

AN ACT

RELATING TO CAPITAL EXPENDITURES; AMENDING THE SEVERANCE TAX BONDING ACT TO ALLOW ISSUANCE OF SUPPLEMENTAL SEVERANCE TAX BONDS BY THE STATE BOARD OF FINANCE FOR PUBLIC SCHOOL CAPITAL OUTLAY AND THE HIGHEST PRIORITY INFRASTRUCTURE RENOVATION AND EXPANSION NEEDS OF POST-SECONDARY EDUCATIONAL INSTITUTIONS; AUTHORIZING THE ISSUANCE OF SUPPLEMENTAL SEVERANCE TAX BONDS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. Section 7-27-6 NMSA 1978 (being Laws 1961, Chapter 5, Section 4) is amended to read:

"7-27-6. SEVERANCE TAX BONDING FUND PLEDGED.--

A. The money in the severance tax bonding fund is first pledged for the payment of principal and interest on all severance tax bonds issued after the enactment of the Severance Tax Bonding Act.

B. The money in the severance tax bonding fund is second pledged, on a basis subordinate to any severance tax bonds then or thereafter outstanding, for the payment of principal and interest on all supplemental severance tax bonds issued after the enactment of the Severance Tax Bonding Act."

Section 2. Section 7-27-7 NMSA 1978 (being Laws 1961, Chapter 5, Section 5) is amended to read:

"7-27-7. SPECIAL INCOME TO RETIRE BONDS.--When a law

authorizing a severance tax bond issue or supplemental severance tax bond issue contemplates the income of money for the retirement of the bond issue other than or in addition to the money in the severance tax bonding fund, then the money derived from such income shall be paid to the state treasurer and be credited to the specific bond issue account and deposited in the severance tax bonding fund."

Section 3. Section 7-27-9 NMSA 1978 (being Laws 1961, Chapter 5, Section 7) is amended to read:

"7-27-9. BONDS TO BE KNOWN AS SEVERANCE TAX BONDS AND SUPPLEMENTAL SEVERANCE TAX BONDS.--

A. Prior to July 1, 1999, all bonds issued wherein the money in the severance tax bonding fund is pledged for their retirement shall be known as "New Mexico severance tax bonds".

B. After July 1, 1999, there shall be two categories of bonds issued by the state board of finance wherein the money in the severance tax bonding fund is pledged for their retirement. Those bonds shall be known as "New Mexico severance tax bonds" and as "New Mexico supplemental severance tax bonds".

Section 4. Section 7-27-10 NMSA 1978 (being Laws 1961, Chapter 5, Section 8) is amended to read:

"7-27-10. STATE BOARD OF FINANCE SHALL ISSUE BONDS.--

A. The state board of finance is authorized to

issue and sell severance tax bonds within the provisions of the Severance Tax Bonding Act, and no other agency of the state is authorized to issue or sell severance tax bonds.

B. The state board of finance may issue and sell supplemental severance tax bonds within the provisions of the Severance Tax Bonding Act, and no other agency of the state is authorized to issue or sell supplemental severance tax bonds."

Section 5. Section 7-27-11 NMSA 1978 (being Laws 1961, Chapter 5, Section 9, as amended) is amended to read:

"7-27-11. AUTHORITY TO REFUND BONDS.--

A. The state board of finance may issue and sell at public or private sale severance tax bonds to refund outstanding severance tax bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof when, in its opinion, such action will be beneficial to the state.

B. The state board of finance may issue and sell at public or private sale supplemental severance tax bonds to refund outstanding supplemental severance tax bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding supplemental severance tax bonds, or any combination thereof when, in its opinion, such action will be beneficial to the state."

Section 6. Section 7-27-12 NMSA 1978 (being Laws 1961, Chapter 5, Section 10, as amended) is amended to read:

"7-27-12. WHEN SEVERANCE TAX BONDS TO BE ISSUED.--

A. The state board of finance shall issue and sell all severance tax bonds when authorized to do so by any law that sets out the amount of the issue and the recipient of the money.

B. The state board of finance shall also issue and sell severance tax bonds authorized by Sections 72-14-36 through 72-14-42 NMSA 1978, and such authority as has been given to the interstate stream commission to issue and sell such bonds is transferred to the state board of finance. The state board of finance shall issue and sell all severance tax bonds only when so instructed by resolution of the governing body or executive head of the recipient of the bond money.

C. Proceeds from supplemental severance tax bonds shall be used only for public school critical capital outlay projects pursuant to the Public School Capital Outlay Act or for infrastructure renovation and expansion at the state's public post-secondary educational institutions and other institutions confirmed as state educational institutions in Article 12, Section 11 of the constitution of New Mexico pursuant to a plan developed and approved by the commission on higher education to fund the highest priority significant needs identified by the commission.

D. The state board of finance shall issue and sell all supplemental severance tax bonds when authorized to do so by any law that sets out the amount of the issue and names the public school capital outlay council or the commission on higher education as the recipient of the money. The state board of finance shall issue and sell supplemental severance tax bonds only when so instructed by resolution of the public school capital outlay council or by resolution of the commission on higher education pursuant to certification by the governing bodies of the appropriate educational institutions."

Section 7. Section 7-27-14 NMSA 1978 (being Laws 1961, Chapter 5, Section 11) is amended to read:

"7-27-14. AMOUNT OF TAX--SECURITY FOR BONDS.--

A. The legislature shall provide for the continued assessment, levy, collection and deposit into the severance tax bonding fund of the tax or taxes upon natural resource products severed and saved from the soil of the state that, together with such other income as may be deposited to the fund, will be sufficient to produce an amount that is at least the amount necessary to meet annual debt service charges on all outstanding severance tax bonds and supplemental severance tax bonds.

B. The state board of finance shall issue no severance tax bonds unless the aggregate amount of severance

tax bonds outstanding, and including the issue proposed, can be serviced with not more than fifty percent of the annual deposits into the severance tax bonding fund, as determined by the deposits during the preceding fiscal year.

C. The state board of finance shall issue no supplemental severance tax bonds unless the aggregate amount of severance tax bonds and supplemental severance tax bonds outstanding, and including the issue proposed, can be serviced with not more than sixty-two and one-half percent of the annual deposits into the severance tax bonding fund, as determined by the deposits during the preceding fiscal year.

D. The provisions of this section shall not be modified by the terms of any severance tax bonds or supplemental severance tax bonds hereafter issued."

Section 8. Section 7-27-16 NMSA 1978 (being Laws 1961, Chapter 5, Section 13, as amended) is amended to read:

"7-27-16. FORM OF BONDS.--

A. The state board of finance, except as otherwise specifically provided in the Severance Tax Bonding Act, shall determine at its discretion the terms, covenants and conditions of severance tax bonds and supplemental severance tax bonds, including but not limited to: date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the

issuance of the bonds.

B. The bonds shall be in such form as the state board of finance may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation."

Section 9. Section 7-27-17 NMSA 1978 (being Laws 1961, Chapter 5, Section 14, as amended) is amended to read:

"7-27-17. EXECUTION OF BONDS.--Severance tax bonds and supplemental severance tax bonds shall be signed and attested by the state treasurer and shall be executed with the facsimile signature of the governor and the facsimile seal of the state, except for bonds issued in book entry or similar form without the delivery of physical securities. Any interest coupons attached to the bonds shall bear the facsimile signature of the state treasurer, which officer, by the execution of the bonds, shall adopt as his own signature the facsimile thereof appearing on the coupons. Except for bonds issued in book entry or similar form without the delivery of physical securities, the Uniform Facsimile Signature of Public Officials Act shall apply, and the state board of finance shall determine the manual signature to be affixed on the bonds."

Section 10. Section 7-27-18 NMSA 1978 (being Laws 1961, Chapter 5, Section 15) is amended to read:

"7-27-18. PROCEDURE FOR SALE OF BONDS.--

A. Severance tax bonds and supplemental severance tax bonds shall be sold by the state board of finance at such times and in such manner as the board may elect, consistent with the need of the board, commission or agency that is the recipient of the bond money, to the highest bidder for cash at not less than par and accrued interest.

B. The state board of finance shall publish a notice of the time and place of sale in a newspaper of general circulation in the state, and also in a recognized financial journal outside the state. Such publication shall be made once each week for two consecutive weeks prior to the date fixed for such sale, the last publication to be at least ten days prior to the date of sale. Such notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which sealed bids therefor shall be received. All bids, except that of the state, shall be accompanied by a deposit of two percent of the bid price. Deposits of unsuccessful bidders shall be returned upon rejection of the bid.

C. At the time and place specified in such notice, the state board of finance shall open the bids in public and shall award the bonds, or any part thereof, to the bidder or bidders offering the best price therefor. Before delivering any bonds sold, the state treasurer shall detach therefrom and cancel all interest coupons which may have matured prior to

the date of delivery. The state board of finance may reject any or all bids and readvertise. The state board of finance may sell a severance tax bond or supplemental severance tax bond issue, or any part thereof, to the state at private sale."

Section 11. Section 7-27-19 NMSA 1978 (being Laws 1961, Chapter 5, Section 16) is amended to read:

"7-27-19. SEVERANCE TAX BONDS AND SUPPLEMENTAL SEVERANCE TAX BONDS LEGAL INVESTMENTS.--Severance tax bonds and supplemental severance tax bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money."

Section 12. Section 7-27-20 NMSA 1978 (being Laws 1961, Chapter 5, Section 17) is amended to read:

"7-27-20. EXPENSES PAID FROM SEVERANCE TAX BONDING FUND.--The expense incurred in the issuance of severance tax bonds and supplemental severance tax bonds shall be paid from the severance tax bonding fund."

Section 13. Section 7-27-21 NMSA 1978 (being Laws 1961, Chapter 5, Section 18) is amended to read:

"7-27-21. TREASURER TO MAKE BOND PAYMENTS AND KEEP RECORDS.--Severance tax bonds and supplemental severance tax bonds payable from the severance tax bonding fund shall be paid by the state treasurer who shall keep a complete bond

register showing severance tax bonds and supplemental severance tax bonds, coupons paid and outstanding on the bonds and such other records as the state board of finance shall require."

Section 14. Section 7-27-22 NMSA 1978 (being Laws 1961, Chapter 79, Section 2, as amended) is amended to read:

"7-27-22. SEVERANCE TAX BONDING ACT TO BE FULL AUTHORITY FOR ISSUANCE OF BONDS.--The Severance Tax Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of severance tax bonds and supplemental severance tax bonds, which bonds and the coupons attached thereto shall have all the qualities of investment securities under the Uniform Commercial Code and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value."

Section 15. Section 7-27-23 NMSA 1978 (being Laws 1961, Chapter 5, Section 20) is amended to read:

"7-27-23. SUIT MAY BE BROUGHT TO COMPEL PERFORMANCE OF OFFICERS.--Any holder of severance tax bonds or supplemental severance tax bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the Severance Tax Bonding Act."

Section 16. Section 7-27-24 NMSA 1978 (being Laws 1961, Chapter 5, Section 21) is amended to read:

"7-27-24. BONDS TAX FREE.--All severance tax bonds and supplemental severance tax bonds shall be exempt from taxation by the state or any of its political subdivisions."

Section 17. Section 7-27-27 NMSA 1978 (being Laws 1961, Chapter 5, Section 27, as amended) is amended to read:

"7-27-27. PURPOSE AND INTENT.--The purpose of the Severance Tax Bonding Act is to establish the authority who shall issue and sell all severance tax bonds and supplemental severance tax bonds for financing specific projects authorized by the legislature and to guarantee redemption of such bonds by revenue derived from the receipts from taxes levied upon natural resource products severed and saved from the soil and such other money as the legislature may from time to time determine. It is intended that projects to be financed from the fund shall include but not be limited to the construction of buildings for state institutions and water resource projects; and it is further intended that the income from water resource projects in excess of the amount required for operation and maintenance of the project shall be used to repay the severance tax bonding fund."

Section 18. COMMISSION ON HIGHER EDUCATION--PLAN FOR FUNDING SIGNIFICANT POST-SECONDARY EDUCATIONAL INFRASTRUCTURE NEEDS.--

A. The commission on higher education, in conjunction with the governing bodies of the post-secondary

educational institutions and other state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, shall develop and approve a five-year plan for funding with supplemental severance tax bonds the infrastructure renovation and expansion projects designated by the commission as the highest priority of significant needs. The commission shall determine the projects and amounts to be funded, with a timetable for the projects and amounts to be funded each year over the five-year period, subject to review and comment by the educational institutions and subject to the amount of supplemental severance tax bonds issued each year.

B. The commission on higher education shall administer the proceeds from supplemental severance tax bonds appropriated to the commission and distribute the proceeds to the respective governing bodies of the educational institutions with projects that are funded with the proceeds pursuant to the plan approved and adopted by the commission in Subsection A of this section.

Section 19. SUPPLEMENTAL SEVERANCE TAX BONDS--PURPOSE FOR WHICH ISSUED--APPROPRIATION OF PROCEEDS.--

A. The state board of finance may issue and sell supplemental severance tax bonds in compliance with the Severance Tax Bonding Act in the following amounts for the following purposes upon the following certification:

(1) an amount not exceeding one hundred million dollars (\$100,000,000) when the public school capital outlay council certifies by resolution the need for the issuance of the bonds for public school critical capital outlay projects pursuant to the Public School Capital Outlay Act; and

(2) an amount not exceeding twenty-five million dollars (\$25,000,000) when the commission on higher education certifies by resolution the need for the issuance of the bonds for infrastructure renovation and expansion at the state's public post-secondary educational institutions or other educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico pursuant to a plan developed and approved by the commission on higher education to fund the highest priority significant needs identified by the commission.

~~B. Of the amount of supplemental severance tax bonds issued annually, an amount equal to twenty percent of the proceeds shall be appropriated for the purposes in Paragraph (2) of Subsection A of this section.~~

C. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that the projects have been developed sufficiently to justify the issuance and that the projects can proceed to contract within

a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended.

D. The proceeds from the sale of the bonds pursuant to Paragraph (1) of Subsection A of this section are appropriated to the public school capital outlay fund to carry out the provisions of the Public School Capital Outlay Act. If the public school capital outlay council has not certified the need for the issuance of the bonds by the end of fiscal year 2004, authorization provided in this section shall expire. Any unexpended or unencumbered balance remaining from the proceeds of bonds issued pursuant to Paragraph (1) of Subsection A of this section at the end of fiscal year 2006 shall revert to the severance tax bonding fund.

E. The proceeds from the sale of the bonds in Paragraph (2) of Subsection A of this section are appropriated to the commission on higher education for distribution to the governing bodies of the educational institutions who have certified projects for funding with the bond proceeds. If the commission on higher education has not certified the need for the issuance of the bonds by the end of fiscal year 2004, authorization provided in this section shall expire. Any unexpended or unencumbered balance remaining from the proceeds of bonds issued pursuant to Paragraph (2) of Subsection A of this section at the end of fiscal year 2006 shall revert to

the severance tax bonding fund.

Section 20. REPEAL.--Section 7-27-11.1 NMSA 1978 (being Laws 1985 (1st S.S.), Chapter 15, Section 15) is repealed.

Section 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

Section 22. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
