

HOUSE BILL 400

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

INTRODUCED BY

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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 15 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;

B. "commuter rail system" means a New Mexico state-owned system that provides railroad transportation for commuters and other rail passengers between Belen and Santa

Fe. "Commuter rail system" includes all real and personal property, tracks, rights of way, easements, locomotives, cars, equipment, tools and facilities that are owned, purchased, leased, operated, licensed or acquired by the district, either alone or in cooperation with other governmental entities, corporations, partnerships, individuals, firms or other public or private entities;

C. "department" means the department of transportation;

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

E. "New Mexico rail runner express" means the commuter rail system operated by the department or the district; and

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

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

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

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

Section 4. [NEW MATERIAL] BOARD.--

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

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

(1) a county commissioner of Bernalillo county appointed by the chair of the board

of county commissioners of Bernalillo county for a term of two years;

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

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

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

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

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

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

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

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

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

E. The board shall:

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

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

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

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

(1) adopt bylaws;

(2) adopt and use a seal;

(3) appoint, hire and retain employees, agents, engineers, attorneys, accountants, financial advisors, investment bankers and other consultants;

(4) prescribe, in accordance with the Procurement Code, methods for auditing and allowing or rejecting claims and demands for:

(a) the awarding of contracts for the construction of improvements, works or structures;

(b) the acquisition of equipment; and

(c) the performance or furnishing of labor, materials or supplies as may be required for carrying out the purposes of the Commuter Rail Transit District Act; and

(5) appoint advisory committees as needed and define the duties of the committees.

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

H. The board may delegate the exercise of any executive, administrative and ministerial power to officers and employees of the district or to any officer or employee contracted by agreement to manage and administer the operations of the district; provided, however, that the mid-region council of governments shall serve as the manager

and administrator of the operations of the district for a minimum of three years after the creation of the district.

I. The members of the board shall receive no compensation for their services except that they shall be

reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act.

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

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

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

A. The district shall:

(1) execute a lease and operating agreement with the department to lease components of the commuter rail system from the department and operate the commuter rail system;

(2) maintain levels of insurance that comply with federal law and are consistent with the district's operating agreement with the department;

(3) plan, design, construct, maintain, operate, manage, equip and supervise a commuter rail system within the district;

(4) make and execute agreements, contracts, leases or licenses and other instruments necessary or convenient between the district and the state, the department of transportation or any other department, agency or commission for the operation, maintenance, equipping and repair of the New Mexico rail runner express, including the equipment, tracks, facilities, stations and other real and personal property of the New

Mexico rail runner express system within the district, as the agent, operator, lessee or licensee of the state, the department of transportation or any other department, agency or commission having jurisdiction or ownership of the New Mexico rail runner express system; provided, however, that the terms of an operating agreement or lease entered into between the department and the district shall first be approved by the state transportation commission;

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

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

(7) establish and determine schedules and terms and conditions of operation of the commuter rail system;

(8) have perpetual existence;

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

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

(11) report to the legislative finance committee on a quarterly basis regarding the district budget; and

(12) maintain administrative offices in the city of Albuquerque.

B. The district may:

(1) sue or be sued;

(2) make and execute agreements, contracts, rental agreements, leases, licenses and other instruments necessary or convenient in the exercise of its powers and functions with any person or governmental agency;

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

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

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

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

(7) exercise the power of eminent domain for acquiring property, rights of way and interests in property solely for the purposes of operating and maintaining a commuter rail system that are declared to be public uses and purposes; provided, however, that if the district determines that all or a part of the property acquired pursuant to this paragraph is

not necessary or desirable, the district may offer the unnecessary or undesirable portion of the property for sale, lease or trade. If the determination is made within five years of the date of acquisition under this paragraph, and notwithstanding the provisions of Chapter 13, Article 6 NMSA 1978, the district may first offer that property to the party from whom the property was acquired pursuant to Section 42-2-23 NMSA 1978;

(8) purchase, trade, exchange, acquire, buy, sell, lease, lease with option to purchase, dispose of and encumber real or personal property and interests therein, including easements, licenses and rights of way;

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

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

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

(12) use public rights of way and, with the permission of the owner, relocate or alter the construction of streets, highways, other public ways, electric and telephone lines and properties, pipelines, conduits and other properties, whether publicly or privately owned, if deemed necessary by the authority in the construction, reconstruction, repair, maintenance and operation of the commuter rail system. Liability for any damage that may occur to the property shall be borne by the district;

(13) provide connecting transit services and connections to and from the commuter rail system within and without the district, including transit services provided pursuant to contracts with regional transit district transit providers or local transit

providers;

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

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

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

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

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

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

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

A. The district may employ and assign duties of commuter rail transit district police officers for the district.

B. At all times while on duty, commuter rail transit district police officers shall carry commissions of office issued by the district. Commuter rail transit district police officers shall have the powers of peace officers on the New Mexico rail runner express and on all property, tracks, rights of way, easements, locomotives, cars and facilities owned, leased, licenced or operated by the commuter rail transit district. Within this territory, a commuter

rail transit police officer may enforce all applicable laws, ordinances and regulations, but no arrest for violation of any law, ordinance or regulation is valid unless, at the time of arrest, the commuter rail transit police officer is wearing:

- (1) a distinctive badge bearing the name of the district issued by the district; or
- (2) a distinctive uniform prescribed and issued by the district.

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

Section 8. [NEW MATERIAL] BONDS.--

A. In order to provide funds to finance district projects, the New Mexico finance authority, when directed by the board, is authorized, subject to the limitations of this section, to issue bonds from time to time, payable from revenue of the district not otherwise obligated.

B. The New Mexico finance authority, when directed by the board, may issue bonds to refund other bonds issued by or at the direction of the board pursuant to this section by exchange or current or advance refunding.

C. In consultation with the board, the New Mexico finance authority shall determine the terms, covenants and conditions of the bonds; provided that the project design life of a project meets or exceeds the life of the bond issued for that project and each series of bonds shall be sold, executed and delivered in accordance with the provisions of the New Mexico Finance Authority Act. The New Mexico finance authority may enter into interest rate exchange agreements, interest rate swap contracts, insurance agreements, remarketing agreements and any other agreements deemed necessary in connection with the issuance of the bonds.

D. Proceeds of the bonds may be used to pay expenses incurred in the

preparation, administration, issuance and sale of the bonds and, together with the earnings on the proceeds of the bonds, may be used to pay rebate, penalty, interest and other obligations relating to the bonds and the proceeds of the bonds under the Internal Revenue Code of 1986, as amended.

E. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bond for value.

F. The bonds shall be legal investments for a person or board charged with the investment of public funds and may be accepted as security for a deposit of public money and, with the interest thereon, are exempt from taxation by the state and a political subdivision or agency of the state.

G. Any law authorizing the imposition or distribution of taxes or fees pledged, that affects those taxes and fees, shall not be amended or repealed or otherwise directly or indirectly modified so as to impair outstanding bonds secured by a pledge of revenues, unless the bonds have been discharged in full or provisions have been made for a full discharge. In addition, while any bonds issued by the New Mexico finance authority pursuant to the provisions of this section remain outstanding, the powers or duties of the district or the authority shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holder of such bonds.

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

I. The New Mexico finance authority shall report to the appropriate legislative interim committee on the status of bonds issued pursuant to this section."

Section 9. [NEW MATERIAL] AGREEMENT OF THE STATE NOT TO LIMIT OR ALTER RIGHTS OF OBLIGEEES.--The state pledges and agrees with the holders of bonds issued under the Commuter Rail Transit District Act and with those parties who enter into contracts with the district that the state will not impair the right vested in the district or the rights or obligations of a person with which the district contracts to fulfill the terms of an agreement made pursuant to the Commuter Rail Transit District Act. The state further agrees that it will not impair the rights or remedies of the holders of the bonds of the district until the bonds have been paid or until adequate provision for payment has been made. The district may include this provision and undertaking for the state in bonds.

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

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

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

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

B. enter into agreements for the joint financing, construction, operation or

maintenance of a commuter rail system in connection with the financing, construction, operation or maintenance of a commuter rail system or a regional transit system under the Regional Transit District Act.

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

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

Section 15. [NEW MATERIAL] LEASE OF COMMUTER RAIL SYSTEM.--Upon a vote by the majority of voters in the district to approve the ordinance imposing the commuter rail gross receipts tax, the department shall lease its interest in the New Mexico rail runner express and the appropriate portions of the commuter rail system to the district for a nominal cost. The lease shall be for a term to coincide with the existence and operation of the district.

Section 16. A new section of the County Local Option Gross Receipts Taxes Act is enacted to read:

"[NEW MATERIAL] COUNTY COMMUTER RAIL GROSS RECEIPTS TAX-- AUTHORITY TO IMPOSE--RATE--ELECTION REQUIRED.--

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

B. Each governing body, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, shall dedicate the revenue for the purposes

authorized by the Commuter Rail Transit District Act.

C. An ordinance imposing a county commuter rail gross receipt tax shall not go into effect until after a joint election is held by all counties within the commuter rail transit district, and a majority of the voters of the commuter rail transit district voting in the election votes in favor of imposing the tax. Within seventy-five days of the date the ordinance imposing the tax is adopted, each governing body shall adopt a resolution calling for a joint election on the question of imposing the tax. The question shall be submitted to the voters of the commuter rail transit district as a separate question at the next general election. If a majority of the voters in the commuter rail transit district voting on the question approves the ordinance imposing the county commuter rail gross receipts tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the county commuter rail gross receipts tax fails, the governing bodies shall not again propose the imposition of any increment of the tax for a period of one year from the date of the election.

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

Section 18. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.