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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Leo Jaramillo

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO REGIONAL TRANSIT DISTRICTS; PROVIDING THAT REVENUE FROM A REGIONAL TRANSIT GROSS RECEIPTS TAX IMPOSED BY A COUNTY BE DISTRIBUTED DIRECTLY TO THE DISTRICT RATHER THAN TRANSFERRED FROM THE COUNTY TO THE DISTRICT.

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

SECTION 1. A new section of the Tax Administration Act is enacted to read:

"NEW MATERIAL] DISTRIBUTION--REGIONAL TRANSIT DISTRICT.--

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each regional transit district created pursuant to the Regional Transit District Act in a county for which the department is collecting a regional transit gross receipts tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to .221127.1

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1 the net receipts attributable to the county regional transit
2 gross receipts tax by that county, less any deduction for
3 administrative cost pursuant to Section 7-1-6.41 NMSA 1978."

4 SECTION 2. Section 7-1-6.13 NMSA 1978 (being Laws 1983,
5 Chapter 211, Section 18, as amended) is amended to read:

6 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION
7 GROSS RECEIPTS AND COMPENSATING TAXES.--

8 A. Except as provided in Section 1 of this 2022
9 act, a transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be
10 made to each county for which the department is collecting a
11 local option gross receipts tax and county compensating tax
12 imposed by that county in an amount, subject to any increase or
13 decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to
14 the net receipts attributable to the local option gross
15 receipts tax and county compensating tax imposed by that
16 county, less any deduction for administrative cost determined
17 and made by the department pursuant to the provisions of the
18 act authorizing imposition by that county of the local option
19 gross receipts tax and county compensating tax and any
20 additional administrative fee withheld pursuant to Section
21 7-1-6.41 NMSA 1978.

22 B. A transfer pursuant to this section may be
23 adjusted for a distribution made to a tax increment development
24 district with respect to a portion of a gross receipts tax
25 increment dedicated by a county pursuant to the Tax Increment

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1 for Development Act.

2 C. A transfer pursuant to this section shall be
3 adjusted for a distribution made to the Local Economic
4 Development Act fund pursuant to Section [~~5 of this 2021 act~~]
5 7-1-6.67 NMSA 1978 and with respect to the amount dedicated by
6 a county pursuant to Subsection B of Section [~~2 of this 2021~~
7 ~~act~~] 5-10-17 NMSA 1978."

8 SECTION 3. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
9 Chapter 211, Section 20, as amended) is amended to read:

10 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
11 MUNICIPALITIES, [~~OR~~] COUNTIES OR REGIONAL TRANSIT DISTRICTS.--

12 A. The provisions of this section apply to:

13 (1) any distribution to a municipality
14 pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;

15 (2) any transfer to a municipality with
16 respect to any local option gross receipts tax imposed by that
17 municipality;

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

20 (4) any distribution to a county pursuant to
21 Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

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

24 (6) any transfer to a county with respect to
25 any tax imposed in accordance with the Local Liquor Excise Tax

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1 Act;

2 (7) any distribution to a county from the
3 county government road fund pursuant to Section 7-1-6.26 NMSA
4 1978;

5 (8) any distribution to a municipality of
6 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978;

7 ~~[(9) any distribution to a municipality of~~
8 ~~compensating taxes pursuant to Section 7-1-6.55 NMSA 1978; and~~

9 ~~(10)]~~ (9) any distribution to a municipality
10 or a county of cannabis excise taxes pursuant to the Cannabis
11 Tax Act; and

12 (10) any distribution to a regional transit
13 district pursuant to Section 1 of this 2022 act.

14 B. Before making a distribution or transfer
15 specified in Subsection A of this section to a municipality,
16 ~~[or]~~ county or regional transit district for the month, amounts
17 comprising the net receipts shall be segregated into two
18 mutually exclusive categories. One category shall be for
19 amounts relating to the current month, and the other category
20 shall be for amounts relating to prior periods. The total of
21 each category for a municipality, ~~[or]~~ county or regional
22 transit district shall be reported each month to that
23 municipality, ~~[or]~~ county or regional transit district. If the
24 total of the amounts relating to prior periods is less than
25 zero and its absolute value exceeds the greater of one hundred

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1 dollars (\$100) or an amount equal to twenty percent of the
2 average distribution or transfer amount for that municipality,
3 [~~or~~] county or regional transit district, then the following
4 procedures shall be carried out:

5 (1) all negative amounts relating to any
6 period prior to the three calendar years preceding the year of
7 the current month, net of any positive amounts in that same
8 time period for the same taxpayers to which the negative
9 amounts pertain, shall be excluded from the total relating to
10 prior periods. Except as provided in Paragraph (2) of this
11 subsection, the net receipts to be distributed or transferred
12 to the municipality, [~~or~~] county or regional transit district
13 shall be adjusted to equal the amount for the current month
14 plus the revised total for prior periods; and

15 (2) if the revised total for prior periods
16 determined pursuant to Paragraph (1) of this subsection is
17 negative and its absolute value exceeds the greater of one
18 hundred dollars (\$100) or an amount equal to twenty percent of
19 the average distribution or transfer amount for that
20 municipality, [~~or~~] county or regional transit district, the
21 revised total for prior periods shall be excluded from the
22 distribution or transfers and the net receipts to be
23 distributed or transferred to the municipality, [~~or~~] county or
24 regional transit district shall be equal to the amount for the
25 current month.

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1 C. The department shall recover from a
2 municipality, [~~or~~] county or regional transit district the
3 amount excluded by Paragraph (2) of Subsection B of this
4 section. This amount may be referred to as the "recoverable
5 amount".

6 D. Prior to or concurrently with the distribution
7 or transfer to the municipality, [~~or~~] county or regional
8 transit district of the adjusted net receipts, the department
9 shall notify the municipality, [~~or~~] county or regional transit
10 district whose distribution or transfer has been adjusted
11 pursuant to Paragraph (2) of Subsection B of this section:

12 (1) that the department has made such an
13 adjustment, that the department has determined that a specified
14 amount is recoverable from the municipality, [~~or~~] county or
15 regional transit district and that the department intends to
16 recover that amount from future distributions or transfers to
17 the municipality, [~~or~~] county or regional transit district;

18 (2) that the municipality, [~~or~~] county or
19 regional transit district has ninety days from the date notice
20 is made to enter into a mutually agreeable repayment agreement
21 with the department;

22 (3) that if the municipality, [~~or~~] county or
23 regional transit district takes no action within the ninety-day
24 period, the department will recover the amount from the next
25 six distributions or transfers following the expiration of the

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1 ninety days; and

2 (4) that the municipality or county may
3 inspect, pursuant to Section 7-1-8.9 NMSA 1978, and that the
4 regional transit district may inspect, pursuant to Section
5 7-1-8.11 NMSA 1978, an application for a claim for refund that
6 gave rise to the recoverable amount, exclusive of any amended
7 returns that may be attached to the application.

8 E. No earlier than ninety days from the date notice
9 pursuant to Subsection D of this section is given, the
10 department shall begin recovering the recoverable amount from a
11 municipality, [~~or~~] county or regional transit district as
12 follows:

13 (1) the department may collect the recoverable
14 amount by:

15 (a) decreasing distributions or
16 transfers to the municipality, [~~or~~] county or regional transit
17 district in accordance with a repayment agreement entered into
18 with the municipality, [~~or~~] county or regional transit
19 district; or

20 (b) except as provided in Paragraphs (2)
21 and (3) of this subsection, if the municipality, [~~or~~] county or
22 regional transit district fails to act within the ninety days,
23 decreasing the amount of the next six distributions or
24 transfers to the municipality, [~~or~~] county or regional transit
25 district following expiration of the ninety-day period in

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1 increments as nearly equal as practicable and sufficient to
2 recover the amount;

3 (2) if, pursuant to Subsection B of this
4 section, the secretary determines that the recoverable amount
5 is more than fifty percent of the average distribution or
6 transfer of net receipts for that municipality, ~~[or]~~ county or
7 regional transit district, the secretary:

8 (a) shall recover only up to fifty
9 percent of the average distribution or transfer of net receipts
10 for that municipality, ~~[or]~~ county or regional transit
11 district; and

12 (b) may, in the secretary's discretion,
13 waive recovery of any portion of the recoverable amount,
14 subject to approval by the state board of finance; and

15 (3) if, after application of a refund claim,
16 audit adjustment, correction of a mistake by the department or
17 other adjustment of a prior period, but prior to any recovery
18 of the department pursuant to this section, the total net
19 receipts of a municipality, ~~[or]~~ county or regional transit
20 district for the twelve-month period beginning with the current
21 month are reduced or are projected to be reduced to less than
22 fifty percent of the average distribution or transfer of net
23 receipts, the secretary may waive recovery of any portion of
24 the recoverable amount, subject to approval by the state board
25 of finance.

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1 F. No later than ninety days from the date notice
2 pursuant to Subsection D of this section is given, the
3 department shall provide the municipality, ~~[or]~~ county or
4 regional transit district adequate opportunity to review an
5 application for a claim for refund that gave rise to the
6 recoverable amount, exclusive of any amended returns that may
7 be attached to the application, pursuant to Section 7-1-8.9
8 NMSA 1978.

9 G. On or before September 1 of each year,
10 ~~[beginning in 2016]~~ the secretary shall report to the state
11 board of finance and the legislative finance committee the
12 total recoverable amount waived pursuant to Subparagraph (b) of
13 Paragraph (2) and Paragraph (3) of Subsection E of this section
14 for each municipality, ~~[and]~~ county and regional transit
15 district in the prior fiscal year.

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

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

23 (1) prior to an adjustment of a distribution
24 or transfer of net receipts creating a recoverable amount owed
25 to the department takes precedence over any collection of any

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1 recoverable amount pursuant to Paragraph (2) of Subsection B of
2 this section, which may be made only from the net amount of the
3 distribution or transfer remaining after application of the
4 decrease or redirection pursuant to this subsection; and

5 (2) after an adjustment of a distribution or
6 transfer of net receipts creating a recoverable amount owed to
7 the department shall be subordinate to any collection of any
8 recoverable amount pursuant to Paragraph (2) of Subsection B of
9 this section.

10 I. Upon the direction of the secretary of finance
11 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
12 secretary shall temporarily withhold the balance of a
13 distribution to a municipality, ~~[or]~~ county or regional transit
14 district, net of any decrease or redirected amount pursuant to
15 Subsection H of this section and any recoverable amount
16 pursuant to Paragraph (2) of Subsection B of this section, that
17 has failed to submit an audit report required by the Audit Act
18 or a financial report required by Subsection F of Section 6-6-2
19 NMSA 1978. The amount to be withheld, the source of the
20 withheld distribution and the number of months that the
21 distribution is to be withheld shall be as directed by the
22 secretary of finance and administration. A distribution
23 withheld pursuant to this subsection shall remain in the tax
24 administration suspense fund until distributed to the
25 municipality, ~~[or]~~ county or regional transit district and

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1 shall not be distributed to the general fund. An amount
2 withheld pursuant to this subsection shall be distributed to
3 the municipality, ~~[or]~~ county or regional transit district upon
4 direction of the secretary of finance and administration.

5 J. As used in this section:

6 (1) "amounts relating to the current month"
7 means any amounts included in the net receipts of the current
8 month that represent payment of tax due for the current month,
9 correction of amounts processed in the current month that
10 relate to the current month or that otherwise relate to
11 obligations due for the current month;

12 (2) "amounts relating to prior periods" means
13 any amounts processed during the current month that adjust
14 amounts processed in a period or periods prior to the current
15 month regardless of whether the adjustment is a correction of a
16 department error or due to the filing of amended returns,
17 payment of department-issued assessments, filing or approval of
18 claims for refund, audit adjustments or other cause;

19 (3) "average distribution or transfer amount"
20 means the following amounts; provided that a distribution or
21 transfer that is negative shall not be used in calculating the
22 amounts:

23 (a) the annual average of the total
24 amount distributed or transferred to a municipality, ~~[or]~~
25 county or regional transit district in each of the three

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1 twelve-month periods preceding the current month;

2 (b) if a distribution or transfer to a
3 municipality, ~~[or]~~ county or regional transit district has been
4 made for less than three years, the total amount distributed or
5 transferred in the year preceding the current month; or

6 (c) if a municipality, ~~[or]~~ county or
7 regional transit district has not received distributions or
8 transfers of net receipts for twelve or more months, the
9 monthly average of net receipts distributed or transferred to
10 the municipality, ~~[or]~~ county or regional transit district
11 preceding the current month multiplied by twelve;

12 (4) "current month" means the month for which
13 the distribution or transfer is being prepared; and

14 (5) "repayment agreement" means an agreement
15 between the department and a municipality, ~~[or]~~ county or
16 regional transit district under which the municipality, ~~[or]~~
17 county or regional transit district agrees to allow the
18 department to recover an amount determined pursuant to
19 Paragraph (2) of Subsection B of this section by decreasing
20 distributions or transfers to the municipality, ~~[or]~~ county or
21 regional transit district for one or more months beginning with
22 the distribution or transfer to be made with respect to a
23 designated month. No interest shall be charged."

24 SECTION 4. Section 7-1-6.41 NMSA 1978 (being Laws 1997,
25 Chapter 125, Section 1) is amended to read:

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1 "7-1-6.41. ADMINISTRATIVE FEE IMPOSED [APPROPRIATION].--

2 ~~[A. The taxation and revenue department is directed~~
3 ~~to withhold an administrative fee of three percent of the net~~
4 ~~amount to be distributed under the provisions of:~~

5 ~~(1) Section 7-1-6.32 NMSA 1978;~~

6 ~~(2) Section 66-12-20 NMSA 1978; and~~

7 ~~(3) Section 74-1-13 NMSA 1978.~~

8 ~~B. The administrative fee to be withheld pursuant~~
9 ~~to Subsection A of this section shall be withheld on~~
10 ~~distributions made on or after July 1, 1997 and shall continue~~
11 ~~until the earlier of December 31, 2006 or the date on which the~~
12 ~~New Mexico finance authority certifies to the taxation and~~
13 ~~revenue department that all obligations for bonds issued~~
14 ~~pursuant to Section 12 of this 1997 act have been fully~~
15 ~~discharged and directs the department to cease distributing~~
16 ~~money to the authority pursuant to this section.~~

17 ~~C. The taxation and revenue department is directed~~
18 ~~to withhold an additional administrative fee at the following~~
19 ~~percentage of the net amount to be distributed pursuant to the~~
20 ~~following provisions of law:~~

21 ~~(1) two percent of the net amount to be~~
22 ~~distributed pursuant to Section 7-1-6.12 NMSA 1978; and~~

23 ~~(2) six-tenths of one percent of the net~~
24 ~~amount to be distributed pursuant to Section 7-1-6.13 NMSA~~
25 ~~1978.~~

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1 ~~D. The administrative fee to be withheld under~~
2 ~~Subsection C of this section shall be withheld on distributions~~
3 ~~made on or after July 1, 1997 and shall continue until the~~
4 ~~earlier of July 1, 2000 or the date on which the New Mexico~~
5 ~~finance authority certifies to the taxation and revenue~~
6 ~~department that all obligations for bonds issued pursuant to~~
7 ~~Section 12 of this 1997 act have been fully discharged and~~
8 ~~directs the department to cease distributing money to the~~
9 ~~authority pursuant to this section.~~

10 ~~E.] The [administrative fee to be withheld by the~~
11 ~~taxation and revenue] department [under Section] may withhold~~
12 ~~an administrative fee of three percent of the net amount~~
13 ~~transferred pursuant to Sections 7-1-6.12 and 7-1-6.13 NMSA~~
14 ~~1978 [shall be set at three percent of the net amount to be~~
15 ~~distributed pursuant to the provisions of those sections.~~

16 ~~F. The administrative fee to be withheld under~~
17 ~~Subsection E of this section shall be withheld on distributions~~
18 ~~made on or after July 1, 2000 and shall continue until the~~
19 ~~earlier of December 31, 2006 or the date on which the New~~
20 ~~Mexico finance authority certifies to the taxation and revenue~~
21 ~~department that all obligations for bonds issued pursuant to~~
22 ~~Section 12 of this 1997 act have been fully discharged and~~
23 ~~directs the department to cease distributing money to the~~
24 ~~authority pursuant to this section. After the department has~~
25 ~~been directed by the authority to cease distributing money to~~

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1 ~~the authority pursuant to this section]~~ and the net amount
2 distributed pursuant to Section 1 of this 2022 act. The
3 administrative fee shall be remitted to the state treasurer for
4 deposit in the state general fund each month.

5 ~~[G. The administrative fee shall be distributed~~
6 ~~monthly to the New Mexico finance authority to be pledged~~
7 ~~irrevocably for the payment of principal, interest and any~~
8 ~~expenses or obligations related to the bonds issued by the~~
9 ~~authority to finance the taxation and revenue information~~
10 ~~management systems project.]"~~

11 SECTION 5. Section 7-1-8.11 NMSA 1978 (being Laws 2017,
12 Chapter 63, Section 20) is amended to read:

13 "7-1-8.11. INFORMATION THAT MAY BE REVEALED TO [~~A WATER~~
14 ~~AND SANITATION DISTRICT]~~ CERTAIN SPECIAL DISTRICTS.--

15 A. An employee of the department may reveal to the
16 officials and employees of a [~~water and sanitation]~~ special
17 district of this state [~~that has in effect a water and~~
18 ~~sanitation gross receipts tax imposed by the water and~~
19 ~~sanitation district upon its]~~ authorized by written request for
20 a period specified by [~~that water and sanitation]~~ the special
21 district within the twelve months preceding the request for the
22 information by those officials and employees:

23 (1) the names, taxpayer identification numbers
24 and addresses of registered gross receipts taxpayers reporting
25 gross receipts for that [~~water and sanitation]~~ special

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1 district; the department may also release the information
2 described in this paragraph quarterly or upon any other
3 periodic basis to which the secretary and the special district
4 agree; and

5 (2) information indicating whether the persons
6 shown on a list of businesses within the [~~water and sanitation~~]
7 special district have reported gross receipts to the department
8 but have not reported gross receipts for that [~~water and~~
9 ~~sanitation~~] special district.

10 B. The officials and employees of [~~water and~~
11 ~~sanitation~~] special districts receiving information as provided
12 in this section shall be subject to the confidentiality
13 provisions of Section 7-1-8 NMSA 1978 and the penalty
14 provisions of Section 7-1-76 NMSA 1978.

15 C. As used in this section:

16 (1) "special district" means a water and
17 sanitation district or a regional transit district located in a
18 county that has imposed and has in effect a special district
19 gross receipts tax in the special district; and

20 (2) "special district gross receipts tax"
21 means:

22 (a) in the case of a regional transit
23 district, the county regional transit gross receipts tax; and

24 (b) in the case of a water and
25 sanitation district, the water and sanitation gross receipts

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1 tax."

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

4 "7-20E-23. COUNTY REGIONAL TRANSIT GROSS RECEIPTS TAX--
5 AUTHORITY TO IMPOSE--RATE--ELECTION REQUIRED.--

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

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

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

22 D. The governing body of a county imposing a county
23 regional transit gross receipts tax shall, prior to January 1,
24 2023, transfer all proceeds the county receives from the tax
25 pursuant to Section 7-1-6.13 NMSA 1978 to the regional transit

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1 district for the purposes specified in the ordinance and in
2 accordance with the provisions of the Regional Transit District
3 Act. On and after January 1, 2023, all revenue from the tax
4 shall be distributed pursuant to Section 1 of this 2022 act.

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

8 SECTION 7. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is January 1, 2023.