

1 HOUSE BILL 326

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Roberto "Bobby" J. Gonzales

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10 AN ACT

11 RELATING TO THE LODGERS' TAX ACT; CLARIFYING THE AUTHORITY OF A  
12 MUNICIPALITY OR COUNTY TO AUDIT A VENDOR THAT FURNISHES  
13 LODGINGS; REPLACING THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY  
14 OF A COUNTY WITH A REPRESENTATIVE OF A MUNICIPALITY OR COUNTY  
15 WHO MAY BRING AN ACTION TO ENFORCE THE ACT; ALLOWING ADDITIONAL  
16 MEMBERS OF AN ADVISORY BOARD; PROVIDING A PENALTY.

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

19 SECTION 1. Section 3-38-17.1 NMSA 1978 (being Laws 1992,  
20 Chapter 12, Section 2, as amended) is amended to read:

21 "3-38-17.1. AUDIT OF VENDORS.--The governing body of any  
22 municipality or county collecting over two hundred fifty  
23 thousand dollars (\$250,000) in occupancy tax proceeds shall  
24 select for annual random audits one or more vendors to verify  
25 the amount of gross taxable rent subject to the occupancy tax

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1 and to ensure that the full amount of occupancy tax on that  
2 rent is collected. The governing body of any municipality or  
3 county collecting less than two hundred fifty thousand dollars  
4 (\$250,000) in receipts, per annum, of occupancy tax proceeds  
5 shall conduct random audits to verify full payment of occupancy  
6 tax receipts. For good cause, a municipality or county may  
7 select any vendor for audit to verify the amount of gross  
8 taxable rent subject to the occupancy tax to ensure that the  
9 full amount of occupancy tax on that rent is collected. Copies  
10 of audits completed shall be filed annually with the local  
11 government division of the department of finance and  
12 administration."

13 SECTION 2. Section 3-38-17.3 NMSA 1978 (being Laws 1996,  
14 Chapter 58, Section 6) is amended to read:

15 "3-38-17.3. ENFORCEMENT.--

16 A. An action to enforce the provisions of the  
17 Lodgers' Tax Act or a municipal or county ordinance adopted  
18 pursuant to that act may be brought by

19 [~~(1) the attorney general or the district~~  
20 ~~attorney in the county of jurisdiction; or~~

21 ~~(2) a vendor who is collecting the proceeds of~~  
22 ~~an occupancy tax in the county of jurisdiction] a municipality  
23 or county, through its duly authorized representative.~~

24 B. A district court may issue a writ of mandamus or  
25 order an injunction or other appropriate remedy to enforce the

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1 provisions of the Lodgers' Tax Act.

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

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

7 "3-38-19. PENALTIES.--The governing body of ~~[the]~~ a  
8 municipality or county shall, by ordinance, provide for  
9 penalties by creating a petty misdemeanor and imposing a fine  
10 of not more than five hundred dollars (\$500) or imprisonment  
11 for not more than ninety days or both for a violation by any  
12 person of the provisions of the occupancy tax ordinance for a  
13 failure to pay the tax, to remit the proceeds thereof to the  
14 municipality or county, to participate and cooperate in an  
15 audit made pursuant to Section 3-38-17.1 NMSA 1978 or to  
16 account properly for any lodging and the tax proceeds  
17 pertaining thereto."

18 SECTION 4. Section 3-38-22 NMSA 1978 (being Laws 1977,  
19 Chapter 294, Section 2, as amended) is amended to read:

20 "3-38-22. ADVISORY BOARDS CREATED--DUTIES.--

21 A. The mayor of every municipality that imposes an  
22 occupancy tax pursuant to the Lodgers' Tax Act shall appoint [~~a~~  
23 ~~five-member~~] an advisory board that consists of [~~two members~~]  
24 at least five members, which shall include an equal number of  
25 members who are owners or operators of lodgings subject to the

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1 occupancy tax within the municipality [~~two~~] and members who are  
2 owners or operators of industries located within the  
3 municipality that primarily provide services or products to  
4 tourists, and one member who is a resident of the municipality  
5 and represents the general public.

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

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

24 D. The advisory board shall submit to the mayor and  
25 council or county commission recommendations for the

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1 expenditures of funds authorized pursuant to the Lodgers' Tax  
2 Act for advertising, publicizing and promoting tourist-related  
3 ~~[attractions]~~ facilities and attractions and tourist-related  
4 events in the respective counties and municipalities."