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**HOUSE BILL 888**

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

**INTRODUCED BY**

**Ben Lujan**

**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**

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1 lawfully delegated to that employee by the secretary;

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

4 C. "municipality" means any incorporated city,  
5 town or village ~~[having]~~ with a population over twenty-five  
6 thousand, according to the 1990 official census, in a class B  
7 county with a valuation of over three billion dollars  
8 (\$3,000,000,000) in 1999, or with a population over five  
9 thousand, according to the 1990 official census, located in  
10 whole or in part in a class B county with a valuation of  
11 between seven hundred fifty million dollars (\$750,000,000) and  
12 one billion dollars (\$1,000,000,000) in 1999 or that  
13 previously qualified to impose and did impose the tax pursuant  
14 to the provisions of the Supplemental Municipal Gross Receipts  
15 Tax Act in effect prior to ~~[this]~~ 1997 ~~[act]~~;

16 D. "person" means an individual or any other legal  
17 entity;

18 E. "refunding bonds" means bonds issued pursuant  
19 to the provisions of the Supplemental Municipal Gross Receipts  
20 Tax Act to refund supplemental municipal gross receipts tax  
21 bonds issued pursuant to the provisions of that act;

22 F. "state gross receipts tax" means the gross  
23 receipts tax imposed under the Gross Receipts and Compensating  
24 Tax Act; and

25 G. "supplemental municipal gross receipts tax"

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1 means the tax authorized to be imposed under the Supplemental  
2 Municipal Gross Receipts Tax Act. "

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

5 "7-19-12. AUTHORIZATION TO IMPOSE SUPPLEMENTAL MUNICIPAL  
6 GROSS RECEIPTS TAX--AUTHORIZATION FOR ISSUANCE OF SUPPLEMENTAL  
7 MUNICIPAL GROSS RECEIPTS BONDS--ELECTION REQUIRED. --

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

22 B. The governing body of a municipality enacting  
23 an ordinance imposing the tax authorized in Subsection A of  
24 this section shall submit the question of imposing [~~such~~] the  
25 tax [~~and the question of the issuance of supplemental~~

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1 ~~municipal gross receipts bonds in an amount not to exceed nine~~  
2 ~~million dollars (\$9,000,000), for which the revenue from the~~  
3 ~~supplemental municipal gross receipts tax is dedicated]~~ to the  
4 qualified electors of the municipality at a regular or special  
5 election.

6 C. The ~~[questions]~~ question referred to in  
7 Subsection B of this section shall be submitted to a vote of  
8 the qualified electors of the municipality ~~[as two separate~~  
9 ~~ballot questions, which shall be]~~ in substantially ~~[in]~~ the  
10 following form:

11 ~~[(1) "Shall the municipality be authorized to~~  
12 ~~issue supplemental municipal gross receipts bonds in an amount~~  
13 ~~of not exceeding \_\_\_\_\_ dollars for the purpose~~  
14 ~~of constructing and equipping and otherwise acquiring a~~  
15 ~~municipal water supply system?~~

16 For \_\_\_\_\_ Against \_\_\_\_\_"; and

17 ~~(2)]~~ "Shall the municipality impose an excise  
18 tax for the privilege of engaging in business in the  
19 municipality which shall be known as the "supplemental  
20 municipal gross receipts tax" and which shall be imposed at a  
21 rate of \_\_\_\_\_ percent of the gross receipts of the person  
22 engaging in business, the proceeds of which are dedicated ~~[to~~  
23 ~~the payment of supplemental municipal gross receipts bonds]~~  
24 for the purposes of acquiring water rights or designing,  
25 constructing, acquiring, equipping, purchasing or otherwise

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1 improving municipal water and wastewater systems or the  
2 payment of special obligation bonds issued for those purposes?

3 For \_\_\_\_\_ Against \_\_\_\_\_".

4 D. Only those voters who are registered electors  
5 who reside within the municipality shall be permitted to vote  
6 on ~~[these two]~~ the question. The procedures for conducting  
7 the election shall be substantially the same as the applicable  
8 provisions in Sections 3-30-1, 3-30-6 and 3-30-7 NMSA 1978  
9 relating to municipal debt.

10 E. If at an election called pursuant to this  
11 section a majority of the voters voting on ~~[each of the two~~  
12 ~~questions]~~ the question vote in the affirmative, ~~[on each such~~  
13 ~~question, then]~~ the ordinance imposing the supplemental  
14 municipal gross receipts tax shall be approved. If at ~~[such]~~  
15 the election a majority of the voters voting on ~~[such~~  
16 ~~questions]~~ the question fail to approve ~~[any of]~~ the  
17 ~~[questions, then]~~ question, the ordinance imposing the tax  
18 shall be disapproved and the ~~[questions]~~ question required to  
19 be submitted by Subsection B of this section shall not be  
20 submitted to the voters for a period of one year from the date  
21 of the election.

22 F. Any ordinance enacted under the provisions of  
23 this section shall include an effective date of either July 1  
24 or January 1, whichever date occurs first after the expiration  
25 of at least ~~[five]~~ three months from the date ~~[of the~~

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1 ~~election~~] a certified copy of any ordinance imposing a  
2 supplemental municipal gross receipts tax [~~shall be~~] is mailed  
3 or delivered to the [~~division~~] department within five days  
4 after the ordinance is adopted by the approval by the  
5 electorate. Any ordinance repealing the imposition of a tax  
6 under the provisions of the Supplemental Municipal Gross  
7 Receipts Tax Act shall become effective on either July 1 or  
8 January 1, after the expiration of at least [~~five~~] three  
9 months from the date the ordinance is repealed by the  
10 governing body.

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

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

18 "7-19-15. COLLECTION BY DEPARTMENT--TRANSFER OF  
19 PROCEEDS--DEDUCTIONS.--

20 A. The department shall collect the supplemental  
21 municipal gross receipts tax in the same manner and at the  
22 same time it collects the state gross receipts tax.

23 B. The department shall withhold an administrative  
24 fee pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA  
25 1978. The department shall transfer to each municipality for

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1 which it is collecting a supplemental municipal gross receipts  
2 tax the amount of the tax collected less the administrative  
3 fee withheld and less any disbursements for tax credits,  
4 refunds and the payment of interest applicable to the  
5 supplemental municipal gross receipts tax. Transfer of the  
6 tax to a municipality shall be made within the month following  
7 the month in which the tax is collected. "

8 Section 4. Section 7-19-17 NMSA 1978 (being Laws 1979,  
9 Chapter 397, Section 8, as amended) is amended to read:

10 "7-19-17. ISSUANCE OF BONDS--PURPOSES. --

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

25 B. Supplemental municipal gross receipts bonds

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1 shall be issued and sold as provided in the Supplemental  
2 Municipal Gross Receipts Tax Act. The bonds shall be  
3 authorized by an ordinance adopted by a majority of the  
4 members of the governing body, and the governing body [~~of the~~  
5 ~~municipality~~] shall determine at its discretion the terms,  
6 covenants and conditions of the supplemental municipal gross  
7 receipts bonds, including but not limited to date of issuance,  
8 denomination, maturity, [~~coupon~~] interest rates, call  
9 features, premium, registration, refundability and other  
10 matters covering the general and technical aspects of their  
11 issuance. [~~These~~] The bonds may be either serial or term and  
12 may be sold by the governing body [~~of the municipality~~] at the  
13 time and in the manner as the governing body may elect, at  
14 either public or private sale. The supplemental municipal  
15 gross receipts bonds shall not be considered or held to be  
16 general obligations of the municipality issuing them and are  
17 payable [~~solely from the revenue accruing from the revenue of~~]  
18 from the net receipts derived from the supplemental municipal  
19 gross receipts tax and from other properly pledged revenues.  
20 The ordinance authorizing the tax shall be irrevocable until  
21 these bonds are fully paid. "

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

24 "7-19-17.1. REFUNDING BONDS-- AUTHORIZATION. --

25 A. Any municipality may issue refunding bonds for

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1 the purpose of refinancing, paying and discharging all or any  
2 part of outstanding supplemental municipal gross receipts  
3 [~~tax~~] bonds of any one or more or all outstanding issues:

4 (1) for the acceleration, deceleration or  
5 other modification of the payment of such obligations,  
6 including without limitation any capitalization of any  
7 interest thereon in arrears or about to become due for any  
8 period not exceeding one year from the date of the refunding  
9 bonds;

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

12 (3) for the purpose of modifying or  
13 eliminating restrictive contractual limitations pertaining to  
14 the issuance of additional bonds, otherwise concerning the  
15 outstanding bonds or to any facilities relating thereto; or

16 (4) for any combination of such purposes.

17 B. The municipality may pledge irrevocably for the  
18 payment of interest and principal on refunding bonds the  
19 appropriate pledged revenues, which may be pledged to an  
20 original issue of bonds as provided in the Supplemental  
21 Municipal Gross Receipts Tax Act. Nothing in this section  
22 shall [~~permit~~] prohibit the pledge of the supplemental  
23 municipal gross receipts tax revenue to the payment of bonds  
24 that refund bonds issued under any other provision of law for  
25 the purposes of acquiring water rights or designing,

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1 construction, acquiring, equipping, purchasing or otherwise  
2 improving municipal water or wastewater systems.

3 C. Refunding bonds may be issued separately or  
4 issued in combination in one series or more.

5 D. Refunding bonds issued pursuant to the  
6 Supplemental Municipal Gross Receipts Tax Act shall be  
7 authorized by ordinance adopted by a majority of the members  
8 of the governing body. Any bonds that are refunded under the  
9 provisions of this section shall be paid at maturity or on any  
10 permitted prior redemption date in the amounts, at the time  
11 and places and, if called prior to maturity, in accordance  
12 with any applicable notice provisions, all as provided in the  
13 proceedings authorizing the issuance of the refunded bonds, or  
14 otherwise appertaining thereto, except for any such bond that  
15 is voluntarily surrendered for exchange or payment by the  
16 holder or owner.

17 E. Provision shall be made for paying the bonds  
18 refunded at the time or places provided in Subsection D of  
19 this section. The principal amount of the refunding bonds  
20 [~~shall not~~] may exceed, [~~but may~~] be less than or be the same  
21 as, the principal amount of the bonds being refunded so long  
22 as provision is duly and sufficiently made for the payment of  
23 the refunded bonds.

24 F. The proceeds of refunding bonds, including any  
25 accrued interest and premium appertaining to the sale of

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1 refunding bonds, shall either be immediately applied to the  
2 retirement of the bonds being refunded or be placed in escrow  
3 in a commercial bank or trust company that possesses and is  
4 exercising trust powers and that is a member of the federal  
5 deposit insurance corporation, to be applied to the payment of  
6 the principal of, interest on and any prior redemption premium  
7 due in connection with the bonds being refunded; provided that  
8 such refunding bond proceeds, including any accrued interest  
9 and any premium appertaining to a sale of refunding bonds, may  
10 be applied to the establishment and maintenance of a reserve  
11 fund and to the payment of expenses incidental to the  
12 refunding and the issuance of the refunding bonds, the  
13 interest on the refunding bonds and the principal of the  
14 refunding bonds or both interest and principal as the  
15 municipality may determine. Nothing in this section requires  
16 the establishment of an escrow if the refunded bonds become  
17 due and payable within one year from the date of the refunding  
18 bonds and if the amounts necessary to retire the refunded  
19 bonds within that time are deposited with the paying agent for  
20 the refunded bonds. Any such escrow shall not necessarily be  
21 limited to proceeds of refunding bonds but may include other  
22 money available for its escrow purpose. Any proceeds in  
23 escrow pending such use may be invested or reinvested in  
24 bills, certificates of indebtedness, notes or bonds that are  
25 direct obligations of or the principal and interest of which

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1 obligations are unconditionally guaranteed by the United  
2 States or in certificates of deposit of banks that are members  
3 of the federal deposit insurance corporation, the par value of  
4 which certificates of deposit is collateralized by a pledge of  
5 obligations of or the payment of which is unconditionally  
6 guaranteed by the United States, the par value of which  
7 obligations is at least seventy-five percent of the par value  
8 of the certificates of deposit. Such proceeds and investments  
9 in escrow, together with any interest or other income to be  
10 derived from any such investment, shall be in an amount at all  
11 times sufficient as to principal, interest, any prior  
12 redemption premium due and any charges of the escrow agent  
13 payable therefrom to pay the bonds being refunded as they  
14 become due at their respective maturities or due at any  
15 designated prior redemption date in connection with which the  
16 municipality shall exercise a prior redemption option. Any  
17 purchaser of any refunding bond issued pursuant to the  
18 provisions of the Supplemental Municipal Gross Receipts Tax  
19 Act is in no manner responsible for the application of the  
20 proceeds thereof by the municipality or any of its officers,  
21 agents or employees.

22 G. Refunding bonds may be sold at a public or  
23 negotiated sale and may bear such additional terms and  
24 provisions as may be determined by the municipality subject to  
25 limitations in the Supplemental Municipal Gross Receipts Tax

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1 Act. The terms, provisions and authorization of the refunding  
2 bonds are not subject to the provisions of any other statute,  
3 provided that the Public Securities Limitation of Action Act  
4 shall be fully applicable to the issuance of refunding bonds.

5 H. The municipality shall receive from the  
6 department of finance and administration written approval of  
7 any refunding bonds issued pursuant to the provisions of this  
8 section. "

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

11 "7-19-18. SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX--USE  
12 OF PROCEEDS--RESTRICTION. --

13 A. The proceeds from the supplemental municipal  
14 gross receipts tax [~~shall be deposited in a special~~  
15 ~~improvement account of the municipality and~~] shall be used  
16 only for:

17 (1) the payment of the principal of, interest  
18 on, any prior redemption premiums due in connection with and  
19 other expenses related to the supplemental municipal gross  
20 receipts bonds issued pursuant to the Supplemental Municipal  
21 Gross Receipts Tax Act;

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

24 (3) refunding bonds; and

25 (4) to the extent not needed for those

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1 purposes, [~~the improvement of the municipality's water system~~]  
2 for the purposes of acquiring water rights or designing,  
3 constructing, acquiring, equipping, purchasing or otherwise  
4 improving municipal water and wastewater systems.

5 B. When any issue of supplemental municipal gross  
6 receipts bonds or refunding bonds is fully paid, the  
7 supplemental municipal gross receipts tax shall cease to be  
8 imposed for that issue, but may continue to be imposed for  
9 [~~bonds enacted and approved pursuant to Section 7-19-12 NMSA~~  
10 ~~1978 and thereafter issued, or for refunding bonds issued~~  
11 ~~pursuant to Section 4 of this 1997 act. Any money remaining~~  
12 ~~in a special improvement account after the obligations for~~  
13 ~~supplemental municipal gross receipts bonds and refunding~~  
14 ~~bonds are fully paid may be transferred to any other fund of~~  
15 ~~the municipality] other purposes permitted by the Supplemental  
16 Municipal Gross Receipts Tax Act. "~~

17 Section 7. EMERGENCY.--It is necessary for the public  
18 peace, health and safety that this act take effect  
19 immediately.