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SENATE BILL 739

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO TAXATION; AUTHORIZING IMPOSITION OF MUNICIPAL AND COUNTY REGIONAL SPORTS AUTHORITY GROSS RECEIPTS TAXES; ENACTING THE REGIONAL SPORTS AUTHORITY ACT; AUTHORIZING CREATION OF REGIONAL SPORTS AUTHORITIES; PROVIDING POWERS AND DUTIES OF REGIONAL SPORTS AUTHORITIES.

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

Section 1. A new section of the Municipal Local Option Gross Receipts Taxes Act is enacted to read:

"NEW MATERIAL MUNICIPAL REGIONAL SPORTS AUTHORITY GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--RATE--ELECTION REQUIRED.--

A. Upon a request by resolution of the board of directors of a regional sports authority, a majority of the members of the governing body of a municipality that is a member of the regional sports authority pursuant to the

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1 Regional Sports Authority Act shall impose by ordinance an
2 excise tax at a rate not to exceed one-fourth percent of the
3 gross receipts of any person engaging in business in the
4 municipality for the privilege of engaging in business. A tax
5 imposed pursuant to this section may be imposed by one or more
6 ordinances, each imposing any number of tax rate increments,
7 but an increment shall not be less than one-sixteenth percent
8 and the aggregate of all rates shall not exceed one-fourth
9 percent of the gross receipts of any person engaging in
10 business in the municipality. The tax may be referred to as
11 the "municipal regional sports authority gross receipts tax".

12 B. The governing body, at the time of enacting an
13 ordinance imposing a tax authorized in Subsection A of this
14 section, shall dedicate the revenue for the management,
15 construction or operation of a regional sports authority or for
16 specific public athletic or recreational projects or services
17 of the regional sports authority pursuant to the Regional
18 Sports Authority Act.

19 C. An ordinance imposing a municipal regional
20 sports authority gross receipts tax shall not go into effect
21 until after an election is held and a majority of the voters of
22 the municipality voting in the election votes in favor of
23 imposing the tax. The governing body shall adopt a resolution
24 calling for an election within seventy-five days of the date
25 the ordinance is adopted on the question of imposing the tax.

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1 The question shall be submitted to the voters of the
2 municipality as a separate question at a regular municipal
3 election or at a special election called for that purpose by
4 the governing body. A special municipal election shall be
5 called, conducted and canvassed as provided in the Municipal
6 Election Code. If a majority of the voters voting on the
7 question approves the ordinance imposing the municipal regional
8 sports authority gross receipts tax, the ordinance shall become
9 effective in accordance with the provisions of the Municipal
10 Local Option Gross Receipts Taxes Act. If the question of
11 imposing the municipal regional sports authority gross receipts
12 tax fails, the governing body shall not again propose the
13 imposition of any increment of the tax for a period of one year
14 from the date of the election.

15 D. The governing body of a municipality imposing
16 the municipal regional sports authority gross receipts tax
17 shall transfer all proceeds from the tax to the regional sports
18 authority of which it is a member for the purposes specified in
19 the ordinance and in accordance with the provisions of the
20 Regional Sports Authority Act."

21 Section 2. A new section of the County Local Option Gross
22 Receipts Taxes Act is enacted to read:

23 "[NEW MATERIAL] COUNTY REGIONAL SPORTS AUTHORITY GROSS
24 RECEIPTS TAX--AUTHORITY TO IMPOSE--RATE--ELECTION REQUIRED.--

25 A. Upon a request by resolution of the board of

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1 directors of a regional sports authority, a majority of the
2 members of the governing body of a county that is a member of
3 the regional sports authority pursuant to the Regional Sports
4 Authority Act shall impose by ordinance an excise tax at a rate
5 not to exceed one-fourth percent of the gross receipts of any
6 person engaging in business within the sports authority area of
7 the county for the privilege of engaging in business. A tax
8 imposed pursuant to this section may be imposed by one or more
9 ordinances, each imposing any number of tax rate increments,
10 but an increment shall not be less than one-sixteenth percent
11 and the aggregate of all rates shall not exceed one-fourth
12 percent of the gross receipts of any person engaging in
13 business within the sports authority area of the county. The
14 tax may be referred to as the "county regional sports authority
15 gross receipts tax".

16 B. The governing body, at the time of enacting an
17 ordinance imposing the tax authorized in Subsection A of this
18 section, shall dedicate the revenue for the management,
19 construction or operation of a public sports authority or for
20 specific athletic or recreational projects or services of the
21 regional sports authority pursuant to the Regional Sports
22 Authority Act.

23 C. An ordinance imposing a county regional sports
24 authority gross receipts tax shall not go into effect until
25 after an election is held and a majority of the voters of the

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1 sports authority area of the county voting in the election
2 votes in favor of imposing the tax. The governing body shall
3 adopt an ordinance calling for an election within seventy-five
4 days of the date the resolution is adopted on the question of
5 imposing the tax. The question shall be submitted to the
6 voters of the sports authority area of the county as a separate
7 question at a general election or at a special election called
8 for that purpose by the governing body. A special election
9 shall be called, conducted and canvassed substantially in the
10 same manner as provided by law for general elections. If a
11 majority of the voters voting on the question approves the
12 ordinance imposing the county regional sports authority gross
13 receipts tax, the ordinance shall become effective in
14 accordance with the provisions of the County Local Option Gross
15 Receipts Taxes Act. If the question of imposing the county
16 regional sports authority gross receipts tax fails, the
17 governing body shall not again propose the imposition of any
18 increment of the tax for a period of one year from the date of
19 the election.

20 D. The governing body of a county imposing a county
21 regional sports authority gross receipts tax shall transfer all
22 proceeds from the tax to the regional sports authority of which
23 it is a member for the purposes specified in the ordinance and
24 in accordance with the provisions of the Regional Sports
25 Authority Act.

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1 E. As used in this section, "sports authority area
2 of the county" means that portion of a county that is outside
3 the boundaries of any municipality and that is within the
4 boundaries of a regional sports authority of which the county
5 is a member."

6 Section 3. [NEW MATERIAL] SHORT TITLE.--Sections 3
7 through 18 of this act may be cited as the "Regional Sports
8 Authority Act".

9 Section 4. [NEW MATERIAL] DEFINITIONS.--As used in the
10 Regional Sports Authority Act:

11 A. "board" means the board of directors of a sports
12 authority;

13 B. "bond" means a revenue bond;

14 C. "combination" means two or more governmental
15 units that exercise joint authority;

16 D. "construct" or "construction" means the
17 planning, designing, engineering, acquisition, installation,
18 construction or reconstruction of a sports authority or
19 components of a sports authority;

20 E. "governmental unit" means the state, a county or
21 a municipality of the state or an Indian nation, tribe or
22 pueblo located within the boundaries of the state;

23 F. "revenues" means fees, rates, charges,
24 assessments, grants, contributions or other income and revenues
25 received by the sports authority; and

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1 G. "sports authority" means a regional sports
2 authority that is a political subdivision of the state created
3 pursuant to the Regional Sports Authority Act.

4 Section 5. [NEW MATERIAL] CREATION OF SPORTS
5 AUTHORITIES.--

6 A. A combination may create a sports authority by
7 contract. The sports authority may exercise the powers
8 conferred by the provisions of the Regional Sports Authority
9 Act. The sports authority shall constitute a separate
10 political subdivision of the state.

11 B. A regional sports authority may be created for
12 the following purposes:

13 (1) to plan for and create athletic and
14 recreational services within a region to effectively serve the
15 citizens of the region, ensuring that sufficient facilities for
16 athletics and recreation are available and avoiding duplication
17 or underutilization of facilities;

18 (2) to allow citizens and residents of the
19 various participating counties and municipalities and of
20 various age groups to utilize athletic and recreational
21 facilities independent of where they reside so as to achieve
22 maximum and efficient utilization of these facilities in an
23 effective, cost-efficient and professionally managed way;

24 (3) to jointly plan, construct, operate and
25 maintain athletic and recreational facilities to serve the

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1 citizens of a region, including, but not limited to, softball
2 fields, baseball fields, soccer fields, swimming pools, parks,
3 skateboard facilities, bicycle paths and off-road facilities
4 for motorized and non-motorized vehicles. These facilities may
5 be constructed to provide for the utilization by residents of
6 the region and to provide for and attract state, regional,
7 national or international athletic or recreational events or
8 competitions; and

9 (4) to enter into agreements with other
10 political subdivisions, public schools and universities to
11 allow residents of other political subdivisions and students to
12 utilize the facilities of the sports authority.

13 C. A contract establishing a sports authority shall
14 specify the:

15 (1) name and purpose of the sports authority;

16 (2) establishment and organization of the
17 board in which all legislative power of the sports authority is
18 vested;

19 (3) manner of the appointment, term of service
20 and qualifications, if any, of the directors and the procedure
21 for filling vacancies;

22 (4) officers of the sports authority, the
23 manner of their appointment and their duties;

24 (5) voting requirements for action by the
25 board;

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1 (6) provisions for the distribution,
2 disposition or division of the assets of the sports authority;

3 (7) the boundaries of the sports authority;

4 (8) term of the contract and the method by
5 which it may be terminated or rescinded; provided that the
6 contract shall not be terminated or rescinded so long as the
7 sports authority has bonds outstanding;

8 (9) provisions for amendment of the contract;

9 (10) limitations on the powers granted by the
10 Regional Sports Authority Act that may be exercised by the
11 sports authority; and

12 (11) conditions required when adding or
13 deleting parties to the contract pursuant to Section 18 of the
14 Regional Sports Authority Act.

15 C. A governmental unit shall not enter into a
16 contract establishing a sports authority without holding at
17 least one public hearing in addition to other requirements
18 imposed by law for public notice. The governmental unit shall
19 give notice of the time, place and purpose of the public
20 hearing by publication in a newspaper of general circulation at
21 least ten days prior to the date of the public hearing.

22 D. Upon the approval of the governor, the state may
23 join in a contract creating a sports authority. The number of
24 directors of the board to which the state is entitled shall be
25 established in the contract, but in no case shall the state be

1 entitled to less than one director. The governor shall appoint
2 the director or directors representing the state on the board,
3 for a term as established by the contract that created the
4 sports authority.

5 Section 6. [NEW MATERIAL] BOARD--POWERS AND DUTIES.--

6 A. All powers, privileges and duties vested in or
7 imposed upon the sports authority shall be exercised and
8 performed by the board. The board shall be composed of at
9 least one director from each governmental unit that is a member
10 of the sports authority. A director shall be an elected
11 official or the elected official's designee. A governmental
12 unit shall not have a majority of membership on the board,
13 unless there are three or fewer participating governmental
14 units in the sports authority.

15 B. The board may delegate its powers by resolution
16 to an officer or agent of the board, with the exception of the
17 following:

- 18 (1) adoption of board policies and procedures;
- 19 (2) ratification of acquisition of land by
20 negotiated sale;
- 21 (3) initiation or continuation of legal
22 action;
- 23 (4) establishment of policies regarding fees,
24 rates or charges; and
- 25 (5) issuance of bonds.

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1 C. Only a director who is an elected official shall
2 be able to vote on resolutions regarding ratification of
3 acquisition of land by negotiated sale or regarding issuance of
4 bonds.

5 D. The board shall promulgate and adhere to
6 policies and procedures that govern its conduct and provide
7 meaningful opportunities for public input. These policies
8 shall include standards and procedures for calling emergency
9 meetings.

10 E. A director of the board shall not vote on an
11 issue when the director has a conflict of interest. A director
12 of the board, officer of the board or employee of the board
13 shall not:

14 (1) acquire a financial interest in a new or
15 existing business venture or business property of any kind when
16 the director, officer or employee of the board believes or has
17 reason to believe that the new financial interest will be
18 directly affected by the director's, officer's or employee's
19 official act;

20 (2) use confidential information acquired by
21 virtue of the director's, officer's or employee's office or
22 employment for the director's, officer's or employee's or
23 another's private gain; or

24 (3) contract with the sports authority without
25 public notice and competitive bidding and full disclosure of

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1 the director's, officer's or employee's financial or other
2 interest in the business that is party to the contract.

3 F. The attorney general shall investigate and
4 prosecute, when appropriate, a complaint brought to the
5 attorney general's attention involving a violation of
6 Subsection E of this section. Violation of the provisions of
7 Subsection E of this section by a director of the board,
8 officer of the board or employee of the board is grounds for
9 removal or suspension of the director or officer and dismissal,
10 demotion or suspension of the employee.

11 G. In addition to all other powers conferred by the
12 Regional Sports Authority Act, the board may:

- 13 (1) adopt bylaws;
- 14 (2) fix the time and place of meetings and the
15 method of providing notice of the meetings;
- 16 (3) make and pass orders and resolutions
17 necessary for the government and management of the affairs of
18 the sports authority and the execution of the powers vested in
19 the sports authority;
- 20 (4) adopt and use a seal;
- 21 (5) maintain offices at a place the board
22 designates;
- 23 (6) appoint, hire and retain employees, agents
24 and other consultants;
- 25 (7) prescribe, in accordance with the

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1 Procurement Code, methods for the awarding of contracts for the
2 construction of improvements or structures, the acquisition of
3 equipment or the performance or furnishing of labor, materials
4 or supplies; and

5 (8) appoint advisory committees and define the
6 duties of the committees.

7 Section 7. [NEW MATERIAL] POWERS OF THE SPORTS
8 AUTHORITY.--

9 A. In addition to other powers granted to the
10 sports authority pursuant to the Regional Sports Authority Act,
11 the sports authority may:

12 (1) sue and be sued;

13 (2) enter into contracts and agreements
14 affecting the affairs of the sports authority;

15 (3) establish, collect and increase or
16 decrease fees, rates or charges for the use of property or
17 facilities of the sports authority;

18 (4) pledge all or a portion of the revenues to
19 the payment of bonds of the sports authority;

20 (5) finance, construct, operate, manage or
21 maintain athletic and recreational facilities within the
22 boundaries of the sports authority;

23 (6) purchase, acquire, exchange, sell, lease,
24 dispose of and encumber real or personal property and interest
25 therein, including easements and rights of way;

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1 (7) accept real or personal property for the
2 use of the sports authority and accept gifts and conveyances
3 upon the terms and conditions as the board may approve; and

4 (8) provide athletic and recreation services
5 outside the boundaries of the sports authority.

6 B. After the creation of a sports authority, the
7 board may include property within or exclude property from the
8 boundaries of the sports authority in the manner provided in
9 this section. Property shall not be included within the
10 boundaries of the sports authority unless it is within the
11 boundaries of the members of the combination at the time of the
12 inclusion. Property located within the boundaries of a
13 governmental unit that is not a member of the combination shall
14 not be included without the consent of the governing body of
15 the governmental unit. Prior to inclusion of property in or
16 exclusion of property from the boundaries of the sports
17 authority, the board shall cause notice of the proposed
18 inclusion or exclusion to be published in a newspaper of
19 general circulation within the boundaries of the sports
20 authority. The notice shall:

21 (1) describe the property to be included in or
22 excluded from the boundaries of the sports authority;

23 (2) specify the date, time and place at which
24 the board shall hold a public hearing on the proposed inclusion
25 or exclusion; provided that the date of the public hearing

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1 contained in the notice shall be not less than twenty days
2 after publication of the notice; and

3 (3) state that persons having objections to
4 the inclusion or exclusion may appear at the public hearing to
5 object to the proposed inclusion or exclusion.

6 C. The board shall hear all objections to the
7 proposed inclusion or exclusion at the time and place
8 designated in the notice. The board, upon the affirmative vote
9 of two-thirds of the directors, may adopt a resolution
10 including or excluding all or a portion of the property
11 described in the notice. Upon the adoption of the resolution,
12 the property shall be included within or excluded from the
13 boundaries of the sports authority as set forth in the
14 resolution. The board may adopt the resolution without
15 amending the sports authority's enabling contract. The board
16 shall cause the resolution to be recorded in the real estate
17 records of each county having territory included in the
18 boundaries of the sports authority.

19 Section 8. [NEW MATERIAL] FEES AND CHARGES.--A sports
20 authority may promulgate rules regarding collection of fees,
21 rates or charges.

22 Section 9. [NEW MATERIAL] BONDS.--

23 A. A sports authority may issue bonds solely for
24 the purpose of financing the purchase, construction,
25 renovation, equipping or furnishing of a sports authority

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1 project. The sports authority shall issue the bonds pursuant
2 to resolution of the board, and the bonds shall be payable
3 solely out of all or a specified portion of the revenues as
4 designated by the board. Proceeds of the bonds may be used to
5 pay expenses incurred in the preparation, issuance and sale of
6 the bonds.

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

9 (1) be executed and delivered by the sports
10 authority;

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 outside 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 sports authority;

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

6 (11) be in the form of coupon bonds that have
7 attached interest coupons bearing a manual or facsimile
8 signature of an officer of the sports authority; 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 sports
20 authority. Outstanding bonds may be refunded by the sports
21 authority as 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 sports
24 authority, may contain a provision for protecting and enforcing
25 the rights and remedies of holders of the bonds as the sports

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1 authority deems appropriate, may set forth the rights and
2 remedies of the holders of the bonds and may contain provisions
3 that the sports authority deems appropriate for the security of
4 the holders of the bonds.

5 E. A pledge of revenues or property made by a
6 sports authority or by a person or governmental unit with which
7 a sports authority contracts shall be valid and binding from
8 the time the pledge is made. The revenues or property so
9 pledged shall immediately be subject to the lien of the pledge
10 without a physical delivery or further act, and the lien of the
11 pledge shall be valid and binding against all parties having
12 claims in tort or contract or otherwise against the pledging
13 party, irrespective of whether the claiming party has notice of
14 the lien.

15 F. Neither the directors of the board, employees of
16 the sports authority or a person executing the bonds shall be
17 liable personally on the bonds or subject to personal liability
18 or accountability by reason of the issuance of the bonds.

19 G. A sports authority may purchase its bonds out of
20 available funds and may hold, pledge, cancel or resell the
21 bonds subject to and in accordance with agreements with the
22 holders.

23 H. Bonds shall be payable solely from pledgeable
24 revenue and shall not constitute an indebtedness or general
25 obligation of the sports authority, the state or other

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1 political subdivisions of the state.

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

4 Section 10. [NEW MATERIAL] AGREEMENT OF THE STATE NOT TO
5 LIMIT OR ALTER RIGHTS OF OBLIGEEES.--The state pledges and
6 agrees with the holders of bonds issued under the Regional
7 Sports Authority Act and with those parties who enter into
8 contracts with a sports authority or a member of a combination
9 pursuant to the Regional Sports Authority Act that the state
10 will not impair the rights vested in the sports authority. The
11 state further agrees that it will not impair the rights or
12 remedies of the holders of the bonds of a sports authority
13 until the bonds have been paid or until adequate provision for
14 payment has been made. A sports authority may include this
15 provision and undertaking for the state in bonds.

16 Section 11. [NEW MATERIAL] INVESTMENTS.--A board may
17 invest or deposit funds in accordance with the prudent investor
18 rule set forth in the Uniform Prudent Investor Act. The board
19 may employ investment management services to invest the funds
20 and may pay reasonable compensation for investment management
21 services from the assets of the applicable funds.

22 Section 12. [NEW MATERIAL] EXEMPTION FROM TAXATION.--The
23 income or other revenues of a sports authority, all properties
24 at any time owned by a sports authority, all bonds issued by a
25 sports authority and the income from the bonds issued by a

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1 sports authority are exempt from taxation in the state.

2 Section 13. [NEW MATERIAL] COOPERATIVE POWERS.--A sports
3 authority may cooperate with a person to:

4 A. accept legitimate contributions or liens
5 securing obligations of the sports authority from the person
6 with respect to the financing, construction, operation or
7 maintenance of a sports authority and, in connection with a
8 loan or advance, enter into contracts establishing the
9 repayment terms;

10 B. enter into contracts regarding the financing,
11 construction, operation or maintenance of a specified sports
12 authority; and

13 C. enter into joint operating contracts concerning
14 a sports authority.

15 Section 14. [NEW MATERIAL] POWERS OF GOVERNMENTAL
16 UNITS.--A governmental unit, for the purpose of aiding the
17 financing, construction, operation or maintenance of a sports
18 authority, may:

19 A. sell, lease, loan, donate, grant, convey,
20 assign, transfer and otherwise dispose to the sports authority
21 real or personal property or interests therein;

22 B. enter into agreements with a person for the
23 joint financing, construction, operation or maintenance of a
24 sports authority; and

25 C. transfer to the sports authority a contract that

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1 may have been awarded by the governmental unit for
2 construction, operation or maintenance of a sports authority.

3 Section 15. [NEW MATERIAL] NOTICE--OPPORTUNITY FOR
4 COMMENT.--At least seven business days prior to a regularly
5 scheduled meeting, the board shall make available to the public
6 written or electronic notice of the time and agenda of the
7 meeting. The board shall designate during each meeting a
8 public comment period and shall offer the public an opportunity
9 to comment.

10 Section 16. [NEW MATERIAL] NOTICE--COORDINATION OF
11 INFORMATION.--At least forty-five days prior to the imposition
12 of or an increase in a rate, fee or charge or prior to the
13 issuance of bonds as authorized in the Regional Sports
14 Authority Act, a notice specifying the amount of the fee, rate
15 or charge and its proposed duration or the value and number of
16 bonds to be issued shall be sent to the state board of finance
17 and to the taxation and revenue department.

18 Section 17. [NEW MATERIAL] TAXATION.--A sports authority
19 has no direct taxation authority.

20 Section 18. [NEW MATERIAL] ADDITION OR WITHDRAWAL OF
21 TERRITORY BY A SPORTS AUTHORITY.--

22 A. After the creation of a sports authority, a
23 governmental unit adjacent to but not part of that sports
24 authority may join the sports authority and determine the
25 territorial area to become a part of that sports authority. A

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1 two-thirds' affirmative vote by the board shall be required
2 before the governmental unit may join the sports authority.

3 B. A governmental unit that is a member of a sports
4 authority may withdraw from the sports authority by adopting a
5 resolution to withdraw. The governmental unit shall withdraw
6 its representative from the board. Real property owned by the
7 sports authority within the boundaries of the withdrawing
8 governmental unit shall remain the property of the sports
9 authority. The provisions of withdrawal shall be negotiated
10 and agreed to by the board and the governmental unit.

11 Section 19. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2007.