

1 SENATE BILL 114

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Ron Griggs

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7
8 FOR THE TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE

9
10 AN ACT

11 RELATING TO TAXATION; AUTHORIZING A MUNICIPALITY OR COUNTY TO
12 IMPOSE A TAX ON SPECIAL FUEL; REPEALING A SECTION OF THE NMSA
13 1978.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "7-24A-1. SHORT TITLE.--Chapter 7, Article 24A NMSA 1978
19 may be cited as the "County and Municipal Gasoline and Special
20 Fuel Tax Act".

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

23 "7-24A-2. DEFINITIONS.--As used in the County and
24 Municipal Gasoline and Special Fuel Tax Act:

25 [~~A. "county" means a class A county or an H class~~

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1 county;

2 B.] A. "biodiesel" means a renewable,
3 biodegradable, mono alkyl ester combustible liquid fuel that is
4 derived from agricultural plant oils or animal fats and that
5 meets the American society for testing and materials
6 specifications for biodiesel fuel, B100 or B99 blend stock for
7 distillate fuels;

8 B. "blended biodiesel" means a diesel engine fuel
9 that contains at least two percent biodiesel;

10 C. "gallon" means the quantity of liquid necessary
11 to fill a standard United States gallon liquid measure or that
12 same quantity adjusted to a temperature of sixty degrees
13 Fahrenheit at the election of any distributor, but a
14 distributor shall report on the same basis for a period of at
15 least one year;

16 D. "gasoline" means any flammable liquid
17 hydrocarbon used primarily as fuel for the propulsion of motor
18 vehicles, motorboats or aircraft except for diesel-engine fuel,
19 kerosene, liquefied petroleum gas, compressed or liquefied
20 natural gas and products specially prepared and sold for use in
21 aircraft propelled by turbo-prop or jet-type engines;

22 E. "governing body" means the city council or city
23 commission of a city, the board of trustees of a town or
24 village or the board of county commissioners of a [~~class A~~
25 county or an H class] county;

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1 ~~[G. "municipality" means any incorporated city,~~
2 ~~town or village, whether incorporated under general act,~~
3 ~~special act or special charter, located within a class A county~~
4 ~~or an H class county;~~

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

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

17 H. "person" means:

18 (1) any individual, estate, trust, receiver,
19 cooperative association, club, corporation, company, firm,
20 partnership, joint venture, syndicate or other entity,
21 including any utility owned or operated by a county,
22 municipality or other political subdivision of the state; or

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

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1 I. "special fuel" means any diesel-engine fuel,
2 biodiesel, blended biodiesel or kerosene used for the
3 generation of power to propel a motor vehicle, except for
4 gasoline, liquefied petroleum gas, compressed or liquefied
5 natural gas and products specially prepared and sold for use in
6 aircraft propelled by turbo-prop or jet engines;

7 ~~[E-]~~ J. "transit route" means a road, highway or
8 street normally used in the operation of a public
9 transportation system; and

10 ~~[F-]~~ K. "vehicle emission inspection program" means
11 a vehicle emission inspection program designed to reduce
12 pollutants emitted by motor vehicles of less than ten thousand
13 pounds pursuant to a county or municipal ordinance."

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.--

17 A. The proceeds of a county or municipal gasoline
18 tax shall be used for bridge and road projects or public
19 transportation related trails and for expenses of purchasing,
20 maintaining and operating transit operations and facilities,
21 for the operation of a transit authority established by the
22 Municipal Transit Law or as provided in the County and
23 Municipal Gasoline and Special Fuel Tax Act, for operation of a
24 vehicle emission inspection program or for road, street or
25 highway construction, repair or maintenance in the county or

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1 municipality. The proceeds of a county or municipal gasoline
2 tax may be pledged for the payment of bonds issued pursuant to
3 the County and Municipal Gasoline and Special Fuel Tax Act.

4 B. The proceeds of a county or municipal special
5 fuel tax shall be used for bridge and road projects or for
6 road, street or highway construction, repair or maintenance in
7 the county or municipality. The proceeds of a county or
8 municipal special fuel tax may be pledged for the payment of
9 bonds issued pursuant to the County and Municipal Gasoline and
10 Special Fuel Tax Act; provided that the bonds were issued to
11 enable the county or municipality to acquire land, buildings or
12 other equipment required for bridge, road, street or highway
13 construction, repair or maintenance or for refunding bonds
14 previously issued for such purposes.

15 C. A county or municipality may engage in the
16 business of transportation of passengers and property within
17 the political subdivision by whatever means it may decide and
18 may acquire cars, motor buses and other equipment necessary for
19 carrying on the business. It may acquire land and erect
20 buildings and equip them with all necessary machinery and
21 facilities for operation, maintenance, modification, repair and
22 storage of any buses, cars, trucks or other equipment needed.
23 It may do all things necessary for the acquisition and conduct
24 of the business of public transportation.

25 [~~B-~~] D. A governing body may enact ordinances and

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1 resolutions and promulgate rules as it may deem necessary and
2 proper for the conduct of the business of transportation and
3 for fixing and collecting all fares, rates and charges for
4 services rendered.

5 [~~G.~~ ~~Any~~] E. A county or municipality engaging in
6 the business of transportation may extend any system of
7 transportation to points outside its boundaries where necessary
8 and incidental to furnishing efficient transportation to points
9 within the county or municipality.

10 [~~D.~~] F. A governing body may lease any system of
11 transportation in whole or in part to any person who will
12 contract to operate it according to the rules, time tables and
13 other requirements established by the governing body.

14 [~~E.~~ ~~Any~~] G. A county or municipality may furnish
15 transportation service to areas located outside its boundaries,
16 provided that prior contracts have been entered into with the
17 county or municipality in which the areas are located covering
18 the schedules, rates, service and other pertinent matters
19 before initiation of such service.

20 [~~F.~~] H. The power of eminent domain is granted to a
21 participating county or municipality for the purpose of
22 acquiring lands and buildings necessary to provide efficient
23 public transit or a vehicle emission inspection program to be
24 exercised in the manner provided by law.

25 [~~G.~~] I. A county or municipality, as an operating

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1 entity, may enter into contracts for special transportation
2 service, charter buses, advertising and any other function that
3 a private enterprise operating a public transit facility could
4 do or perform for revenue.

5 [H.] J. A governing body may spend ~~[any]~~ public
6 funds to pay the costs of operation of public transit or a
7 vehicle emission inspection program if revenues of the system
8 prove to be insufficient.

9 [I.] K. A county or municipality is authorized to
10 enter into binding agreements with the United States or any of
11 its officers or agencies or the state or any of its officers or
12 agencies or any combination of agencies, departments or
13 officers of both the United States and the state for planning,
14 developing, modernizing, studying, improving, financing,
15 operating or otherwise affecting public transit; to accept any
16 loans, grants or payments from any of these agencies; and to
17 make any commitments or assume any obligations required by any
18 of these agencies as a condition of receiving the benefits
19 thereof."

20 SECTION 4. A new section of the County and Municipal
21 Gasoline and Special Fuel Tax Act is enacted to read:

22 "[NEW MATERIAL] COUNTY SPECIAL FUEL TAX--AUTHORIZATION--
23 IMPOSITION--RATE.--

24 A. The majority of the members of the governing
25 body of a county may adopt an ordinance imposing a tax of up to

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1 two cents (\$.02) per gallon on special fuel sold at retail
2 within the boundaries of the county on all property not lying
3 within the boundaries of a municipality and upon which taxes
4 are imposed in accordance with the Special Fuels Supplier Tax
5 Act. The tax imposed by this section is to be referred to as
6 the "county special fuel tax".

7 B. If the governing body of a county adopts an
8 ordinance imposing a county special fuel tax, the governing
9 body shall submit the question of levying the tax to the
10 qualified electors in the county residing outside the
11 boundaries of a municipality.

12 C. The county special fuel tax may be imposed in
13 increments of one cent (\$.01) per gallon up to a maximum of two
14 cents (\$.02) per gallon. The amount of the tax and the
15 specific purposes for which the proceeds shall be used shall be
16 stated in the ordinance adopted by the governing body of the
17 county as provided in Subsection A of this section."

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

20 "7-24A-6. COUNTY GASOLINE TAX OR SPECIAL FUEL TAX--
21 PROCEDURE FOR ADOPTION OF ORDINANCE--ELECTION.--

22 A. The ordinance imposing a county gasoline tax or
23 county special fuel tax shall not go into effect until after an
24 election is held and a simple majority of the qualified
25 electors of the county residing outside the boundaries of a

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

14 B. Within five days after passage of a county
15 gasoline tax or county special fuel tax ordinance, the
16 governing body of the county shall submit a certified copy of
17 the ordinance to the taxation and revenue department."

18 SECTION 6. Section 7-24A-6.1 NMSA 1978 (being Laws 1986,
19 Chapter 74, Section 1, as amended) is amended to read:

20 "7-24A-6.1. COUNTY-WIDE GASOLINE TAX--AUTHORIZATION--
21 IMPOSITION--RATE--ELECTION.--

22 A. A county-wide gasoline tax may be imposed on
23 each gallon of gasoline sold at retail within the county in
24 increments of one cent (\$.01) per gallon up to a maximum of two
25 cents (\$.02) per gallon for the purpose of funding a vehicle

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1 emissions inspection program and other programs as specified in
2 Subsection D of this section when the governing bodies of a
3 county and a municipality adopt identical ordinances submitting
4 the question to the qualified electors in the county in a joint
5 election.

6 B. The procedures of the County and Municipal
7 Gasoline and Special Fuel Tax Act shall apply unless otherwise
8 provided in this section.

9 C. The ordinance shall not go into effect until
10 after a joint election is held pursuant to Section 7-24A-21
11 NMSA 1978 and a simple majority of the qualified electors of
12 the county voting on the issue vote in favor of imposing a
13 county-wide gasoline tax. If the ordinance is approved by a
14 majority of the qualified electors of the county voting on the
15 issue, the gasoline tax shall be imposed county-wide, both
16 within and outside the boundaries of any municipality within
17 the county.

18 D. If the qualified electors of the county vote in
19 favor of an ordinance imposing a county-wide gasoline tax
20 pursuant to Subsection C of Section 7-24A-21 NMSA 1978 and any
21 proceeds of the tax are dedicated by the ordinance to a vehicle
22 emissions inspection program, then the proceeds of the tax
23 imposed shall be used first for the vehicle emissions
24 inspection program and the balance shall be used for other
25 environmental programs such as water quality or air quality

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1 programs. That balance shall be distributed to the
2 municipality and the county based on the proportions that the
3 population of the municipality and the population of the county
4 outside the boundaries of the municipality bear to the total
5 population of the county. The municipality and county shall
6 reimburse the motor vehicle division of the taxation and
7 revenue department for actual costs incurred in administering
8 any plan that involves the motor vehicle division in the
9 enforcement of denial of motor vehicle registration for
10 noncompliance with a vehicle emissions inspection program. The
11 costs reimbursed are appropriated to the motor vehicle division
12 for that purpose."

13 SECTION 7. Section 7-24A-7.1 NMSA 1978 (being Laws 1990,
14 Chapter 88, Section 8) is amended to read:

15 "7-24A-7.1. REGISTRATION REQUIRED.--Each person selling
16 gasoline or special fuel at retail in a county [~~which imposes a~~
17 ~~county or county-wide gasoline tax~~] or in a municipality
18 [~~which~~] that imposes a [municipal gasoline] tax pursuant to the
19 County and Municipal Gasoline and Special Fuel Tax Act shall
20 register with the county or the municipality, as appropriate,
21 as a seller of gasoline at retail or a seller of special fuel
22 at retail, or both, as appropriate."

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

25 "7-24A-8. COLLECTION OF COUNTY GASOLINE TAX AND COUNTY
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1 SPECIAL FUEL TAX.--The county shall collect the county gasoline
2 tax and county special fuel tax imposed by the County and
3 Municipal Gasoline and Special Fuel Tax Act. Every person
4 subject to the imposition of the county gasoline tax or county
5 special fuel tax shall file a return on forms provided by and
6 with the information required by the county and shall pay the
7 tax due on or before the twenty-fifth day of the month
8 following the month in which the gasoline or special fuel is
9 sold at retail within the boundaries of the county."

10 SECTION 9. A new section of the County and Municipal
11 Gasoline and Special Fuel Tax Act is enacted to read:

12 "[NEW MATERIAL] 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 of
16 up to two cents (\$.02) per gallon on special fuel sold at
17 retail within the boundaries of the municipality and upon which
18 taxes are imposed in accordance with the Special Fuels Supplier
19 Tax Act. The tax imposed by this section is to be referred to
20 as the "municipal special fuel tax".

21 B. If the governing body of a municipality adopts
22 an ordinance imposing a municipal special fuel tax, the
23 governing body shall submit the question of levying the tax to
24 the qualified electors in the municipality.

25 C. The municipal special fuel tax may be imposed in

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1 increments of one cent (\$.01) per gallon up to a maximum of two
2 cents (\$.02) per gallon. The amount of the tax and the
3 specific purposes for which the proceeds shall be used shall be
4 stated in the ordinance adopted by the governing body of the
5 municipality as provided in Subsection A of this section."

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

8 "7-24A-11. MUNICIPAL GASOLINE TAX OR SPECIAL FUEL TAX--
9 PROCEDURE FOR ADOPTION OF ORDINANCE--ELECTION.--

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

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1 again propose [~~a municipal gasoline tax~~] an ordinance for that
2 tax for a period of one year after the election.

3 B. After passage of a municipal gasoline tax or
4 municipal special fuel tax ordinance, the governing body of the
5 municipality shall submit a certified copy of the ordinance to
6 the taxation and revenue department."

7 SECTION 11. Section 7-24A-12 NMSA 1978 (being Laws 1978,
8 Chapter 182, Section 12, as amended) is amended to read:

9 "7-24A-12. COLLECTION OF MUNICIPAL GASOLINE TAX AND
10 MUNICIPAL SPECIAL FUEL TAX.--The municipality shall collect the
11 municipal gasoline tax and municipal special fuel tax imposed
12 by the County and Municipal Gasoline and Special Fuel Tax Act.
13 Every person subject to the imposition of the municipal
14 gasoline tax or municipal special fuel tax shall file a return
15 on forms provided by and with the information required by the
16 municipality and shall pay the tax due on or before the twenty-
17 fifth day of the month following the month in which the
18 gasoline or special fuel is sold at retail within the
19 boundaries of the municipality."

20 SECTION 12. Section 7-24A-14 NMSA 1978 (being Laws 1978,
21 Chapter 182, Section 14, as amended) is amended to read:

22 "7-24A-14. BOND ORDINANCE.--

23 A. The governing body may adopt an ordinance
24 providing for issuance of bonds to enable the county or
25 municipality to acquire land, buildings, buses or other

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1 equipment required for public transit, a vehicle emission
2 inspection program or for road, street or highway construction,
3 repair or maintenance or for refunding bonds previously issued
4 for such purpose or any such purposes.

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

6 (1) gross income derived by the county or
7 municipality from the transit facilities or vehicle emission
8 inspection facilities financed with the proceeds and other
9 transit facilities not so financed; provided that when gross
10 revenues are so pledged, the county or municipality may apply
11 to the payment of the expense of maintaining and operating the
12 transit facilities, the gross revenues of which are so pledged,
13 the county's or municipality's revenues derived from sources
14 other than the proceeds of ad valorem taxes and may, in the
15 proceedings authorizing the issue of bonds, covenant and agree
16 to apply to the payment of the maintenance and operation
17 expenses so much of the revenues as may be necessary for such
18 purposes or as may be specified in the proceedings;

19 (2) income derived from franchises granted by
20 the governing body of a county or municipality;

21 (3) contributions, grants or other financial
22 assistance from the state or federal government or any other
23 source;

24 (4) county or municipal gasoline tax or
25 special fuel tax revenue; or

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1 (5) any one or a combination of these sources.

2 C. The ordinance is irrepealable as long as any
3 indebtedness on the bonds is unpaid by the county or
4 municipality."

5 SECTION 13. Section 7-24A-17 NMSA 1978 (being Laws 1978,
6 Chapter 182, Section 17) is amended to read:

7 "7-24A-17. CONSTRUCTION.--The County and Municipal
8 Gasoline and Special Fuel Tax Act is full authority for
9 authorization and issuance of bonds. If any proceeding
10 involving the validity and enforceability of any bond or its
11 security, any bond reciting in substance that it was issued by
12 the county or municipality to aid in financing public transit
13 or transportation projects or any other purpose authorized by
14 the County and Municipal Gasoline and Special Fuel Tax Act is
15 conclusively presumed to have been issued for a county or
16 municipal transit or transportation project or other purpose in
17 accordance with that act."

18 SECTION 14. Section 7-24A-21 NMSA 1978 (being Laws 1978,
19 Chapter 182, Section 21, as amended) is amended to read:

20 "7-24A-21. JOINT ELECTION.--

21 A. If an election is held by one or more
22 municipalities within a county or a municipality and the county
23 concerning adoption of the county and municipal gasoline or
24 special fuel taxes, such election may be held jointly by such
25 county and municipality, or municipalities, and may be held at

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1 any election except a primary election.

2 B. The election may be conducted using paper
3 ballots. Consolidated voter precincts may be used if the board
4 of county commissioners determines that such a consolidation
5 would provide for a cost-effective and efficient election
6 process and such consolidation would [~~insure~~] ensure the
7 integrity of the election process.

8 C. If a joint election is held by a municipality
9 and a county pursuant to Section 7-24A-6.1 NMSA 1978 and a
10 simple majority of the qualified electors of the county voting
11 on the issue [~~vote~~] votes in favor of imposing the county-wide
12 gasoline tax, the tax shall be [~~imposed by the division and~~]
13 collected pursuant to the County and Municipal Gasoline and
14 Special Fuel Tax Act."

15 SECTION 15. Section 7-24B-4 NMSA 1978 (being Laws 1987,
16 Chapter 45, Section 13, as amended) is amended to read:

17 "7-24B-4. SPECIAL COUNTY HOSPITAL GASOLINE TAX--
18 AUTHORIZATION--IMPOSITION--RATE.--

19 A. The majority of the members of the governing
20 body of a county may adopt an ordinance imposing a tax of up to
21 two cents (\$.02) a gallon on all gasoline sold at retail in the
22 county and upon which gasoline taxes are imposed in accordance
23 with the Gasoline Tax Act. The tax imposed by this section is
24 to be referred to as the "special county hospital gasoline tax"
25 and is in addition to the tax imposed in the Gasoline Tax Act.

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1 B. The special county hospital gasoline tax may be
2 imposed by the governing body of a county regardless of whether
3 the county has imposed a tax on gasoline pursuant to the County
4 and Municipal Gasoline and Special Fuel Tax Act.

5 C. The special county hospital gasoline tax may be
6 imposed in increments of one cent (\$.01) per gallon up to a
7 maximum of two cents (\$.02) per gallon. The amount of the tax
8 and the specific purposes for which the proceeds shall be used
9 shall be stated in the ordinance adopted by the governing body
10 of the county.

11 D. The special county hospital gasoline tax shall
12 be imposed for a period of not more than five years from the
13 effective date of the ordinance imposing the tax. This
14 authorization may be extended for additional five-year periods
15 provided all requirements for enactment of the first ordinance
16 are met."

17 **SECTION 16.** Section 66-6-25 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 360, as amended) is amended to read:

19 "66-6-25. REGISTRATION BY COUNTY OR MUNICIPALITY
20 PROHIBITED.--

21 A. No county or municipality shall require
22 registration or charge fees for any vehicle subject to
23 registration under the Motor Vehicle Code.

24 B. Notwithstanding the provisions of Subsection A
25 of this section, a county or municipality designated as an

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1 agent pursuant to Section 66-2-14.1 NMSA 1978 may impose a fee
2 in an amount not to exceed five dollars (\$5.00) per year in
3 addition to any other registration fee required. This fee
4 shall not be imposed if the county or municipality has imposed
5 a gasoline tax pursuant to the County and Municipal Gasoline
6 and Special Fuel Tax Act, the proceeds of which are used to
7 fund a vehicle emission inspection program. Any money
8 collected as a result of the imposition of an additional fee
9 pursuant to this subsection shall be used only to fund a
10 vehicle emission inspection program."

11 SECTION 17. REPEAL.--Section 7-24A-7 NMSA 1978 (being
12 Laws 1978, Chapter 182, Section 7, as amended) is repealed.

13 SECTION 18. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2015.