

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

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

AN ACT

RELATING TO TAXATION; CREATING THE TENANCY TAX; 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
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;

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

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

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

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

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

25 [~~H.~~] G. "tourist" means a person who travels for

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1 the purpose of business, pleasure or culture to a municipality
 2 or county imposing an occupancy tax;

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

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

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

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

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

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

20 "3-38-15. AUTHORIZATION OF OCCUPANCY TAX--LIMITATIONS ON
 21 USE OF PROCEEDS.--

22 A. A municipality may impose by ordinance an
 23 occupancy tax for revenues on lodging within the municipality,
 24 and the board of county commissioners of a county may impose by
 25 ordinance an occupancy tax for revenues on lodging within that

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1 part of the county outside of the incorporated limits of a
2 municipality.

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

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

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

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

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

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

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1 purposes.

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

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

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

22 H. Notwithstanding the provisions of Paragraph (2)
23 of Subsection D of this section, the payment of principal and
24 interest on outstanding bonds issued prior to January 1, 1996
25 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made

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1 in accordance with the retirement schedules of the bonds
2 established at the time of issuance. The amount of
3 expenditures required under Paragraph (2) of Subsection D of
4 this section shall be reduced each year, if necessary, to make
5 the required payments of principal and interest of all
6 outstanding bonds issued prior to January 1, 1996."

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

9 "3-38-15.1. [NEW MATERIAL] AUTHORIZATION OF TENANCY TAX--
10 USE OF PROCEEDS.--

11 A. A municipality may impose by ordinance a tenancy
12 tax for revenues on lodging within the municipality, and the
13 board of county commissioners of a county may impose by
14 ordinance a tenancy tax for revenues on lodging within that
15 part of the county outside of the incorporated limits of a
16 municipality.

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

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

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

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

2 "3-38-16.1. [NEW MATERIAL] TENANCY TAX EXEMPTIONS.--The
3 tenancy tax shall not apply:

4 A. if the rent paid by a vendee is less than two
5 dollars (\$2.00) a day;

6 B. for the first thirty days the vendee rents the
7 taxable premises;

8 C. to lodging accommodations at institutions of the
9 federal government, the state or any political subdivision
10 thereof;

11 D. to lodging accommodations at religious,
12 charitable, educational or philanthropic institutions,
13 including accommodations at summer camps operated by such
14 institutions;

15 E. to clinics, hospitals or other medical
16 facilities; or

17 F. to privately owned and operated convalescent
18 homes or homes for the aged, infirm, indigent or chronically
19 ill."

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

22 "3-38-17. COLLECTION OF TAXES.--

23 A. Every vendor providing lodgings in a
24 municipality or county imposing an occupancy tax or a tenancy
25 tax shall collect the proceeds thereof on behalf of the

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1 municipality or county and shall act as a trustee therefor.

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

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

8 "3-38-17.1. AUDIT OF VENDORS.--The governing body of any
9 municipality or county collecting over two hundred fifty
10 thousand dollars (\$250,000) in occupancy tax or tenancy tax
11 proceeds shall select for annual random audits one or more
12 vendors to verify the amount of gross rent subject to the
13 occupancy tax or tenancy tax and to ensure that the full amount
14 of occupancy tax or tenancy tax on that rent is collected. The
15 governing body of any municipality or county collecting less
16 than two hundred fifty thousand dollars (\$250,000) in receipts,
17 per annum, of occupancy tax or tenancy tax proceeds shall
18 conduct random audits to verify full payment of occupancy tax
19 or tenancy tax receipts. Copies of audits completed shall be
20 filed annually with the local government division of the
21 department of finance and administration."

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

24 "3-38-17.2. FINANCIAL REPORTING.--

25 A. The governing body of any municipality or county

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

8 B. The governing body of any municipality or county
 9 imposing and collecting an occupancy tax or tenancy tax shall
 10 report to the local government division of the department of
 11 finance and administration on a quarterly basis any expenditure
 12 of occupancy tax or tenancy tax funds pursuant to Sections
 13 3-38-15, 3-38-15.1 and 3-38-21 NMSA 1978 and shall furnish a
 14 copy of this report to the advisory board created pursuant to
 15 Section 3-38-22 NMSA 1978 when it is filed with the division."

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

18 "3-38-17.3. ENFORCEMENT.--

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

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

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

25 B. A district court may issue a writ of mandamus or

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1 order an injunction or other appropriate remedy to enforce the
2 provisions of the Lodgers' Tax Act.

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

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

8 "3-38-18. COLLECTION OF DELINQUENCIES.--

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

18 B. ~~[The]~~ A municipality or county may bring an
19 action in law or equity in the district court for the
20 collection of any amounts due, including without limitation
21 penalties thereon, interest on the unpaid principal at a rate
22 ~~[of]~~ not exceeding one percent a month, the costs of collection
23 and reasonable ~~[attorneys']~~ attorney fees incurred in
24 connection therewith."

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

2 "3-38-18.1. LIEN FOR OCCUPANCY TAX OR TENANCY TAX--
3 PAYMENT--CERTIFICATE OF LIENS.--

4 A. The occupancy tax and tenancy tax imposed by a
5 municipality or county [~~constitutes~~] constitute a lien in favor
6 of that municipality or county upon the personal and real
7 property of the vendor providing lodgings in that municipality
8 or county. The lien may be enforced as provided in Sections
9 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be
10 determined from the date of filing.

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

20 C. The clerk or treasurer of [~~the~~] a municipality
21 or county shall furnish to any person applying for such a
22 certificate a certificate showing the amount of all liens in
23 the records of the municipality or county against any vendor
24 pursuant to Chapter 3, Article 38 NMSA 1978."

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

2 "3-38-19. PENALTIES.--The governing body of [~~the~~] a
3 municipality or county shall, by ordinance, provide for
4 penalties by creating a misdemeanor and imposing a fine of not
5 more than five hundred dollars (\$500) or imprisonment for not
6 more than ninety days or both for a violation by any person of
7 the provisions of the occupancy tax ordinance or the tenancy
8 tax ordinance for a failure to pay the tax, to remit the
9 proceeds thereof to the municipality or county or to account
10 properly for any lodging and the tax proceeds pertaining
11 thereto."

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

14 "3-38-20. ORDINANCE REQUIREMENTS.--The ordinance imposing
15 an occupancy tax or a tenancy tax or any ordinance amendatory
16 thereof or supplemental thereto, except as limited by or
17 otherwise provided in the Lodgers' Tax Act, shall:

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

23 B. state the rate or other amount of the occupancy
24 tax or tenancy tax; the times, place and method for the payment
25 of the occupancy tax or tenancy tax proceeds to the

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1 municipality or county; the accounts and other records to be
 2 maintained in connection with the occupancy tax or tenancy tax;
 3 a procedure for making refunds and resolving disputes relating
 4 to the occupancy tax or tenancy tax, including exemptions
 5 pertaining thereto; the procedure for preservation and
 6 destruction of records and their inspection and investigation;
 7 vendor audit requirements; applicable civil and criminal
 8 penalties; and a procedure of liens, distraint and sales to
 9 satisfy such liens; and

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

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

17 "3-38-21.1. CONTRACTING FOR SERVICES.--

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

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1 provided to the contracting person or governmental agency shall
2 be maintained in a separate account established for that
3 purpose and shall not be commingled with any other money.

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

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

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

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

25 "3-38-22. ADVISORY BOARDS CREATED--DUTIES.--

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1 A. The mayor of every municipality that imposes an
2 occupancy tax or tenancy tax pursuant to the Lodgers' Tax Act
3 shall appoint a five-member advisory board that consists of two
4 members who are owners or operators of lodgings subject to the
5 occupancy tax or tenancy tax within the municipality, two
6 members who are owners or operators of industries located
7 within the municipality that primarily provide services or
8 products to tourists and one member who is a resident of the
9 municipality and represents the general public.

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

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

4 D. The advisory board shall submit to the mayor and
5 council or county commission recommendations for the
6 expenditures of funds authorized pursuant to the Lodgers' Tax
7 Act for advertising, publicizing and promoting tourist-related
8 [~~attractions~~] facilities and attractions and tourist-related
9 events in the respective counties and municipalities."

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

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