
24 YOUTH AND FAMILIES PRE-KINDERGARTEN FUND.--

25 A. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 shall be made to the public pre-kindergarten fund in an
2 amount equal to four and three hundred forty-eight thousandths
3 percent of the net receipts attributable to the gasoline tax.

4 B. A distribution pursuant to Section 7-1-6.1 NMSA
5 1978 shall be made to the children, youth and families pre-
6 kindergarten fund in an amount equal to four and three hundred
7 forty-eight thousandths percent of the net receipts
8 attributable to the gasoline tax.

9 C. A distribution pursuant to Section 7-1-6.1 NMSA
10 1978 shall be made to the public pre-kindergarten fund in an
11 amount equal to three and seven hundred four thousandths
12 percent of the net receipts attributable to the special fuel
13 excise tax.

14 D. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to the children, youth and families pre-
16 kindergarten fund in an amount equal to three and seven hundred
17 four thousandths percent of the net receipts attributable to
18 the special fuel excise tax."

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

21 "[NEW MATERIAL] DISTRIBUTION--GASOLINE TAX AND SPECIAL
22 FUEL EXCISE TAX--GENERAL FUND.--

23 A. A distribution pursuant to Section 7-1-6.1 NMSA
24 1978 shall be made to the general fund in an amount equal to
25 eight and six hundred ninety-one thousandths percent of the net

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1 receipts attributable to the gasoline tax.

2 B. A distribution pursuant to Section 7-1-6.1 NMSA
3 1978 shall be made to the general fund in an amount equal to
4 seven and four hundred seven thousandths percent of the net
5 receipts attributable to the special fuel excise tax."

6 SECTION 11. Section 7-13-3 NMSA 1978 (being Laws 1971,
7 Chapter 207, Section 3, as amended) is amended to read:

8 "7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
9 "GASOLINE TAX".--

10 A. For the privilege of receiving gasoline in this
11 state, there is imposed an excise tax at a rate provided in
12 Subsection B of this section on each gallon of gasoline
13 received in New Mexico.

14 B. The tax imposed by Subsection A of this section
15 shall be [~~seventeen cents (\$.17)~~] twenty-three cents (\$.23) per
16 gallon received in New Mexico.

17 C. The tax imposed by this section may be called
18 the "gasoline tax".

19 SECTION 12. Section 7-16A-3 NMSA 1978 (being Laws 1992,
20 Chapter 51, Section 3, as amended) is amended to read:

21 "7-16A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
22 SPECIAL FUEL EXCISE TAX.--

23 A. For the privilege of receiving or using special
24 fuel in this state, there is imposed an excise tax at a rate
25 provided in Subsection B of this section on each gallon of

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1 special fuel received in New Mexico.

2 B. The tax imposed by Subsection A of this section
3 shall be [~~twenty-one cents (\$.21)~~] twenty-seven cents (\$.27)
4 per gallon of special fuel received or used in New Mexico.

5 C. The tax imposed by this section may be called
6 the "special fuel excise tax".

7 SECTION 13. Section 67-3-28.2 NMSA 1978 (being Laws 1986,
8 Chapter 20, Section 125, as amended) is amended to read:

9 "67-3-28.2. LOCAL GOVERNMENTS ROAD FUND CREATED--
10 USES.--

11 A. There is created in the state treasury the
12 "local governments road fund" to be administered by the
13 department. All income received from investment of the fund
14 shall be credited to the fund. No money in the fund shall be
15 used by the department to administer any program, and except as
16 provided in Subsection E of this section, no entity receiving a
17 distribution pursuant to a program requiring matching funds
18 shall use another distribution made pursuant to this section to
19 meet the match required.

20 B. No more than five hundred thousand dollars
21 (\$500,000) annually from the local governments road fund shall
22 be used by the department to purchase at fair market value, for
23 municipalities and counties that can demonstrate financial
24 hardship as determined by the department, automotive, major
25 road and miscellaneous equipment that would otherwise be sold

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1 at auction by the department as unusable for department
2 purposes. The department shall adopt rules setting the
3 procedure to carry out the purposes of this subsection.

4 C. Except for the amounts in Subsections B and E of
5 this section and amounts distributed pursuant to the municipal
6 arterial program pursuant to Section 7-1-6.28 NMSA 1978, money
7 in the local governments road fund shall be distributed in the
8 following amounts for the specified purposes:

9 (1) forty-two percent for the cooperative
10 agreements program, to be used solely for the cooperative
11 agreements entered into pursuant to Section 67-3-28 NMSA 1978
12 and in accordance with the match authorized pursuant to Section
13 67-3-32 NMSA 1978; provided, however, that distribution amounts
14 made pursuant to this paragraph in each year shall be based on
15 the following allocations:

16 (a) thirty-three percent for agreements
17 entered into with counties;

18 (b) forty-nine percent for agreements
19 entered into with municipalities;

20 (c) fourteen percent for agreements
21 entered into with school districts; and

22 (d) four percent for agreements entered
23 into with other entities;

24 (2) sixteen percent for the municipal arterial
25 program, to be used solely for the necessary project

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1 development, construction, reconstruction, improvement,
2 maintenance, repair and right-of-way and material acquisition
3 of and for those streets that are principal extensions of rural
4 state highways and of other streets not on the state highway
5 system but that qualify under the designated criteria
6 established by the department. In entering into agreements
7 with municipalities to provide funds for any project qualifying
8 for the municipal arterial program, the department shall give
9 preference to municipalities that contribute an amount equal to
10 at least twenty-five percent of the project cost, including a
11 contribution made through funding received pursuant to
12 Subsection E of this section;

13 (3) sixteen percent for school bus routes, to
14 be used solely for cooperative agreements entered into pursuant
15 to Section 67-3-28 NMSA 1978 and in accordance with the match
16 authorized pursuant to Section 67-3-32 NMSA 1978 for acquiring
17 rights of way and constructing, maintaining, repairing,
18 improving and paving school bus routes and public school
19 parking lots; and

20 (4) twenty-six percent for the county arterial
21 program, to be used for project development, construction,
22 reconstruction, improvement, maintenance, repair and right-of-
23 way and material acquisition of and for county roads for which
24 individual counties have prioritized road projects. Prior to
25 entering into any agreements for projects with the counties for

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1 the following fiscal year, in June of each year the department
2 shall determine and certify the amount to which each county is
3 entitled pursuant to the following schedule:

4 Road Mileage Category Based on
5 Number of Miles Maintained

6 By a County:	Entitlement to County:
7 400 miles or under	\$250 for each mile
8 401 to 800 miles	\$100,000 plus \$200 for each 9 mile over 400 miles
10 801 to 1,200 miles	\$180,000 plus \$150 for each 11 mile over 800 miles
12 1,201 to 1,600 miles	\$240,000 plus \$100 for each 13 mile over 1,200 miles
14 Over 1,600 miles	\$300,000 plus \$50 for each 15 mile over 1,600 miles.

16 If in any year there is an insufficient amount in the fund
17 of the county arterial program to certify the total amount to
18 which all counties are entitled, the department shall decrease
19 the entitlement amount due to each county in the same
20 proportion as the insufficiency is to the total entitlements to
21 all counties. Distribution of an entitlement amount and an
22 agreement entered into with a county for any of the purposes
23 for which the money may be spent requires an amount from the
24 county equal to at least twenty-five percent of the
25 entitlement. The county contribution may be made through funds

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1 received pursuant to Subsection E of this section. Any
2 uncommitted or unencumbered balance remaining in the county
3 arterial program fund at the end of a fiscal year shall be
4 transferred to the cooperative agreements program specified in
5 Paragraph (1) of this subsection for additional funding of that
6 program in the next fiscal year.

7 D. The department may transfer funds from the state
8 road fund to the local governments road fund to facilitate cash
9 flow for the funding of these local governments road projects.
10 The administrator of the local governments road fund shall
11 reimburse the state road fund in a timely manner for any such
12 transfers.

13 E. The department may distribute up to one million
14 dollars (\$1,000,000) per calendar year of the money in the
15 local governments road fund to municipalities and counties that
16 can demonstrate financial hardship, for use as all or a portion
17 of the municipality's or county's matching fund requirements
18 pursuant to this section. In order to qualify for matching
19 funds under this subsection, a county or municipality shall
20 provide the department with a financial hardship qualification
21 certificate issued by the department of finance and
22 administration."

23 SECTION 14. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2017.