

1 SENATE BILL 153

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

3 INTRODUCED BY

4 John M. Sapien

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10 AN ACT

11 RELATING TO TAXATION; AUTHORIZING LOCAL SCHOOL BOARDS TO IMPOSE  
12 A GROSS RECEIPTS TAX; ENACTING THE LOCAL SCHOOL DISTRICT GROSS  
13 RECEIPTS TAX ACT; PROVIDING FOR ADMINISTRATION OF THE LOCAL  
14 SCHOOL DISTRICT GROSS RECEIPTS TAX.

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

17 Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
18 through 9 of this act may be cited as the "Local School  
19 District Gross Receipts Tax Act".

20 Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
21 Local School District Gross Receipts Tax Act:

22 A. "department" means the taxation and revenue  
23 department, the secretary of taxation and revenue or any  
24 employee of the department exercising authority lawfully  
25 delegated to that employee by the secretary;

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1           B. "local school board" means the governing body of  
2 a school district that has been designated as a board of  
3 finance by the public education department pursuant to Section  
4 22-8-38 NMSA 1978;

5           C. "person" means an individual or any other legal  
6 entity;

7           D. "school district" means an area of land  
8 established as a political subdivision of the state for the  
9 administration of public schools and segregated geographically  
10 for taxation and bonding purposes; and

11           E. "state gross receipts tax" means the gross  
12 receipts tax imposed under the Gross Receipts and Compensating  
13 Tax Act.

14           Section 3. [NEW MATERIAL] LOCAL SCHOOL DISTRICT GROSS  
15 RECEIPTS TAX--AUTHORITY TO IMPOSE FOR OPERATIONAL PURPOSES.--

16           A. A majority of the members of a local school  
17 board may impose by resolution an excise tax, for operational  
18 purposes of the school district, not to exceed a rate of one-  
19 half percent of the gross receipts of a person engaging in  
20 business in the school district for the privilege of engaging  
21 in business. The tax may be imposed in one or more increments  
22 of one-eighth percent not to exceed an aggregate rate of one-  
23 half percent. The tax shall be imposed for a period of not  
24 more than three years from the effective date of the resolution  
25 imposing the tax; provided, however, that having enacted a

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1 resolution imposing the tax, the local school board may enact  
2 subsequent resolutions for succeeding periods of not more than  
3 three years. The resolution shall specify the proposed use of  
4 the revenue from the tax.

5 B. The tax authorized by this section is to be  
6 referred to as the "local school district gross receipts tax".

7 Section 4. [NEW MATERIAL] EFFECTIVE DATE OF RESOLUTION.--

8 A resolution imposing, amending or repealing a local school  
9 district gross receipts tax or an increment of the tax shall  
10 include an effective date of either July 1 or January 1,  
11 whichever date occurs first after the expiration of at least  
12 three months from the date the adopted resolution is mailed or  
13 delivered to the department. The ordinance shall include that  
14 effective date.

15 Section 5. [NEW MATERIAL] RESOLUTION REQUIREMENTS.--

16 A. A resolution imposing the local school district  
17 gross receipts tax shall adopt by reference the same  
18 definitions and the same provisions relating to exemptions and  
19 deductions as are contained in the Gross Receipts and  
20 Compensating Tax Act then in effect and as it may be amended  
21 from time to time.

22 B. A local school board imposing the local school  
23 district gross receipts tax shall impose the tax by adopting a  
24 model resolution with respect to the tax furnished to the local  
25 school board by the department. A resolution that does not

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1 conform substantially to the model resolution of the department  
2 is not valid.

3 Section 6. [NEW MATERIAL] SPECIFIC EXEMPTIONS.--No local  
4 school district gross receipts tax shall be imposed on the  
5 gross receipts arising from transporting persons or property  
6 for hire by railroad, motor vehicle, air transportation or any  
7 other means from one point within the school district to  
8 another point outside the school district.

9 Section 7. [NEW MATERIAL] COPY OF RESOLUTION TO BE  
10 SUBMITTED TO DEPARTMENT.--A certified copy of the resolution  
11 imposing or repealing the local school district gross receipts  
12 tax or changing the tax rate imposed shall be mailed or  
13 delivered to the department within five days after the date the  
14 resolution is adopted.

15 Section 8. [NEW MATERIAL] COLLECTION BY DEPARTMENT--  
16 TRANSFER OF PROCEEDS--DEDUCTIONS.--

17 A. The department shall collect the local school  
18 district gross receipts tax in the same manner and at the same  
19 time it collects the state gross receipts tax.

20 B. The department may deduct an amount not to  
21 exceed three percent of each tax collected pursuant to the  
22 provisions of the Local School District Gross Receipts Tax Act  
23 as a charge for the administrative costs of collection, which  
24 amount shall be remitted to the state treasurer for deposit in  
25 the general fund each month. The department shall transfer to

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1 each local school board for which it is collecting a tax  
2 pursuant to the provisions of the Local School District Gross  
3 Receipts Tax Act the amount of the tax collected for that local  
4 school board, less any deduction for administrative costs made  
5 pursuant to this section and less any disbursements for tax  
6 credits, refunds and the payment of interest applicable to the  
7 tax. The transfer to the local school board shall be made  
8 within the month following the month in which the tax is  
9 collected.

10 Section 9. [NEW MATERIAL] INTERPRETATION OF ACT--  
11 ADMINISTRATION AND ENFORCEMENT OF ACT.--

12 A. The department shall interpret the provisions of  
13 the Local School District Gross Receipts Tax Act.

14 B. The department shall administer and enforce the  
15 collection of the local school district gross receipts tax, and  
16 the Tax Administration Act applies to the administration and  
17 enforcement of the tax.

18 Section 10. Section 7-1-2 NMSA 1978 (being Laws 1965,  
19 Chapter 248, Section 2, as amended) is amended to read:

20 "7-1-2. APPLICABILITY.--The Tax Administration Act  
21 applies to and governs:

22 A. the administration and enforcement of the  
23 following taxes or tax acts as they now exist or may hereafter  
24 be amended:

25 (1) Income Tax Act;

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- 1 (2) Withholding Tax Act;
- 2 (3) Venture Capital Investment Act;
- 3 (4) Gross Receipts and Compensating Tax Act
- 4 and any state gross receipts tax;
- 5 (5) Liquor Excise Tax Act;
- 6 (6) Local Liquor Excise Tax Act;
- 7 (7) any municipal local option gross receipts
- 8 tax;
- 9 (8) any county local option gross receipts
- 10 tax;
- 11 (9) Special Fuels Supplier Tax Act;
- 12 (10) Gasoline Tax Act;
- 13 (11) petroleum products loading fee, which fee
- 14 shall be considered a tax for the purpose of the Tax
- 15 Administration Act;
- 16 (12) Alternative Fuel Tax Act;
- 17 (13) Cigarette Tax Act;
- 18 (14) Estate Tax Act;
- 19 (15) Railroad Car Company Tax Act;
- 20 (16) Investment Credit Act, rural job tax
- 21 credit, Laboratory Partnership with Small Business Tax Credit
- 22 Act, Technology Jobs Tax Credit Act, film production tax
- 23 credit, New Mexico filmmaker tax credit, Affordable Housing Tax
- 24 Credit Act, high-wage jobs tax credit and Research and
- 25 Development Small Business Tax Credit Act;

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- 1 (17) Corporate Income and Franchise Tax Act;
- 2 (18) Uniform Division of Income for Tax
- 3 Purposes Act;
- 4 (19) Multistate Tax Compact;
- 5 (20) Tobacco Products Tax Act; ~~[and]~~
- 6 (21) the telecommunications relay service
- 7 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 8 surcharge shall be considered a tax for the purposes of the Tax
- 9 Administration Act; and
- 10 (22) Local School District Gross Receipts Tax
- 11 Act;

12 B. the administration and enforcement of the

13 following taxes, surtaxes, advanced payments or tax acts as

14 they now exist or may hereafter be amended:

- 15 (1) Resources Excise Tax Act;
- 16 (2) Severance Tax Act;
- 17 (3) any severance surtax;
- 18 (4) Oil and Gas Severance Tax Act;
- 19 (5) Oil and Gas Conservation Tax Act;
- 20 (6) Oil and Gas Emergency School Tax Act;
- 21 (7) Oil and Gas Ad Valorem Production Tax Act;
- 22 (8) Natural Gas Processors Tax Act;
- 23 (9) Oil and Gas Production Equipment Ad
- 24 Valorem Tax Act;
- 25 (10) Copper Production Ad Valorem Tax Act;

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1 (11) any advance payment required to be made  
2 by any act specified in this subsection, which advance payment  
3 shall be considered a tax for the purposes of the Tax  
4 Administration Act;

5 (12) Enhanced Oil Recovery Act;

6 (13) Natural Gas and Crude Oil Production  
7 Incentive Act; and

8 (14) intergovernmental production tax credit  
9 and intergovernmental production equipment tax credit;

10 C. the administration and enforcement of the  
11 following taxes, surcharges, fees or acts as they now exist or  
12 may hereafter be amended:

13 (1) Weight Distance Tax Act;

14 (2) the workers' compensation fee authorized  
15 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
16 tax for purposes of the Tax Administration Act;

17 (3) Uniform Unclaimed Property Act (1995);

18 (4) 911 emergency surcharge and the network  
19 and database surcharge, which surcharges shall be considered  
20 taxes for purposes of the Tax Administration Act;

21 (5) the solid waste assessment fee authorized  
22 by the Solid Waste Act, which fee shall be considered a tax for  
23 purposes of the Tax Administration Act;

24 (6) the water conservation fee imposed by  
25 Section 74-1-13 NMSA 1978, which fee shall be considered a tax

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1 for the purposes of the Tax Administration Act; and

2 (7) the gaming tax imposed pursuant to the  
3 Gaming Control Act; and

4 D. the administration and enforcement of all other  
5 laws, with respect to which the department is charged with  
6 responsibilities pursuant to the Tax Administration Act, but  
7 only to the extent that the other laws do not conflict with the  
8 Tax Administration Act."

9 Section 11. Section 7-1-6.15 NMSA 1978 (being Laws 1983,  
10 Chapter 211, Section 20, as amended) is amended to read:

11 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO  
12 MUNICIPALITIES OR COUNTIES.--

13 A. The provisions of this section apply to:

14 (1) any distribution to a municipality of  
15 gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or  
16 of interstate telecommunications gross receipts tax pursuant to  
17 Section 7-1-6.36 NMSA 1978;

18 (2) any transfer to a municipality with  
19 respect to any local option gross receipts tax imposed by that  
20 municipality;

21 (3) any transfer to a county with respect to  
22 any local option gross receipts tax imposed by that county;

23 (4) any distribution to a county pursuant to  
24 Section 7-1-6.16 NMSA 1978;

25 (5) any distribution to a municipality or a

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1 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

2 (6) any transfer to a county with respect to  
3 any tax imposed in accordance with the Local Liquor Excise Tax  
4 Act;

5 (7) any distribution to a municipality or a  
6 county of cigarette taxes pursuant to Sections 7-1-6.11,  
7 7-12-15 and 7-12-16 NMSA 1978;

8 (8) any distribution to a county from the  
9 county government road fund pursuant to Section 7-1-6.26 NMSA  
10 1978;

11 (9) any distribution to a municipality of  
12 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; ~~and~~

13 (10) any distribution to a municipality of  
14 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978; and

15 (11) any transfer to a local school board with  
16 respect to a local school district gross receipts tax imposed  
17 by that local school board.

18 B. If the secretary determines that any prior  
19 distribution or transfer to a political subdivision was  
20 erroneous, the secretary shall increase or decrease the next  
21 distribution or transfer amount for that political subdivision  
22 after the determination, except as provided in Subsection C, D  
23 or E of this section, by the amount necessary to correct the  
24 error. Subject to the provisions of Subsection E of this  
25 section, the secretary shall notify the political subdivision

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1 of the amount of each increase or decrease.

2 C. No decrease shall be made to current or future  
3 distributions or transfers to a political subdivision for any  
4 excess distribution or transfer made to that political  
5 subdivision more than one year prior to the calendar year in  
6 which the determination of the secretary was made.

7 D. The secretary, in lieu of recovery from the next  
8 distribution or transfer amount, may recover an excess  
9 distribution or transfer of one hundred dollars (\$100) or more  
10 to the political subdivision in installments from current and  
11 future distributions or transfers to that political subdivision  
12 pursuant to an agreement with the officials of the political  
13 subdivision whenever the amount of the distribution or transfer  
14 decrease for the political subdivision exceeds ten percent of  
15 the average distribution or transfer amount for that political  
16 subdivision for the twelve months preceding the month in which  
17 the secretary's determination is made; provided that for the  
18 purposes of this subsection, the "average distribution or  
19 transfer amount" shall be the arithmetic mean of the  
20 distribution or transfer amounts within the twelve months  
21 immediately preceding the month in which the determination is  
22 made.

23 E. Except for the provisions of this section, if  
24 the amount by which a distribution or transfer would be  
25 adjusted pursuant to Subsection B of this section is one

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1 hundred dollars (\$100) or less, no adjustment or notice need be  
2 made.

3 F. The secretary is authorized to decrease a  
4 distribution to a municipality or county upon being directed to  
5 do so by the secretary of finance and administration pursuant  
6 to the State Aid Intercept Act or to redirect a distribution to  
7 the New Mexico finance authority pursuant to an ordinance or a  
8 resolution passed by the county or municipality and a written  
9 agreement of the municipality or county and the New Mexico  
10 finance authority. Upon direction to decrease a distribution  
11 or notice to redirect a distribution to a municipality or  
12 county, the secretary shall decrease or redirect the next  
13 designated distribution, and succeeding distributions as  
14 necessary, by the amount of the state distributions intercept  
15 authorized by the secretary of finance and administration  
16 pursuant to the State Aid Intercept Act or by the amount of the  
17 state distribution intercept authorized pursuant to an  
18 ordinance or a resolution passed by the county or municipality  
19 and a written agreement with the New Mexico finance authority.  
20 The secretary shall transfer the state distributions intercept  
21 amount to the municipal or county treasurer or other person  
22 designated by the secretary of finance and administration or to  
23 the New Mexico finance authority pursuant to written agreement  
24 to pay the debt service to avoid default on qualified local  
25 revenue bonds or meet other local revenue bond, loan or other

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1 debt obligations of the municipality or county to the New  
2 Mexico finance authority."

3 Section 12. A new section of the Tax Administration Act  
4 is enacted to read:

5 "[NEW MATERIAL] TRANSFER--REVENUES FROM LOCAL SCHOOL  
6 DISTRICT GROSS RECEIPTS TAX.--A transfer pursuant to Section  
7 7-1-6.1 NMSA 1978 shall be made to each local school board for  
8 which the department is collecting a local school district  
9 gross receipts tax imposed by that local school board in an  
10 amount, subject to any increase or decrease made pursuant to  
11 Section 7-1-6.15 NMSA 1978, equal to the net receipts  
12 attributable to the local school district gross receipts tax  
13 imposed by that local school board, less any deduction for  
14 administrative cost determined and made by the department  
15 pursuant to the Local School District Gross Receipts Tax Act."

16 Section 13. Section 22-5-4 NMSA 1978 (being Laws 1967,  
17 Chapter 16, Section 28, as amended) is amended to read:

18 "22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES.--A local  
19 school board shall have the following powers or duties:

20 A. subject to the rules of the department, develop  
21 educational policies for the school district;

22 B. employ a local superintendent for the school  
23 district and fix the superintendent's salary;

24 C. review and approve the annual school district  
25 budget;

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- 1           D. acquire, lease and dispose of property;
- 2           E. have the capacity to sue and be sued;
- 3           F. acquire property by eminent domain pursuant to
- 4 the procedures provided in the Eminent Domain Code;
- 5           G. issue general obligation bonds of the school
- 6 district;
- 7           H. provide for the repair of and maintain all
- 8 property belonging to the school district;
- 9           I. for good cause and upon order of the district
- 10 court, subpoena witnesses and documents in connection with a
- 11 hearing concerning any powers or duties of the local school
- 12 board;
- 13           J. except for expenditures for salaries, contract
- 14 for the expenditure of money according to the provisions of the
- 15 Procurement Code;
- 16           K. adopt rules pertaining to the administration of
- 17 all powers or duties of the local school board;
- 18           L. accept or reject any charitable gift, grant,
- 19 devise or bequest. The particular gift, grant, devise or
- 20 bequest accepted shall be considered an asset of the school
- 21 district or the public school to which it is given;
- 22           M. offer and, upon compliance with the conditions
- 23 of such offer, pay rewards for information leading to the
- 24 arrest and conviction or other appropriate disciplinary
- 25 disposition by the courts or juvenile authorities of offenders

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1 in case of theft, defacement or destruction of school district  
2 property. All such rewards shall be paid from school district  
3 funds in accordance with rules promulgated by the department;  
4 [~~and~~]

5 N. give prior approval for any educational program  
6 in a public school in the school district that is to be  
7 conducted, sponsored, carried on or caused to be carried on by  
8 a private organization or agency; and

9 O. impose a gross receipts tax pursuant to the  
10 Local School District Gross Receipts Tax Act."

11 Section 14. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2010.