

SENATE FLOOR SUBSTITUTE FOR  
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 375

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO TAXATION; CREATING THE LOCAL OPTION TENANCY TAX FOR CERTAIN CLASS B COUNTIES; PROVIDING FOR LOCAL CONTROL OF ELIGIBLE USES FOR THE TENANCY TAX.

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

**SECTION 1.** Section 3-38-14 NMSA 1978 (being Laws 1969, Chapter 199, Section 2, as amended) is amended to read:

"3-38-14. DEFINITIONS.--As used in the Lodgers' Tax Act:

A. "gross taxable rent" means the total amount of

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rent paid for lodging, not including the state gross receipts tax or local sales taxes;

B. "lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has the right to use or possess the rooms or other units of accommodations in or at a taxable premises;

C. "lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of [~~lodgings~~] lodging;

~~[D. "occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Act;~~

~~E.]~~ D. "person" means a corporation, firm, other body corporate, partnership, association or individual. "Person" includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" does not include the United States of America, the state of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government or any political subdivision of the state;

~~[F.]~~ E. "rent" means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodgers' Tax Act;

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[G.] F. "taxable premises" means a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for lodging;

[H.] G. "tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax;

[I.] H. "tourist-related events" means events that are planned for, promoted to and attended by tourists;

[J.] I. "tourist-related facilities and attractions" means facilities and attractions that are intended to be used by or visited by tourists;

[K.] J. "tourist-related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events;

[L.] K. "vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and

[M.] L. "vendor" means a person or ~~[his]~~ the person's agent furnishing lodgings in the exercise of the taxable service of lodging."

**SECTION 2.** Section 3-38-15 NMSA 1978 (being Laws 1969, Chapter 199, Section 3, as amended) is amended to read:

"3-38-15. AUTHORIZATION OF OCCUPANCY TAX--LIMITATIONS ON USE OF PROCEEDS.--

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A. A municipality may impose by ordinance an occupancy tax for revenues on lodging within the municipality, and the board of county commissioners of a county may impose by ordinance an occupancy tax for revenues on lodging within that part of the county outside of the incorporated limits of a municipality.

B. The occupancy tax shall not exceed five percent of the gross taxable rent.

C. Every vendor who is furnishing any lodgings within a municipality or county is exercising a taxable privilege.

D. The following portions of the proceeds from the occupancy tax shall be used only for advertising, publicizing and promoting tourist-related facilities and attractions [~~facilities~~] and tourist-related events:

(1) if the municipality or county imposes an occupancy tax of no more than two percent, not less than one-fourth of the proceeds shall be used for those purposes;

(2) if the occupancy tax imposed is more than two percent and the municipality is not located in a class A county or the county is not a class A county, not less than one-half of the proceeds from the first three percent of the occupancy tax and not less than one-fourth of the proceeds from the occupancy tax in excess of three percent shall be used for those purposes; and

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(3) if the occupancy tax imposed is more than two percent and the municipality is located in a class A county or the county is a class A county, not less than one-half of the proceeds from the occupancy tax shall be used for those purposes.

E. The proceeds from the occupancy tax in excess of the amount required to be used for advertising, publicizing and promoting tourist-related facilities and attractions [~~facilities~~] and tourist-related events may be used for any purpose authorized in Section 3-38-21 NMSA 1978.

F. The proceeds from the occupancy tax that are required to be used to advertise, publicize and promote tourist-related facilities and attractions [~~facilities~~] and tourist-related events shall be used within two years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.

G. Notwithstanding the provisions of Paragraph (2) of Subsection D of this section, any use by a municipality or county of occupancy tax proceeds on January 1, 1996 may continue to be so used after July 1, 1996 in accordance with the provisions of this section and Section 3-38-21 NMSA 1978 as they were in effect prior to July 1, 1996; provided, any change in the use of those occupancy tax proceeds after July 1, 1996 is subject to the limitations of that paragraph.

H. Notwithstanding the provisions of Paragraph (2) of Subsection D of this section, the payment of principal and interest on outstanding bonds issued prior to January 1, 1996

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pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made in accordance with the retirement schedules of the bonds established at the time of issuance. The amount of expenditures required under Paragraph (2) of Subsection D of this section shall be reduced each year, if necessary, to make the required payments of principal and interest of all outstanding bonds issued prior to January 1, 1996."

SECTION 3. A new Section 3-38-15.1 NMSA 1978 is enacted to read:

"3-38-15.1. [NEW MATERIAL] AUTHORIZATION OF TENANCY TAX--  
USE OF PROCEEDS.--

A. A municipality in a class B county having a net taxable value, as that term is defined in the Property Tax Code, of more than four billion five hundred million dollars (\$4,500,000,000) but less than five billion five hundred million dollars (\$5,500,000,000) may impose by ordinance a tenancy tax for revenues on lodging within the municipality, and the board of county commissioners of a class B county having a net taxable value, as that term is defined in the Property Tax Code, of more than four billion five hundred million dollars (\$4,500,000,000) but less than five billion five hundred million dollars (\$5,500,000,000) may impose by ordinance a tenancy tax for revenues on lodging within that part of the county outside of the incorporated limits of a municipality.

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B. The tenancy tax shall not exceed five percent of the gross taxable rent.

C. Every vendor who is furnishing any lodgings within a municipality or county is exercising a taxable privilege.

D. The proceeds from the tenancy tax shall be used only for the purposes stated in the ordinance by which the tax is imposed."

SECTION 4. A new Section 3-38-16.1 NMSA 1978 is enacted to read:

"3-38-16.1. [NEW MATERIAL] TENANCY TAX EXEMPTIONS.--The tenancy tax shall not apply:

A. if the rent paid by a vendee is less than HLLC→~~two dollars (\$2.00)~~ twenty dollars (\$20.00)←HLLC a day;

HTRC→B. if the rent paid by a vendee is set by law to benefit a low-income person;←HTRC

HTRC→B. C.←HTRC for the first thirty days the vendee rents the taxable premises;

HTRC→C. D.←HTRC to lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;

HTRC→D. E.←HTRC to lodging accommodations at religious, charitable, educational or philanthropic institutions, including accommodations at summer camps operated by such institutions;

HTRC→E. F.←HTRC to clinics, hospitals or other medical facilities; or

HTRC→F. G.←HTRC to privately owned and operated

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convalescent homes or homes for the aged, infirm, indigent or chronically ill."

SECTION 5. Section 3-38-17 NMSA 1978 (being Laws 1969, Chapter 199, Section 5, as amended) is amended to read:

"3-38-17. COLLECTION OF TAXES.--

A. Every vendor providing lodgings in a municipality or county imposing an occupancy tax or a tenancy tax shall collect the proceeds thereof on behalf of the municipality or county and shall act as a trustee therefor.

B. The [~~tax~~] taxes shall be collected from vendees in accordance with the ordinance imposing the tax and shall be charged separately from the rent fixed by the vendor for the lodgings."

SECTION 6. Section 3-38-17.1 NMSA 1978 (being Laws 1992, Chapter 12, Section 2, as amended) is amended to read:

"3-38-17.1. AUDIT OF VENDORS.--The governing body of any municipality or county collecting over two hundred fifty thousand dollars (\$250,000) in occupancy tax or tenancy tax proceeds shall select for annual random audits one or more vendors to verify the amount of gross rent subject to the occupancy tax or tenancy tax and to ensure that the full amount of occupancy tax or tenancy tax on that rent is collected. The governing body of any municipality or county collecting less than two hundred fifty thousand dollars (\$250,000) in receipts, per annum, of occupancy tax or tenancy tax proceeds shall

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conduct random audits to verify full payment of occupancy tax or tenancy tax receipts. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration."

SECTION 7. Section 3-38-17.2 NMSA 1978 (being Laws 1996, Chapter 58, Section 5) is amended to read:

"3-38-17.2. FINANCIAL REPORTING.--

A. The governing body of any municipality or county imposing and collecting an occupancy tax or tenancy tax shall furnish to the advisory board that portion of any proposed budget, report or audit filed or received by the governing body pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act that relates to the expenditure of occupancy tax or tenancy tax funds within ten days of the filing or receipt of such proposed budget, report or audit by the local governing body.

B. The governing body of any municipality or county imposing and collecting an occupancy tax or tenancy tax shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of occupancy tax or tenancy tax funds pursuant to Sections 3-38-15, 3-38-15.1 and 3-38-21 NMSA 1978 and shall furnish a copy of this report to the advisory board created pursuant to Section 3-38-22 NMSA 1978 when it is filed with the division."

SECTION 8. Section 3-38-17.3 NMSA 1978 (being Laws 1996, Chapter 58, Section 6) is amended to read:

"3-38-17.3. ENFORCEMENT.--

A. An action to enforce the provisions of the Lodgers' Tax Act may be brought by:

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(1) the attorney general or the district attorney in the county of jurisdiction; or

(2) a vendor who is collecting the proceeds of an occupancy tax or tenancy tax in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Lodgers' Tax Act.

C. The court shall award costs and reasonable ~~[attorneys']~~ attorney fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act."

SECTION 9. Section 3-38-18 NMSA 1978 (being Laws 1969, Chapter 199, Section 6, as amended) is amended to read:

"3-38-18. COLLECTION OF DELINQUENCIES.--

A. The governing body of ~~[the]~~ a municipality or county shall, by ordinance, provide that a vendor is liable for the payment of the proceeds of any occupancy tax or tenancy tax that the vendor failed to remit to the municipality or county, due to ~~[his]~~ the vendor's failure to collect the tax, or otherwise, and shall provide for a civil penalty for any such failure in an amount equal to the greater of ten percent of the amount that was not duly remitted to the municipality or county or one hundred dollars (\$100).

B. ~~[The]~~ A municipality or county may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation

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penalties thereon, interest on the unpaid principal at a rate [of] not exceeding one percent a month, the costs of collection and reasonable [attorneys'] attorney fees incurred in connection therewith."

SECTION 10. Section 3-38-18.1 NMSA 1978 (being Laws 1992, Chapter 12, Section 1) is amended to read:

"3-38-18.1. LIEN FOR OCCUPANCY TAX OR TENANCY TAX--  
PAYMENT--CERTIFICATE OF LIENS.--

A. The occupancy tax and tenancy tax imposed by a municipality or county [~~constitutes~~] constitute a lien in favor of that municipality or county upon the personal and real property of the vendor providing lodgings in that municipality or county. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, no person shall sell the property of any vendor without first ascertaining from the clerk or treasurer of the municipality or county in which the vendor is located the amount of any occupancy tax or tenancy tax due the municipality or county. Any occupancy tax or tenancy tax due the municipality or county shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

C. The clerk or treasurer of [~~the~~] a municipality or county shall furnish to any person applying for such a certificate a certificate showing the amount of all liens in the records of the municipality or county against any vendor

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pursuant to Chapter 3, Article 38 NMSA 1978."

SECTION 11. Section 3-38-19 NMSA 1978 (being Laws 1969, Chapter 199, Section 7, as amended) is amended to read:

"3-38-19. PENALTIES.--The governing body of [~~the~~] a municipality or county shall, by ordinance, provide for penalties by creating a misdemeanor and imposing a fine of not more than five hundred dollars (\$500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the occupancy tax ordinance or the tenancy tax ordinance for a failure to pay the tax, to remit the proceeds thereof to the municipality or county or to account properly for any lodging and the tax proceeds pertaining thereto."

SECTION 12. Section 3-38-20 NMSA 1978 (being Laws 1969, Chapter 199, Section 8, as amended) is amended to read:

"3-38-20. ORDINANCE REQUIREMENTS.--The ordinance imposing an occupancy tax or a tenancy tax or any ordinance amendatory thereof or supplemental thereto, except as limited by or otherwise provided in the Lodgers' Tax Act, shall:

A. provide a procedure for licensing each vendor and for refusing a vendor a license after an opportunity has been given to the vendor of a public hearing thereon by the governing body of the municipality or county, as the case may be;

B. state the rate or other amount of the occupancy

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tax or tenancy tax; the times, place and method for the payment of the occupancy tax or tenancy tax proceeds to the municipality or county; the accounts and other records to be maintained in connection with the occupancy tax or tenancy tax; a procedure for making refunds and resolving disputes relating to the occupancy tax or tenancy tax, including exemptions pertaining thereto; the procedure for preservation and destruction of records and their inspection and investigation; vendor audit requirements; applicable civil and criminal penalties; and a procedure of liens, distraint and sales to satisfy such liens; and

C. provide other rights, privileges, powers, immunities and other details relating to any such vendor licenses, the collection of the occupancy tax or tenancy tax and the remittance of the proceeds thereof to the municipality or county."

SECTION 13. Section 3-38-21.1 NMSA 1978 (being Laws 1996, Chapter 58, Section 8) is amended to read:

"3-38-21.1. CONTRACTING FOR SERVICES.--

A. The governing body of a municipality or county may contract for the management of programs and activities funded with revenue from the occupancy tax [~~authorized in Section 3-38-15 NMSA 1978~~] or the tenancy tax. The governing body shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Within ten days of receiving the reports, the governing body shall furnish copies of them to the advisory board. Funds provided to the contracting person or governmental agency shall

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be maintained in a separate account established for that purpose and shall not be commingled with any other money.

B. A person or governmental agency with whom a municipality contracts under this section to conduct an activity authorized by Section 3-38-21 NMSA 1978 shall maintain complete and accurate financial records of each expenditure of the tax revenue made and upon request of the governing body of the municipality or county shall make such records available for inspection.

C. The occupancy tax or tenancy tax revenue spent for a purpose authorized by the Lodgers' Tax Act may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.

D. A person or governmental agency with whom a local governmental body contracts under this section may subcontract with the approval of the governing body of the municipality or county. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records."

**SECTION 14.** Section 3-38-22 NMSA 1978 (being Laws 1977, Chapter 294, Section 2, as amended) is amended to read:

"3-38-22. ADVISORY BOARDS CREATED--DUTIES.--

A. The mayor of every municipality that imposes an

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occupancy tax or tenancy tax pursuant to the Lodgers' Tax Act shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax or tenancy tax within the municipality, two members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists and one member who is a resident of the municipality and represents the general public.

B. The [~~chairman~~] chair of every board of county [~~commission~~] commissioners that imposes an occupancy tax or tenancy tax pursuant to the Lodgers' Tax Act shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax or tenancy tax within the unincorporated area of the county, two members who are owners or operators of industries located within the unincorporated area of the county that primarily provide services or products to tourists and one member who is a resident of the unincorporated area of the county who represents the general public.

C. Members of the advisory boards created under Subsections A and B of this section shall serve at the pleasure of the respective appointing authorities. The boards shall advise the respective governing bodies on the expenditure of funds authorized by Section 3-38-15 or 3-38-15.1 NMSA 1978 for advertising, publicizing and promoting [~~tourist attractions and~~] tourist-related facilities and attractions in the respective counties and municipalities.

D. The advisory board shall submit to the mayor and

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council or county commission recommendations for the expenditures of funds authorized pursuant to the Lodgers' Tax Act for advertising, publicizing and promoting tourist-related [~~attractions~~] facilities and attractions and tourist-related events in the respective counties and municipalities."

SECTION 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.

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