



Synopsis of House Floor Amendment #1

House Floor Amendment #1 made the following changes:

- Requires the terms of the operating and lease agreements between NMDOT and the Commuter Rail Transit District be approved by the State Transportation Commission.
- Requires the Commuter Rail Transit District to report to the Legislative Finance Committee (LFC) on a quarterly basis regarding the District’s budget.
- Authorizes the New Mexico Finance Authority (NMFA), when directed by the Commuter Rail Transit District Board of Directors, to issue bonds payable from the revenues of the District; and that NMFA shall report to the appropriate legislative interim committee on the status of any such bonds.

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee’s Amendment to House Bill 400, as amended by the House Transportation and Public Works Committee, provides the following changes:

- Requires that the district’s exercise of eminent domain may only be used “...for acquiring rights of way and interests in property solely for the purpose of operating and maintaining a commuter rail system ...”
- Any property acquired through eminent domain that is later deemed not necessary or desirable may be offered for sale, lease or trade. If this determination is made within 5 years of the date of acquisition the property must first be offered to the party from whom it was acquired.
- Clarification of the language requiring the counties to call for a joint election on the question of imposing a tax within 75 days of passage of an ordinance.

Synopsis of HTPWC Amendment

The House Transportation and Public Works Committee amendment to House Bill 400 incorporates provisions:

- Requiring the Commuter Rail Transit District (CRTD) to execute a lease and operating agreement with the New Mexico Department of Transportation (Department) to lease components of the commuter rail system from the Department and operate the commuter rail system.
- Additionally, the Amendment provides that upon a vote by the majority of voters in the District to approve the ordinance imposing the commuter rail gross receipts tax, NMDOT shall lease its interest in the New Mexico Rail Runner Express and the appropriate portions of the commuter rail system to CRTD for a nominal cost with the lease being for a term to coincide with the existence and operation of the District.

Synopsis of Original Bill

House Bill 400 enacts the Commuter Rail Transit District Act, and creates a Commuter Rail Transit District (District) comprised of Bernalillo, Sandoval, Santa Fe and Valencia Counties. Under the provisions of HB 400:

- The District will be governed by a Board composed of 7 total voting members and one non-voting member (one County Commissioner from each of the Counties within the District as appointed by the Chair of the individual County Commissions, one elected official from each of the Cities of Santa Fe and Albuquerque as appointed by their respective Mayors, the Lieutenant Governor of New Mexico who will chair the District board, and a non-voting member appointed by the Governor from recommendations submitted by Pueblos within the District).
- the District's powers and duties include:
  - finance, plan, design, construct, maintain, operate, manage, equip and supervise a commuter rail system within the District between Belen and Santa Fe;
  - adopt, establish, collect and increase or decrease fares, fees, tolls, rates or charges for the use of property of the commuter rail system;
  - issue bonds for the purpose of financing the purchase, construction, renovation, equipping or furnishing a commuter rail system
  - establish and determine schedules and terms and conditions of operation of the commuter rail system;
  - 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;
  - exercise the power of eminent domain;
  - 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;
  - provide connecting transit services and connections to and from the commuter rail system within and without the district;
  - promulgate rules regarding collection of fees, tolls, rates or charges for use of the commuter rail system;
  - enter into toll enforcement agreements with state and local law enforcement authorities; and
  - authorize and employ District police officers.
- Other provisions of the Bill provide that:
  - 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;
  - 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;

- The fees, tolls, rates or charges adopted or established by the board are not subject to regulation by the Public Regulation Commission (PRC);
- The state, or a department, commission or agency of the state, a political subdivision, municipality or a county may:
  - 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
  - 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.
- The Mid-Region Council of Governments (MRCOG) 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;
- County Commuter Rail Gross Receipts Tax Imposition: The bill also provides for the imposition of a 1/8 percent county commuter rail gross receipts tax through a joint election:
  - 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";
  - Each governing body, at the time of enacting an ordinance imposing the tax shall dedicate the revenue for the purposes authorized by the Commuter Rail Transit District Act;
  - 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. Each governing body shall adopt an ordinance calling for a joint election within seventy-five days of the date the resolution is adopted 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 or at a joint special election that is called for that purpose by each governing body before the next general election. A joint special election shall be called, conducted and canvassed substantially in the same manner as provided by law for general elections. 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; and
- 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;
- On July 1, 2008: all real and personal property, personnel, contracts, leases, licenses, appropriations, money, records, user fees, equipment and supplies of the department of transportation that relate to the New Mexico rail runner express would be transferred to the commuter rail transit district; and all contracts of the department of transportation relating to the New Mexico rail runner express shall be binding on the commuter rail transit district.
- This bill is to be enacted immediately as an emergency measure.

**FISCAL IMPLICATIONS**

House Bill 400 would allow imposition of a new 1/8 percent county commuter rail gross receipts tax in Bernalillo, Sandoval, Santa Fe and Valencia counties that would be used to offset the operating expenses of the RailRunner.. The timing of this fiscal impact will depend on when and if the board of directors of the district passes a resolution directing each county to impose the tax, and when and if the voters of the four counties approve imposition of the tax. Unless a special election is held prior, the next general election at which the tax could be approved will occur on November 4, 2008.

The table below illustrates the revenue that would be generated if the 1/8 percent increment were imposed in FY09. In FY09, these four counties will have combined taxable gross receipts totaling \$24 billion in FY09. A 1/8 percent tax on that amount would yield \$30,060.2 thousand.

**Illustration of Potential Revenue from Additional County Local Option Increments - Fiscal Year 2009**

County	FY09 Taxable Gross Receipts	Potential Revenue: 1/8%
		County Commuter Rail GRT Increment
Bernalillo	17,471,824,545	21,839,781
Sandoval	1,820,394,040	2,275,493
Santa Fe	3,972,188,628	4,965,236
Valencia	783,790,951	979,739
<b>Total</b>	<b>24,048,198,164</b>	<b>30,060,248</b>

Source: Taxation and Revenue Department, Office of Research and Statistics

RailRunner gross operations cost for Fiscal Year 2009 are projected to be \$17 million. These costs will be offset by a \$10 million federal Congestion Mitigation and Air Quality (CMAQ) grant funds, \$2.25 million of maintenance payments from BNSF and Amtrak, and \$978.1 thousand in fare revenues. This leaves \$3.8 million in operating expenses that unless another revenue stream is found will be required to be taken from the state road fund (SRF).

The projected preliminary Rail Runner gross operations costs for Fiscal Year 2010 is \$19.96 million. These costs will be offset by \$2.25 million of maintenance payments from BNSF and Amtrak and an expected \$2.38 million in fare revenues. The federal CMAQ grant funding was for a three year period through FY09. Without a revenue source, such as proposed in this Bill, NMDOT's SRF liability would increase in FY10 to a minimum of \$15.3.

## SIGNIFICANT ISSUES

The Senate Judiciary Committee's Amendment to House Bill 400 substantially increases the size of the Commuter Rail Transit Board by inclusion of a representative of each pueblo within the defined district as compared to House Bill 400 which provided representation to only one representative who would be appointed by the Governor of New Mexico from recommendations submitted by the pueblos. If all pueblos within the district are allowed representatives as proposed by the amendment, representation would be provided to the pueblos of Isleta, Sandia, Santa Ana, Jemez, Zia, San Felipe, Santa Domingo, Cochiti, Pojoaque, Tesuque, Santa Clara and San Ildefonso. The amendment does not afford representation to the Navajo Nation which is also included within the Commuter Rail Transit District. Additionally, representation would not be accorded to all municipalities within the district such as Belen, Los Lunas, Bernalillo and Espanola. Representation would only be accorded to the municipalities of Albuquerque and Santa Fe.

The Senate Judiciary Committee Amendment also establishes these Native American members as voting members on the board. The NMDOT raises concern allowing the Native American representatives to vote on issues which can indebt the district, such as bonding measures, may violate the state constitution.

House Floor amendments #1 and #2 provide for appropriate legislative and state oversight by requiring that: (1) the state highway commission review and approve any and all operating and lease agreements between the NMDOT and the commuter rail transit district; and (2) ensuring that oversight is provided by quarterly budget status reports to the LFC and review of bond sale activities of the district through the NMFA and the appropriate legislative oversight committees.

The House Taxation and Revenue Committee's Amendment addresses eminent domain concerns. The Attorney General notes that "NMSA Section 42-2-23 (1978), incorporated in this amendment, grants an option and a right to repurchase to the original owner, their personal representative or heirs in the event the state, a state agency or other entity condemns property in excess of the dimensions or amount necessary for public use, as determined by the condemner, if such determination occurs within five years of the date of condemnation. However, the amendments to this bill provide that the District may first offer excess property to the prior owner. The District's discretionary authority to sell excess property to the prior owner appears to conflict with Section 42-2-23 which grants an option and right to repurchase to the original owner." (Highlight added).

The House Transportation and Public Works Amendment to House Bill 400 ensures that ownership of the assets of the commuter rail remain with the NMDOT. The Amendment also provides that there will be an operating agreement between the NMDOT and the CRTDA. This begins to address some of the concerns expressed with oversight. The CRTDA would however continue to remain "... a public body, politic and corporate, separate and apart from the state..." that does not report to any entity of the state or to the Legislature except as provided for within, a yet to be negotiated, operating agreement between the NMDOT and the CRTDA.

The County of Santa Fe on January 29, 2008 passed a resolution objecting to the provisions of House Bill 400. The County Commission expressed concern with the taxing authority proposed within this Bill.

- Gross Receipts Tax: New Mexico’s municipalities and counties are authorized to impose over 4 percent of local option gross receipts taxes (that figure excludes several additional local option taxes that have been authorized for selected local governments). Due to increasing imposition of local option taxes, the statewide gross receipts tax rate is increasing steadily. On average, a local option gross receipts tax of about 1.9 percent will be imposed by local governments statewide by FY09. Combined with the state gross receipts tax of 5 percent, the statewide tax rate is therefore 6.9 percent.
- Ownership of Assets: House Bill 400 requires the state and NMDOT to transfer ownership of all real and personal property, equipment, personnel and supplies related to RailRunner to the District on July 1, 2008. The GRIP debt of \$400 million, however, would remain with NMDOT. There has been, to date, an investment by the state of \$175 million for the acquisition of real property (right-of-way, locomotive and train passenger cars, stations, track, ties, and signals) with another \$225 million being expended for construction activities between Bernalillo and Santa Fe. NMDOT expresses concern that given this significant investment and its responsibility for retiring this debt that ownership of these assets remains with the state.
- Oversight: The Bill specifically provides that the District is “... a public body, politic and corporate, separate and apart from the state...” As such, the state, the Legislature and NMDOT would have no oversight of commuter rail activities and services provided by the District unless specified within the Act. There are no such provisions.

NMDOT in its analysis indicates that the State of New Mexico has a substantial interest in providing oversight of the District for the following reasons:

- The state’s substantial investment in the rail, right-of-way, equipment and construction of the RailRunner project (\$400 million);
- Public interest in the provision of safeguards that make the commuter rail service a safe, quality, efficient and economic service;
- The provision of commuter rail services has not been done in this state before;
- Statewide tourism and economic development interests;
- The potential for future expansion of services to other parts of the State requiring state coordination with other potentially created rail districts;
- Statewide coordination through implementation of emergency response and environmental response plans; and
- maintaining the rail right-of-way as an interstate transportation system and in meeting federal laws, regulations, and interests.

Throughout the discussion regarding commuter rail over the past three years the significance of the commuter rail project as a statewide rather than regional project has repeatedly been pointed out by both NMDOT and MRCOG.

- Regional, Local, and Tribal Participation: In order to succeed the District must meet the needs of all localities within the District. The provisions regarding tribal, local and

regional membership and participation on the board of directors of the district to include voting provisions need to be strengthened to meet this goal. The provisions of the Bill in this regard appear to be lacking in providing full representation to all parties.

- Pre-existing agreements with and obligations to BNSF, Amtrak, and Santa Fe Southern: These agreements place limitations on NMDOT’s use of the rail right-of-way. NMDOT indicates that the Bill in its current form impairs the Department’s ability to comply with these agreements and obligations.
- Liability Allocation/Insurance: NMDOT expresses concern that the Bill is currently silent as to liability allocation between the District and the Department or liability protection in the form of insurance requirements. Commuter Rail Service carries significant liability. Language is needed to allocate liability between the District and the Department and to provide for adequate levels of insurance in order to protect the public fiscal and to compensate members of the public who are damaged by accidents and other activity associated with the commuter rail. Such language is also needed to meet the requirements of the agreements with and obligations to BNSF and Amtrak.
- MRCOG: House Bill 400 provides for MRCOG to remain as the administrator and manager of the project for at least three years.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

As noted above the Attorney General notes that “NMSA Section 42-2-23 (1978), incorporated in this amendment, grants an option and a right to repurchase to the original owner, their personal representative or heirs in the event the state, a state agency or other entity condemns property in excess of the dimensions or amount necessary for public use, as determined by the condemner, if such determination occurs within five years of the date of condemnation. However, the amendments to this bill provide that the District may first offer excess property to the prior owner. The District’s discretionary authority to sell excess property to the prior owner appears to conflict with Section 42-2-23 which grants an option and right to repurchase to the original owner.”

The Public Regulation Commission (PRC) points out that Section 6A of HB 400 provides that “The fees, tolls, rates or charges adopted or established by the Board are not subject to regulation by the Public Regulation Commission.” Current state law provides that the PRC has the authority to set passenger rates for railroads that operate solely within the state of New Mexico that are owned by the public

### **TECHNICAL ISSUES**

There are no provisions allowing for reconsideration of this tax by the electorate once it has been approved. The Bill provides that if there is a negative vote the issue may be revisited one year later.

The Bill does not define the purpose of the Act. NMDOT indicates that on Page 2, line 13, definition D, New Mexico railrunner express is defined as the commuter rail system in existence at the time the District is created. This Bill has an emergency clause which would create the district prior to the completion of the construction of the RailRunner line to Santa Fe, the



completion of stations in Santa Fe County and the operation of service to Santa Fe. NMDOT suggests that this be revised to define New Mexico railrunner express as the commuter rail service between Belen and Santa Fe, which would be consistent with the definition of commuter rail service in Section 2 B of the Bill.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Another source of revenue will need to be identified for support of the commuter rail.

#### **AMENDMENTS**

NMDOT proposes amending the Bill to replace the content of Section 16 of the Bill with provisions that require the execution of an operating and lease agreements between the NMDOT and the Commuter Rail Transit District for the use of the Department's Rail Runner train equipment, track and infrastructure by the Commuter Rail Transit District. It is suggested that this amendment also: provide that NMDOT provide staff assistance to the Commuter Rail Transit District until the District has hired their own staff; revise the definition of New Mexico rail runner express as discussed in the Technical Issues section above; and, revise Section 4 B of the Bill as introduced regarding the voting powers of the Commuter Rail Transit District Board members. These amendments should also address oversight, regional and local participation, safety, efficient and economical service and other issues discussed above.

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