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HOUSE BILL 164

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

James G. Taylor

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

**RELATING TO THE SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX ACT;
ALLOWING MUNICIPALITIES TO IMPOSE, WITH VOTER APPROVAL, AN
EXCISE TAX TO FUND MUNICIPAL WATER AND WASTEWATER PROJECTS AND
SYSTEMS; AMENDING SECTIONS OF THE NMSA 1978; DECLARING AN
EMERGENCY.**

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

**Section 1. Section 7-19-11 NMSA 1978 (being Laws 1979,
Chapter 397, Section 2, as amended) is amended to read:**

**"7-19-11. DEFINITIONS. --As used in the Supplemental
Municipal Gross Receipts Tax Act:**

**A. "department" or "division" means the taxation
and revenue department, the secretary of taxation and revenue
or any employee of the department exercising authority
lawfully delegated to that employee by the secretary;**

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1 B. "governing body" means the city council or city
2 commission of a municipality;

3 C. "municipality" means any incorporated city,
4 town or village [~~having previously qualified to impose and did~~
5 ~~impose the tax pursuant to the provisions of the Supplemental~~
6 ~~Municipal Gross Receipts Tax Act in effect prior to this 1997~~
7 ~~act~~];

8 D. "person" means an individual or any other legal
9 entity;

10 E. "refunding bonds" means bonds issued pursuant
11 to the provisions of the Supplemental Municipal Gross Receipts
12 Tax Act to refund supplemental municipal gross receipts tax
13 bonds issued pursuant to the provisions of that act;

14 F. "state gross receipts tax" means the gross
15 receipts tax imposed under the Gross Receipts and Compensating
16 Tax Act; and

17 G. "supplemental municipal gross receipts tax"
18 means the tax authorized to be imposed under the Supplemental
19 Municipal Gross Receipts Tax Act. "

20 Section 2. Section 7-19-12 NMSA 1978 (being Laws 1979,
21 Chapter 397, Section 3, as amended) is amended to read:

22 "7-19-12. AUTHORIZATION TO IMPOSE SUPPLEMENTAL MUNICIPAL
23 GROSS RECEIPTS TAX--AUTHORIZATION FOR ISSUANCE OF SUPPLEMENTAL
24 MUNICIPAL GROSS RECEIPTS BONDS--ELECTION REQUIRED. --

25 A. The majority of the members elected to the

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1 governing body of a municipality may enact an ordinance
2 imposing an excise tax on any person engaging in business in
3 the municipality for the privilege of engaging in business in
4 the municipality. This tax is to be referred to as the
5 "supplemental municipal gross receipts tax" and is to be
6 dedicated for the purposes of acquiring water rights or
7 designing, constructing, acquiring, equipping, purchasing or
8 otherwise improving municipal water and wastewater systems or
9 the payment of special obligation bonds issued for those
10 purposes. The rate of the tax shall not exceed one percent of
11 the gross receipts of the person engaging in business and
12 shall be imposed in [~~one-fourth~~] one-sixteenth percent
13 increments if less than one percent.

14 B. The governing body of a municipality enacting
15 an ordinance imposing the tax authorized in Subsection A of
16 this section shall submit the question of imposing [~~such~~] the
17 tax [~~and the question of the issuance of supplemental~~
18 ~~municipal gross receipts bonds in an amount not to exceed nine~~
19 ~~million dollars (\$9,000,000), for which the revenue from the~~
20 ~~supplemental municipal gross receipts tax is dedicated] to the
21 qualified electors of the municipality at a regular or special
22 election.~~

23 C. The [~~questions~~] question referred to in
24 Subsection B of this section shall be submitted to a vote of
25 the qualified electors of the municipality [~~as two separate~~

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1 ~~ballot questions, which shall be~~ in substantially ~~[in]~~ the
2 following form:

3 [~~(1)~~] ~~"Shall the municipality be authorized to~~
4 ~~issue supplemental municipal gross receipts bonds in an amount~~
5 ~~of not exceeding _____ dollars for the purpose~~
6 ~~of constructing and equipping and otherwise acquiring a~~
7 ~~municipal water supply system?~~

8 For _____ Against _____"; and

9 ~~(2)~~] "Shall the municipality impose an excise
10 tax for the privilege of engaging in business in the
11 municipality which shall be known as the "supplemental
12 municipal gross receipts tax" and which shall be imposed at a
13 rate of _____ percent of the gross receipts of the person
14 engaging in business, the proceeds of which are dedicated ~~[to~~
15 ~~the payment of supplemental municipal gross receipts bonds]~~
16 for the purposes of acquiring water rights or designing,
17 constructing, acquiring, equipping, purchasing or otherwise
18 improving municipal water and wastewater systems or the
19 payment of special obligation bonds issued for those purposes?

20 For _____ Against _____".

21 D. Only those voters who are registered electors
22 who reside within the municipality shall be permitted to vote
23 on ~~[these two]~~ the question. The procedures for conducting
24 the election shall be substantially the same as the applicable
25 provisions in Sections 3-30-1, 3-30-6 and 3-30-7 NMSA 1978

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1 relating to municipal debt.

2 E. If at an election called pursuant to this
3 section a majority of the voters voting on [~~each of the two~~
4 ~~questions~~] the question vote in the affirmative, [~~on each such~~
5 ~~question, then~~] the ordinance imposing the supplemental
6 municipal gross receipts tax shall be approved. If at [~~such~~
7 the election a majority of the voters voting on [~~such~~
8 ~~questions~~] the question fail to approve [~~any of~~] the
9 [~~questions, then~~] question, the ordinance imposing the tax
10 shall be disapproved and the [~~questions~~] question required to
11 be submitted by Subsection B of this section shall not be
12 submitted to the voters for a period of one year from the date
13 of the election.

14 F. Any ordinance enacted under the provisions of
15 this section shall include an effective date of either July 1
16 or January 1, whichever date occurs first after the expiration
17 of at least [~~five~~] three months from the date [~~of the~~
18 ~~election~~] a certified copy of any ordinance imposing a
19 supplemental municipal gross receipts tax [~~shall be~~] is mailed
20 or delivered to the [~~division~~] department within five days
21 after the ordinance is adopted by the approval by the
22 electorate. Any ordinance repealing the imposition of a tax
23 under the provisions of the Supplemental Municipal Gross
24 Receipts Tax Act shall become effective on either July 1 or
25 January 1, after the expiration of at least [~~five~~] three

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1 months from the date the ordinance is repealed by the
2 governing body.

3 G. Nothing in this section [~~is intended to or does~~
4 ~~alter~~] alters the effectiveness or validity of [~~any~~] actions
5 taken in accordance with [~~Subsection G of Section 80 of~~
6 ~~Chapter 20 of Laws 1986~~] prior law governing supplemental
7 municipal gross receipts taxes. "

8 Section 3. Section 7-19-15 NMSA 1978 (being Laws 1979,
9 Chapter 397, Section 6, as amended) is amended to read:

10 "7-19-15. COLLECTION BY DEPARTMENT--TRANSFER OF
11 PROCEEDS--DEDUCTIONS. --

12 A. The department shall collect the supplemental
13 municipal gross receipts tax in the same manner and at the
14 same time it collects the state gross receipts tax.

15 B. The department shall withhold an administrative
16 fee pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA
17 1978. The department shall transfer to each municipality for
18 which it is collecting a supplemental municipal gross receipts
19 tax the amount of the tax collected less the administrative
20 fee withheld and less any disbursements for tax credits,
21 refunds and the payment of interest applicable to the
22 supplemental municipal gross receipts tax. Transfer of the
23 tax to a municipality shall be made within the month following
24 the month in which the tax is collected. "

25 Section 4. Section 7-19-17 NMSA 1978 (being Laws 1979,

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1 Chapter 397, Section 8, as amended) is amended to read:

2 "7-19-17. ISSUANCE OF BONDS--PURPOSES. --

3 A. If the ordinance imposing the supplemental
4 municipal gross receipts tax is approved as provided in
5 Subsection E of Section 7-19-12 NMSA 1978, the governing body
6 of a municipality may issue bonds pursuant to the Supplemental
7 Municipal Gross Receipts Tax Act [~~in an amount not to exceed~~
8 ~~nine million dollars (\$9,000,000)~~]. The supplemental
9 municipal gross receipts bonds shall be issued for the purpose
10 of [~~constructing and equipping and otherwise acquiring a~~
11 ~~municipal water supply system, including the purchase of water~~
12 ~~rights and easements, equipment and professional fees related~~
13 ~~thereto, to be paid back from the proceeds of the supplemental~~
14 ~~municipal gross receipts tax imposed~~] acquiring water rights
15 or designing, constructing, acquiring, equipping, purchasing
16 or otherwise improving municipal water and wastewater systems.

17 B. Supplemental municipal gross receipts bonds
18 shall be issued and sold as provided in the Supplemental
19 Municipal Gross Receipts Tax Act. The bonds shall be
20 authorized by an ordinance adopted by a majority of the
21 members of the governing body, and the governing body [~~of the~~
22 ~~municipality~~] shall determine at its discretion the terms,
23 covenants and conditions of the supplemental municipal gross
24 receipts bonds, including but not limited to date of issuance,
25 denomination, maturity, [~~coupon~~] interest rates, call

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1 features, premium, registration, refundability and other
2 matters covering the general and technical aspects of their
3 issuance. ~~[These]~~ The bonds may be either serial or term and
4 may be sold by the governing body ~~[of the municipality]~~ at the
5 time and in the manner as the governing body may elect, at
6 either public or private sale. The supplemental municipal
7 gross receipts bonds shall not be considered or held to be
8 general obligations of the municipality issuing them and are
9 payable ~~[solely from the revenue accruing from the revenue of]~~
10 from the net receipts derived from the supplemental municipal
11 gross receipts tax and from other properly pledged revenues.
12 The ordinance authorizing the tax shall be irrevocable until
13 these bonds are fully paid. "

14 Section 5. Section 7-19-17.1 NMSA 1978 (being Laws 1997,
15 Chapter 219, Section 4) is amended to read:

16 "7-19-17.1. REFUNDING BONDS-- AUTHORIZATION. --

17 A. Any municipality may issue refunding bonds for
18 the purpose of refinancing, paying and discharging all or any
19 part of outstanding supplemental municipal gross receipts
20 ~~[tax]~~ bonds of any one or more or all outstanding issues:

21 (1) for the acceleration, deceleration or
22 other modification of the payment of such obligations,
23 including without limitation any capitalization of any
24 interest thereon in arrears or about to become due for any
25 period not exceeding one year from the date of the refunding

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1 bonds;

2 (2) for the purpose of reducing interest
3 costs or affecting other economies;

4 (3) for the purpose of modifying or
5 eliminating restrictive contractual limitations pertaining to
6 the issuance of additional bonds, otherwise concerning the
7 outstanding bonds or to any facilities relating thereto; or

8 (4) for any combination of such purposes.

9 B. The municipality may pledge irrevocably for the
10 payment of interest and principal on refunding bonds the
11 appropriate pledged revenues, which may be pledged to an
12 original issue of bonds as provided in the Supplemental
13 Municipal Gross Receipts Tax Act. Nothing in this section
14 shall ~~[permit]~~ prohibit the pledge of the supplemental
15 municipal gross receipts tax revenue to the payment of bonds
16 that refund bonds issued under any other provision of law for
17 the purposes of acquiring water rights or designing,
18 construction, acquiring, equipping, purchasing or otherwise
19 improving municipal water or wastewater systems.

20 C. Refunding bonds may be issued separately or
21 issued in combination in one series or more.

22 D. Refunding bonds issued pursuant to the
23 Supplemental Municipal Gross Receipts Tax Act shall be
24 authorized by ordinance adopted by a majority of the members
25 of the governing body. Any bonds that are refunded under the

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1 provisions of this section shall be paid at maturity or on any
2 permitted prior redemption date in the amounts, at the time
3 and places and, if called prior to maturity, in accordance
4 with any applicable notice provisions, all as provided in the
5 proceedings authorizing the issuance of the refunded bonds, or
6 otherwise appertaining thereto, except for any such bond that
7 is voluntarily surrendered for exchange or payment by the
8 holder or owner.

9 E. Provision shall be made for paying the bonds
10 refunded at the time or places provided in Subsection D of
11 this section. The principal amount of the refunding bonds
12 [~~shall not~~] may exceed, [~~but may~~] be less than or be the same
13 as, the principal amount of the bonds being refunded so long
14 as provision is duly and sufficiently made for the payment of
15 the refunded bonds.

16 F. The proceeds of refunding bonds, including any
17 accrued interest and premium appertaining to the sale of
18 refunding bonds, shall either be immediately applied to the
19 retirement of the bonds being refunded or be placed in escrow
20 in a commercial bank or trust company that possesses and is
21 exercising trust powers and that is a member of the federal
22 deposit insurance corporation, to be applied to the payment of
23 the principal of, interest on and any prior redemption premium
24 due in connection with the bonds being refunded; provided that
25 such refunding bond proceeds, including any accrued interest

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1 and any premium appertaining to a sale of refunding bonds, may
2 be applied to the establishment and maintenance of a reserve
3 fund and to the payment of expenses incidental to the
4 refunding and the issuance of the refunding bonds, the
5 interest on the refunding bonds and the principal of the
6 refunding bonds or both interest and principal as the
7 municipality may determine. Nothing in this section requires
8 the establishment of an escrow if the refunded bonds become
9 due and payable within one year from the date of the refunding
10 bonds and if the amounts necessary to retire the refunded
11 bonds within that time are deposited with the paying agent for
12 the refunded bonds. Any such escrow shall not necessarily be
13 limited to proceeds of refunding bonds but may include other
14 money available for its escrow purpose. Any proceeds in
15 escrow pending such use may be invested or reinvested in
16 bills, certificates of indebtedness, notes or bonds that are
17 direct obligations of or the principal and interest of which
18 obligations are unconditionally guaranteed by the United
19 States or in certificates of deposit of banks that are members
20 of the federal deposit insurance corporation, the par value of
21 which certificates of deposit is collateralized by a pledge of
22 obligations of or the payment of which is unconditionally
23 guaranteed by the United States, the par value of which
24 obligations is at least seventy-five percent of the par value
25 of the certificates of deposit. Such proceeds and investments

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1 in escrow, together with any interest or other income to be
2 derived from any such investment, shall be in an amount at all
3 times sufficient as to principal, interest, any prior
4 redemption premium due and any charges of the escrow agent
5 payable therefrom to pay the bonds being refunded as they
6 become due at their respective maturities or due at any
7 designated prior redemption date in connection with which the
8 municipality shall exercise a prior redemption option. Any
9 purchaser of any refunding bond issued pursuant to the
10 provisions of the Supplemental Municipal Gross Receipts Tax
11 Act is in no manner responsible for the application of the
12 proceeds thereof by the municipality or any of its officers,
13 agents or employees.

14 G. Refunding bonds may be sold at a public or
15 negotiated sale and may bear such additional terms and
16 provisions as may be determined by the municipality subject to
17 limitations in the Supplemental Municipal Gross Receipts Tax
18 Act. The terms, provisions and authorization of the refunding
19 bonds are not subject to the provisions of any other statute,
20 provided that the Public Securities Limitation of Action Act
21 shall be fully applicable to the issuance of refunding bonds.

22 H. The municipality shall receive from the
23 department of finance and administration written approval of
24 any refunding bonds issued pursuant to the provisions of this
25 section. "

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1 Section 6. Section 7-19-18 NMSA 1978 (being Laws 1979,
2 Chapter 397, Section 9, as amended) is amended to read:

3 "7-19-18. SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX--USE
4 OF PROCEEDS--RESTRICTION. --

5 A. The proceeds from the supplemental municipal
6 gross receipts tax [~~shall be deposited in a special~~
7 ~~improvement account of the municipality and~~] shall be used
8 only for:

9 (1) the payment of the principal of, interest
10 on, any prior redemption premiums due in connection with and
11 other expenses related to the supplemental municipal gross
12 receipts bonds issued pursuant to the Supplemental Municipal
13 Gross Receipts Tax Act;

14 (2) the funding of any reserves and other
15 accounts in connection with such bonds;

16 (3) refunding bonds; and

17 (4) to the extent not needed for those
18 purposes, [~~the improvement of the municipality's water system~~]
19 for the purposes of acquiring water rights or designing,
20 constructing, acquiring, equipping, purchasing or otherwise
21 improving municipal water and wastewater systems.

22 B. When any issue of supplemental municipal gross
23 receipts bonds or refunding bonds is fully paid, the
24 supplemental municipal gross receipts tax shall cease to be
25 imposed for that issue, but may continue to be imposed for

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1 ~~[bonds enacted and approved pursuant to Section 7-19-12 NMSA~~
2 ~~1978 and thereafter issued, or for refunding bonds issued~~
3 ~~pursuant to Section 4 of this 1997 act. Any money remaining~~
4 ~~in a special improvement account after the obligations for~~
5 ~~supplemental municipal gross receipts bonds and refunding~~
6 ~~bonds are fully paid may be transferred to any other fund of~~
7 ~~the municipality] other purposes permitted by the Supplemental~~
8 ~~Municipal Gross Receipts Tax Act. "~~

9 Section 7. EMERGENCY. --It is necessary for the public
10 peace, health and safety that this act take effect
11 immediately.