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**HOUSE BILL 344**

**43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998**

**INTRODUCED BY**

**J. "ANDY" KISSNER**

**AN ACT**

**RELATING TO FINANCING OF HIGHWAY PROJECTS; AUTHORIZING THE GOVERNOR TO IMPOSE A HIGHWAY BONDING GASOLINE TAX UNDER CERTAIN CONDITIONS; INCREASING THE BONDING AUTHORITY OF THE STATE HIGHWAY COMMISSION AND AUTHORIZING ISSUANCE OF STATE HIGHWAY BONDS FOR FIVE CONSTRUCTION PROJECTS; LIMITING THE USE OF STATE ROAD REVENUES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.**

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

**Section 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994, Chapter 5, Section 2, as amended by Laws 1995, Chapter 6, Section 1 and also by Laws 1995, Chapter 36, Section 1) is amended to read:**

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

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

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1 1978 shall be made to the state aviation fund in an amount  
2 equal to three and fifty-nine hundredths percent of the gross  
3 receipts attributable to the sale of fuel specially prepared  
4 and sold for use in turboprop or jet-type engines as  
5 determined by the department.

6 B. A distribution pursuant to Section 7-1-6.1 NMSA  
7 1978 shall be made to the state aviation fund in an amount  
8 equal to twenty-six hundredths of one percent of [~~gasoline~~  
9 ~~taxes~~] the net receipts, exclusive of penalties and interest,  
10 [~~collected pursuant to the Gasoline Tax Act~~] attributable to  
11 the gasoline tax. "

12 Section 2. Section 7-1-6.9 NMSA 1978 (being Laws 1991,  
13 Chapter 9, Section 11, as amended) is amended to read:

14 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO  
15 MUNICIPALITIES AND COUNTIES. --

16 A. A distribution pursuant to Section 7-1-6.1 NMSA  
17 1978 shall be made in an amount equal to ten and thirty-eight  
18 hundredths percent of the net receipts [~~attributable to the~~  
19 ~~taxes~~], exclusive of penalties and interest, [~~imposed by the~~  
20 ~~Gasoline Tax Act~~] attributable to the gasoline tax.

21 B. The amount determined in Subsection A of this  
22 section shall be distributed as follows:

23 (1) ninety percent of the amount shall be  
24 paid to the treasurers of municipalities and H class counties  
25 in the proportion that the taxable motor fuel sales in each of

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1 the municipalities and H class counties bears to the aggregate  
2 taxable motor fuel sales in all of these municipalities and H  
3 class counties; and

4 (2) ten percent of the amount shall be paid  
5 to the treasurers of the counties, including H class counties,  
6 in the proportion that the taxable motor fuel sales outside of  
7 incorporated municipalities in each of the counties bears to  
8 the aggregate taxable motor fuel sales outside of incorporated  
9 municipalities in all of the counties.

10 C. This distribution shall be paid into the  
11 municipal treasury or county general fund for general purposes  
12 or for any special purposes designated by the governing body  
13 of the municipality or county. Any municipality or H class  
14 county that has created or that creates a "street improvement  
15 fund" to which gasoline tax revenues or distributions are  
16 irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA  
17 1978 or that has pledged all or a portion of gasoline tax  
18 revenues or distributions to the payment of bonds shall  
19 receive its proportion of the distribution of revenues under  
20 this section impressed with and subject to these pledges. "

21 Section 3. Section 7-13-3.1 NMSA 1978 (being Laws 1979,  
22 Chapter 166, Section 7, as amended) is amended to read:

23 "7-13-3.1. GASOLINE INVENTORY TAX--IMPOSITION OF TAX--  
24 DATE PAYMENT OF TAX DUE.--

25 A. A gasoline inventory tax is imposed measured by

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1 the quantity of gallons of gasoline in the possession of a  
2 distributor or wholesaler on the day [ ~~in~~ ] on which an increase  
3 in the excise tax imposed by Section 7-13-3 NMSA 1978 or the  
4 initial imposition of or increase in the excise tax imposed by  
5 Section 7-13-3.6 NMSA 1978 is effective. The taxable event is  
6 the existence of an inventory in the possession of a  
7 distributor or wholesaler on the day prior to the day [ ~~in~~ ] on  
8 which an increase in the excise tax imposed by Section 7-13-3  
9 NMSA 1978 or the initial imposition of or increase in the  
10 excise tax imposed by Section 7-13-3.6 NMSA 1978 is effective.  
11 The rate of the gasoline inventory tax to apply on each gallon  
12 of gasoline held in inventory by a distributor or wholesaler,  
13 as provided in Section 7-13-3.2 NMSA 1978, shall be the  
14 difference between the gasoline [ ~~excise~~ ] tax rate or the  
15 highway bonding gasoline tax rate, whichever is applicable,  
16 imposed on the day prior to the day [ ~~in~~ ] on which the  
17 [ ~~gasoline excise~~ ] applicable tax is increased or initially  
18 imposed subtracted from the [ ~~gasoline excise~~ ] applicable tax  
19 rate imposed on the day that the [ ~~gasoline excise~~ ] applicable  
20 tax rate increase or imposition is effective, expressed in  
21 cents per gallon.

22 B. The gasoline inventory tax is to be paid to the  
23 department on or before the twenty-fifth day of the month  
24 following the month in which the taxable event occurs. "

25 Section 4. Section 7-13-3.2 NMSA 1978 (being Laws 1979,

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1 Chapter 166, Section 8, as amended) is amended to read:

2 "7-13-3.2. GASOLINE INVENTORIES. --

3 A. On the day prior to the day that the excise tax  
4 imposed by Section 7-13-3 NMSA 1978 is increased or the excise  
5 tax imposed by Section 7-13-3.6 NMSA 1978 is initially imposed  
6 or increased, each distributor, wholesaler and retailer shall  
7 take inventory of the gallons of gasoline on hand.

8 B. Distributors and wholesalers shall report total  
9 gallons of gasoline in inventory on the day prior to the day  
10 that an increase in the gasoline tax rate or the initial  
11 imposition or an increase in the highway bonding gasoline tax  
12 rate is effective and pay any tax due imposed by Section  
13 7-13-3.1 NMSA 1978.

14 C. Retailers shall maintain a record of the total  
15 gallons of gasoline in inventory on the day prior to the day  
16 that an increase in the gasoline tax rate or the initial  
17 imposition or an increase in the highway bonding gasoline tax  
18 rate is effective and shall not increase the price of the  
19 gasoline sold until the inventory is disposed of in the  
20 ordinary course of business. "

21 Section 5. A new section of the Gasoline Tax Act,  
22 Section 7-13-3.6 NMSA 1978, is enacted to read:

23 "7-13-3.6. [NEW MATERIAL] IMPOSITION AND RATE OF HIGHWAY  
24 BONDING GASOLINE TAX-- LIMITATION. --

25 A. The governor is authorized, subject to the

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1 limitations of this section, to impose for the privilege of  
2 receiving gasoline in this state an excise tax at a rate not  
3 to exceed five cents (\$.05) per gallon of gasoline received in  
4 New Mexico. The tax may be imposed in any number of one-cent  
5 (\$.01) increments and may be referred to as the "highway  
6 bonding gasoline tax". The proceeds from the tax shall be  
7 used only to secure or pay state highway bonds issued pursuant  
8 to Paragraph (3) of Subsection C of Section 67-3-59.1 NMSA  
9 1978.

10 B. The governor may impose any increment of the  
11 tax authorized by Subsection A of this section only upon a  
12 finding that the tax increase is necessary because there are  
13 insufficient revenues available in the state road fund to  
14 pledge for the issuance of the amounts of state highway bonds  
15 that:

16 (1) are authorized pursuant to Paragraph (3)  
17 of Subsection C of Section 67-3-59.1 NMSA 1978; and

18 (2) are needed to fund statewide road  
19 improvements that the state highway commission certifies are  
20 necessary for purposes of safety, commerce and economic  
21 development.

22 C. The tax authorized to be imposed pursuant to  
23 this section shall become effective only upon July 1 or  
24 January 1, whichever date occurs first, after the expiration  
25 of at least three months from the date the governor issues the

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1 finding pursuant to Subsection B of this section. "

2 Section 6. Section 7-13-5 NMSA 1978 (being Laws 1971,  
3 Chapter 207, Section 5, as amended) is amended to read:

4 "7-13-5. TAX RETURNS--PAYMENT OF TAX. --Distributors  
5 shall file gasoline tax and highway bonding gasoline tax  
6 returns in form and content as prescribed by the secretary on  
7 or before the twenty-fifth day of the month following the  
8 month in which gasoline is received in New Mexico. Such  
9 returns shall be accompanied by payment of the amount of  
10 gasoline tax or highway bonding gasoline tax due. "

11 Section 7. Section 7-13-13 NMSA 1978 (being Laws 1971,  
12 Chapter 207, Section 12, as amended) is amended to read:

13 "7-13-13. PERMIT TO PURCHASE DYED GASOLINE AND APPLY FOR  
14 REFUND OF [~~GASOLINE~~] TAX ON GASOLINE NOT USED IN MOTOR BOATS  
15 OR IN MOTOR VEHICLES OPERATED ON HIGHWAYS OF THIS STATE. --

16 A. Each person who wishes to purchase gasoline  
17 dyed in accordance with the provisions of Section 7-13-15 NMSA  
18 1978 and to claim a refund of gasoline tax and highway bonding  
19 gasoline tax paid on such gasoline under the provisions of  
20 Section 7-13-14 NMSA 1978 shall apply for and obtain a permit  
21 to do so from the department. The application for the permit  
22 shall be in form and content as prescribed by the department.

23 B. The secretary may, upon notice and after  
24 hearing, suspend the gasoline tax and highway bonding gasoline  
25 tax refund permit of any person who makes any false statement

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1 on an application for a permit or on a claim for refund made  
2 under Section 7-13-14 NMSA 1978 who uses gasoline dyed in  
3 accordance with Section 7-13-15 NMSA 1978 in a motor boat or  
4 in a vehicle licensed to operate on the highways of this state  
5 or who violates any other provision of the Gasoline Tax Act.  
6 Such suspension may be, in the discretion of the secretary,  
7 for a period of up to one year. "

8 Section 8. Section 7-13-14 NMSA 1978 (being Laws 1971,  
9 Chapter 207, Section 13, as amended) is amended to read:

10 "7-13-14. CLAIM FOR REFUND OF [GASOLINE] TAX PAID ON  
11 GASOLINE NOT USED IN MOTOR BOATS OR IN MOTOR VEHICLES LICENSED  
12 TO OPERATE ON HIGHWAYS OF THIS STATE. -- Upon submission of  
13 proof satisfactory to the department, the department shall  
14 allow a claim for refund of gasoline tax and highway bonding  
15 gasoline tax paid on dyed gasoline purchased and used within  
16 six months prior to the filing of the claim by holders of  
17 permits issued under Section 7-13-13 NMSA 1978. The  
18 individual purchases of such gasoline, other than that to be  
19 used as aviation fuel, must have been made in quantities of  
20 fifty gallons or more. Purchasers of aviation fuel may  
21 accumulate invoices to reach the minimum required for filing a  
22 claim for refund. No claim for refund may be presented on  
23 less than one hundred gallons so purchased. The secretary  
24 may, by regulation, prescribe the documents necessary to  
25 support a claim for refund and the invoice and sales procedure

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1 to be followed by sellers and purchasers of gasoline not  
2 intended to be used in motor boats or in motor vehicles  
3 licensed to operate on the highways of this state by the motor  
4 vehicle division of the department. "

5 Section 9. Section 67-3-59.1 NMSA 1978 (being Laws 1989,  
6 Chapter 157, Section 1, as amended) is amended to read:

7 "67-3-59.1. STATE HIGHWAY DEBENTURES--ISSUANCE--LIMITS--  
8 APPROVAL--COUPONS.--

9 A. In order to provide funds to finance state  
10 highway projects, including state highway projects that are  
11 required for the waste isolation pilot project and are  
12 eligible for federal reimbursement or payment as authorized by  
13 federal legislation, the state highway commission is  
14 authorized to issue bonds from time to time, payable from:

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

17 (2) contributions of a county or  
18 municipality, if any, to the expense of a project as  
19 determined by a cooperative agreement made pursuant to Section  
20 67-3-28 NMSA 1978 and deposited in the state road fund; and

21 (3) the proceeds of the collection of  
22 [gasoline excise] taxes and [motor vehicle registration] fees  
23 that are required by law to be paid into the state road fund  
24 and not otherwise pledged solely to the payment of outstanding  
25 bonds and debentures.

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1           B. The total aggregate outstanding principal  
2 amount of bonds issued from time to time pursuant to this  
3 section, secured by or payable from [~~the gasoline excise taxes~~  
4 ~~and motor vehicle registration fees~~] federal funds not  
5 otherwise obligated that are paid into the state road fund,  
6 county or municipal contributions deposited in the state road  
7 fund pursuant to a cooperative agreement and the proceeds from  
8 the collection of taxes and fees required by law to be paid  
9 into the state road fund shall not, without additional  
10 authorization of the state legislature, exceed [~~one hundred~~  
11 ~~fifty million dollars (\$150,000,000)~~] at any given time,  
12 subject to the [~~following~~] provisions of Subsection C of this  
13 section, the following amounts:

14                   (1) prior to July 1, 1998, one hundred fifty  
15 million dollars (\$150,000,000);

16                   (2) from July 1, 1998 through June 30, 1999,  
17 five hundred million dollars (\$500,000,000); and

18                   (3) after June 30, 1999, one billion one  
19 hundred million dollars (\$1,100,000,000).

20           C. The total aggregate outstanding principal  
21 amount of bonds authorized pursuant to Subsection B of this  
22 section shall be subject to the following provisions:

23                   (1) the total aggregate outstanding principal  
24 amount of bonds issued for state highway projects that are  
25 required for the waste isolation pilot project and are

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1 eligible for federal reimbursement or payment as authorized by  
2 federal legislation shall not exceed [ ~~one hundred million~~  
3 ~~dollars (\$100,000,000); and~~ two hundred million dollars  
4 (\$200,000,000);

5 (2) the total aggregate outstanding principal  
6 amount of bonds issued for state highway projects other than  
7 state highway projects that are required for the waste  
8 isolation pilot project and are eligible for federal  
9 reimbursement or payment as authorized by federal legislation  
10 shall not exceed:

11 (a) prior to July 1, 1998, fifty  
12 million dollars (\$50,000,000);

13 (b) from July 1, 1998 through June 30,  
14 1999, three hundred million dollars (\$300,000,000); and

15 (c) after June 30, 1999, nine hundred  
16 million dollars (\$900,000,000); and

17 (3) the proceeds from the sale of bonds  
18 issued after July 1, 1998 pursuant to the additional authority  
19 added in Subparagraphs (b) and (c) of Paragraph (2) of this  
20 subsection shall be used for planning, designing, engineering  
21 and constructing and for acquiring rights of way for the  
22 following projects:

23 (a) the reconstruction of the  
24 interstate 40 and interstate 25 interchange in Albuquerque;

25 (b) the limited-access construction and

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1 necessary interchanges for United States highway 70 from Las  
2 Cruces east to White Sands missile range road;

3 (c) construction of the Santa Fe relief  
4 route and required interchanges;

5 (d) improvement of United States  
6 highway 84 and 285 from Santa Fe to Pojoaque; and

7 (e) the four-lane construction and  
8 improvement of state highway 44 from Bernalillo to Bloomfield.

9 ~~[C.]~~ D. The state highway commission may issue  
10 bonds to refund other bonds issued pursuant to this section by  
11 exchange or current or advance refunding.

12 ~~[D.]~~ E. Each series of bonds shall have a maturity  
13 of no more than twenty-five years from the date of issuance;  
14 provided that bonds issued after July 1, 1998 pursuant to  
15 Subparagraphs (b) and (c) of Paragraph (2) of Subsection C of  
16 this section shall have a maturity of no more than ten years  
17 from the date of issuance. The state highway commission shall  
18 determine all other terms, covenants and conditions of the  
19 bonds; provided that the bonds shall not be issued pursuant to  
20 this section unless the state board of finance approves the  
21 issuance of the bonds and the principal amount of and interest  
22 rate or maximum net effective interest rate on the bonds.

23 ~~[E.]~~ F. The bonds shall be executed with the  
24 manual or facsimile ~~[signatures]~~ signature of the chairman of  
25 the state highway commission, countersigned by the state

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1 treasurer and attested to by the secretary of the state  
2 highway commission, with the seal of the state highway  
3 commission imprinted or otherwise affixed to the bonds.

4 [F-] G. Proceeds of the bonds may be used to pay  
5 expenses incurred in the preparation, issuance and sale of the  
6 bonds and, together with the earnings on the proceeds of the  
7 bonds, may be used to pay rebate, penalty, interest and other  
8 obligations relating to the bonds and the proceeds of the  
9 bonds under the Internal Revenue Code of 1986, as amended.

10 [G-] H. The bonds may be sold at public or private  
11 sale or through the New Mexico finance authority. If sold at  
12 public sale, a notice of the time and place of sale shall be  
13 published in a newspaper of general circulation in the state,  
14 and in any other newspaper determined in the resolution  
15 authorizing the issuance of the bonds, once each week for two  
16 consecutive weeks prior to the date of sale. The bonds may be  
17 purchased by the state treasurer or state investment officer.

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

24 [I-] J. The bonds shall be legal investments for  
25 any person or board charged with the investment of public

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

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

18 L. Bonds issued pursuant to this section shall be  
19 paid solely from federal funds not otherwise obligated, taxes  
20 and fees and county and municipal contributions deposited into  
21 the state road fund and shall not constitute a general  
22 obligation of the state. "

23 Section 10. Section 67-3-65 NMSA 1978 (being Laws 1973,  
24 Chapter 145, Section 1, as amended) is amended to read:

25 "67-3-65. STATE ROAD FUND CREATED. --

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1           A. The "state road fund" is created within the  
2 state treasury to which shall be credited all receipts  
3 authorized by law to be paid into it. No income earned on the  
4 fund shall be transferred to another fund. For fiscal year  
5 2000 and subsequent fiscal years, money in the state road fund  
6 after payment of the administrative fee pursuant to Subsection  
7 B of this section shall be used solely for highway and  
8 transportation programs and purposes administered by the state  
9 highway and transportation department.

10           B. For July 1999 and subsequent months, to defray  
11 the costs of administering the collection of taxes and fees  
12 that constitute the state road fund, an administrative fee of  
13 two and one-half percent is imposed on revenues deposited in  
14 the state road fund. The administrative fee shall be imposed  
15 on all revenues deposited each month in the state road fund  
16 other than federal funds, bond proceeds and county and  
17 municipal contributions pursuant to a cooperative agreement.  
18 The department shall transmit the fee to the state treasurer  
19 for deposit in the general fund no later than the tenth day of  
20 the month following the month for which the fee was  
21 calculated. "

22           Section 11. EFFECTIVE DATE. --The effective date of the  
23 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3  
4  
5  
6 February 12, 1998

7  
8 Mr. Speaker:

9  
10 Your TRANSPORTATION COMMITTEE, to whom has been  
11 referred

12  
13 HOUSE BILLS 179, 147, 286, and 344

14  
15 has had it under consideration and reports same with  
16 recommendation that they DO NOT PASS, but that

17 HOUSE TRANSPORTATION COMMITTEE SUBSTITUTE FOR HOUSE  
18 BILLS 179, 147, 286, and 344

19  
20 DO PASS and thence referred to the TAXATION AND REVENUE  
21 COMMITTEE.

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HTC/SB 308

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Respectfully submitted,

\_\_\_\_\_  
Daniel P. Silva, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against

Yes: 11

Excused: None

Absent: Russell

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1 FORTY-THIRD LEGISLATURE  
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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HTC/SB 308

Page 19

Respectfully submitted,

\_\_\_\_\_  
Daniel P. Silva, Chairman

Adopted \_\_\_\_\_

(Chief Clerk)

Not Adopted \_\_\_\_\_

(Chief Clerk)

Date \_\_\_\_\_

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HTC/SB 308

Page 21

Respectfully submitted,

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Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

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