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HOUSE BILL 860

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Andrew J. Barreras

AN ACT

RELATING TO TAXATION; PROVIDING THAT THE COUNTY REGIONAL TRANSIT GROSS RECEIPTS TAX BE DISTRIBUTED BY THE TAXATION AND REVENUE DEPARTMENT TO THE REGIONAL TRANSIT DISTRICT; PROVIDING THAT A REGIONAL TRANSIT DISTRICT MAY OBTAIN INFORMATION FROM THE TAXATION AND REVENUE DEPARTMENT REGARDING THE COUNTY REGIONAL TRANSIT GROSS RECEIPTS TAXES COLLECTED.

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

Section 1. Section 7-1-6.13 NMSA 1978 (being Laws 1983, Chapter 211, Section 18, as amended) is amended to read:

"7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION GROSS RECEIPTS TAXES.--

A. Except as provided in Subsections B, [~~and~~] C and D of this section, a transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is

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1 collecting a local option gross receipts tax imposed by that
2 county in an amount, subject to any increase or decrease made
3 pursuant to Section 7-1-6.15 NMSA 1978, equal to the net
4 receipts attributable to the local option gross receipts tax
5 imposed by that county, less any deduction for administrative
6 cost determined and made by the department pursuant to the
7 provisions of the act authorizing imposition by that county of
8 the local option gross receipts tax and any additional
9 administrative fee withheld pursuant to Subsection C of Section
10 7-1-6.41 NMSA 1978.

11 B. A transfer pursuant to this section may be
12 adjusted for a distribution made to a tax increment development
13 district with respect to a portion of a gross receipts tax
14 increment dedicated by a county pursuant to the Tax Increment
15 for Development Act.

16 C. Through June 30, 2009, a distribution pursuant
17 to Section 7-1-6.1 NMSA 1978 shall be made to the sole
18 community provider fund from revenue attributable to the county
19 gross receipts tax imposed by a county pursuant to Section
20 7-20E-9 NMSA 1978, subject to the approval of the board of
21 county commissioners of that county. The distribution shall be
22 in an amount equal to one-twelfth of the county's annual
23 approved contribution for support of sole community provider
24 payments. Revenue in excess of the amount required for the
25 contribution shall be transferred to the county pursuant to the

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1 provisions of Subsection A of this section.

2 D. The department shall transfer the amount of the
3 county regional transit gross receipts tax collected, less the
4 administrative fee withheld and less any disbursements for tax
5 credits, refunds and the payment of interest applicable to the
6 tax, to the regional transit district for which county regional
7 transit gross receipts tax is imposed pursuant to the
8 provisions of the County Local Option Gross Receipts Taxes Act.
9 The transfer to a regional transit district shall be made
10 within the month following the month in which the tax is
11 collected."

12 Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965,
13 Chapter 248, Section 13, as amended) is amended to read:

14 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
15 INFORMATION.--It is unlawful for an employee of the department
16 or a former employee of the department to reveal to an
17 individual other than another employee of the department
18 information contained in the return of a taxpayer made pursuant
19 to a law subject to administration and enforcement under the
20 provisions of the Tax Administration Act or any other
21 information about a taxpayer acquired as a result of the
22 employee's employment by the department and not available from
23 public sources, except:

24 A. to an authorized representative of another
25 state; provided that the receiving state has entered into a

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1 written agreement with the department to use the information
2 for tax purposes only and that the receiving state has enacted
3 a confidentiality statute similar to this section to which the
4 representative is subject;

5 B. to a representative of the secretary of the
6 treasury or the secretary's delegate pursuant to the terms of a
7 reciprocal agreement entered into with the federal government
8 for exchange of the information;

9 C. to the multistate tax commission, the federation
10 of tax administrators or their authorized representatives;
11 provided that the information is used for tax purposes only and
12 is disclosed by the multistate tax commission or the federation
13 of tax administrators only to states that have met the
14 requirements of Subsection A of this section;

15 D. to another jurisdiction pursuant to an
16 international fuel tax agreement; provided that the information
17 is used for tax purposes only;

18 E. to a district court, an appellate court or a
19 federal court:

20 (1) in response to an order thereof in an
21 action relating to taxes or an action for tax fraud or any
22 other crime that may affect taxes due to the state to which the
23 state is a party and in which the information sought is about a
24 taxpayer who is party to the action and is material to the
25 inquiry, in which case only that information may be required to

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1 be produced in court and admitted in evidence subject to court
2 order protecting the confidentiality of the information and no
3 more;

4 (2) in an action in which the department is
5 attempting to enforce an act with which the department is
6 charged or to collect a tax; or

7 (3) in any matter in which the department is a
8 party and the taxpayer has put the taxpayer's own liability for
9 taxes at issue, in which case only that information regarding
10 the taxpayer who is party to the action may be produced, but
11 this shall not prevent the disclosure of department policy or
12 interpretation of law arising from circumstances of a taxpayer
13 who is not a party;

14 F. to the taxpayer or to the taxpayer's authorized
15 representative; provided, however, that nothing in this
16 subsection shall be construed to require any employee to
17 testify in a judicial proceeding except as provided in
18 Subsection E of this section;

19 G. information obtained through the administration
20 of a law not subject to administration and enforcement under
21 the provisions of the Tax Administration Act to the extent that
22 release of that information is not otherwise prohibited by law;

23 H. in a manner, for statistical purposes, that the
24 information revealed is not identified as applicable to an
25 individual taxpayer;

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1 I. with reference to information concerning the tax
2 on tobacco imposed by [~~Sections 7-12-1 through 7-12-13, 7-12-15~~
3 ~~and 7-12-17 NMSA 1978~~] the Cigarette Tax Act to a committee of
4 the legislature for a valid legislative purpose or to the
5 attorney general for purposes of Section 6-4-13 NMSA 1978 and
6 the master settlement agreement defined in Section 6-4-12 NMSA
7 1978;

8 J. to a transferee, assignee, buyer or lessor of a
9 liquor license, the amount and basis of an unpaid assessment of
10 tax for which the transferor, assignor, seller or lessee is
11 liable;

12 K. to a purchaser of a business as provided in
13 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis
14 of an unpaid assessment of tax for which the purchaser's seller
15 is liable;

16 L. to a municipality of this state upon its request
17 for a period specified by that municipality within the twelve
18 months preceding the request for the information by that
19 municipality:

20 (1) the names, taxpayer identification numbers
21 and addresses of registered gross receipts taxpayers reporting
22 gross receipts for that municipality under the Gross Receipts
23 and Compensating Tax Act or a local option gross receipts tax
24 imposed by that municipality. The department may also release
25 the information described in this paragraph quarterly or upon

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1 such other periodic basis as the secretary and the municipality
2 may agree; and

3 (2) information indicating whether persons
4 shown on a list of businesses located within that municipality
5 furnished by the municipality have reported gross receipts to
6 the department but have not reported gross receipts for that
7 municipality under the Gross Receipts and Compensating Tax Act
8 or a local option gross receipts tax imposed by that
9 municipality.

10 The employees of municipalities receiving information as
11 provided in this subsection shall be subject to the penalty
12 contained in Section 7-1-76 NMSA 1978 if that information is
13 revealed to individuals other than other employees of the
14 municipality in question or the department;

15 M. to the commissioner of public lands for use in
16 auditing that pertains to rentals, royalties, fees and other
17 payments due the state under land sale, land lease or other
18 land use contracts; the commissioner of public lands and
19 employees of the commissioner are subject to the same
20 provisions regarding confidentiality of information as
21 employees of the department;

22 N. the department shall furnish, upon request by
23 the child support enforcement division of the human services
24 department, the last known address with date of all names
25 certified to the department as being absent parents of children

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1 receiving public financial assistance. The child support
2 enforcement division personnel shall use such information only
3 for the purpose of enforcing the support liability of the
4 absent parents and shall not use the information or disclose it
5 for any other purpose; the child support enforcement division
6 and its employees are subject to the provisions of this section
7 with respect to any information acquired from the department;

8 O. the department shall furnish to the [~~information~~
9 ~~systems division of the general services~~] department of of
10 information technology, by electronic media, a database
11 containing New Mexico personal income tax filers by county,
12 which shall be updated quarterly. The database information
13 shall be used only for the purpose of producing the random jury
14 list for the selection of petit or grand jurors for the state
15 courts pursuant to Section 38-5-3 NMSA 1978. The database
16 shall not contain any financial information. If any
17 information in the database is revealed by an employee of the
18 administrative office of the courts or the department of
19 information [~~systems division~~] technology to individuals other
20 than employees of the administrative office of the courts, the
21 state courts, the department of information [~~systems division~~]
22 technology or the department, the employee shall be subject to
23 the penalty provisions of Section 7-1-76 NMSA 1978;

24 P. with respect to the tax on gasoline imposed by
25 the Gasoline Tax Act, the department shall make available for

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1 public inspection at monthly intervals a report covering the
2 number of gallons of gasoline and ethanol blended fuels
3 received and deducted and the amount of tax paid by each person
4 required to file a gasoline tax return or pay gasoline tax in
5 the state of New Mexico;

6 Q. the identity of a rack operator, importer,
7 blender, supplier or distributor and the number of gallons
8 reported on returns required under the Gasoline Tax Act,
9 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a
10 rack operator, importer, blender, distributor or supplier, but
11 only when it is necessary to enable the department to carry out
12 its duties under the Gasoline Tax Act, the Special Fuels
13 Supplier Tax Act or the Alternative Fuel Tax Act;

14 R. the department shall release upon request only
15 the names and addresses of all gasoline or special fuel
16 distributors, wholesalers and retailers to the New Mexico
17 department of agriculture, the employees of which are thereby
18 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
19 that information is revealed to individuals other than
20 employees of either the New Mexico department of agriculture or
21 the department;

22 S. the department shall answer all inquiries
23 concerning whether a person is or is not a registered taxpayer
24 for tax programs that require registration, but nothing in this
25 subsection shall be construed to allow the department to answer

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1 inquiries concerning whether a person has filed a tax return;

2 T. upon request of a municipality or county of this
3 state, the department shall permit officials or employees of
4 the municipality or county to inspect the records of the
5 department pertaining to an increase or decrease to a
6 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
7 1978 for the purpose of reviewing the basis for the increase or
8 decrease. The municipal or county officials or employees
9 receiving information provided in this subsection shall not
10 reveal that information to any person other than another
11 employee of the municipality or the county, the department or a
12 district court, an appellate court or a federal court in a
13 proceeding relating to a disputed distribution and in which
14 both the state and the municipality or county are parties.
15 Information provided pursuant to provisions of this subsection
16 that is revealed other than as provided in this subsection
17 shall subject the person revealing the information to the
18 penalty contained in Section 7-1-76 NMSA 1978;

19 U. to a county of this state that has in effect a
20 local option gross receipts tax imposed by the county upon its
21 request for a period specified by that county within the twelve
22 months preceding the request for the information by that
23 county:

24 (1) the names, taxpayer identification numbers
25 and addresses of registered gross receipts taxpayers reporting

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1 gross receipts either for that county in the case of a local
2 option gross receipts tax imposed on a countywide basis or only
3 for the areas of that county outside of any incorporated
4 municipalities within that county in the case of a county local
5 option gross receipts tax imposed only in areas of the county
6 outside of any incorporated municipalities. The department may
7 also release the information described in this paragraph
8 quarterly or upon such other periodic basis as the secretary
9 and the county may agree;

10 (2) in the case of a local option gross
11 receipts tax imposed by a county on a countywide basis,
12 information indicating whether persons shown on a list of
13 businesses located within the county furnished by the county
14 have reported gross receipts to the department but have not
15 reported gross receipts for that county under the Gross
16 Receipts and Compensating Tax Act or a local option gross
17 receipts tax imposed by that county on a countywide basis; and

18 (3) in the case of a local option gross
19 receipts tax imposed by a county only on persons engaging in
20 business in that area of the county outside of incorporated
21 municipalities, information indicating whether persons on a
22 list of businesses located in that county outside of the
23 incorporated municipalities but within that county furnished by
24 the county have reported gross receipts to the department but
25 have not reported gross receipts for that county outside of the

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1 incorporated municipalities within that county under the Gross
2 Receipts and Compensating Tax Act or a local option gross
3 receipts tax imposed by the county only on persons engaging in
4 business in that county outside of the incorporated
5 municipalities.

6 The officers and employees of counties receiving
7 information as provided in this subsection shall be subject to
8 the penalty contained in Section 7-1-76 NMSA 1978 if the
9 information is revealed to individuals other than other
10 officers or employees of the county in question or the
11 department;

12 V. to authorized representatives of an Indian
13 nation, tribe or pueblo, the territory of which is located
14 wholly or partially within New Mexico, pursuant to the terms of
15 a reciprocal agreement entered into with the Indian nation,
16 tribe or pueblo for the exchange of that information for tax
17 purposes only; provided that the Indian nation, tribe or pueblo
18 has enacted a confidentiality statute similar to this section;

19 W. information with respect to the taxes or tax
20 acts administered pursuant to Subsection B of Section 7-1-2
21 NMSA 1978, except that:

22 (1) information for or relating to a period
23 prior to July 1, 1985 with respect to Sections 7-25-1 through
24 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
25 to a committee of the legislature for a valid legislative

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1 purpose;

2 (2) except as provided in Paragraph (3) of
3 this subsection, contracts and other agreements between the
4 taxpayer and other parties and the proprietary information
5 contained in those contracts and agreements shall not be
6 released without the consent of all parties to the contract or
7 agreement; and

8 (3) audit [~~workpapers~~] work papers and the
9 proprietary information contained in the [~~workpapers~~] work
10 papers shall not be released except to:

11 (a) the minerals management service of
12 the United States department of the interior, if production
13 occurred on federal land;

14 (b) a person having a legal interest in
15 the property that is subject to the audit;

16 (c) a purchaser of products severed from
17 a property subject to the audit; or

18 (d) the authorized representative of any
19 of the persons in Subparagraphs (a) through (c) of this
20 paragraph. This paragraph does not prohibit the release of
21 proprietary information contained in the [~~workpapers~~] work
22 papers that is also available from returns or from other
23 sources not subject to the provisions of this section;

24 X. information with respect to the taxes, surtaxes,
25 advance payments or tax acts administered pursuant to

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1 Subsection C of Section 7-1-2 NMSA 1978;

2 Y. to the public regulation commission, information
3 with respect to the Corporate Income and Franchise Tax Act
4 required to enable the commission to carry out its duties;

5 Z. to the state racing commission, information with
6 respect to the state, municipal and county gross receipts taxes
7 paid by racetracks;

8 AA. upon request of a corporation authorized to be
9 formed under the Educational Assistance Act, the department
10 shall furnish the last known address and the date of that
11 address of every person certified to the department as an
12 absent obligor of an educational debt due and owed to the
13 corporation or that the corporation has lawfully contracted to
14 collect. The corporation and its officers and employees shall
15 use that information only to enforce the educational debt
16 obligation of the absent obligors and shall not disclose that
17 information or use it for any other purpose;

18 BB. a decision and order made by a hearing officer
19 pursuant to Section 7-1-24 NMSA 1978 with respect to a protest
20 filed with the secretary on or after July 1, 1993;

21 CC. information required by a provision of the Tax
22 Administration Act to be made available to the public by the
23 department;

24 DD. upon request by the Bernalillo county
25 metropolitan court, the department shall furnish the last known

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1 address and the date of that address for every person the court
2 certifies to the department as a person who owes fines, fees or
3 costs to the court or who has failed to appear pursuant to a
4 court order or a promise to appear;

5 EE. upon request by a magistrate court, the
6 department shall furnish the last known address and the date of
7 that address for every person the court certifies to the
8 department as a person who owes fines, fees or costs to the
9 court or who has failed to appear pursuant to a court order or
10 a promise to appear;

11 FF. to the national tax administration agencies of
12 Mexico and Canada; provided the agency receiving the
13 information has entered into a written agreement with the
14 department to use the information for tax purposes only and is
15 subject to a confidentiality statute similar to this section;

16 GG. to a district attorney, a state district court
17 grand jury or federal grand jury for an investigation of or
18 proceeding related to an alleged criminal violation of the tax
19 laws;

20 HH. to a third party subject to a subpoena or levy
21 issued pursuant to the provisions of the Tax Administration
22 Act, the identity of the taxpayer involved, the taxes or tax
23 acts involved and the nature of the proceeding;

24 II. to the gaming control board, tax returns of
25 license applicants and their affiliates as provided in

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1 Subsection E of Section 60-2E-14 NMSA 1978;

2 JJ. any written ruling on questions of evidence or
3 procedure made by a hearing officer pursuant to Section 7-1-24
4 NMSA 1978; provided that the name and identification number of
5 the taxpayer requesting the ruling shall not be disclosed;

6 KK. to representatives of the workers' compensation
7 administration, authorized by the director of the workers'
8 compensation administration for this purpose, to facilitate the
9 identification of taxpayers that are delinquent or noncompliant
10 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
11 1978;

12 LL. to the secretary of [~~labor~~] workforce solutions
13 or the secretary's delegate for use in enforcement of
14 unemployment insurance collections pursuant to the terms of a
15 reciprocal agreement entered into with the secretary of [~~labor~~]
16 workforce solutions for exchange of information; the secretary
17 of [~~labor~~] workforce solutions and employees of the [~~labor~~]
18 workforce solutions department are subject to the provisions
19 regarding confidentiality of information contained in the Tax
20 Administration Act;

21 MM. information that the department is authorized
22 by the Tax Administration Act to release to a local body that
23 licenses professions or occupations pursuant to Chapter 36,
24 Article 2 NMSA 1978 or Chapter 61 NMSA 1978; [~~and~~]

25 NN. upon request for inspection by the public

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1 pursuant to Section 7-1-29 NMSA 1978, the department shall
2 furnish the taxpayer name, refund or credit amount, tax program
3 or business tax credit and the date the refund or credit was
4 issued; nothing in this subsection shall be construed to
5 require the release of information that would violate an
6 agreement between the state and the federal internal revenue
7 service for sharing of information or any provision or rule of
8 the federal Internal Revenue Code to which a state is subject;
9 and

10 00. to a regional transit district, information
11 regarding the county regional transit gross receipts tax
12 imposed pursuant to an ordinance of that district, including
13 information regarding the amount of tax collected, any amounts
14 withheld and amounts distributed to the district."

15 Section 3. Section 7-20E-7 NMSA 1978 (being Laws 1993,
16 Chapter 354, Section 7, as amended) is amended to read:

17 "7-20E-7. COLLECTION BY DEPARTMENT--TRANSFER OF
18 PROCEEDS--DEDUCTIONS.--

19 A. The department shall collect each tax imposed
20 pursuant to the provisions of the County Local Option Gross
21 Receipts Taxes Act in the same manner and at the same time it
22 collects the state gross receipts tax.

23 B. The department shall withhold an administrative
24 fee pursuant to Section 7-1-6.41 NMSA 1978. Except as provided
25 in [~~Subsection~~] Subsections C and D of this section, the

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1 department shall transfer to each county for which it is
2 collecting a tax pursuant to the provisions of the County Local
3 Option Gross Receipts Taxes Act the amount of each tax
4 collected for that county, less the administrative fee withheld
5 and less any disbursements for tax credits, refunds and the
6 payment of interest applicable to the tax. The transfer to the
7 county shall be made within the month following the month in
8 which the tax is collected.

9 C. Through June 30, 2009, with respect to revenue
10 attributable to imposition by a county of the county gross
11 receipts tax pursuant to Section 7-20E-9 NMSA 1978, the
12 department shall, subject to the approval of the board of
13 county commissioners of that county, distribute monthly to the
14 sole community provider fund an amount equal to one-twelfth of
15 the county's approved annual contribution for support of sole
16 community provider payments. Revenue in excess of the amount
17 required for the contribution shall be transferred to the
18 county pursuant to the provisions of Subsection B of this
19 section.

20 D. The department shall transfer the amount of the
21 county regional transit gross receipts tax collected, less the
22 administrative fee withheld and less any disbursements for tax
23 credits, refunds and the payment of interest applicable to the
24 tax, to the regional transit district for which county regional
25 transit gross receipts tax is imposed pursuant to the

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1 provisions of the County Local Option Gross Receipts Taxes Act.
2 The transfer to a regional transit district shall be made
3 within the month following the month in which the tax is
4 collected."

5 Section 4. Section 7-20E-23 NMSA 1978 (being Laws 2004,
6 Chapter 17, Section 2, as amended) is amended to read:

7 "7-20E-23. COUNTY REGIONAL TRANSIT GROSS RECEIPTS TAX--
8 AUTHORITY TO IMPOSE--RATE--ELECTION REQUIRED.--

9 A. Upon a request by resolution of the board of
10 directors of a regional transit district, a majority of the
11 members of the governing body of each county that is within the
12 district shall impose by identical ordinances an excise tax at
13 the rate specified in the resolution, but not to exceed one-
14 half percent of the gross receipts of any person engaging in
15 business in the district for the privilege of engaging in
16 business. A tax imposed pursuant to this section may be
17 imposed by one or more ordinances, each imposing any number of
18 tax rate increments, but an increment shall not be less than
19 one-sixteenth percent of the gross receipts of any person
20 engaging in business in the district and the aggregate of all
21 rates shall not exceed one-half percent of the gross receipts
22 of any person engaging in business in the district. The tax
23 may be referred to as the "county regional transit gross
24 receipts tax".

25 B. Each governing body, at the time of enacting an
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1 ordinance imposing the tax authorized in Subsection A of this
2 section, shall dedicate the revenue for the purposes authorized
3 by the Regional Transit District Act.

4 C. An ordinance imposing a county regional transit
5 gross receipts tax shall not go into effect until after a joint
6 election is held by all counties within the district and a
7 majority of the voters of the district voting in the election
8 votes in favor of imposing the tax. Each governing body shall
9 adopt an ordinance calling for a joint election within seventy-
10 five days of the date the resolution is adopted on the question
11 of imposing the tax. The question shall be submitted to the
12 voters of the district as a separate question at a general
13 election or at a joint special election called for that purpose
14 by each governing body. A joint special election shall be
15 called, conducted and canvassed substantially in the same
16 manner as provided by law for general elections. If a majority
17 of the voters in the district voting on the question approves
18 the ordinance imposing the county regional transit gross
19 receipts tax, the ordinance shall become effective in
20 accordance with the provisions of the County Local Option Gross
21 Receipts Taxes Act. If the question of imposing the county
22 regional transit gross receipts tax fails, the governing bodies
23 shall not again propose the imposition of any increment of the
24 tax for a period of one year from the date of the election.

25 D. The ~~[governing body of a county imposing a~~

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1 ~~county regional transit gross receipts tax~~ department shall
2 withhold an administrative fee pursuant to Section 7-1-6.41
3 NMSA 1978 and shall transfer [all] the balance of the proceeds
4 from the tax to the regional transit district for the purposes
5 specified in the ordinance and in accordance with the
6 provisions of the Regional Transit District Act.

7 E. As used in this section, "county within the
8 district" means a county within which lies any portion of a
9 regional transit district."