

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 400

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO TRANSPORTATION; ENACTING THE COMMUTER RAIL TRANSIT DISTRICT ACT; CREATING THE COMMUTER RAIL TRANSIT DISTRICT; PROVIDING FOR POWERS AND DUTIES; AUTHORIZING BOND ISSUANCE; IMPOSING PENALTIES; AUTHORIZING COMMUTER RAIL TRANSIT DISTRICT POLICE OFFICERS; PROVIDING FOR THE IMPOSITION OF A COUNTY COMMUTER RAIL GROSS RECEIPTS TAX; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Commuter Rail Transit District Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the Commuter Rail Transit District Act:

A. "board" means the board of directors of the commuter rail transit district;

.171696.2

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1           B. "commuter rail system" means a New Mexico state-  
2 owned system that provides railroad transportation for  
3 commuters and other rail passengers between Belen and Santa Fe.  
4 "Commuter rail system" includes all real and personal property,  
5 tracks, rights of way, easements, locomotives, cars, equipment,  
6 tools and facilities that are owned, purchased, leased,  
7 licensed, acquired or donated by the district, either alone or  
8 in cooperation with other governmental entities, corporations,  
9 partnerships, individuals, firms or other public or private  
10 entities;

11           C. "district" means the commuter rail transit  
12 district created by the Commuter Rail Transit District Act;

13           D. "New Mexico rail runner express" means the  
14 commuter rail system in existence at the time the commuter rail  
15 transit district is created; and

16           E. "revenue" means the rates, fees and charges  
17 collected by the district from the operation of the commuter  
18 rail system, distributions from the commuter rail transit  
19 district gross receipts tax and all other appropriations or  
20 funds received by the district.

21           Section 3. [NEW MATERIAL] COMMUTER RAIL TRANSIT DISTRICT  
22 CREATED.--

23           A. The "commuter rail transit district" is created  
24 coextensive with the boundaries of Bernalillo county, Sandoval  
25 county, Santa Fe county and Valencia county.

.171696.2

underscoring material = new  
[bracketed material] = delete

1           B. The district is a public body, politic and  
2 corporate, separate and apart from the state, constituting a  
3 governmental instrumentality for the performance of essential  
4 governmental functions within the district.

5           Section 4. [NEW MATERIAL] BOARD.--

6           A. All powers, privileges and duties vested in or  
7 imposed on the district shall be exercised and performed by the  
8 board.

9           B. The board shall be composed of seven voting  
10 members and one nonvoting member as follows:

11                   (1) a county commissioner of Bernalillo county  
12 appointed by the chair of the board of county commissioners of  
13 Bernalillo county for a term of two years;

14                   (2) a county commissioner of Sandoval county  
15 appointed by the chair of the board of county commissioners of  
16 Sandoval county for a term of two years;

17                   (3) a county commissioner of Santa Fe county  
18 appointed by the chair of the board of county commissioners of  
19 Santa Fe county for a term of two years;

20                   (4) a county commissioner of Valencia county  
21 appointed by the chair of the board of county commissioners of  
22 Valencia county for a term of two years;

23                   (5) an elected official from the Albuquerque  
24 city government appointed by the mayor of Albuquerque for a  
25 term of two years, provided that the initial appointment shall

.171696.2

1 be for a term of one year;

2 (6) an elected official from the Santa Fe city  
3 government appointed by the mayor of Santa Fe for a term of two  
4 years, provided that the initial appointment shall be for a  
5 term of one year;

6 (7) the lieutenant governor for the lieutenant  
7 governor's term of office; and

8 (8) a nonvoting member appointed by the  
9 governor for a term of three years from recommendations  
10 submitted by pueblos located within the district to represent  
11 the pueblos located within the district.

12 C. A vacancy occurring by other than expiration of  
13 term shall be filled in the same manner as the original  
14 appointment, but only for the unexpired term.

15 D. The lieutenant governor shall serve as the chair  
16 of the board.

17 E. The board shall:

18 (1) annually elect a member from among the  
19 voting members to serve as vice-chair of the board and such  
20 other officers as it deems necessary;

21 (2) promulgate and adhere to policies and  
22 procedures that govern its conduct and provide meaningful  
23 opportunities for public input; and

24 (3) fix the time and place of meetings and the  
25 method of providing notice of the meetings.

.171696.2

underscoring material = new  
[bracketed material] = delete

1 F. In addition to all other powers conferred by the  
2 Commuter Rail Transit District Act, the board may:

- 3 (1) adopt bylaws;
- 4 (2) adopt and use a seal;
- 5 (3) appoint, hire and retain employees,  
6 agents, engineers, attorneys, accountants, financial advisors,  
7 investment bankers and other consultants;
- 8 (4) prescribe, in accordance with the  
9 Procurement Code, methods for auditing and allowing or  
10 rejecting claims and demands for:
- 11 (a) the awarding of contracts for the  
12 construction of improvements, works or structures;
- 13 (b) the acquisition of equipment; and
- 14 (c) the performance or furnishing of  
15 labor, materials or supplies as may be required for carrying  
16 out the purposes of the Commuter Rail Transit District Act; and
- 17 (5) appoint advisory committees as needed and  
18 define the duties of the committees.

19 G. In addition to any other scheduled meeting, the  
20 board shall meet at the call of the chair or whenever four  
21 voting members so request in writing. A majority of voting  
22 members then serving constitutes a quorum for the transaction  
23 of business, but the affirmative vote of at least four members  
24 is necessary for any action to be taken by the district.

25 H. The board may delegate the exercise of any

underscored material = new  
[bracketed material] = delete

1 executive, administrative and ministerial power to officers and  
2 employees of the district or to any officer or employee  
3 contracted by agreement to manage and administer the operations  
4 of the district; provided, however, that the mid-region council  
5 of governments shall serve as the manager and administrator of  
6 the operations of the district for a minimum of three years  
7 after the creation of the district.

8 I. The members of the board shall receive no  
9 compensation for their services except that they shall be  
10 reimbursed for actual and necessary expenses at the same rate  
11 and on the same basis as provided for public officers in the  
12 Per Diem and Mileage Act.

13 J. The district is not subject to the supervision  
14 or control of any other board, bureau, commission, department  
15 or agency of the state, except as specifically provided in the  
16 Commuter Rail Transit District Act. No use of the terms "state  
17 agency" or "instrumentality" in any other law of the state  
18 shall be deemed to refer to the district unless the district is  
19 specifically referred to in the law.

20 K. The district is a governmental instrumentality  
21 for purposes of the Tort Claims Act.

22 Section 5. [NEW MATERIAL] DISTRICT--DUTIES--POWERS.--

23 A. The district shall:

24 (1) plan, design, construct, maintain,  
25 operate, manage, equip and supervise a commuter rail system

.171696.2

underscoring material = new  
[bracketed material] = delete

1 within the district;

2 (2) make and execute agreements, contracts,  
3 leases or licenses and other instruments necessary or  
4 convenient between the district and the state, the department  
5 of transportation or any other department, agency or commission  
6 for the operation, maintenance, equipping and repair of the New  
7 Mexico rail runner express, including the equipment, tracks,  
8 facilities, stations and other real and personal property of  
9 the New Mexico rail runner express system within the district,  
10 as the agent, operator, lessee or licensee of the state, the  
11 department of transportation or any other department, agency or  
12 commission having jurisdiction or ownership of the New Mexico  
13 rail runner express system;

14 (3) finance, construct, operate and maintain a  
15 commuter rail system and provide commuter rail transportation  
16 services within the district between Belen and Santa Fe;

17 (4) adopt, establish, collect and increase or  
18 decrease fares, fees, tolls, rates or charges for the use of  
19 property of the commuter rail system;

20 (5) establish and determine schedules and  
21 terms and conditions of operation of the commuter rail system;

22 (6) have perpetual existence;

23 (7) do any and all things necessary or proper  
24 to accomplish the purposes of the Commuter Rail Transit  
25 District Act;

.171696.2

underscored material = new  
[bracketed material] = delete

1 (8) hire an executive director and such other  
2 employees or other agents as it deems necessary for the  
3 performance of its powers and duties, including consultants,  
4 financial advisors and legal advisors, and prescribe the powers  
5 and duties and fix the compensation of the employees and  
6 agents; provided, however, that the mid-region council of  
7 governments shall serve as manager and administrator of  
8 operations of the district for a minimum of three years after  
9 creation of the district. The executive director of the  
10 district shall direct affairs and business of the district,  
11 subject to the policies, control and direction of the district;

12 (9) maintain such records and accounts of  
13 revenues and expenditures as required by the state auditor.  
14 The state auditor or the state auditor's designee shall conduct  
15 an annual financial and legal compliance audit of the accounts  
16 of the authority and file copies with the governor and the  
17 legislature; and

18 (10) maintain administrative offices in the  
19 city of Albuquerque.

20 B. The district may:

21 (1) sue or be sued;  
22 (2) make and execute agreements, contracts,  
23 rental agreements, leases, licenses and other instruments  
24 necessary or convenient in the exercise of its powers and  
25 functions with any person or governmental agency;

.171696.2

underscoring material = new  
[bracketed material] = delete

1 (3) enter into contractual agreements, leases,  
2 licenses and other instruments with respect to the operation  
3 and maintenance of a commuter rail system within the district  
4 upon the terms and conditions the board considers advisable;

5 (4) enter into agreements and contracts with  
6 any bureau, department or agency of the United States  
7 government or with any state government, political subdivision,  
8 local public body or transit authority dealing with or  
9 concerning the planning, design, construction, maintenance,  
10 operation, management, equipping, acquisition or supervision of  
11 a commuter rail system;

12 (5) lease, license, grant or sell rights of  
13 way, easements or other property interests to governmental  
14 entities, corporations, partnerships, individuals or other  
15 public or private entities in any property of the district for  
16 reasonable consideration;

17 (6) utilize the services of executive  
18 departments, agencies and commissions of the state upon  
19 mutually agreeable terms and conditions;

20 (7) exercise the power of eminent domain for  
21 acquiring property, rights of way and interests in property for  
22 the uses and purposes of operating and maintaining a commuter  
23 rail system that are declared to be public uses and purposes;

24 (8) purchase, trade, exchange, acquire, buy,  
25 sell, lease, lease with option to purchase, dispose of and

.171696.2

underscored material = new  
[bracketed material] = delete

1 encumber real or personal property and interests therein,  
2 including easements, licenses and rights of way;

3 (9) acquire real or personal property by  
4 exchange, donation, gift, bequest, devise or eminent domain;

5 (10) negotiate and contract for the  
6 acquisition of property from any person, governmental entity,  
7 Indian tribe or Indian pueblo, political subdivision, local  
8 governmental bodies or the state or its departments or  
9 commissions for the construction and operation of a commuter  
10 rail system;

11 (11) receive by gift, grant, donation or  
12 otherwise, any sum of money, aid or assistance from the United  
13 States, the state of New Mexico or any other state, any  
14 political subdivision or any other public or private entity;

15 (12) use public rights of way and, with the  
16 permission of the owner, relocate or alter the construction of  
17 streets, highways, other public ways, electric and telephone  
18 lines and properties, pipelines, conduits and other properties,  
19 whether publicly or privately owned, if deemed necessary by the  
20 authority in the construction, reconstruction, repair,  
21 maintenance and operation of the commuter rail system.

22 Liability for any damage that may occur to the property shall  
23 be borne by the district;

24 (13) provide connecting transit services and  
25 connections to and from the commuter rail system within and

.171696.2

underscored material = new  
[bracketed material] = delete

1 without the district;

2 (14) promulgate rules regarding collection of  
3 fees, tolls, rates or charges for use of the commuter rail  
4 system; and

5 (15) enter into toll enforcement agreements  
6 with state and local law enforcement authorities.

7 C. The district is not subject to the supervision  
8 or control of any other board, bureau, commission, department  
9 or agency of the state, except as specifically provided in the  
10 Commuter Rail Transit District Act.

11 Section 6. [NEW MATERIAL] RATES--PENALTIES.--

12 A. The fees, tolls, rates or charges adopted or  
13 established by the board are not subject to regulation by the  
14 public regulation commission.

15 B. A person who fails to pay a fee, toll, rate or  
16 charge required for the privilege of traveling on or using  
17 property of the commuter rail system may be assessed a fine of  
18 not less than fifty dollars (\$50.00) and not more than one  
19 hundred fifty dollars (\$150). The magistrate or metropolitan  
20 court where the offense took place has jurisdiction over  
21 actions brought pursuant to this subsection.

22 Section 7. [NEW MATERIAL] AUTHORIZATION TO EMPLOY  
23 COMMUTER RAIL TRANSIT DISTRICT POLICE OFFICERS--POWERS AND  
24 DUTIES OF OFFICERS.--

25 A. The district may employ and assign duties of

.171696.2

underscoring material = new  
[bracketed material] = delete

1 commuter rail transit district police officers for the  
2 district.

3 B. At all times while on duty, commuter rail  
4 transit district police officers shall carry commissions of  
5 office issued by the district. Commuter rail transit district  
6 police officers shall have the powers of peace officers on the  
7 New Mexico rail runner express and on all property, tracks,  
8 rights of way, easements, locomotives, cars and facilities  
9 owned, leased, licenced or operated by the commuter rail  
10 transit district. Within this territory, a commuter rail  
11 transit police officer may enforce all applicable laws,  
12 ordinances and regulations, but no arrest for violation of any  
13 law, ordinance or regulation is valid unless, at the time of  
14 arrest, the commuter rail transit police officer is wearing:

15 (1) a distinctive badge bearing the name of  
16 the district issued by the district; or

17 (2) a distinctive uniform prescribed and  
18 issued by the district.

19 C. A person employed by the district as a commuter  
20 rail transit district police officer shall fulfill the  
21 requirements for certification in Subsection A of Section  
22 29-7-6 NMSA 1978 within one year of the date of first  
23 employment.

24 Section 8. [NEW MATERIAL] BONDS.--

25 A. The district may issue bonds for the purpose of  
.171696.2

underscored material = new  
[bracketed material] = delete

1 financing the purchase, construction, renovation, equipping or  
2 furnishing a commuter rail system. The district shall issue  
3 the bonds pursuant to resolution of the board, and the bonds  
4 shall be payable solely out of all or a specified portion of  
5 the revenues as designated by the board. Proceeds of the bonds  
6 may be used to pay expenses incurred in the preparation,  
7 issuance and sale of the bonds.

8 B. As provided in the resolution of the board under  
9 which the bonds are authorized to be issued, the bonds shall:

10 (1) be executed and delivered by the district;

11 (2) be in a form and denomination and include  
12 terms and maturities;

13 (3) be subject to optional or mandatory  
14 redemption prior to maturity with or without a premium;

15 (4) be in fully registered form or bearer form  
16 registrable as to principal or interest or both;

17 (5) bear conversion privileges;

18 (6) be payable in installments and at a time  
19 not exceeding forty years from the date of issuance;

20 (7) be payable within or without the state;

21 (8) have the principal paid in yearly amounts  
22 beginning not later than two years from the date of issuance of  
23 the bonds;

24 (9) be subject to purchase at the option of  
25 the holder or the district;

.171696.2

underscored material = new  
[bracketed material] = delete

1 (10) be executed by the officers of the  
2 district, including the use of one or more facsimile signatures  
3 so long as at least one manual signature appears on the bonds,  
4 which signatures may be either of an officer of the district or  
5 of an agent authenticating the same;

6 (11) be in a form of coupon bonds that have  
7 attached interest coupons bearing a manual or facsimile  
8 signature of an officer of the district; and

9 (12) be sold at a net effective interest rate  
10 not exceeding the maximum net effective interest rate permitted  
11 by the Public Securities Act.

12 C. Bonds may be sold at public or private sale at a  
13 price, in a manner and at a time determined by the board, and  
14 the board may pay all fees, expenses and commissions that it  
15 deems necessary or advantageous in connection with the sale of  
16 the bonds. The power to fix the date of sale of the bonds,  
17 receive bids or proposals, award and sell bonds, fix interest  
18 rates and take all other action necessary to sell and deliver  
19 the bonds may be delegated to an officer or agent of the  
20 district. Outstanding bonds may be refunded by the district as  
21 provided in the Public Securities Act.

22 D. A resolution authorizing the issuance of bonds  
23 may pledge all or a portion of the revenues of the district,  
24 may contain a provision for protecting and enforcing the rights  
25 and remedies of holders of the bonds and may contain provisions

.171696.2

underscored material = new  
[bracketed material] = delete

1 that the board deems appropriate for the security of the holder  
2 of the bonds.

3 E. A pledge of revenues or property made by the  
4 district shall be valid and binding from the time the pledge is  
5 made. The revenues or property so pledged shall immediately be  
6 subject to the lien of the pledge without physical delivery or  
7 further act, and the lien of the pledge shall be valid and  
8 binding against all parties having claims in tort or contract  
9 or otherwise against the authority, irrespective of whether the  
10 claiming party has notice of the lien.

11 F. Neither the directors of the board, employees of  
12 the district or a person executing the bonds shall be liable  
13 personally on the bonds or subject to personal liability or  
14 accountability by reason of the issuance of the bonds.

15 G. The district may purchase its bonds out of  
16 available funds and may hold, pledge, cancel or resell the  
17 bonds subject to and in accordance with agreements with the  
18 holders.

19 H. Bonds shall be payable solely from pledgeable  
20 revenue and shall not constitute an indebtedness or general  
21 obligation of the district, the state or political subdivisions  
22 of the state.

23 I. The form and terms of bonds shall be approved by  
24 the state board of finance before issuance of the bonds.

25 Section 9. [NEW MATERIAL] AGREEMENT OF THE STATE NOT TO

.171696.2

underscored material = new  
[bracketed material] = delete

1 LIMIT OR ALTER RIGHTS OF OBLIGEEES.--The state pledges and  
2 agrees with the holders of bonds issued under the Commuter Rail  
3 Transit District Act and with those parties who enter into  
4 contracts with the district that the state will not impair the  
5 right vested in the district or the rights or obligations of a  
6 person with which the district contracts to fulfill the terms  
7 of an agreement made pursuant to the Commuter Rail Transit  
8 District Act. The state further agrees that it will not impair  
9 the rights or remedies of the holders of the bonds of the  
10 district until the bonds have been paid or until adequate  
11 provision for payment has been made. The district may include  
12 this provision and undertaking for the state in bonds.

13 Section 10. [NEW MATERIAL] INVESTMENTS.--The board may  
14 invest or deposit funds in accordance with the prudent investor  
15 rule set forth in the Uniform Prudent Investor Act. The board  
16 may employ investment management services to invest the funds  
17 and may pay reasonable compensation for investment management  
18 services from the assets of the applicable funds. The board  
19 shall keep accurate and complete records and accounts  
20 concerning the investment portfolio.

21 Section 11. [NEW MATERIAL] EXEMPTION FROM TAXATION.--The  
22 income or other revenue of the district, all properties at any  
23 time owned by the district, all bonds issued by the district  
24 and the income from the bonds issued by the district are exempt  
25 from taxation in the state.

.171696.2

underscored material = new  
[bracketed material] = delete

1           Section 12. [NEW MATERIAL] GOVERNMENTAL COOPERATION.--The  
2 state, or a department, commission or agency of the state, a  
3 political subdivision, municipality or a county may:

4           A. sell, lease, loan, donate, grant, convey,  
5 assign, transfer and otherwise dispose to the district real or  
6 personal property or interests therein, including rights of  
7 way, track, cars, locomotives and other rail equipment and  
8 facilities; or

9           B. enter into agreements for the joint financing,  
10 construction, operation or maintenance of a commuter rail  
11 system in connection with the financing, construction,  
12 operation or maintenance of a commuter rail system or a  
13 regional transit system under the Regional Transit District  
14 Act.

15           Section 13. [NEW MATERIAL] NOTICE--OPPORTUNITY FOR  
16 COMMENT.--At least ten days prior to a regularly scheduled  
17 meeting, the board shall make available to the public written  
18 or electronic notice of the time and agenda of the meeting.  
19 The board shall designate during each meeting a public comment  
20 period and shall offer the public an opportunity to comment.

21           Section 14. [NEW MATERIAL] TAXATION.--The district has no  
22 direct taxation authority.

23           Section 15. A new section of the County Local Option  
24 Gross Receipts Taxes Act is enacted to read:

25           "[NEW MATERIAL] COUNTY COMMUTER RAIL GROSS RECEIPTS TAX--  
.171696.2

underscoring material = new  
[bracketed material] = delete

1 AUTHORITY TO IMPOSE--RATE--ELECTION REQUIRED.--

2 A. Within thirty days of a request by resolution of  
3 the board of directors of the commuter rail transit district,  
4 the governing body of each county that is within the commuter  
5 rail transit district shall impose by identical ordinances an  
6 excise tax at the rate of one-eighth of one percent of the  
7 gross receipts of any person engaging in business in the  
8 commuter rail transit district for the privilege of engaging in  
9 business. The tax may be referred to as the "county commuter  
10 rail gross receipts tax".

11 B. Each governing body, at the time of enacting an  
12 ordinance imposing the tax authorized in Subsection A of this  
13 section, shall dedicate the revenue for the purposes authorized  
14 by the Commuter Rail Transit District Act.

15 C. An ordinance imposing a county commuter rail  
16 gross receipt tax shall not go into effect until after a joint  
17 election is held by all counties within the commuter rail  
18 transit district, and a majority of the voters of the commuter  
19 rail transit district voting in the election votes in favor of  
20 imposing the tax. Each governing body shall adopt an ordinance  
21 calling for a joint election within seventy-five days of the  
22 date the resolution is adopted on the question of imposing the  
23 tax. The question shall be submitted to the voters of the  
24 commuter rail transit district as a separate question at the  
25 next general election or at a joint special election that is

.171696.2

underscoring material = new  
[bracketed material] = delete

1 called for that purpose by each governing body before the next  
2 general election. A joint special election shall be called,  
3 conducted and canvassed substantially in the same manner as  
4 provided by law for general elections. If a majority of the  
5 voters in the commuter rail transit district voting on the  
6 question approves the ordinance imposing the county commuter  
7 rail gross receipts tax, the ordinance shall become effective  
8 in accordance with the provisions of the County Local Option  
9 Gross Receipts Taxes Act. If the question of imposing the  
10 county commuter rail gross receipts tax fails, the governing  
11 bodies shall not again propose the imposition of any increment  
12 of the tax for a period of one year from the date of the  
13 election.

14 D. The governing body of a county imposing a county  
15 commuter rail gross receipts tax shall transfer all proceeds  
16 from the tax to the commuter rail transit district for the  
17 purposes specified in the ordinance and in accordance with the  
18 provisions of the Commuter Rail Transit District Act."

19 Section 16. TEMPORARY PROVISIONS.--On July 1, 2008:

20 A. all real and personal property, personnel,  
21 contracts, leases, licenses, appropriations, money, records,  
22 user fees, equipment and supplies of the department of  
23 transportation that relate to the New Mexico rail runner  
24 express shall be transferred to the commuter rail transit  
25 district; and

.171696.2

