

1 SENATE BILL 518

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

3 INTRODUCED BY

4 Stuart Ingle

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10 AN ACT

11 RELATING TO TAXATION; REVISING THE PROCEDURE FOR CORRECTING  
12 DISTRIBUTIONS AND TRANSFERS AUTHORIZED IN THE TAX  
13 ADMINISTRATION ACT; PROVIDING AUTHORITY TO EXPEND MONEY IN THE  
14 APPROPRIATION CONTINGENCY FUND; DECLARING AN EMERGENCY.

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

17 SECTION 1. Section 6-4-2.3 NMSA 1978 (being Laws 1991,  
18 Chapter 10, Section 7) is amended to read:

19 "6-4-2.3. APPROPRIATION CONTINGENCY FUND.--There is  
20 created within the general fund the "appropriation contingency  
21 fund".

22 A. The appropriation contingency fund may be  
23 expended only:

24 (1) upon specific authorization by the  
25 legislature; [or]

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1                   (2) as provided in Sections [~~6-7-1~~] 12-11-23  
2 through [~~6-7-3~~] 12-11-25 NMSA 1978 in the event there is no  
3 surplus of unappropriated money in the general fund and in the  
4 amount authorized by the legislature; or

5                   (3) pursuant to Section 7-1-6.15.

6                   B. Notwithstanding Section 6-4-4 NMSA 1978, for the  
7 seventy-ninth fiscal year, if the revenues of the general fund  
8 exceed the total appropriations from the general fund, the  
9 excess revenue shall be transferred to the appropriation  
10 contingency fund.

11                   C. Five million dollars (\$5,000,000) is transferred  
12 from the operating reserve fund to the public school state-  
13 support reserve fund in the eightieth fiscal year.

14                   D. If revenues and transfers to the general fund,  
15 excluding transfers to the operating reserve, appropriation  
16 contingency fund and public school state-support reserve, as of  
17 the end of the seventy-ninth fiscal year, are not sufficient to  
18 meet appropriations, the governor, with state board of finance  
19 approval, may transfer at the end of that year the amount  
20 necessary to meet the year's obligations from the unencumbered  
21 balance remaining in the general fund operating reserve in a  
22 total not to exceed sixty million dollars (\$60,000,000)."

23                   SECTION 2. Section 7-1-6.15 NMSA 1978 (being Laws 1983,  
24 Chapter 211, Section 20, as amended) is amended to read:

25                   "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO

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1 MUNICIPALITIES OR COUNTIES.--

2 A. The provisions of this section apply to:

3 (1) any distribution to a municipality of  
4 gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or  
5 of interstate telecommunications gross receipts tax pursuant to  
6 Section 7-1-6.36 NMSA 1978;

7 (2) any transfer to a municipality with  
8 respect to any local option gross receipts tax imposed by that  
9 municipality;

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

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

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

16 (6) any transfer to a county with respect to  
17 any tax imposed in accordance with the Local Liquor Excise Tax  
18 Act;

19 (7) any distribution to a municipality or a  
20 county of cigarette taxes pursuant to Sections 7-1-6.11,  
21 7-12-15 and 7-12-16 NMSA 1978;

22 (8) any distribution to a county from the  
23 county government road fund pursuant to Section 7-1-6.26 NMSA  
24 1978;

25 (9) any distribution to a municipality of

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1 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

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

4 B. If the secretary determines that ~~[any prior~~  
5 ~~distribution or transfer to a political subdivision was~~  
6 ~~erroneous]~~ administration of the monthly net receipts requires  
7 adjustment of prior period distributions or will result in a  
8 net negative monthly distribution or transfer to a political  
9 subdivision, the secretary shall increase or decrease the next  
10 distribution or transfer amount for that political subdivision  
11 after the determination ~~[except as provided in]~~ pursuant to  
12 Subsection C, D, ~~[or]~~ E or F of this section, by the amount  
13 necessary to ~~[correct the error]~~ properly reconcile the  
14 distribution or transfer of net receipts to that political  
15 subdivision. Subject to the provisions of ~~[Subsection E of]~~  
16 this section, the secretary shall notify the political  
17 subdivision of the amount of each increase or decrease to a  
18 distribution no later than the date of the next distribution or  
19 transfer to that political subdivision following the  
20 determination, provided that no notification need be made if  
21 the amount of the change is less than one hundred dollars  
22 (\$100).

23 C. ~~[No]~~ If the secretary determines that any prior  
24 distribution or transfer to a political subdivision was an  
25 erroneous distribution, prior to the distribution or transfer

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1 date of the next ensuing month following the month in which the  
2 political subdivision was notified pursuant to Subsection B of  
3 this section, the secretary shall increase or decrease the  
4 amount of the distribution or transfer made to that political  
5 subdivision by the amount necessary to effect the change,  
6 provided that no increase or decrease shall be made to current  
7 or future distributions or transfers to a political subdivision  
8 for any [~~excess~~] change made pursuant to this subsection to a  
9 prior distribution or transfer made to that political  
10 subdivision more than one year prior to the calendar year in  
11 which the determination of the secretary was made.

12 D. If the secretary determines that any  
13 distribution or transfer of net receipts to a political  
14 subdivision, for any reason other than an error of the  
15 department that is to be distributed or transferred pursuant to  
16 Subsection C of this section, will result in a net negative  
17 monthly distribution or transfer of the greater of either one  
18 thousand dollars (\$1,000) or ten percent of the total  
19 distribution or transfer to the political subdivision during  
20 the prior twelve months prior to the month in which the net  
21 negative distribution or transfer notification was provided by  
22 the secretary, then the secretary may:

23 (1) prior to the distribution or transfer date  
24 of the next ensuing month following the month in which the  
25 political subdivision was notified pursuant to this section and

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1 in consultation with the subject political subdivision, obtain  
2 authorization pursuant to Subsection J of this section to draw  
3 funds from the appropriation contingency fund in an amount  
4 sufficient to offset the negative distribution, such amount  
5 determined by the sum of:

6 (a) the net negative distribution for  
7 the subject month and political subdivision; plus

8 (b) an amount equal to the twenty-fifth  
9 percentile of the most recent twelve months of positive  
10 distributions to that political subdivision;

11 (2) prior to the distribution or transfer date  
12 of the next ensuing month following the month in which the  
13 political subdivision was notified pursuant to this section and  
14 after consultation with the subject political subdivision, in  
15 lieu of recovery from the next distribution or transfer amount,  
16 may recover ~~[an excess]~~ a net negative distribution or transfer  
17 ~~[of one hundred dollars (\$100) or more]~~ to the political  
18 subdivision in installments from current ~~[and future]~~  
19 distributions or transfers to that political subdivision  
20 pursuant to an agreement with the officials of the political  
21 subdivision ~~[whenever the amount of the distribution or~~  
22 ~~transfer decrease for the political subdivision exceeds ten~~  
23 ~~percent of the average distribution or transfer amount for that~~  
24 ~~political subdivision for the twelve months preceding the month~~  
25 ~~in which the secretary's determination is made; provided that~~

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1 ~~for the purposes of this subsection, the "average distribution~~  
2 ~~or transfer amount" shall be the arithmetic mean of the~~  
3 ~~distribution or transfer amounts within the twelve months~~  
4 ~~immediately preceding the month in which the determination is~~  
5 ~~made]; or~~

6 (3) upon agreement and after consultation with  
7 the subject political subdivision, decrease net distributions  
8 or transfers in the next ensuing month following the month in  
9 which the political subdivision was notified of the taxpayer's  
10 reduced tax liability pursuant to this section by the amount of  
11 the taxpayer's reduced tax liability.

12 E. If the secretary determines that the aggregate  
13 monthly net receipts distribution or transfer to a political  
14 subdivision will be reduced specifically as the result of a  
15 reduction in an individual taxpayer's previously paid tax  
16 liability and if that taxpayer's reduction in the political  
17 subdivision's monthly distribution or transfer will be more  
18 than the greater of either one thousand dollars (\$1,000) or  
19 seventy-five percent of the average monthly distribution to the  
20 political subdivision during the prior twelve months prior to  
21 the month in which the taxpayer's tax liability reduction is  
22 applicable to the political subdivision's distributions or  
23 transfers, then the secretary, after notification and  
24 consultation with the subject political subdivision, may  
25 suspend the distribution or transfer related to the taxpayer's

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1 reported liability for a period of up to the next ensuing  
2 month's distribution or transfer date, and may:

3 (1) prior to the distribution or transfer date  
4 of the next ensuing month following the month in which the  
5 political subdivision was notified pursuant to this subsection  
6 and in consultation with the subject political subdivision,  
7 obtain authorization pursuant to Subsection J of this section  
8 to draw funds from the appropriation contingency fund in an  
9 amount sufficient to offset the reduction in the distribution  
10 or transfer as the result of a reduction in an individual  
11 taxpayer's previously paid tax liability;

12 (2) prior to the distribution or transfer date  
13 of the next ensuing month following the month in which the  
14 political subdivision was notified of the taxpayer's reduced  
15 tax liability pursuant to this section, and after consultation  
16 with the subject political subdivision, in lieu of full  
17 distribution or transfer in the next ensuing month's  
18 distribution or transfer amount recover a reduction in the  
19 taxpayer's tax liability by distribution or transfer to the  
20 political subdivision in installments from current and future  
21 distributions or transfers to that political subdivision  
22 pursuant to an agreement with the officials of the political  
23 subdivision; or

24 (3) upon agreement and after consultation with  
25 the subject political subdivision, decrease net distributions

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1 or transfers in the next ensuing month following the month in  
2 which the political subdivision was notified of the taxpayer's  
3 reduced tax liability pursuant to this subsection by the amount  
4 of the taxpayer's reduced tax liability.

5 F. Except as otherwise provided in Subsection B, C,  
6 D or E of this section, if the secretary determines prior to  
7 the date a monthly net receipts distribution or transfer is to  
8 occur that the aggregate monthly distribution or transfer to a  
9 political subdivision appears abnormally high or low, and  
10 notifies the political subdivision of the factual issues upon  
11 which it is determined that a potential distribution appears  
12 abnormally high or low, the secretary may withhold a reasonable  
13 portion of the potential distribution or transfer upon  
14 providing notification of the determination to the political  
15 subdivision. The secretary shall determine the reasonable  
16 proportion of the potential distribution to be withheld as a  
17 matter of administrative efficiency, but in no case shall the  
18 secretary determine that more than seventy-five percent of the  
19 average annual monthly distribution or transfer made to that  
20 political subdivision in the past twelve months shall be  
21 withheld pursuant to this subsection. The secretary may  
22 withhold a portion of the distribution or transfer pursuant to  
23 this subsection exclusively to allow for efficient  
24 administrative avoidance of unreasonable distributions or  
25 transfers that might be avoided by investigation of the factual

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1 circumstances that have created the appearance of the  
2 abnormally high or low distribution or transfer. Upon  
3 determination by the secretary that withholding a portion of a  
4 distribution or transfer is reasonable pursuant to this  
5 subsection, an investigation of the factual basis for such  
6 conclusion shall be undertaken and completed before the next  
7 ensuing month's date of distributions or transfers to political  
8 subdivisions. Unless that investigation establishes a clear  
9 and unambiguous basis for continuing to withhold a portion of  
10 the distribution or transfer, the prior month tax revenues that  
11 were withheld shall be distributed and transferred at the time  
12 of the next ensuing month's date of distributions or transfers  
13 to political subdivisions.

14 ~~[E-]~~ G. Except for the provisions of this section,  
15 if the amount by which a net receipts distribution or transfer  
16 would be adjusted pursuant to Subsection B of this section is  
17 one hundred dollars (\$100) or less, no adjustment or notice  
18 need be made.

19 ~~[F-]~~ H. The secretary is authorized to decrease a  
20 distribution to a municipality or county upon being directed to  
21 do so by the secretary of finance and administration pursuant  
22 to the State Aid Intercept Act or to redirect a distribution to  
23 the New Mexico finance authority pursuant to an ordinance or a  
24 resolution passed by the county or municipality and a written  
25 agreement of the municipality or county and the New Mexico

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

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

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

7 J. To allow for the efficient administration of  
8 taxes identified in Subsection A of this section and to provide  
9 the secretary and political subdivisions an optional mechanism  
10 to adjust distributions or transfers pursuant to this section,  
11 the secretary may obtain funds necessary for a distribution or  
12 transfer pursuant to this section from the appropriation  
13 contingency fund, subject to the following conditions and  
14 restrictions:

15 (1) the secretary shall obtain the approval of  
16 the state board of finance to utilize the appropriation  
17 contingency fund for a distribution or transfer to a political  
18 subdivision; and

19 (2) the subject political subdivision shall  
20 demonstrate that the reduction of subject distribution or  
21 transfer:

22 (a) cannot be reasonably mitigated with  
23 reductions in discretionary expenditures on services,  
24 procurements and programs, excluding those services,  
25 procurements and programs providing for the public health and

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1 safety requirements of the residents of the political  
2 subdivision; and

3 (b) whether as a reduction in  
4 distributions or transfers over time pursuant to available  
5 installment agreement terms or as a direct reduction in  
6 distributions, will reduce available revenues for the subject  
7 political subdivision's discretionary expenditures by more than  
8 fifty percent during the next ensuing twelve-month period.

9 K. As used in this section:

10 (1) "discretionary expenditures" means all  
11 political subdivision expenditures, excluding:

12 (a) authorized intercept transfers  
13 pursuant to the State Aid Intercept Act or by the amount of the  
14 state distribution intercept authorized pursuant to an  
15 ordinance or a resolution passed by the county or municipality  
16 and a written agreement with the New Mexico finance authority;

17 (b) publicly approved bond or loan  
18 repayment obligations of the political subdivision; and

19 (c) approved and budgeted expenditures  
20 and contractual obligations related to public health and  
21 safety; and

22 (2) "erroneous distribution" means a prior  
23 distribution to a political subdivision that is subsequently  
24 determined to be incorrect as a result of an action or  
25 determination by the department that was factually inaccurate

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1 or otherwise in error due to the actions or inactions in the  
2 administration of the secretary's duties."

3 SECTION 3. APPLICABILITY.--The provisions of this act  
4 apply to determinations of the secretary of finance and  
5 administration made on or after May 1, 2013.

6 SECTION 4. EMERGENCY.--It is necessary for the public  
7 peace, health and safety that this act take effect immediately.

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