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AN ACT

RELATING TO TAXATION; RENAMING THE COUNTY AND MUNICIPAL
GASOLINE TAX ACT AS THE COUNTY AND MUNICIPAL FUELS TAX ACT;
GRANTING AUTHORITY TO ALL COUNTIES AND MUNICIPALITIES TO
IMPOSE A TAX ON RETAIL SALES OF GASOLINE AND SPECIAL FUEL
WITHIN THEIR JURISDICTIONS; CHANGING PERMITTED USE OF
PROCEEDS OF COUNTY AND MUNICIPAL GASOLINE AND SPECIAL FUEL
TAXES; PROVIDING FOR LOCAL ADMINISTRATION OF COUNTY AND
MUNICIPAL GASOLINE AND SPECIAL FUEL TAXES; REVISING PURPOSES
FOR WHICH BONDS MAY BE ISSUED; MAKING A CONFORMING AMENDMENT
TO THE MOTOR VEHICLE CODE; REPEALING THE SPECIAL COUNTY
HOSPITAL GASOLINE TAX ACT; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 7-24A-1 NMSA 1978 (being Laws 1978,
Chapter 182, Section 1, as amended) is amended to read:

"7-24A-1. SHORT TITLE.--Chapter 7, Article 24A NMSA
1978 may be cited as the "County and Municipal Fuels Tax
Act"."

SECTION 2. Section 7-24A-2 NMSA 1978 (being Laws 1991,
Chapter 156, Section 2) is amended to read:

"7-24A-2. DEFINITIONS.--As used in the County and
Municipal Fuels Tax Act:

A. "alternative fuel" means liquefied petroleum

1 gas, compressed natural gas, liquefied natural gas or a
2 water-phased hydrocarbon fuel emulsion consisting of a
3 hydrocarbon base and water in an amount not less than twenty
4 percent by volume of the total water-phased fuel emulsion,
5 all of which may be used for the generation of power to
6 propel a motor vehicle on the highways;

7 B. "biodiesel" means a renewable, biodegradable,
8 mono alkyl ester combustible liquid fuel that is derived from
9 agricultural plant oils or animal fats and that meets the
10 American society for testing and materials specifications for
11 biodiesel fuel, B100 or B99 blend stock for distillate fuels;

12 C. "blended biodiesel" means a diesel engine fuel
13 that contains at least two percent biodiesel;

14 D. "county area" means that portion of a county
15 located outside the boundaries of any municipality, except
16 that for an H class county, "county area" means the entire
17 county;

18 E. "gasoline" means any flammable liquid
19 hydrocarbon used primarily as fuel for the propulsion of
20 motor vehicles or motorboats, including flammable liquid
21 hydrocarbon that contains a minimum of ten percent by volume
22 of denatured ethanol, of at least one hundred ninety-nine
23 proof, exclusive of denaturants. "Gasoline" does not include
24 diesel engine fuel, kerosene, alternative fuel or products
25 sold for use in aircraft;

1 F. "governing body" means the city council or city
2 commission of a city, the board of trustees of a town or
3 village or the board of county commissioners of a county;

4 G. "highway" means every road, highway,
5 thoroughfare, street, alley or way, including toll roads,
6 generally open to the use of the public as a matter of right
7 for the purpose of motor vehicle travel and regardless of
8 whether it may be temporarily closed for the purpose of
9 construction, reconstruction, maintenance or repair;

10 H. "motor vehicle" means any self-propelled
11 vehicle or device that is either subject to registration
12 pursuant to Section 66-3-1 NMSA 1978 or is used or may be
13 used on the public highways in whole or in part for the
14 purpose of transporting persons or property and includes any
15 connected trailer or semitrailer;

16 I. "municipality" means any incorporated city,
17 town or village, whether incorporated under general act,
18 special act or special charter, but does not include an H
19 class county;

20 J. "person" means:

21 (1) any individual, estate, trust, receiver,
22 cooperative association, club, corporation, company, firm,
23 partnership, limited liability company, joint venture,
24 syndicate or other entity, including any utility owned or
25 operated by a county, municipality or other political

1 subdivision of the state; or

2 (2) to the extent permitted by law, the
3 United States or any agency or instrumentality thereof or the
4 state of New Mexico or any political subdivision, agency or
5 instrumentality thereof;

6 K. "special fuel" means any diesel-engine fuel,
7 biodiesel, blended biodiesel or kerosene used for the
8 generation of power to propel a motor vehicle. "Special
9 fuel" does not include gasoline, alternative fuel or products
10 sold for use in aircraft; and

11 L. "taxpayer" means a person liable for payment of
12 a tax imposed pursuant to the County and Municipal Fuels Tax
13 Act."

14 **SECTION 3.** Section 7-24A-3 NMSA 1978 (being Laws 1978,
15 Chapter 182, Section 3, as amended) is amended to read:

16 "7-24A-3. USE OF PROCEEDS.--The proceeds of a county or
17 municipal gasoline or special fuel tax shall be used only for
18 public bridge or highway projects, including the
19 construction, reconstruction, repair or maintenance of public
20 bridges and highways, or for the payment of bonds issued
21 pursuant to the County and Municipal Fuels Tax Act."

22 **SECTION 4.** A new section of the County and Municipal
23 Fuels Tax Act, Section 7-24A-4.1 NMSA 1978, is enacted to
24 read:

25 "7-24A-4.1. ADMINISTRATION--ENFORCEMENT.--A county or

1 municipality that has in effect an ordinance imposing a tax
2 pursuant to the County and Municipal Fuels Tax Act shall
3 administer and enforce the tax."

4 SECTION 5. A new section of the County and Municipal
5 Fuels Tax Act, Section 7-24A-4.2 NMSA 1978, is enacted to
6 read:

7 "7-24A-4.2. REGISTRATION REQUIRED.--

8 A. Each person selling gasoline or special fuel at
9 retail fuel dispensers in a county that imposes a county
10 gasoline or special fuel tax shall register with the county
11 as a seller of that product at retail fuel dispensers.

12 B. Each person selling gasoline or special fuel at
13 retail fuel dispensers in a municipality that imposes a
14 municipal gasoline or special fuel tax shall register with
15 the municipality as a seller of that product at retail fuel
16 dispensers."

17 SECTION 6. A new section of the County and Municipal
18 Fuels Tax Act, Section 7-24A-4.3 NMSA 1978, is enacted to
19 read:

20 "7-24A-4.3. RECORDS REQUIRED--INSPECTION OF BOOKS AND
21 RECORDS OF TAXPAYERS--AUDITS.--

22 A. A taxpayer shall maintain records and books of
23 account in a manner that will permit the accurate computation
24 of tax. A county or municipality shall require taxpayers to
25 establish and maintain tax-related accounts and shall

1 designate the records to be retained and the period of
2 retention.

3 B. A county or municipality administering a tax
4 pursuant to the County and Municipal Fuels Tax Act shall
5 cause the records and books of account of a taxpayer to be
6 inspected or audited at such times as the county or
7 municipality deems necessary to administer and enforce the
8 tax. Upon request, a taxpayer shall make the taxpayer's
9 records and books of account available for inspection at
10 reasonable hours to persons designated by the county or
11 municipality to conduct the audit or other inspection. The
12 taxpayer shall be permitted to submit a claim for refund with
13 respect to any period open to inspection or audit."

14 SECTION 7. A new section of the County and Municipal
15 Fuels Tax Act, Section 7-24A-4.4 NMSA 1978, is enacted to
16 read:

17 "7-24A-4.4. TAX RETURNS--DUE DATE--REPORTING
18 PERIOD--EXTENSIONS.--

19 A. A taxpayer shall file tax returns in the manner
20 and in the form and content as prescribed by the county or
21 municipality administering a tax imposed pursuant to the
22 County and Municipal Fuels Tax Act. Filing by electronic or
23 optical means may be permitted or required by the county or
24 municipality.

25 B. The county or municipality, by ordinance, shall HB 63
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1 require that the due date for filing of returns and payment
2 of tax shall be the twenty-fifth day of each calendar month.

3 C. A county or municipality may provide, by
4 ordinance, for the granting, for good cause, of extensions of
5 time to file a return or to pay tax; provided that no
6 extension of time shall prevent the accrual of interest as
7 otherwise provided in the County and Municipal Fuels Tax
8 Act."

9 SECTION 8. A new section of the County and Municipal
10 Fuels Tax Act, Section 7-24A-4.5 NMSA 1978, is enacted to
11 read:

12 "7-24A-4.5. CIVIL PENALTY--INTEREST.--

13 A. A county or municipality that imposes a tax
14 pursuant to the County and Municipal Fuels Tax Act may
15 provide, by ordinance, for a civil penalty when a taxpayer
16 fails to file or pay timely. The penalty shall not exceed
17 the greater of ten percent of the amount of tax due or one
18 hundred dollars (\$100).

19 B. The county or municipality shall provide, by
20 ordinance, that if an amount of tax imposed is not paid on or
21 before the day on which it becomes due, interest shall be
22 paid to the county or municipality on that amount from the
23 first day following the day on which the tax is due, without
24 regard to any extension of time, until it is paid; provided
25 that if the amount of interest is less than one dollar

1 (\$1.00), no interest shall be due. The rate of interest
2 shall not exceed one percent per month.

3 C. The county or municipality shall provide, by
4 ordinance, that interest shall be allowed and paid on the
5 amount of tax overpaid by a taxpayer that is subsequently
6 refunded or credited to that taxpayer; provided that if the
7 amount of interest owed is less than one dollar (\$1.00), no
8 interest shall be paid. The rate of interest on overpayments
9 shall be the same as the rate set pursuant to Subsection B of
10 this section."

11 SECTION 9. A new section of the County and Municipal
12 Fuels Tax Act, Section 7-24A-4.6 NMSA 1978, is enacted to
13 read:

14 "7-24A-4.6. LIEN FOR TAX--PAYMENT--CERTIFICATE OF
15 LIENS.--

16 A. A county or municipal gasoline or special fuel
17 tax imposed by a county or municipality constitutes a lien in
18 favor of the county or municipality upon the real property
19 and the personal property located on that real property where
20 the sales of gasoline are subject to the tax. The lien may
21 be enforced as provided in Chapter 3, Article 36 NMSA 1978.
22 Priority of the lien shall be determined from the date of
23 filing.

24 B. Under process or order of court, no person
25 shall sell the property of any taxpayer without first

1 ascertaining from the clerk or treasurer of the county or
2 municipality in which the taxpayer is located the amount of
3 any county or municipal gasoline or special fuel tax due to
4 the county or municipality. Any amount of tax due to the
5 county or municipality shall be paid from the proceeds of the
6 sale before payment is made to the judgment creditor or any
7 other person with a claim to the sale proceeds.

8 C. Upon application, the clerk or treasurer of the
9 county or municipality shall furnish to any person a
10 certificate showing the amount of all liens in the records of
11 the county or municipality against the taxpayer."

12 **SECTION 10.** A new section of the County and Municipal
13 Fuels Tax Act, Section 7-24A-4.7 NMSA 1978, is enacted to
14 read:

15 "7-24A-4.7. DELINQUENCIES--OVERPAYMENTS--DISPUTES.--

16 A. A county or municipality may bring an action in
17 law or equity in district court for the collection of any
18 amount of county or municipal gasoline or special fuel tax
19 that is past due, including any related penalty, interest,
20 costs of collection and reasonable attorney fees. A district
21 court may issue a writ of mandamus or order an injunction or
22 other appropriate remedy to enforce the provisions of the
23 ordinance. The court may award costs and reasonable attorney
24 fees to the prevailing party in a court action to enforce the
25 provisions of the ordinance.

1 B. The county or municipality shall provide, by
2 ordinance, at least one procedure by which a taxpayer may
3 seek refund of amounts claimed to have been paid in excess of
4 the amount of tax due.

5 C. The county or municipality shall provide, by
6 ordinance, the procedures for resolving disputes regarding a
7 county or municipal gasoline or special fuel tax, including
8 deductions pertaining thereto."

9 **SECTION 11.** Section 7-24A-5 NMSA 1978 (being Laws 1978,
10 Chapter 182, Section 5, as amended) is amended to read:

11 "7-24A-5. COUNTY GASOLINE TAX--AUTHORIZATION--
12 IMPOSITION--RATE.--

13 A. The majority of the members of the governing
14 body of a county may adopt an ordinance imposing a tax of up
15 to five cents (\$.05) per gallon on all gasoline sold at
16 retail fuel dispensers within the county area. The tax
17 imposed by this section is to be referred to as the "county
18 gasoline tax" and is in addition to the tax imposed in the
19 Gasoline Tax Act.

20 B. The county gasoline tax may be imposed in
21 increments of one cent (\$.01) per gallon up to a maximum of
22 five cents (\$.05) per gallon. The amount of the tax and the
23 specific purposes for which the proceeds shall be used shall
24 be stated in the ordinance adopted by the governing body of
25 the county as provided in Subsection A of this section."

1 **SECTION 12.** A new section of the County and Municipal
2 Fuels Tax Act, Section 7-24A-5.1 NMSA 1978, is enacted to
3 read:

4 "7-24A-5.1. COUNTY SPECIAL FUEL TAX--
5 AUTHORIZATION--IMPOSITION--RATE.--

6 A. The majority of the members of the governing
7 body of a county may adopt an ordinance imposing a tax of up
8 to five cents (\$.05) per gallon on all special fuel sold at
9 retail fuel dispensers within the county area. The tax
10 imposed by this section is to be referred to as the "county
11 special fuel tax" and is in addition to the tax imposed in
12 the Special Fuels Supplier Tax Act.

13 B. The county special fuel tax may be imposed in
14 increments of one cent (\$.01) per gallon up to a maximum of
15 five cents (\$.05) per gallon. The amount of the tax and the
16 specific purposes for which the proceeds shall be used shall
17 be stated in the ordinance authorized by Subsection A of this
18 section and adopted by the governing body of the county."

19 **SECTION 13.** Section 7-24A-6 NMSA 1978 (being Laws 1978,
20 Chapter 182, Section 6, as amended) is amended to read:

21 "7-24A-6. PROCEDURE FOR ADOPTION OF COUNTY ORDINANCE--
22 ELECTION.--The ordinance imposing a county gasoline tax or a
23 county special fuel tax shall not go into effect until after
24 an election is held and a simple majority of the qualified
25 electors of the county residing outside the boundaries of a

1 municipality votes in favor of imposing the tax. The
2 governing body of the county shall provide for an election on
3 the question of imposing a county gasoline tax or a county
4 special fuel tax within ninety days after the day the
5 ordinance is adopted. Such question may be submitted to the
6 electors and voted upon as a separate question at any general
7 election or at any special election called for that purpose
8 by the governing body. The election upon the question shall
9 be called, held, conducted and canvassed in substantially the
10 same manner as provided by law for general elections. If the
11 question of imposing a county gasoline tax or a county
12 special fuel tax fails, the governing body shall not again
13 propose an ordinance imposing that tax for at least one year
14 after the election."

15 SECTION 14. Section 7-24A-10 NMSA 1978 (being Laws
16 1978, Chapter 182, Section 10, as amended) is amended to
17 read:

18 "7-24A-10. MUNICIPAL GASOLINE TAX--AUTHORIZATION--
19 IMPOSITION--RATE.--

20 A. The majority of the members of the governing
21 body of a municipality may adopt an ordinance imposing a tax
22 of up to five cents (\$.05) per gallon on all gasoline sold at
23 retail fuel dispensers within the boundaries of the
24 municipality. The tax imposed by this section is to be
25 referred to as the "municipal gasoline tax" and is in

1 addition to the tax imposed in the Gasoline Tax Act.

2 B. The municipal gasoline tax may be imposed in
3 increments of one cent (\$.01) per gallon up to a maximum of
4 five cents (\$.05) per gallon. The amount of the tax and the
5 specific purposes for which the proceeds shall be used shall
6 be stated in the ordinance authorized by Subsection A of this
7 section and adopted by the governing body of the
8 municipality."

9 SECTION 15. A new section of the County and Municipal
10 Fuels Tax Act, Section 7-24A-10.1 NMSA 1978, is enacted to
11 read:

12 "7-24A-10.1. MUNICIPAL SPECIAL FUEL TAX--
13 AUTHORIZATION--IMPOSITION--RATE.--

14 A. The majority of the members of the governing
15 body of a municipality may adopt an ordinance imposing a tax
16 of up to five cents (\$.05) per gallon on all special fuel
17 sold at retail fuel dispensers within the boundaries of the
18 municipality. The tax imposed by this section is to be
19 referred to as the "municipal special fuel tax" and is in
20 addition to the tax imposed in the Special Fuels Supplier Tax
21 Act.

22 B. The municipal special fuel tax may be imposed
23 in increments of one cent (\$.01) per gallon up to a maximum
24 of five cents (\$.05) per gallon. The amount of the tax and
25 the specific purposes for which the proceeds shall be used

1 shall be stated in the ordinance authorized by Subsection A
2 of this section and adopted by the governing body of the
3 municipality."

4 SECTION 16. Section 7-24A-11 NMSA 1978 (being Laws
5 1978, Chapter 182, Section 11, as amended) is amended to
6 read:

7 "7-24A-11. PROCEDURE FOR ADOPTION OF MUNICIPAL
8 ORDINANCE--ELECTION.--The ordinance imposing a municipal
9 gasoline tax or a municipal special fuel tax shall not go
10 into effect until after an election is held and a simple
11 majority of the qualified electors of the municipality voting
12 on the question votes in favor of imposing the tax. The
13 governing body of the municipality shall provide for an
14 election on the question of imposing the municipal gasoline
15 tax or municipal special fuel tax within ninety days after
16 the day the ordinance is adopted. Such question may be
17 submitted to the electors and voted upon as a separate
18 question at any regular or special election or at any special
19 election called for that purpose by the governing body. The
20 election upon the question shall be called, held, conducted
21 and canvassed in substantially the same manner as provided by
22 law for special municipal elections as provided in the
23 Municipal Election Code. If the question of imposing a
24 municipal gasoline tax or municipal special fuel tax fails,
25 the governing body shall not again propose an ordinance

1 imposing that tax for at least one year after the election."

2 SECTION 17. A new section of the County and Municipal
3 Fuels Tax Act, Section 7-24A-11.1 NMSA 1978, is enacted to
4 read:

5 "7-24A-11.1. DEDUCTIONS.--In computing tax due, the
6 following may be deducted from sales at retail fuel
7 dispensers:

8 A. with respect to county or municipal gasoline
9 tax:

10 (1) gasoline sold to the United States or an
11 agency or instrumentality thereof for the exclusive use of
12 the United States or an agency or instrumentality thereof.

13 Gasoline sold to the United States includes gasoline
14 delivered into the fuel supply tank of a government-licensed
15 vehicle of the United States; and

16 (2) gasoline sold to an Indian nation, tribe
17 or pueblo or a political subdivision, agency or
18 instrumentality of that Indian nation, tribe or pueblo for
19 the exclusive use of the Indian nation, tribe or pueblo or a
20 political subdivision, agency or instrumentality thereof.

21 Gasoline sold to an Indian nation, tribe or pueblo includes
22 gasoline delivered into the fuel supply tank of a
23 government-licensed vehicle of the Indian nation, tribe or
24 pueblo; and

25 B. with respect to county or municipal special

1 fuel tax:

2 (1) special fuel sold to the United States
3 or an agency or instrumentality thereof for the exclusive use
4 of the United States or an agency or instrumentality thereof.
5 Special fuel sold to the United States includes special fuel
6 delivered into the fuel supply tank of a government-licensed
7 vehicle of the United States;

8 (2) special fuel sold to an Indian nation,
9 tribe or pueblo or a political subdivision, agency or
10 instrumentality of that Indian nation, tribe or pueblo for
11 the exclusive use of the Indian nation, tribe or pueblo or a
12 political subdivision, agency or instrumentality thereof.

13 Special fuel sold to an Indian nation, tribe or pueblo
14 includes special fuel delivered into the fuel supply tank of
15 a government-licensed vehicle of the Indian nation, tribe or
16 pueblo;

17 (3) special fuel sold to the state of New
18 Mexico or a political subdivision, agency or instrumentality
19 of the state of New Mexico for the exclusive use of the state
20 of New Mexico or a political subdivision, agency or
21 instrumentality thereof. Special fuel sold to the state of
22 New Mexico includes special fuel delivered into the fuel
23 supply tank of a government-licensed vehicle; and

24 (4) special fuel that is number 2 diesel
25 fuel sold for the generation of power to propel a vehicle

1 authorized by contract with the public education department
2 as a school bus; provided that the fuel has a distillation
3 temperature of five hundred degrees Fahrenheit at a ten
4 percent recovery point and six hundred forty degrees
5 Fahrenheit at a ninety percent recovery point."

6 SECTION 18. Section 7-24A-14 NMSA 1978 (being Laws
7 1978, Chapter 182, Section 14, as amended) is amended to
8 read:

9 "7-24A-14. BOND ORDINANCE.--

10 A. The governing body may adopt an ordinance
11 providing for issuance of bonds to enable the county or
12 municipality to fund public bridge or highway construction,
13 reconstruction, repair or maintenance or for refunding bonds
14 previously issued for such purpose or any such purposes.

15 B. The bonds are payable solely from a pledge of:

16 (1) income derived from franchises granted
17 by the governing body of a county or municipality;

18 (2) contributions, grants or other financial
19 assistance from the state or federal government or any other
20 source;

21 (3) county or municipal gasoline or special
22 fuel tax revenue; or

23 (4) any one or a combination of these
24 sources.

25 C. The ordinance shall not be repealed as long as

1 any indebtedness on the bonds is unpaid by the county or
2 municipality."

3 **SECTION 19.** Section 7-24A-17 NMSA 1978 (being Laws
4 1978, Chapter 182, Section 17) is amended to read:

5 "7-24A-17. CONSTRUCTION.--The County and Municipal
6 Fuels Tax Act is full authority for authorization and
7 issuance of bonds. In any proceeding involving the validity
8 and enforceability of any bond or its security, any bond
9 reciting in substance that it was issued by the county or
10 municipality to aid in financing for a purpose authorized by
11 the County and Municipal Fuels Tax Act is conclusively
12 presumed to have been issued for a purpose in accordance with
13 that act."

14 **SECTION 20.** Section 7-24A-18 NMSA 1978 (being Laws
15 1978, Chapter 182, Section 18) is amended to read:

16 "7-24A-18. ADDITIONAL SECURITY.--To further the
17 marketability of bonds, the ordinance authorizing their issue
18 may authorize any security agreement not in conflict with
19 law."

20 **SECTION 21.** Section 66-6-25 NMSA 1978 (being Laws 1978,
21 Chapter 35, Section 360, as amended) is amended to read:

22 "66-6-25. REGISTRATION BY COUNTY OR MUNICIPALITY
23 PROHIBITED.--No county or municipality shall require
24 registration or charge fees for any vehicle subject to
25 registration under the Motor Vehicle Code."

1 **SECTION 22. REPEAL.--**

2 A. Sections 7-24A-4, 7-24A-6.1 through 7-24A-8,
3 7-24A-12 and 7-24A-21 NMSA 1978 (being Laws 1978, Chapter
4 182, Section 4, Laws 1986, Chapter 74, Section 1, Laws 1978,
5 Chapter 182, Section 7, Laws 1990, Chapter 88, Section 8 and
6 Laws 1978, Chapter 182, Sections 8, 12 and 21, as amended)
7 are repealed.

8 B. Sections 7-24B-1 through 7-24B-9 NMSA 1978
9 (being Laws 1987, Chapter 45, Sections 10 through 13, Laws
10 1990, Chapter 88, Section 16 and Laws 1987, Chapter 45,
11 Sections 15 through 18, as amended) are repealed.

12 **SECTION 23. EFFECTIVE DATE.--**The effective date of the
13 provisions of this act is July 1, 2017._____

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