

1 HOUSE BILL 561

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 George Dodge, Jr.

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9  
10 AN ACT

11 RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT TO  
12 REVISE THE PROCEDURE FOR CORRECTING DISTRIBUTIONS AND  
13 TRANSFERS; DECLARING AN EMERGENCY.

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

16 SECTION 1. Section 7-1-6.15 NMSA 1978 (being Laws 1983,  
17 Chapter 211, Section 20, as amended) is amended to read:

18 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO  
19 MUNICIPALITIES OR COUNTIES.--

20 A. The provisions of this section apply to:

21 (1) any distribution to a municipality of  
22 gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or  
23 of interstate telecommunications gross receipts tax pursuant to  
24 Section 7-1-6.36 NMSA 1978;

25 (2) any transfer to a municipality with

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1 respect to any local option gross receipts tax imposed by that  
2 municipality;

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

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

7 (5) any distribution to a municipality or a  
8 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

9 (6) any transfer to a county with respect to  
10 any tax imposed in accordance with the Local Liquor Excise Tax  
11 Act;

12 (7) any distribution to a municipality or a  
13 county of cigarette taxes pursuant to Sections 7-1-6.11,  
14 7-12-15 and 7-12-16 NMSA 1978;

15 (8) any distribution to a county from the  
16 county government road fund pursuant to Section 7-1-6.26 NMSA  
17 1978;

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

20 (10) any distribution to a municipality of  
21 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

22 B. If the secretary determines that the amount of  
23 any prior distribution or transfer to a political subdivision  
24 [was erroneous] is incorrect based on information discovered or  
25 presented after the prior distribution or transfer was made,

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1 whether the information is derived from the filing of an  
2 amended return, approval of a claim for refund, payment of an  
3 assessment, processing of an audit adjustment, discovery of a  
4 processing error by the department or other cause, the  
5 secretary first shall [~~increase or decrease the next~~  
6 ~~distribution or transfer amount for that political subdivision~~  
7 ~~after the determination, except as provided in Subsection C, D~~  
8 ~~or E of this section, by the amount necessary to correct the~~  
9 ~~error. Subject to the provisions of Subsection E of this~~  
10 ~~section, the secretary shall~~] notify the political subdivision  
11 of the amount of each increase or decrease [~~C. No~~] to the  
12 prior distribution no later than the date of the next  
13 distribution or transfer to that political subdivision  
14 following the determination; provided that no notification need  
15 be made:

16 (1) if the amount of the increase or decrease  
17 is less than one hundred dollars (\$100); and

18 (2) with respect to an increase or decrease to  
19 prior distributions or transfers made before the beginning of  
20 the calendar year prior to the calendar year in which the  
21 determination of the secretary was made.

22 C. Except as provided in Subsection D of this  
23 section, in the month following the month in which the  
24 political subdivision was notified pursuant to Subsection B of  
25 this section, the secretary shall increase or decrease the

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1 amount of the distribution or transfer made to that political  
2 subdivision by the amount determined pursuant to Subsection B  
3 of this section; provided that no increase or decrease shall be  
4 made to current or future distributions or transfers to a  
5 political subdivision for any [~~excess~~] increase or decrease  
6 determined for a prior distribution or transfer made to that  
7 political subdivision more than one year prior to the calendar  
8 year in which the determination of the secretary was made. If  
9 the amount of decrease, whether resulting from a single  
10 determination or more than one, exceeds the amount of the  
11 transfer or distribution, the excess may be deducted from  
12 future transfers or distributions.

13 D. The secretary, in lieu of [~~recovery from the~~  
14 ~~next~~] decreasing a distribution or transfer amount pursuant to  
15 Subsection C of this section, may [~~recover an excess~~  
16 ~~distribution or transfer of one hundred dollars (\$100) or more~~  
17 ~~to the political subdivision in installments from current and~~  
18 ~~future~~] decrease distributions or transfers to that political  
19 subdivision in installments pursuant to an agreement with the  
20 officials of the political subdivision whenever the amount of  
21 the distribution or transfer decrease for the political  
22 subdivision exceeds:

23 (1) one hundred dollars (\$100); or

24 (2) ten percent of the average distribution or  
25 transfer amount for that political subdivision for the twelve

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1 months preceding the month in which the secretary's  
2 determination is made; provided that for the purposes of this  
3 subsection, the "average distribution or transfer amount" shall  
4 be the arithmetic mean of the distribution or transfer amounts  
5 within the twelve months immediately preceding the month in  
6 which the determination is made.

7 ~~[E. Except for the provisions of this section, if~~  
8 ~~the amount by which a distribution or transfer would be~~  
9 ~~adjusted pursuant to Subsection B of this section is one~~  
10 ~~hundred dollars (\$100) or less, no adjustment or notice need be~~  
11 ~~made.~~

12 ~~F.]~~ E. The secretary is authorized to decrease a  
13 distribution to a municipality or county upon being directed to  
14 do so by the secretary of finance and administration pursuant  
15 to the State Aid Intercept Act or to redirect a distribution to  
16 the New Mexico finance authority pursuant to an ordinance or a  
17 resolution passed by the county or municipality and a written  
18 agreement of the municipality or county and the New Mexico  
19 finance authority. Upon direction to decrease a distribution  
20 or notice to redirect a distribution to a municipality or  
21 county, the secretary shall decrease or redirect the next  
22 designated distribution, and succeeding distributions as  
23 necessary, by the amount of the state distributions intercept  
24 authorized by the secretary of finance and administration  
25 pursuant to the State Aid Intercept Act or by the amount of the

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1 state distribution intercept authorized pursuant to an  
2 ordinance or a resolution passed by the county or municipality  
3 and a written agreement with the New Mexico finance authority.  
4 The secretary shall transfer the state distributions intercept  
5 amount to the municipal or county treasurer or other person  
6 designated by the secretary of finance and administration or to  
7 the New Mexico finance authority pursuant to written agreement  
8 to pay the debt service to avoid default on qualified local  
9 revenue bonds or meet other local revenue bond, loan or other  
10 debt obligations of the municipality or county to the New  
11 Mexico finance authority.

12 ~~[G.]~~ F. A decrease to a distribution or transfer  
13 pursuant to this subsection takes priority over any decrease  
14 pursuant to Subsection C or D of this section. A decrease  
15 pursuant to Subsection C or D of this section may be applied  
16 only against any amount of a distribution or transfer remaining  
17 after application of the decrease pursuant to this subsection.

18 Upon the direction of the secretary of finance and  
19 administration pursuant to Section 9-6-5.2 NMSA 1978, the  
20 secretary shall temporarily withhold a distribution to a  
21 municipality or county that has failed to submit an audit  
22 report required by the Audit Act or a financial report required  
23 by Subsection F of Section 6-6-2 NMSA 1978. The amount to be  
24 withheld, the source of the withheld distribution and the  
25 number of months that the distribution is to be withheld shall

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1 be as directed by the secretary of finance and administration.  
2 A distribution withheld pursuant to this subsection shall  
3 remain in the tax administration suspense fund until  
4 distributed to the municipality or county and shall not be  
5 distributed to the general fund."

6 SECTION 2. APPLICABILITY.--The provisions of this act  
7 apply to determinations of the secretary of taxation and  
8 revenue made on or after April 1, 2013.

9 SECTION 3. EMERGENCY.--It is necessary for the public  
10 peace, health and safety that this act take effect immediately.