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SENATE BILL 356

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

INTRODUCED BY

Jacob R. Candelaria

AN ACT

RELATING TO TAX ADMINISTRATION; ENACTING THE ADMINISTRATIVE  
HEARINGS OFFICE ACT; PROVIDING FOR A CHIEF HEARING OFFICER;  
CREATING A CHIEF HEARING OFFICER SELECTION COMMITTEE; PROVIDING  
FOR INDEPENDENT HEARING OFFICERS; CREATING A HEARING OFFICE  
SEPARATE FROM THE TAXATION AND REVENUE DEPARTMENT FOR  
ADMINISTRATIVE HEARINGS; PROVIDING POWERS AND DUTIES; PROVIDING  
PROCEDURES; TRANSFERRING FUNCTIONS, PERSONNEL, APPROPRIATIONS,  
MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS, STATUTORY REFERENCES  
AND RULES; REPEALING SECTION 7-1-24.1 NMSA 1978 (BEING LAWS  
2013, CHAPTER 27, SECTION 7).

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 9 of this act may be cited as the "Administrative  
Hearings Office Act".

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1           SECTION 2.   [NEW MATERIAL] ADMINISTRATIVE HEARINGS  
2 OFFICE--CREATED.--The "administrative hearings office" is  
3 created and is administratively attached pursuant to the  
4 provisions of Section 9-1-7 NMSA 1978 to the department of  
5 finance and administration.

6           SECTION 3.   [NEW MATERIAL] CHIEF HEARING OFFICER--  
7 APPOINTMENT.--The head of the administrative hearings office is  
8 the "chief hearing officer", who shall be appointed for a term  
9 of six years, except that the initial term shall begin on July  
10 1, 2015 and shall end on December 31, 2015. The chief hearing  
11 officer may be reappointed to successive terms. An appointed  
12 chief hearing officer shall serve and have all the duties,  
13 responsibilities and authority of that office during the period  
14 of time prior to appointment of a new chief hearing officer.  
15 The initial chief hearing officer shall be the person who is  
16 the chief of the hearings bureau of the taxation and revenue  
17 department on July 1, 2015. The chief hearing officer shall be  
18 removed only for malfeasance, misfeasance or abuse of office.

19           SECTION 4.   [NEW MATERIAL] CHIEF HEARING OFFICER SELECTION  
20 COMMITTEE--DUTIES.--

21           A. The "chief hearing officer selection committee"  
22 is created and consists of nine members, including:

23                       (1) four members who are selected by the New  
24 Mexico legislative council, no more than two of whom are from  
25 the same political party;

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1 (2) four members who are selected by the  
2 governor, no more than two of whom are from the same political  
3 party; and

4 (3) a committee chair, whom a majority of the  
5 other eight members select and who is:

6 (a) not a candidate for the position of  
7 chief hearing officer; and

8 (b) either a former chief of the  
9 hearings bureau of the taxation and revenue department, a  
10 former chief hearing officer or another person with extensive  
11 knowledge of the tax law.

12 B. The chief hearing officer selection committee  
13 shall meet exclusively for the purpose of nominating persons to  
14 fill a current or impending vacancy in the position of chief  
15 hearing officer of the administrative hearings office. The  
16 committee shall actively solicit, accept and evaluate  
17 applications for the positing of chief hearing officer and may  
18 require applicants to submit any information that the committee  
19 deems relevant to the consideration of applications. Within  
20 ninety days before the date on which the term of a chief  
21 hearing officer ends or no later than thirty days after the  
22 occurrence of a vacancy in the chief hearing officer position,  
23 the chief hearing officer selection committee shall convene  
24 and, within thirty days after convening, submit to the governor  
25 the names of persons who:

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1 (1) are attorneys licensed to practice law in  
2 New Mexico or another state;

3 (2) have knowledge of the tax law and  
4 substantial experience making the record in an administrative  
5 hearing suitable for judicial review; and

6 (3) are recommended for appointment to the  
7 position by a majority of the committee.

8 C. Immediately after receiving nominations for  
9 chief hearing officer, the governor may make one request of the  
10 committee for submission of additional names. The committee  
11 shall promptly submit those additional names if a majority of  
12 the committee finds that additional persons would be qualified  
13 and recommends those persons for appointment as chief hearing  
14 officer. The governor shall fill a vacancy or appoint a  
15 successor to fill an impending vacancy in the office of chief  
16 hearing officer within thirty days after receiving final  
17 nominations from the committee by appointing one of the persons  
18 nominated by the committee.

19 D. The chief hearing officer selection committee is  
20 administratively attached pursuant to the provisions of Section  
21 9-1-7 NMSA 1978 to the department of finance and  
22 administration.

23 SECTION 5. [NEW MATERIAL] CHIEF HEARING OFFICER--POWERS  
24 AND DUTIES--EMPLOYEES OF THE OFFICE.--

25 A. The chief hearing officer may:

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1 (1) adopt and promulgate rules pertaining to  
2 administrative hearings; and

3 (2) subject to appropriations, hire and  
4 contract for such professional, technical and support staff as  
5 needed to carry out the functions of the administrative  
6 hearings office; provided that such hiring and contracting be  
7 without regard to party affiliation and solely on the grounds  
8 of competence and fitness to perform the duties of the  
9 position. Employees of the administrative hearings office,  
10 except the chief hearing officer, are subject to the provisions  
11 of the Personnel Act.

12 B. The chief hearing officer shall:

13 (1) oversee the administrative hearings  
14 office; and

15 (2) considering the knowledge and experience  
16 of particular hearing officers, efficiency in the hearing  
17 process and potential conflicts of interest, assign and  
18 distribute the work of the office.

19 SECTION 6. [NEW MATERIAL] HEARING OFFICER CODE OF  
20 CONDUCT--INDEPENDENCE.--

21 A. The chief hearing officer shall:

22 (1) adopt and promulgate a hearing officer  
23 code of conduct; and

24 (2) periodically evaluate each hearing  
25 officer's performance for competency, efficiency and

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1 professional demeanor in accord with relevant legal standards  
2 and the hearing officer code of conduct.

3 B. The chief hearing officer shall ensure that each  
4 hearing officer has decisional independence; however, the chief  
5 hearing officer may:

6 (1) consult with a hearing officer about a  
7 genuine question of law; and

8 (2) review with a hearing officer any issue on  
9 appeal addressed by a court of this state.

10 C. The administrative hearings office shall:

11 (1) hear all tax protests pursuant to the  
12 provisions of the Tax Administration Act;

13 (2) hear property tax protests pursuant to the  
14 provisions of the Property Tax Code;

15 (3) hear all certificate-denial protests  
16 pursuant to the provisions of Section 13-1-22 NMSA 1978;

17 (4) conduct all adjudicatory hearings pursuant  
18 to the Motor Vehicle Code;

19 (5) conduct all driver's license revocation  
20 hearings pursuant to the provisions of the Implied Consent Act;

21 (6) make and preserve a complete record of all  
22 proceedings; and

23 (7) maintain confidentiality regarding  
24 taxpayer information as required by the provisions of Section  
25 7-1-8 NMSA 1978.

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1           D. In hearings conducted pursuant to the Tax  
2 Administration Act, Section 13-1-22 NMSA 1978 and the Motor  
3 Vehicle Code:

4                   (1) the Rules of Evidence do not apply. The  
5 hearing officer may require reasonable substantiation of  
6 statements or records tendered, the accuracy or truth of which  
7 is in reasonable doubt, to rule on the admissibility of  
8 evidence. A taxpayer or the taxation and revenue department  
9 may request a written ruling on a contested question of  
10 evidence in a matter in which the taxpayer has filed a written  
11 protest and for which that protest is pending. The  
12 administrative hearings office shall issue a copy of its  
13 written ruling to the taxation and revenue department at the  
14 time the ruling is issued to the taxpayer;

15                   (2) the Rules of Civil Procedure for the  
16 District Courts do not apply. The hearing officer shall  
17 conduct a hearing to allow the ample and fair presentation of  
18 complaints and defenses. The hearing officer shall hear  
19 arguments, permit discovery, entertain and dispose of motions,  
20 require written expositions of the case as the circumstances  
21 justify and render a decision in accordance with the law and  
22 the evidence presented and admitted. A taxpayer or the  
23 taxation and revenue department may request a written ruling on  
24 a contested question of procedure in a matter in which the  
25 taxpayer has filed a written protest and for which that protest

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1 is pending. The administrative hearings office shall issue a  
2 copy of its written ruling to the taxation and revenue  
3 department at the time the ruling is issued to the taxpayer;  
4 and

5 (3) the hearing officer may administer oaths  
6 and issue subpoenas for the attendance of witnesses and the  
7 production of relevant books and papers, and for hearings  
8 conducted for a license suspension pursuant to Section 66-5-30  
9 NMSA 1978, the hearing officer may require a reexamination of  
10 the licensee.

11 SECTION 7. [NEW MATERIAL] CERTAIN ACTIONS PROHIBITED.--A  
12 hearing officer shall not:

13 A. engage or participate in any way in the  
14 enforcement or formulation of general tax policy other than to  
15 conduct hearings. A taxpayer or the taxation and revenue  
16 department may request that the chief hearing officer determine  
17 whether a hearing officer has engaged or participated in the  
18 enforcement or formulation of general tax policy and whether  
19 that engagement or participation affects the hearing officer's  
20 impartiality in a particular matter. To avoid actual or  
21 apparent prejudice, the chief hearing officer may designate  
22 another hearing officer for the matter; and

23 B. engage in ex-parte communications concerning the  
24 substantive issues of any matter that has been protested while  
25 that matter is pending. If the chief hearing officer

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1 determines that a hearing officer has engaged in prohibited  
2 ex-parte communications, the chief hearing officer shall  
3 designate another hearing officer for that matter.

4 SECTION 8. [NEW MATERIAL] TAX PROTESTS--PROCEDURES.--

5 A. Upon timely receipt of a tax protest filed  
6 pursuant to the provisions of Section 7-1-24 NMSA 1978, the  
7 taxation and revenue department shall promptly acknowledge the  
8 protest by letter to the protesting taxpayer or the taxpayer's  
9 representative. If the protest is not filed in accordance with  
10 the provisions of Section 7-1-24 NMSA 1978, the department  
11 shall inform the taxpayer of the deficiency and the opportunity  
12 to correct it. Within forty-five days after receipt of a  
13 protest filed pursuant to the provisions of Section 7-1-24 NMSA  
14 1978 that has not been resolved, the taxation and revenue  
15 department shall request from the administrative hearings  
16 office a hearing and shall send to the office a copy of the  
17 protest. The chief hearing officer shall promptly designate a  
18 hearing officer and shall set a date for a hearing to take  
19 place within ninety days after receipt of a protest filed  
20 pursuant to Section 7-1-24 NMSA 1978.

21 B. A taxpayer may appear at the hearing on the  
22 taxpayer's own behalf or may be represented by a bona fide  
23 employee, an attorney, a certified public accountant or, with  
24 respect only to tax imposed pursuant to the Income Tax Act, a  
25 person who is an enrolled agent for federal income tax

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1 purposes. If the taxation and revenue department and the  
2 taxpayer agree, the hearing may be conducted via  
3 videoconference. At the beginning of the hearing, the hearing  
4 officer shall inform the taxpayer of the taxpayer's right to  
5 representation. A hearing shall not be open to the public  
6 except upon request of the taxpayer. A hearing officer may  
7 postpone or continue a hearing at the hearing officer's  
8 discretion.

9 C. Within thirty days after the hearing, the  
10 hearing officer shall inform the taxation and revenue  
11 department and the taxpayer in writing of the decision and,  
12 pursuant to the provisions of Section 7-1-25 NMSA 1978, of the  
13 aggrieved party's right to, and the requirements for perfection  
14 of, an appeal from the decision to the court of appeals and of  
15 the consequences of a failure to appeal. The written decision  
16 shall embody an order granting or denying the relief requested  
17 or granting or denying a part of the relief requested, as  
18 appropriate.

19 D. A taxpayer with two or more protests containing  
20 related issues may request that the protests be combined and  
21 heard jointly. The hearing officer shall grant the request to  
22 combine protests unless it would create an unreasonable burden  
23 on the administrative hearings office or the taxation and  
24 revenue department.

25 E. Nothing in this section shall be construed to

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1 authorize a criminal proceeding or to authorize an  
2 administrative protest of the issuance of a subpoena or  
3 summons.

4 SECTION 9. [NEW MATERIAL] MOTOR VEHICLE ADMINISTRATIVE  
5 HEARINGS--PROCEDURES.--

6 A. A person may dispute the denial of or failure to  
7 either allow or deny a license, permit, placard or registration  
8 provided for in the Motor Vehicle Code. Upon timely receipt of  
9 a protest, the chief hearing officer shall promptly designate a  
10 hearing officer to conduct a hearing and shall set a date for  
11 the hearing. On that date, the hearing officer shall hear the  
12 protest.

13 B. A person may appear at a hearing set pursuant to  
14 the provisions of Subsection A of this section for the person's  
15 self or be represented by a bona fide employee or an attorney.  
16 A hearing shall not be open to the public except if held  
17 pursuant to the provisions of the Implied Consent Act or upon  
18 request of the person. A hearing officer may postpone or  
19 continue a hearing.

20 C. At the beginning of the hearing, the hearing  
21 officer shall inform the person of the person's right to  
22 representation. Within thirty days after the hearing, the  
23 hearing officer shall inform the protestant in writing of the  
24 decision and of the protestant's right to, and the requirements  
25 for perfection of, an appeal from the decision to the district

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1 court and of the consequences of a failure to appeal. The  
2 written decision shall embody an order granting or denying the  
3 relief requested or granting such part of the relief requested,  
4 as appropriate.

5 D. If the protestant or the secretary of taxation  
6 and revenue is dissatisfied with the decision and order of the  
7 hearing officer, the party may appeal pursuant to the  
8 provisions of Section 39-3-1.1 NMSA 1978.

9 E. No court of this state has jurisdiction to  
10 entertain a proceeding by any person in which the person calls  
11 into question the application to that person of any provision  
12 of the Motor Vehicle Code, except as a consequence of the  
13 appeal by that person to the district court from the action and  
14 order of the hearing officer as provided for in this section.

15 F. Nothing in this section shall be construed to  
16 authorize a criminal proceeding or to authorize an  
17 administrative protest of the issuance of a subpoena or  
18 summons.

19 **SECTION 10.** Section 7-1-3 NMSA 1978 (being Laws 1965,  
20 Chapter 248, Section 3, as amended) is amended to read:

21 "7-1-3. DEFINITIONS.--Unless the context clearly  
22 indicates a different meaning, the definitions of words and  
23 phrases as they are stated in this section are to be used, and  
24 whenever in the Tax Administration Act these words and phrases  
25 appear, the singular includes the plural and the plural

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1 includes the singular:

2 A. "automated clearinghouse transaction" means an  
3 electronic credit or debit transmitted through an automated  
4 clearinghouse payable to the state treasurer and deposited with  
5 the fiscal agent of New Mexico;

6 B. "department" means the taxation and revenue  
7 department, the secretary or any employee of the department  
8 exercising authority lawfully delegated to that employee by the  
9 secretary;

10 C. "electronic payment" means a payment made by  
11 automated clearinghouse deposit, any funds wire transfer system  
12 or a credit card, debit card or electronic cash transaction  
13 through the internet;

14 D. "employee of the department" means any employee  
15 of the department, including the secretary, or any person  
16 acting as agent or authorized to represent or perform services  
17 for the department in any capacity with respect to any law made  
18 subject to administration and enforcement under the provisions  
19 of the Tax Administration Act;

20 E. "financial institution" means any state or  
21 federally chartered, federally insured depository institution;

22 F. "hearing officer" means a person who has been  
23 designated by the chief hearing officer to serve as a hearing  
24 officer and who is:

25 (1) the chief hearing officer;

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1                   (2) an employee of the administrative hearings  
2 office; or

3                   (3) a contractor of the administrative  
4 hearings office;

5                   [~~F.~~] G. "Internal Revenue Code" means the Internal  
6 Revenue Code of 1986, as that code may be amended or its  
7 sections renumbered;

8                   [~~G.~~] H. "levy" means the lawful power, hereby  
9 invested in the secretary, to take into possession or to  
10 require the present or future surrender to the secretary or the  
11 secretary's delegate of any property or rights to property  
12 belonging to a delinquent taxpayer;

13                   [~~H.~~] I. "local option gross receipts tax" means a  
14 tax authorized to be imposed by a county or municipality upon  
15 the taxpayer's gross receipts, as that term is defined in the  
16 Gross Receipts and Compensating Tax Act, and required to be  
17 collected by the department at the same time and in the same  
18 manner as the gross receipts tax; "local option gross receipts  
19 tax" includes the taxes imposed pursuant to the Municipal Local  
20 Option Gross Receipts Taxes Act, Supplemental Municipal Gross  
21 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,  
22 Local Hospital Gross Receipts Tax Act, County Correctional  
23 Facility Gross Receipts Tax Act and such other acts as may be  
24 enacted authorizing counties or municipalities to impose taxes  
25 on gross receipts, which taxes are to be collected by the

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1 department in the same time and in the same manner as it  
2 collects the gross receipts tax;

3 ~~[F.]~~ J. "managed audit" means a review and analysis  
4 conducted by a taxpayer under an agreement with the department  
5 to determine the taxpayer's compliance with a tax administered  
6 pursuant to the Tax Administration Act and the presentation of  
7 the results to the department for assessment of tax found to be  
8 due;

9 ~~[J.]~~ K. "net receipts" means the total amount of  
10 money paid by taxpayers to the department in a month pursuant  
11 to a tax or tax act less any refunds disbursed in that month  
12 with respect to that tax or tax act;

13 ~~[K.]~~ L. "overpayment" means an amount paid,  
14 pursuant to any law subject to administration and enforcement  
15 under the provisions of the Tax Administration Act, by a person  
16 to the department or withheld from the person in excess of tax  
17 due from the person to the state at the time of the payment or  
18 at the time the amount withheld is credited against tax due;

19 ~~[L.]~~ M. "paid" includes the term "paid over";

20 ~~[M.]~~ N. "pay" includes the term "pay over";

21 ~~[N.]~~ O. "payment" includes the term "payment over";

22 ~~[O.]~~ P. "person" means any individual, estate,  
23 trust, receiver, cooperative association, club, corporation,  
24 company, firm, partnership, limited liability company, limited  
25 liability partnership, joint venture, syndicate, other

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1 association or gas, water or electric utility owned or operated  
2 by a county or municipality; "person" also means, to the extent  
3 permitted by law, a federal, state or other governmental unit  
4 or subdivision, or an agency, department or instrumentality  
5 thereof; and "person", as used in Sections 7-1-72 through  
6 7-1-74 NMSA 1978, also includes an officer or employee of a  
7 corporation, a member or employee of a partnership or any  
8 individual who, as such, is under a duty to perform any act in  
9 respect of which a violation occurs;

10 ~~[P-]~~ Q. "property" means property or rights to  
11 property;

12 ~~[Q-]~~ R. "property or rights to property" means any  
13 tangible property, real or personal, or any intangible property  
14 of a taxpayer;

15 ~~[R-]~~ S. "return" means any tax or information  
16 return, declaration of estimated tax or claim for refund,  
17 including any amendments or supplements to the return, required  
18 or permitted pursuant to a law subject to administration and  
19 enforcement pursuant to the Tax Administration Act and filed  
20 with the secretary or the secretary's delegate by or on behalf  
21 of any person;

22 ~~[S-]~~ T. "return information" means a taxpayer's  
23 name, address, government-issued identification number and  
24 other identifying information; any information contained in or  
25 derived from a taxpayer's return; any information with respect

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1 to any actual or possible administrative or legal action by an  
2 employee of the department concerning a taxpayer's return, such  
3 as audits, managed audits, denial of credits or refunds,  
4 assessments of tax, penalty or interest, protests of  
5 assessments or denial of refunds or credits, levies or liens;  
6 or any other information with respect to a taxpayer's return or  
7 tax liability that was not obtained from public sources or that  
8 was created by an employee of the department; but "return  
9 information" does not include statistical data or other  
10 information that cannot be associated with or directly or  
11 indirectly identify a particular taxpayer;

12 [F.] U. "secretary" means the secretary of taxation  
13 and revenue and, except for purposes of Subsection B of Section  
14 7-1-4 NMSA 1978 [~~and Subsection E of Section 7-1-24 NMSA 1978~~],  
15 also includes the deputy secretary or a division director or  
16 deputy division director delegated by the secretary;

17 [H.] V. "secretary or the secretary's delegate"  
18 means the secretary or any employee of the department  
19 exercising authority lawfully delegated to that employee by the  
20 secretary;

21 [V.] W. "security" means money, property or rights  
22 to property or a surety bond;

23 [W.] X. "state" means any state of the United  
24 States, the District of Columbia, the commonwealth of Puerto  
25 Rico and any territory or possession of the United States;

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1           ~~[X.]~~ Y. "tax" means the total amount of each tax  
2 imposed and required to be paid, withheld and paid or collected  
3 and paid under provision of any law made subject to  
4 administration and enforcement according to the provisions of  
5 the Tax Administration Act and, unless the context otherwise  
6 requires, includes the amount of any interest or civil penalty  
7 relating thereto; "tax" also means any amount of any abatement  
8 of tax made or any credit, rebate or refund paid or credited by  
9 the department under any law subject to administration and  
10 enforcement under the provisions of the Tax Administration Act  
11 to any person contrary to law and includes, unless the context  
12 requires otherwise, the amount of any interest or civil penalty  
13 relating thereto;

14           ~~[Y. "taxpayer" means a person liable for payment of~~  
15 ~~any tax, a person responsible for withholding and payment or~~  
16 ~~for collection and payment of any tax a person to whom an~~  
17 ~~assessment has been made, if the assessment remains unabated or~~  
18 ~~the amount thereof has not been paid, or a person who entered~~  
19 ~~into a special agreement to assume the liability of gross~~  
20 ~~receipts tax or governmental gross receipts tax of another~~  
21 ~~person and the special agreement was approved by the secretary~~  
22 ~~pursuant to the Tax Administration Act; and]~~

23           Z. "tax return preparer" means a person who  
24 prepares for others for compensation or who employs one or more  
25 persons to prepare for others for compensation any return of

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1 income tax, a substantial portion of any return of income tax,  
2 any claim for refund with respect to income tax or a  
3 substantial portion of any claim for refund with respect to  
4 income tax; provided that a person shall not be a "tax return  
5 preparer" merely because such person:

6 (1) furnishes typing, reproducing or other  
7 mechanical assistance;

8 (2) is an employee who prepares an income tax  
9 return or claim for refund with respect to an income tax return  
10 of the employer, or of an officer or employee of the employer,  
11 by whom the person is regularly and continuously employed; or

12 (3) prepares as a trustee or other fiduciary  
13 an income tax return or claim for refund with respect to income  
14 tax for any person; and

15 AA. "taxpayer" means a person liable for payment of  
16 any tax; a person responsible for withholding and payment or  
17 for collection and payment of any tax; a person to whom an  
18 assessment has been made, if the assessment remains unabated or  
19 the amount thereof has not been paid; or a person who entered  
20 into a special agreement to assume the liability of gross  
21 receipts tax or governmental gross receipts tax of another  
22 person and the special agreement was approved by the secretary  
23 pursuant to the Tax Administration Act."

24 SECTION 11. Section 7-1-4.2 NMSA 1978 (being Laws 2003,  
25 Chapter 398, Section 2) is amended to read:

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1 "7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights  
2 afforded New Mexico taxpayers during the assessment, collection  
3 and enforcement of any tax administered by the department as  
4 set forth in the Tax Administration Act include:

5 A. the right to available public information and  
6 prompt and courteous tax assistance;

7 B. the right to be represented or advised by  
8 counsel or other qualified representatives at any time in  
9 administrative interactions with the department in accordance  
10 with the provisions of Section 7-1-24 NMSA 1978 or the  
11 administrative hearings office in accordance with the  
12 provisions of the Administrative Hearings Office Act;

13 C. the right to have audits, inspections of records  
14 and meetings conducted at a reasonable time and place in  
15 accordance with the provisions of Section 7-1-11 NMSA 1978;

16 D. the right to have the department conduct its  
17 audits in a timely and expeditious manner and be entitled to  
18 the tolling of interest as provided in the Tax Administration  
19 Act;

20 E. the right to obtain nontechnical information  
21 that explains the procedures, remedies and rights available  
22 during audit, protest, appeals and collection proceedings  
23 pursuant to the Tax Administration Act;

24 F. the right to be provided with an explanation of  
25 the results of and the basis for audits, assessments or denials

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1 of refunds that identify any amount of tax, interest or penalty  
2 due;

3 G. the right to seek review, through formal or  
4 informal proceedings, of any findings or adverse decisions  
5 relating to determinations during audit or protest procedures  
6 in accordance with the provisions of Section 7-1-24 NMSA 1978  
7 and the Administrative Hearings Office Act;

8 H. the right to have the taxpayer's tax information  
9 kept confidential unless otherwise specified by law, in  
10 accordance with Section 7-1-8 NMSA 1978;

11 I. the right to abatement of an assessment of taxes  
12 determined to have been incorrectly, erroneously or illegally  
13 made, as provided in Section 7-1-28 NMSA 1978 and the right to  
14 seek a compromise of an asserted tax liability by obtaining a  
15 written determination of liability or nonliability when the  
16 secretary in good faith is in doubt of the liability as  
17 provided in Section 7-1-20 NMSA 1978;

18 J. upon receipt of a tax assessment, the right to  
19 be informed clearly that if the assessment is not paid,  
20 secured, protested or otherwise provided for in accordance with  
21 the provisions of Section 7-1-16 NMSA 1978, the taxpayer will  
22 be a delinquent taxpayer and, upon notice of delinquency, the  
23 right to timely notice of any collection actions that will  
24 require sale or seizure of the taxpayer's property in  
25 accordance with the provisions of the Tax Administration Act;

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1 and

2 K. the right to procedures for payment of tax  
3 obligations by installment payment agreements, in accordance  
4 with Section 7-1-21 NMSA 1978."

5 SECTION 12. Section 7-1-8.3 NMSA 1978 (being Laws 2009,  
6 Chapter 243, Section 5) is amended to read:

7 "7-1-8.3. INFORMATION THAT MAY BE REVEALED TO PUBLIC.--An  
8 employee of the department may reveal:

9 A. information obtained through the administration  
10 of a law not subject to administration and enforcement under  
11 the provisions of the Tax Administration Act to the extent that  
12 revealing that information is not otherwise prohibited by law;

13 B. return information with respect to the taxes or  
14 tax acts administered pursuant to Subsection B of Section 7-1-2  
15 NMSA 1978, except that:

16 (1) return information for or relating to a  
17 period prior to July 1, 1985 with respect to [~~Sections 7-25-1~~  
18 ~~through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978~~] the  
19 Resources Excise Tax Act and the Severance Tax Act may be  
20 revealed only to a committee of the legislature for a valid  
21 legislative purpose;

22 (2) except as provided in Paragraph (3) of  
23 this subsection, contracts and other agreements between the  
24 taxpayer and other parties and the proprietary information  
25 contained in those contracts and agreements shall not be

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1 revealed without the consent of all parties to the contract or  
2 agreement; and

3 (3) audit workpapers and the proprietary  
4 information contained in the workpapers shall not be revealed  
5 except to:

6 (a) the ~~[minerals management service]~~  
7 bureau of safety and environmental enforcement of the United  
8 States department of the interior, if production occurred on  
9 federal land;

10 (b) a person having a legal interest in  
11 the property that is subject to the audit;

12 (c) a purchaser of products severed from  
13 a property subject to the audit; or

14 (d) the authorized representative of any  
15 of the persons in Subparagraphs (a) through (c) of this  
16 paragraph. This paragraph does not prohibit the revelation of  
17 proprietary information contained in the workpapers that is  
18 also available from returns or from other sources not subject  
19 to the provisions of Section 7-1-8 NMSA 1978;

20 C. return information with respect to the taxes,  
21 surtaxes, advance payments or tax acts administered pursuant to  
22 Subsection C of Section 7-1-2 NMSA 1978;

23 D. a decision and order made by a hearing officer  
24 pursuant to ~~[Section 7-1-24 NMSA 1978]~~ the provisions of the  
25 Administrative Hearings Office Act with respect to a protest

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1 filed with the secretary on or after July 1, 1993;

2 E. any written ruling on questions of evidence or  
3 procedure made by a hearing officer pursuant to [~~Section 7-1-24~~  
4 ~~NMSA 1978~~] the provisions of the Administrative Hearings Office  
5 Act; provided that the name and identification number of the  
6 taxpayer requesting the ruling shall not be revealed; and

7 F. return information included in a notice of lien  
8 or release or extinguishment of lien."

9 SECTION 13. Section 7-1-8.4 NMSA 1978 (being Laws 2009,  
10 Chapter 243, Section 6) is amended to read:

11 "7-1-8.4. INFORMATION THAT MAY BE REVEALED TO JUDICIAL  
12 BODIES OR WITH RESPECT TO JUDICIAL PROCEEDINGS OR  
13 INVESTIGATIONS AND TO ADMINISTRATIVE HEARINGS OFFICE.--An  
14 employee of the department may reveal to:

15 A. a district court, an appellate court or a  
16 federal court, a return or return information:

17 (1) in response to an order thereof in an  
18 action relating to taxes or an action for tax fraud or any  
19 other crime that may involve taxes due to the state and in  
20 which the information sought is about a taxpayer [~~who~~] that is  
21 party to the action and is material to the inquiry, in which  
22 case only that information may be required to be produced in  
23 court and admitted in evidence subject to court order  
24 protecting the confidentiality of the information and no more;

25 (2) in an action in which the department is

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1 attempting to enforce an act with which the department is  
2 charged or to collect a tax; or

3 (3) in any matter in which the department is a  
4 party and the taxpayer has put the taxpayer's own liability for  
5 taxes at issue, in which case only that information regarding  
6 the taxpayer [~~who~~] that is party to the action may be produced,  
7 but this shall not prevent revelation of department policy or  
8 interpretation of law arising from circumstances of a taxpayer  
9 [~~who~~] that is not a party;

10 B. the Bernalillo county metropolitan court, upon  
11 that court's request, the last known address and the date of  
12 that address for every person the court certifies to the  
13 department as a person who owes fines, fees or costs to the  
14 court or who has failed to appear pursuant to a court order or  
15 a promise to appear;

16 C. a magistrate court, upon the magistrate court's  
17 request, the last known address and the date of that address  
18 for every person the court certifies to the department as a  
19 person who owes fines, fees or costs to the court or who has  
20 failed to appear pursuant to a court order or a promise to  
21 appear;

22 D. a district attorney, a state district court  
23 grand jury or federal grand jury, information for an  
24 investigation of or proceeding related to an alleged criminal  
25 violation of the tax laws; [~~and~~]

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1 E. a third party subject to a subpoena or levy  
2 issued pursuant to the provisions of the Tax Administration  
3 Act, the identity of the taxpayer involved, the taxes or tax  
4 acts involved and the nature of the proceeding; and

5 F. the administrative hearings office, information  
6 in relation to a protest or other hearing, in which case only  
7 that information regarding the taxpayer that is a party to the  
8 action may be produced, but this shall not prevent revelation  
9 of department policy or interpretation of law arising from  
10 circumstances of a taxpayer that is not a party. The office  
11 shall maintain confidentiality regarding taxpayer information  
12 as required by the provisions of Section 7-1-8 NMSA 1978."

13 SECTION 14. Section 7-1-22 NMSA 1978 (being Laws 1965,  
14 Chapter 248, Section 24, as amended) is amended to read:

15 "7-1-22. EXHAUSTION OF ADMINISTRATIVE REMEDIES.--No court  
16 of this state has jurisdiction to entertain any proceeding by a  
17 taxpayer in which the taxpayer calls into question the  
18 taxpayer's liability for any tax or the application to the  
19 taxpayer of any provision of the Tax Administration Act, except  
20 as a consequence of the appeal by the taxpayer to the court of  
21 appeals from the [~~action and order of the secretary, all as~~  
22 ~~specified in Section 7-1-24 NMSA 1978~~] order of a hearing  
23 officer, or except as a consequence of a claim for refund as  
24 specified in Section 7-1-26 NMSA 1978."

25 SECTION 15. Section 7-1-24 NMSA 1978 (being Laws 1965,

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1 Chapter 248, Section 26, as amended) is amended to read:

2 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

3 A. ~~Any~~ A taxpayer may dispute:

4 (1) the assessment to the taxpayer of any  
5 amount of tax;

6 (2) the application to the taxpayer of any  
7 provision of the Tax Administration Act except the issuance of  
8 a subpoena or summons; or

9 (3) the denial of or failure either to allow  
10 or to deny a:

11 (a) credit or rebate; or

12 (b) claim for refund made in accordance  
13 with Section 7-1-26 NMSA 1978.

14 B. The taxpayer may dispute a matter described in  
15 Subsection A of this section by filing with the secretary a  
16 written protest. Every protest shall identify the taxpayer and  
17 the tax credit, rebate, property or provision of the Tax  
18 Administration Act involved and state the grounds for the  
19 taxpayer's protest and the affirmative relief requested. The  
20 statement of grounds for protest shall specify individual  
21 grounds upon which the protest is based and a summary statement  
22 of the evidence, if any, expected to be produced supporting  
23 each ground asserted; provided that the taxpayer may supplement  
24 the statement at any time prior to ten days before ~~any~~ the  
25 hearing conducted on the protest pursuant to ~~Section 7-1-24.1~~

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1 ~~NMSA 1978~~] the provisions of the Administrative Hearings Office  
2 Act or, if a scheduling order has been issued, in accordance  
3 with the scheduling order. The secretary may, in appropriate  
4 cases, provide for an informal conference before [~~setting~~] a  
5 hearing of the protest is set by the administrative hearings  
6 office or before acting on [~~any~~] a claim for refund. In the  
7 case of an assessment of tax by the department, a protest may  
8 be filed without making payment of the amount assessed.

9 C. [~~Any~~] A protest by a taxpayer shall be filed  
10 within ninety days of the date of the mailing to or service  
11 upon the taxpayer by the department of the notice of assessment  
12 or other peremptory notice or demand, the date of mailing or  
13 filing a return, the date of the application to the taxpayer of  
14 the applicable provision of the Tax Administration Act, the  
15 date of denial of a claim pursuant to Section [~~7-1-24.1~~] 7-1-26  
16 NMSA 1978 or the last date upon which the department was  
17 required to take action on the claim but failed to take action.  
18 If a protest is not filed within the time required, the  
19 secretary may proceed to enforce collection of any tax if the  
20 taxpayer is delinquent within the meaning of Section 7-1-16  
21 NMSA 1978. The fact that the department did not mail the  
22 assessment or other peremptory notice or demand by certified or  
23 registered mail or otherwise demand and receive acknowledgment  
24 of receipt by the taxpayer shall not be deemed to demonstrate  
25 the taxpayer's inability to protest within the required time.

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1 D. No proceedings other than those to enforce  
2 collection of [~~any~~] an amount assessed as tax and to protect  
3 the interest of the state by injunction, as provided in  
4 Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and  
5 7-1-58 NMSA 1978, are stayed by timely filing of a protest  
6 [~~under~~] pursuant to the provisions of this section.

7 E. Nothing in this section shall be construed to  
8 authorize [~~any~~] a criminal [~~proceedings hereunder~~] proceeding  
9 or to authorize an administrative protest of the issuance of a  
10 subpoena or summons."

11 SECTION 16. Section 7-1-25 NMSA 1978 (being Laws 1965,  
12 Chapter 248, Section 27, as amended) is amended to read:

13 "7-1-25. APPEALS FROM [~~SECRETARY'S~~] HEARING OFFICER'S  
14 DECISION AND ORDER.--

15 A. If the protestant or secretary is dissatisfied  
16 with the decision and order of the hearing officer, the party  
17 may appeal to the court of appeals for further relief, but only  
18 to the same extent and upon the same theory as was asserted in  
19 the hearing before the hearing officer. All such appeals shall  
20 be upon the record made at the hearing and shall not be de  
21 novo. All such appeals to the court of appeals shall be taken  
22 within thirty days of the date of mailing or delivery of the  
23 written decision and order of the hearing officer to the  
24 protestant, and, if not so taken, the decision and order are  
25 conclusive.

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1           B. The procedure for perfecting an appeal under  
2 this section to the court of appeals shall be as provided by  
3 the Rules of Appellate Procedure.

4           C. Upon appeal, the court shall set aside a  
5 decision and order of the hearing officer only if found to be:

6                   (1) arbitrary, capricious or an abuse of  
7 discretion;

8                   (2) not supported by substantial evidence in  
9 the record; or

10                   (3) otherwise not in accordance with the law.

11           D. If the secretary appeals a decision of the  
12 hearing officer and the court's decision, from which either no  
13 appeal is taken or no appeal may be taken, upholds the decision  
14 of the hearing officer, the court shall award reasonable  
15 ~~[attorney's]~~ attorney fees to the protestant. If the decision  
16 upholds the hearing officer's decision only in part, the award  
17 shall be limited to reasonable ~~[attorney's]~~ attorney fees  
18 associated with the portion upheld."

19           SECTION 17. Section 7-1-26 NMSA 1978 (being Laws 1965,  
20 Chapter 248, Section 28, as amended) is amended to read:

21           "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE  
22 OR REFUND.--

23           A. ~~[Any]~~ A person who believes that an amount of  
24 tax has been paid by or withheld from that person in excess of  
25 that for which the person was liable, who has been denied any

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1 credit or rebate claimed or who claims a prior right to  
2 property in the possession of the department pursuant to a levy  
3 made under authority of Sections 7-1-31 through 7-1-34 NMSA  
4 1978 may claim a refund by directing to the secretary, within  
5 the time limited by the provisions of Subsections D and E of  
6 this section, a written claim for refund. Except as provided  
7 in Subsection I of this section, a refund claim shall include:

8 (1) the taxpayer's name, address and  
9 identification number;

10 (2) the type of tax for which a refund is  
11 being claimed, the credit or rebate denied or the property  
12 levied upon;

13 (3) the sum of money or other property being  
14 claimed;

15 (4) with respect to refund, the period for  
16 which overpayment was made; and

17 (5) a brief statement of the facts and the law  
18 on which the claim is based, which may be referred to as the  
19 "basis for the refund".

20 B. The secretary or the secretary's delegate may  
21 allow the claim in whole or in part or may deny the claim.

22 (1) If the claim is denied in whole or in part  
23 in writing, no claim may be refiled with respect to that which  
24 was denied, but the person, within ninety days after either the  
25 mailing or delivery of the denial of all or any part of the

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1 claim, may elect to pursue one, but not more than one, of the  
2 remedies in Subsection C of this section.

3 (2) If the department has neither granted nor  
4 denied any portion of a claim for refund within one hundred  
5 twenty days of the date the claim was mailed or delivered to  
6 the department, the person may refile it within the time limits  
7 set forth in Subsection D of this section or may within ninety  
8 days elect to pursue one, but only one, of the remedies in  
9 Subsection C of this section. After the expiration of the two  
10 hundred ten days from the date the claim was mailed or  
11 delivered to the department, the department may not approve or  
12 disapprove the claim unless the person has pursued one of the  
13 remedies under Subsection C of this section.

14 C. A person may elect to pursue ~~[one, but only]~~ no  
15 more than one of the remedies in Paragraphs (1) and (2) of this  
16 subsection. ~~[In any case, if]~~ A person ~~[does timely pursue]~~  
17 who timely pursues more than one remedy ~~[the person]~~ shall be  
18 deemed to have elected the first remedy invoked. The ~~[remedies~~  
19 ~~are as follows: (1) the]~~ person may:

20 (1) direct to the secretary, pursuant to the  
21 provisions of Section 7-1-24 NMSA 1978, a written protest  
22 ~~[against the denial of, or failure to either allow or deny, the~~  
23 ~~claim or portion of the claim]~~ that shall set forth:

24 (a) the circumstances of: 1) an alleged  
25 overpayment; 2) a denied credit; 3) a denied rebate; or 4) a

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1 denial of a prior right to property levied upon by the  
2 department;

3 (b) an allegation that, because of that  
4 overpayment or denial, the state is indebted to the taxpayer  
5 for a specified amount, including any allowed interest, or for  
6 the property;

7 (c) demanding the refund to the taxpayer  
8 of that amount or that property; and

9 (d) reciting the facts of the claim for  
10 refund; or

11 (2) [~~the person may~~] commence a civil action  
12 in the district court for Santa Fe county by filing a complaint  
13 setting forth the circumstance of the claimed overpayment,  
14 denied credit or rebate or denial of a prior right to property  
15 levied upon by the department alleging that on account thereof  
16 the state is indebted to the plaintiff in the amount or  
17 property stated, together with any interest allowable,  
18 demanding the refund to the plaintiff of that amount or  
19 property and reciting the facts of the claim for refund. The  
20 plaintiff or the secretary may appeal from any final decision  
21 or order of the district court to the court of appeals.

22 D. Except as otherwise provided in Subsection E of  
23 this section, no credit or refund of any amount may be allowed  
24 or made to any person unless as the result of a claim made by  
25 that person as provided in this section:

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- 1 (1) within three years of the end of the  
2 calendar year in which:
- 3 (a) the payment was originally due or  
4 the overpayment resulted from an assessment by the department  
5 pursuant to Section 7-1-17 NMSA 1978, whichever is later;
- 6 (b) the final determination of value  
7 occurs with respect to any overpayment that resulted from a  
8 disapproval by any agency of the United States or the state of  
9 New Mexico or any court of increase in value of a product  
10 subject to taxation under the Oil and Gas Severance Tax Act,  
11 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency  
12 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act  
13 or the Natural Gas Processors Tax Act;
- 14 (c) property was levied upon pursuant to  
15 the provisions of the Tax Administration Act; or
- 16 (d) an overpayment of New Mexico tax  
17 resulted from: 1) an internal revenue service audit adjustment  
18 or a federal refund paid due to an adjustment of an audit by  
19 the internal revenue service or an amended federal return; or  
20 2) making a change to a federal return for which federal  
21 approval is required by the Internal Revenue Code;
- 22 (2) when an amount of a claim for credit under  
23 the provisions of the Investment Credit Act, Laboratory  
24 Partnership with Small Business Tax Credit Act or Technology  
25 Jobs Tax Credit Act or for the rural job tax credit pursuant to

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1 Section 7-2E-1.1 NMSA 1978 or similar credit has been denied,  
2 the taxpayer may claim a refund of the credit no later than one  
3 year after the date of the denial;

4 (3) when a taxpayer under audit by the  
5 department has signed a waiver of the limitation on assessments  
6 on or after July 1, 1993 pursuant to Subsection F of Section  
7 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of  
8 the same tax paid for the same period for which the waiver was  
9 given, until a date one year after the later of the date of the  
10 mailing of an assessment issued pursuant to the audit, the date  
11 of the mailing of final audit findings to the taxpayer or the  
12 date a proceeding is begun in court by the department with  
13 respect to the same tax and the same period;

14 (4) if the payment of an amount of tax was not  
15 made within three years of the end of the calendar year in  
16 which the original due date of the tax or date of the  
17 assessment of the department occurred, a claim for refund of  
18 that amount of tax can be made within one year of the date on  
19 which the tax was paid; or

20 (5) when a taxpayer has been assessed a tax on  
21 or after July 1, 1993 under Subsection B, C or D of Section  
22 7-1-18 NMSA 1978 and when the assessment applies to a period  
23 ending at least three years prior to the beginning of the year  
24 in which the assessment was made, the taxpayer may claim a  
25 refund for the same tax for the period of the assessment or for

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1 any period following that period within one year of the date of  
2 the assessment unless a longer period for claiming a refund is  
3 provided in this section.

4 E. No credit or refund shall be allowed or made to  
5 any person claiming a refund of gasoline tax under Section  
6 7-13-11 NMSA 1978 unless notice of the destruction of the  
7 gasoline was given the department within thirty days of the  
8 actual destruction and the claim for refund is made within six  
9 months of the date of destruction. No credit or refund shall  
10 be allowed or made to any person claiming a refund of gasoline  
11 tax under Section 7-13-17 NMSA 1978 unless the refund is  
12 claimed within six months of the date of purchase of the  
13 gasoline and the gasoline has been used at the time the claim  
14 for refund is made.

15 F. If as a result of an audit by the department or  
16 a managed audit covering multiple periods an overpayment of tax  
17 is found in any period under the audit, that overpayment may be  
18 credited against an underpayment of the same tax found in  
19 another period under audit pursuant to Section 7-1-29 NMSA  
20 1978, provided that the taxpayer files a claim for refund for  
21 the overpayments identified in the audit.

22 G. Any refund of tax paid under any tax or tax act  
23 administered under Subsection B of Section 7-1-2 NMSA 1978 may  
24 be made, at the discretion of the department, in the form of  
25 credit against future tax payments if future tax liabilities in

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1 an amount at least equal to the credit amount reasonably may be  
2 expected to become due.

3 H. For the purposes of this section, [~~the term~~]  
4 "oil and gas tax return" means a return reporting tax due with  
5 respect to oil, natural gas, liquid hydrocarbons, carbon  
6 dioxide, helium or nonhydrocarbon gas pursuant to the Oil and  
7 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,  
8 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad  
9 Valorem Production Tax Act, the Natural Gas Processors Tax Act  
10 or the Oil and Gas Production Equipment Ad Valorem Tax Act.

11 I. The filing of a fully completed original income  
12 tax return, corporate income tax return, corporate income and  
13 franchise tax return, estate tax return or special fuel excise  
14 tax return that shows a balance due the taxpayer or a fully  
15 completed amended income tax return, an amended corporate  
16 income tax return, an amended corporate income and franchise  
17 tax return, an amended estate tax return, an amended special  
18 fuel excise tax return or an amended oil and gas tax return  
19 that shows a lesser tax liability than the original return  
20 constitutes the filing of a claim for refund for the difference  
21 in tax due shown on the original and amended returns."

22 SECTION 18. Section 7-1-29.1 NMSA 1978 (being Laws 2003,  
23 Chapter 398, Section 12) is amended to read:

24 "7-1-29.1. AWARDING OF COSTS AND FEES.--

25 A. In any administrative or court proceeding that

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1 is brought by or against the taxpayer on or after July 1, 2003  
2 in connection with the determination, collection or refund of  
3 any tax, interest or penalty for a tax governed by the  
4 provisions of the Tax Administration Act, the taxpayer shall be  
5 awarded a judgment or a settlement for reasonable  
6 administrative costs incurred in connection with an  
7 administrative proceeding with the department or the  
8 administrative hearings office or reasonable litigation costs  
9 incurred in connection with a court proceeding, if the taxpayer  
10 is the prevailing party.

11 B. As used in this section:

12 (1) "administrative proceeding" means any  
13 procedure or other action before the department or the  
14 administrative hearings office;

15 (2) "court proceeding" means any civil action  
16 brought in state district court;

17 (3) "reasonable administrative costs" means:

18 (a) any administrative fees or similar  
19 charges imposed by the department or the administrative  
20 hearings office; and

21 (b) actual charges for: 1) filing fees,  
22 court reporter fees, service of process fees and similar  
23 expenses; 2) the services of expert witnesses; 3) any study,  
24 analysis, report, test or project reasonably necessary for the  
25 preparation of the party's case; and 4) fees and costs paid or

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1 incurred for the services in connection with the proceeding of  
2 attorneys or of certified public accountants who are authorized  
3 to practice [~~before the department~~] in the context of an  
4 administrative proceeding; and

5 (4) "reasonable litigation costs" means:

6 (a) reasonable court costs; and

7 (b) actual charges for: 1) filing fees,  
8 court reporter fees, service of process fees and similar  
9 expenses; 2) the services of expert witnesses; 3) any study,  
10 analysis, report, test or project reasonably necessary for the  
11 preparation of the party's case; and 4) fees and costs paid or  
12 incurred for the services of attorneys in connection with the  
13 proceeding.

14 C. For purposes of this section:

15 (1) the taxpayer is the prevailing party if  
16 the taxpayer has:

17 (a) substantially prevailed with respect  
18 to the amount in controversy; or

19 (b) substantially prevailed with respect  
20 to most of the issues involved in the case or the most  
21 significant issue or set of issues involved in the case;

22 (2) the taxpayer shall not be treated as the  
23 prevailing party if, prior to July 1, 2015, the department  
24 establishes or, on or after July 1, 2015, the hearing officer  
25 finds that the position of the department in the proceeding was

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1 based upon a reasonable application of the law to the facts of  
2 the case. For purposes of this paragraph, the position of the  
3 department shall be presumed not to be based upon a reasonable  
4 application of the law to the facts of the case if:

5 (a) the department did not follow ~~[its]~~  
6 applicable published guidance in the proceeding; or

7 (b) the assessment giving rise to the  
8 proceeding is not supported by substantial evidence determined  
9 at the time of the issuance of the assessment;

10 (3) as used in Subparagraph (a) of Paragraph  
11 (2) of this subsection, "applicable published guidance" means:

12 (a) department or administrative  
13 hearings office regulations, information releases,  
14 instructions, notices, technical advice memoranda and  
15 announcements; and

16 (b) private letter rulings and letters  
17 issued by the department to the taxpayer; and

18 (4) the determination of whether the taxpayer  
19 is the prevailing party and the amount of reasonable litigation  
20 costs or reasonable administrative costs shall be made by  
21 agreement of the parties or:

22 (a) in the case where the final  
23 determination with respect to the tax, interest or penalty is  
24 made in an administrative proceeding, by the ~~[department]~~  
25 hearing officer; or

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1 (b) in the case where the final  
2 determination is made by the court, the court.

3 D. An order granting or denying in whole or in part  
4 an award for reasonable litigation costs pursuant to Subsection  
5 A of this section in a court proceeding may be incorporated as  
6 a part of the decision or judgment in the court proceeding and  
7 shall be subject to appeal in the same manner as the decision  
8 or judgment. A decision or order granting or denying in whole  
9 or in part an award for reasonable administrative costs  
10 pursuant to Subsection A of this section by [~~the department~~] a  
11 hearing officer shall be reviewable in the same manner as a  
12 decision of [~~the department~~] a hearing officer.

13 E. No agreement for or award of reasonable  
14 administrative costs or reasonable litigation costs in any  
15 administrative or court proceeding pursuant to Subsection A of  
16 this section shall exceed the lesser of twenty percent of the  
17 amount of the settlement or judgment or fifty thousand dollars  
18 (\$50,000). A taxpayer awarded administrative litigation costs  
19 pursuant to this section may not receive an award of attorney  
20 fees pursuant to Subsection D of Section 7-1-25 NMSA 1978."

21 SECTION 19. Section 7-38-21 NMSA 1978 (being Laws 1973,  
22 Chapter 258, Section 61, as amended) is amended to read:

23 "7-38-21. PROTESTS--ELECTION OF REMEDIES.--

24 A. A property owner may protest the value or  
25 classification determined for [~~his~~] the property owner's

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1 property for property taxation purposes, the allocation of  
2 value of [~~his~~] the property to a particular governmental unit  
3 or a denial of a claim for an exemption or for a limitation on  
4 increase in value either by:

5 (1) filing, as provided in the Property Tax  
6 Code, a petition of protest with:

7 (a) the [~~director~~] administrative  
8 hearings office; or

9 (b) the county assessor [~~as provided in~~  
10 ~~the Property Tax Code~~]; or

11 (2) filing a claim for refund after paying  
12 [~~his~~] the property owner's taxes as provided in the Property  
13 Tax Code.

14 B. The initiation of a protest under Paragraph (1)  
15 of Subsection A of this section is an election to pursue that  
16 remedy and is an unconditional and irrevocable waiver of the  
17 right to pursue the remedy provided [~~under~~] in Paragraph (2) of  
18 Subsection A of this section.

19 C. A property owner may also protest the  
20 application to [~~his~~] the property owner's property of any  
21 administrative fee adopted pursuant to Section 7-38-36.1 NMSA  
22 1978 by filing a claim for refund after paying [~~his~~] the  
23 property owner's taxes as provided in the Property Tax Code."

24 SECTION 20. Section 7-38-22 NMSA 1978 (being Laws 1973,  
25 Chapter 258, Section 62, as amended) is amended to read:

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1 "7-38-22. PROTESTING VALUES, CLASSIFICATION, ALLOCATION  
2 OF VALUES AND DENIAL OF EXEMPTION DETERMINED BY THE DIVISION.--

3 A. A property owner may protest the value or  
4 classification determined by the division for [~~his~~] the  
5 property owner's property for property taxation purposes or the  
6 division's allocation of value of [~~his~~] the property owner's  
7 property to a particular governmental unit or the denial of a  
8 claim for an exemption by filing a petition with the [~~director~~]  
9 administrative hearings office. Filing a petition in  
10 accordance with this section entitles a property owner to a  
11 hearing on [~~his~~] the property owner's protest.

12 B. Petitions shall:

13 (1) be filed [~~with the division~~] no later than  
14 thirty days after the mailing by the division of the notice of  
15 valuation;

16 (2) state the property owner's name and  
17 address and the description of the property;

18 (3) state why the property owner believes the  
19 value, classification, [~~the~~] allocation of value or denial of  
20 an exemption is incorrect and what [~~he~~] the property owner  
21 believes the correct value, classification, allocation of value  
22 or exemption to be;

23 (4) state the value, classification,  
24 allocation of value or exemption that is not in controversy;  
25 and

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1 (5) contain such other information as the  
2 [~~division~~] administrative hearings office may by [~~regulation~~]  
3 rule require.

4 C. The [~~division~~] administrative hearings office  
5 shall notify the director and the property owner by certified  
6 mail of the date, time and place that [~~he~~] the parties may  
7 appear before the [~~director~~] administrative hearings office to  
8 [~~support his~~] present evidence related to the petition. The  
9 notice shall be mailed at least fifteen days prior to the  
10 hearing date.

11 D. The director may provide for an informal  
12 conference on the protest before the hearing."

13 SECTION 21. Section 7-38-23 NMSA 1978 (being Laws 1973,  
14 Chapter 258, Section 63, as amended) is amended to read:

15 "7-38-23. PROTEST HEARINGS--VERBATIM RECORD--ACTION BY  
16 HEARING OFFICER--TIME LIMITATIONS.--

17 A. Except for the rules relating to discovery, the  
18 technical rules of evidence and the Rules of Civil Procedure  
19 for the District Courts do not apply at a protest [~~hearings~~  
20 ~~before the hearing officer~~] hearing conducted pursuant to the  
21 provisions of the Property Tax Code, but the [~~hearings~~] hearing  
22 shall be conducted so that an ample opportunity is provided for  
23 the presentation of complaints and defenses. All testimony  
24 shall be taken under oath. A verbatim record of the hearings  
25 shall be made but need not be transcribed unless required for

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1 appeal purposes. A hearing officer shall be designated by the  
2 [~~secretary~~] chief hearing officer of the administrative  
3 hearings office to conduct the hearing.

4 B. Final action taken by the hearing officer on a  
5 petition shall be by written order. The hearing officer's  
6 order shall be made within thirty days after the date of the  
7 hearing, but this time limitation may be extended by agreement  
8 of the department and the protestant. A copy of the order  
9 shall be sent immediately by certified mail to the property  
10 owner. A copy of the order shall also be sent to the county  
11 assessor.

12 C. All protests shall be decided within one hundred  
13 twenty days of the date the protest is filed unless the parties  
14 otherwise agree. The protest shall be denied if the property  
15 owner or [~~his~~] the property owner's authorized representative  
16 fails, without reasonable justification, to appear at the  
17 hearing.

18 D. The hearing officer's order shall be in the name  
19 of the [~~secretary~~] chief hearing officer, dated, state the  
20 changes to be made in the valuation records, if any, and direct  
21 the county assessor to take appropriate action. The department  
22 shall make any changes in its valuation records required by the  
23 order.

24 E. Changes in the valuation records shall clearly  
25 indicate that the prior entry has been superseded by an order

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1 of the hearing officer.

2 F. The department shall maintain a file of all  
3 orders made pursuant to this section. The file shall be open  
4 for public inspection.

5 G. If an order of the hearing officer is appealed  
6 under Section 7-38-28 NMSA 1978, the department shall  
7 immediately notify the appropriate county assessor of the  
8 appeal. Notations shall be made in the valuation records of  
9 the assessor and the department indicating the pendency of the  
10 appeal."

11 SECTION 22. Section 7-38-28 NMSA 1978 (being Laws 1973,  
12 Chapter 258, Section 68, as amended) is amended to read:

13 "7-38-28. APPEALS FROM ORDERS OF THE ~~[DIRECTOR]~~ HEARING  
14 OFFICER OR COUNTY VALUATION PROTESTS BOARDS.--

15 A. A property owner may appeal an order made by  
16 ~~[the director]~~ a hearing officer or a county valuation protests  
17 board by filing an appeal pursuant to the provisions of Section  
18 39-3-1.1 NMSA 1978.

19 B. The director shall notify the appropriate county  
20 assessor of the decision and order of the district court and  
21 shall direct the assessor to take appropriate action to comply  
22 with the decision and order."

23 SECTION 23. Section 9-11-6.2 NMSA 1978 (being Laws 1995,  
24 Chapter 31, Section 3) is amended to read:

25 "9-11-6.2. ADMINISTRATIVE REGULATIONS, RULINGS,  
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1 INSTRUCTIONS AND ORDERS--PRESUMPTION OF CORRECTNESS.--

2 A. The secretary is empowered and directed to issue  
3 and file as required by law all regulations, rulings,  
4 instructions or orders necessary to implement and enforce any  
5 provision of any law the administration and enforcement of  
6 which the department, the secretary, any division of the  
7 department or any director of any division of the department is  
8 charged, including all rules and regulations necessary by  
9 reason of any alteration of any such law. In order to  
10 accomplish its purpose, this provision is to be liberally  
11 construed.

12 B. Directives issued by the secretary shall be in  
13 form substantially as follows:

14 (1) regulations shall be written statements of  
15 the secretary of general application, interpreting and  
16 exemplifying the ~~[statues]~~ statutes to which they relate;

17 (2) rulings shall be written statements of the  
18 secretary, of limited application to one or a small number of  
19 persons, interpreting the statutes to which they relate,  
20 ordinarily issued in response to a request for clarification of  
21 the consequences of a specified set of circumstances;

22 (3) orders shall be written statements of the  
23 secretary or ~~[a hearing officer or other]~~ delegate of the  
24 secretary to implement a decision after a hearing; and

25 (4) instructions shall be other written

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1 statements or directives of the secretary or secretary's  
2 delegate not dealing with the merits of any law but otherwise  
3 in aid of the accomplishment of the duties of the secretary.

4 C. To be effective, any ruling or regulation issued  
5 by the secretary shall be reviewed by the attorney general or  
6 other legal counsel of the department prior to being filed as  
7 required by law, and the fact of the review shall be indicated  
8 on the ruling or regulation.

9 D. To be effective, a regulation shall first be  
10 issued as a proposed regulation and filed for public inspection  
11 in the office of the secretary. Unless otherwise provided by  
12 statute, no regulation affecting any person or agency outside  
13 the department shall be adopted, amended or repealed without a  
14 public hearing on the proposed action before the secretary or a  
15 hearing officer designated by the secretary. The public  
16 hearing shall be held in Santa Fe unless otherwise permitted by  
17 statute. Notice of the subject matter of the regulation, the  
18 action proposed to be taken, the time and place of the hearing,  
19 the manner in which interested parties may present their views  
20 and the method by which copies of the proposed regulation,  
21 proposed amendment or repeal of an existing regulation may be  
22 obtained shall be published at least thirty days prior to the  
23 hearing date in [a] the New Mexico register and mailed at least  
24 thirty days prior to the hearing date to all persons who have  
25 made a written request for advance notice of hearing. After

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1 the proposed regulation has been on file for not less than  
2 sixty days and a public hearing on the proposed action has been  
3 held by the secretary or a hearing officer designated by the  
4 secretary, the secretary may issue it as a final regulation by  
5 signing the regulation and filing the regulation in the manner  
6 required by law. The secretary shall not delegate the  
7 authority to sign regulations.

8 E. In addition to filing copies of regulations with  
9 the state records center and archives as required by law, the  
10 secretary shall maintain in the office of the secretary a  
11 duplicate official set of current and superseded regulations, a  
12 set of current and superseded rulings and such additional sets  
13 of those regulations and rulings as appear necessary, which  
14 duplicate or additional sets shall be available for inspection  
15 by the public, but superseded regulations need be maintained  
16 for no longer than ten years from the date of supersession.

17 F. The secretary shall develop and maintain a file  
18 of names and addresses of individuals and professional and  
19 industry groups having an interest in the promulgation of new,  
20 revised or proposed regulations. At convenient times, the  
21 secretary shall distribute to these persons all such  
22 regulations and all pertinent rulings, making such charges as  
23 will defray the expense incurred in their physical preparation  
24 and mailing. Such charges are appropriated to the department  
25 to defray the costs of preparing and distributing regulations

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1 and rulings.

2 G. Any regulation, ruling, instruction or order  
3 issued by the secretary or ~~[order or instruction issued by a~~  
4 ~~hearing officer or other]~~ delegate of the secretary is presumed  
5 to be a proper implementation of the provisions of the laws  
6 that are charged to the department, the secretary, any division  
7 of the department or any director of any division of the  
8 department.

9 H. The extent to which regulations, rulings and  
10 orders will have retroactive effect shall be stated, and if no  
11 such statement is made, they will be applied prospectively  
12 only."

13 SECTION 24. Section 13-1-22 NMSA 1978 (being Laws 1969,  
14 Chapter 184, Section 1, as amended) is amended to read:

15 "13-1-22. RESIDENT BUSINESS, RESIDENT VETERAN BUSINESS,  
16 RESIDENT CONTRACTOR AND RESIDENT VETERAN CONTRACTOR  
17 CERTIFICATION.--

18 A. To receive a resident business or resident  
19 veteran business preference pursuant to Section 13-1-21 NMSA  
20 1978 or a resident contractor or resident veteran contractor  
21 preference pursuant to Section 13-4-2 NMSA 1978, a business or  
22 contractor shall submit with its bid or proposal a copy of a  
23 valid resident business certificate, valid resident veteran  
24 business certificate, valid resident contractor certificate or  
25 valid resident veteran contractor certificate issued by the

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1 taxation and revenue department.

2 B. An application for a resident business  
3 certificate shall include an affidavit from a certified public  
4 accountant setting forth that the business is licensed to do  
5 business in this state and that:

6 (1) the business has paid property taxes or  
7 rent on real property in the state and paid at least one other  
8 tax administered by the state in each of the three years  
9 immediately preceding the submission of the affidavit;

10 (2) if the business is a new business, the  
11 owner or majority of owners has paid property taxes or rent on  
12 real property in the state and has paid at least one other tax  
13 administered by the state in each of the three years  
14 immediately preceding the submission of the affidavit and has  
15 not applied for a resident business or resident contractor  
16 certificate pursuant to this section during that time period;

17 (3) if the business is a relocated business,  
18 at least eighty percent of the total personnel of the business  
19 in the year immediately preceding the submission of the  
20 affidavit were residents of the state and that, prior to the  
21 submission of the affidavit, the business either leased real  
22 property for ten years or purchased real property greater than  
23 one hundred thousand dollars (\$100,000) in value in the state;  
24 or

25 (4) if the business is a previously certified

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1 business or was eligible for certification, the business has  
2 changed its name, has reorganized into one or more different  
3 legal entities, was purchased by another legal entity but  
4 operates in the state as substantially the same commercial  
5 enterprise or has merged with a different legal entity but  
6 operates in the state as substantially the same commercial  
7 enterprise.

8 C. An application for a resident veteran business  
9 certificate shall include the affidavit required by Subsection  
10 B of this section, an affidavit from a certified public  
11 accountant providing the previous year's annual revenues of the  
12 resident veteran business and:

13 (1) verification by the federal department of  
14 veterans affairs as being either a veteran-owned small business  
15 or a service-disabled veteran-owned small business; or

16 (2) verification of veteran status as  
17 indicated by the United States department of defense DD form  
18 214 of release or discharge from active duty with an honorable  
19 discharge or of service-disabled veteran status by the  
20 department of veterans affairs and proof that a veteran or  
21 veterans own a majority of the business.

22 D. An application for a resident contractor  
23 certificate shall include an affidavit from a certified public  
24 accountant setting forth that the contractor is currently  
25 licensed as a contractor in this state and that:

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- 1 (1) the contractor has:
- 2 (a) registered with the state at least
- 3 one vehicle; and
- 4 (b) in each of the five years
- 5 immediately preceding the submission of the affidavit: 1) paid
- 6 property taxes or rent on real property in the state and paid
- 7 at least one other tax administered by the state; and 2) paid
- 8 unemployment insurance on at least three full-time employees
- 9 who are residents of the state; provided that if a contractor
- 10 is a legacy contractor, the requirement of at least three full-
- 11 time employees who are residents of the state is waived;
- 12 (2) if the contractor is a new contractor, the
- 13 owner or majority of owners has paid property taxes or rent on
- 14 real property in the state and has paid at least one other tax
- 15 administered by the state in each of the five years immediately
- 16 preceding the submission of the affidavit and has not applied
- 17 for a resident business or resident contractor certificate
- 18 pursuant to this section during that time period;
- 19 (3) if the contractor is a relocated business,
- 20 at least eighty percent of the total personnel of the business
- 21 in the year immediately preceding the submission of the
- 22 affidavit were residents of the state and that, prior to the
- 23 submission of the affidavit, the contractor either leased real
- 24 property for ten years or purchased real property greater than
- 25 one hundred thousand dollars (\$100,000) in value in the state;

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1 or

2 (4) if the contractor is a previously  
3 certified contractor or was eligible for certification, the  
4 contractor has changed its name, has reorganized into one or  
5 more different legal entities, was purchased by another legal  
6 entity but operates in the state as substantially the same  
7 enterprise or has merged with a different legal entity but  
8 operates in the state as substantially the same commercial  
9 enterprise.

10 E. An application for a resident veteran contractor  
11 certificate shall include the affidavit required by Subsection  
12 D of this section, an affidavit from a certified public  
13 accountant providing the previous year's annual revenues for  
14 the resident veteran contractor and:

15 (1) verification by the federal department of  
16 veterans affairs as being either a veteran-owned small business  
17 or a service-disabled veteran-owned small business; or

18 (2) verification of veteran status as  
19 indicated by the United States department of defense DD form  
20 214 of release or discharge from active duty with an honorable  
21 discharge or of service-disabled veteran status by the  
22 department of veterans affairs and proof that a veteran or  
23 veterans own a majority of the business.

24 F. The taxation and revenue department shall  
25 prescribe the form and content of an application for

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1 certification and required affidavit. The taxation and revenue  
2 department shall examine the application and affidavit and, if  
3 necessary, may seek additional information to ensure that the  
4 business or contractor is eligible to receive the certificate  
5 pursuant to the provisions of this section. If the taxation  
6 and revenue department determines that an applicant is  
7 eligible, the department shall issue a certificate pursuant to  
8 the provisions of this section. If the taxation and revenue  
9 department determines that the applicant is not eligible, the  
10 department shall issue notification within thirty days. If no  
11 notification is provided by the department, the certificate is  
12 deemed approved. A certificate is valid for three years from  
13 the date of its issuance; provided that if there is a change of  
14 ownership of more than fifty percent, a resident business,  
15 resident veteran business, resident contractor or resident  
16 veteran contractor shall reapply for a certificate.

17 G. A business or contractor whose application for a  
18 certificate is denied has fifteen days from the date of the  
19 taxation and revenue department's decision to file an objection  
20 with the taxation and revenue department. The person filing  
21 the objection shall submit evidence to support the objection.  
22 The taxation and revenue department shall review the evidence  
23 and issue a decision within fifteen days of the filing of the  
24 objection.

25 H. If, following a hearing and an opportunity to be

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1 heard, the [~~taxation and revenue department~~] administrative  
2 hearings office finds that a business or contractor provided  
3 false information to the taxation and revenue department in  
4 order to obtain a certificate or that a business or contractor  
5 used a certificate to obtain a resident business, resident  
6 veteran business, resident contractor or resident veteran  
7 contractor preference for a bid or proposal and the resident  
8 business, resident veteran business, resident contractor or  
9 resident veteran contractor did not perform the percentage of  
10 the contract specified in the bid or proposal, the business or  
11 contractor:

12 (1) is not eligible to receive a certificate  
13 or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978  
14 for a period of five years from the date on which the taxation  
15 and revenue department became aware of the submission of the  
16 false information or the failure to perform the contract as  
17 specified in the bid or proposal; and

18 (2) is subject to an administrative penalty of  
19 up to fifty thousand dollars (\$50,000) for each violation.

20 I. In a decision issued pursuant to Subsection G or  
21 H of this section, the taxation and revenue department or  
22 administrative hearings office shall state the reasons for the  
23 action taken and inform an aggrieved business or contractor of  
24 the right to judicial review of the determination pursuant to  
25 the provisions of Section 39-3-1.1 NMSA 1978.

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1           J. The taxation and revenue department may assess a  
2 reasonable fee for the issuance of a certificate not to exceed  
3 the actual cost of administering the taxation and revenue  
4 department's duties pursuant to this section.

5           K. The state auditor may audit or review the  
6 issuance or validity of certificates.

7           L. For purposes of this section:

8                   (1) "new business" means a person that did not  
9 exist as a business in any form and that has been in existence  
10 for less than three years;

11                   (2) "new contractor" means a person that did  
12 not exist as a business in any form and that has been in  
13 existence for less than five years;

14                   (3) "legacy contractor" means a construction  
15 business that has been licensed in this state for ten  
16 consecutive years; and

17                   (4) "relocated business" means a business that  
18 moved eighty percent of its total domestic personnel from  
19 another state to New Mexico in the past five years."

20           **SECTION 25.** That version of Section 13-1-22 NMSA 1978  
21 (being Laws 2012, Chapter 56, Section 4) that is to become  
22 effective July 1, 2022 is amended to read:

23           "13-1-22. RESIDENT BUSINESS AND RESIDENT CONTRACTOR  
24 CERTIFICATION.--

25           A. To receive a resident business preference

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1 pursuant to Section 13-1-21 NMSA 1978 or a resident contractor  
2 preference pursuant to Section 13-4-2 NMSA 1978, a business or  
3 contractor shall submit with its bid or proposal a copy of a  
4 valid resident business certificate or valid resident  
5 contractor certificate issued by the taxation and revenue  
6 department.

7 B. An application for a resident business  
8 certificate shall include an affidavit from a certified public  
9 accountant setting forth that the business is licensed to do  
10 business in this state and that:

11 (1) the business has paid property taxes or  
12 rent on real property in the state and paid at least one other  
13 tax administered by the state in each of the three years  
14 immediately preceding the submission of the affidavit;

15 (2) if the business is a new business, the  
16 owner or majority of owners has paid property taxes or rent on  
17 real property in the state and has paid at least one other tax  
18 administered by the state in each of the three years  
19 immediately preceding the submission of the affidavit and has  
20 not applied for a resident business or resident contractor  
21 certificate pursuant to this section during that time period;

22 (3) if the business is a relocated business,  
23 at least eighty percent of the total personnel of the business  
24 in the year immediately preceding the submission of the  
25 affidavit were residents of the state and that, prior to the

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1 submission of the affidavit, the business either leased real  
2 property for ten years or purchased real property greater than  
3 one hundred thousand dollars (\$100,000) in value in the state;  
4 or

5 (4) if the business is a previously certified  
6 business or was eligible for certification, the business has  
7 changed its name, has reorganized into one or more different  
8 legal entities, was purchased by another legal entity but  
9 operates in the state as substantially the same commercial  
10 enterprise or has merged with a different legal entity but  
11 operates in the state as substantially the same commercial  
12 enterprise.

13 C. An application for a resident contractor  
14 certificate shall include an affidavit from a certified public  
15 accountant setting forth that the contractor is currently  
16 licensed as a contractor in this state and that:

17 (1) the contractor has:

18 (a) registered with the state at least  
19 one vehicle; and

20 (b) in each of the five years  
21 immediately preceding the submission of the affidavit: 1) paid  
22 property taxes or rent on real property in the state and paid  
23 at least one other tax administered by the state; and 2) paid  
24 unemployment insurance on at least three full-time employees  
25 who are residents of the state; provided that if a contractor

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1 is a legacy contractor, the requirement of at least three full-  
2 time employees who are residents of the state is waived;

3 (2) if the contractor is a new contractor, the  
4 owner or majority of owners has paid property taxes or rent on  
5 real property in the state and has paid at least one other tax  
6 administered by the state in each of the five years immediately  
7 preceding the submission of the affidavit and has not applied  
8 for a resident business or resident contractor certificate  
9 pursuant to this section during that time period;

10 (3) if the contractor is a relocated business,  
11 at least eighty percent of the total personnel of the business  
12 in the year immediately preceding the submission of the  
13 affidavit were residents of the state and that, prior to the  
14 submission of the affidavit, the contractor either leased real  
15 property for ten years or purchased real property greater than  
16 one hundred thousand dollars (\$100,000) in value in the state;  
17 or

18 (4) if the contractor is a previously  
19 certified contractor or was eligible for certification, the  
20 contractor has changed its name, has reorganized into one or  
21 more different legal entities, was purchased by another legal  
22 entity but operates in the state as substantially the same  
23 enterprise or has merged with a different legal entity but  
24 operates in the state as substantially the same commercial  
25 enterprise.

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1           D. The taxation and revenue department shall  
2 prescribe the form and content of the application and required  
3 affidavit. The taxation and revenue department shall examine  
4 the application and affidavit and, if necessary, may seek  
5 additional information to ensure that the business or  
6 contractor is eligible to receive the certificate pursuant to  
7 the provisions of this section. If the taxation and revenue  
8 department determines that an applicant is eligible, the  
9 department shall issue a certificate pursuant to the provisions  
10 of this section. If the taxation and revenue department  
11 determines that the applicant is not eligible, the department  
12 shall issue notification within thirty days. If no  
13 notification is provided by the department, the certificate is  
14 deemed approved. A certificate is valid for three years from  
15 the date of its issuance; provided that if there is a change of  
16 ownership of more than fifty percent, a resident business or  
17 resident contractor shall reapply for a certificate.

18           E. A business or contractor whose application for a  
19 certificate is denied has fifteen days from the date of the  
20 taxation and revenue department's decision to file an objection  
21 with the taxation and revenue department. The person filing  
22 the objection shall submit evidence to support the objection.  
23 The taxation and revenue department shall review the evidence  
24 and issue a decision within fifteen days of the filing of the  
25 objection.

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1 F. If, following a hearing and an opportunity to be  
2 heard, the [~~taxation and revenue department~~] administrative  
3 hearings office finds that a business or contractor provided  
4 false information to the taxation and revenue department in  
5 order to obtain a certificate or that a business or contractor  
6 used a certificate to obtain a resident business or resident  
7 contractor preference for a bid or proposal and the resident  
8 business or contractor did not perform the percentage of the  
9 contract specified in the bid or proposal, the business or  
10 contractor:

11 (1) is not eligible to receive a certificate  
12 or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978  
13 for a period of five years from the date on which the taxation  
14 and revenue department became aware of the submission of the  
15 false information or the failure to perform the contract as  
16 specified in the bid or proposal; and

17 (2) is subject to an administrative penalty of  
18 up to fifty thousand dollars (\$50,000) for each violation.

19 G. In a decision issued pursuant to Subsection E or  
20 F of this section, the taxation and revenue department or the  
21 administrative hearings office shall state the reasons for the  
22 action taken and inform an aggrieved business or contractor of  
23 the right to judicial review of the determination pursuant to  
24 the provisions of Section 39-3-1.1 NMSA 1978.

25 H. The taxation and revenue department may assess a

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1 reasonable fee for the issuance of a certificate not to exceed  
2 the actual cost of administering the taxation and revenue  
3 department's duties pursuant to this section.

4 I. The state auditor may audit or review the  
5 issuance or validity of certificates.

6 J. For purposes of this section:

7 (1) "new business" means a person that did not  
8 exist as a business in any form and that has been in existence  
9 for less than three years;

10 (2) "new contractor" means a person that did  
11 not exist as a business in any form and that has been in  
12 existence for less than five years;

13 (3) "legacy contractor" means a construction  
14 business that has been licensed in this state for ten  
15 consecutive years; and

16 (4) "relocated business" means a business that  
17 moved eighty percent of its total domestic personnel from  
18 another state to New Mexico in the past five years."

19 **SECTION 26.** Section 40-5A-6 NMSA 1978 (being Laws 1995,  
20 Chapter 25, Section 6, as amended) is amended to read:

21 "40-5A-6. SUSPENSION OR REVOCATION OF LICENSE.--The  
22 failure of a licensee to be in compliance with a judgment and  
23 order for support or subpoena or warrants relating to paternity  
24 or child support proceedings is grounds for suspension or  
25 revocation of a license. The proceeding shall be conducted by

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1 a board or the administrative hearings office pursuant to the  
2 law governing suspension and revocation proceedings for the  
3 license."

4 SECTION 27. Section 66-2-11 NMSA 1978 (being Laws 1978,  
5 Chapter 35, Section 15, as amended) is amended to read:

6 "66-2-11. GIVING OF NOTICE.--Whenever the department or  
7 the administrative hearings office is authorized or required to  
8 give any notice under the Motor Vehicle Code or any other law  
9 regulating the operation of vehicles, unless a different method  
10 of giving notice is otherwise expressly prescribed, notice  
11 shall be given either by personal delivery to the person to be  
12 notified or by deposit in the United States mail of the notice  
13 in an envelope with postage prepaid, addressed to the person at  
14 [~~his~~] the person's address as shown by the records of the  
15 department. The giving of notice by mail is complete upon the  
16 expiration of seven days after deposit of the notice. Proof of  
17 the giving of notice in either manner may be made by the  
18 certificate of any officer or employee of the department or  
19 affidavit of any person over eighteen years of age, naming the  
20 person to whom the notice was given and specifying the time,  
21 place and manner of the giving of the notice. Notice is given  
22 when a person refuses to accept notice."

23 SECTION 28. Section 66-2-17 NMSA 1978 (being Laws 1995,  
24 Chapter 129, Section 3) is amended to read:

25 "66-2-17. ADMINISTRATIVE HEARING--PROCEDURE [~~APPEALS FROM~~  
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1 ~~SECRETARY'S DECISION AND ORDER--EXHAUSTION OF ADMINISTRATIVE~~  
2 ~~REMEDIES].--~~

3           A. Unless a more specific provision for review  
4 exists, any person may dispute the denial of, or failure to  
5 either allow or deny, any license, permit, placard or  
6 registration provided for under the Motor Vehicle Code by  
7 filing with the secretary a written protest against the action  
8 or inaction [~~taken~~] by the department. Every protest shall  
9 identify the person and the action or inaction that is in  
10 dispute, the grounds for the protest and the affirmative relief  
11 requested. The statement of grounds for protest shall specify  
12 individual grounds upon which the protest is based and a  
13 summary statement of the evidence expected to be produced  
14 supporting each ground asserted, if any; provided that the  
15 person may supplement the statement at any time prior to [~~any~~]  
16 a hearing conducted on the protest [~~under Subsection D of this~~  
17 ~~section~~] pursuant to the provisions of the Administrative  
18 Hearings Office Act. The secretary may, in appropriate cases,  
19 provide for an informal conference before [~~setting~~] the  
20 administrative hearings office sets a hearing of the protest.

21           B. Any protest by a person shall be filed within  
22 thirty days of the date of the mailing or verbal notification  
23 of the action proposed to be taken by the department. If a  
24 protest is not filed within the time required for filing a  
25 protest, the secretary may proceed with the action [~~or~~

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1 ~~inaction]~~ proposed by the department.

2 ~~[G. Upon timely receipt of a protest, the~~  
3 ~~department or hearing officer shall promptly set a date for~~  
4 ~~hearing and on that date hear the protest.~~

5 ~~D. A hearing officer shall be designated by the~~  
6 ~~secretary to conduct the hearing. A person may appear at a~~  
7 ~~hearing for himself or be represented by a bona fide employee~~  
8 ~~or an attorney. Hearings shall not be open to the public~~  
9 ~~except upon request of the person and may be postponed or~~  
10 ~~continued at the discretion of the hearing officer.~~

11 ~~E. In hearings before the hearing officer, the~~  
12 ~~technical rules of evidence shall not apply, but in ruling on~~  
13 ~~the admissibility of evidence, the hearing officer may require~~  
14 ~~reasonable substantiation of statements or records tendered,~~  
15 ~~the accuracy or truth of which is in reasonable doubt.~~

16 ~~F. In hearings before the hearing officer, the~~  
17 ~~Rules of Civil Procedure for the District Courts shall not~~  
18 ~~apply, but the hearing shall be conducted so that both~~  
19 ~~complaints and defenses are amply and fairly presented. To~~  
20 ~~this end, the hearing officer shall hear arguments, permit~~  
21 ~~discovery, entertain and dispose of motions, require written~~  
22 ~~expositions of the case as the circumstances justify and render~~  
23 ~~a decision in accordance with the law and the evidence~~  
24 ~~presented and admitted.~~

25 ~~G. In the case of the hearing of any protest, the~~

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1 ~~hearing officer shall make and preserve a complete record of~~  
2 ~~the proceedings. At the beginning of the hearing, the hearing~~  
3 ~~officer shall inform the person of the person's right to~~  
4 ~~representation. The hearing officer, within thirty days of the~~  
5 ~~hearing, shall inform the protestant in writing of the~~  
6 ~~decision, informing the protestant at the same time of the~~  
7 ~~right to, and the requirements for perfection of, an appeal~~  
8 ~~from the decision to the district court and of the consequences~~  
9 ~~of a failure to appeal. The written decision shall embody an~~  
10 ~~order granting or denying the relief requested or granting such~~  
11 ~~part thereof as seems appropriate.~~

12 ~~H. If the protestant or secretary is dissatisfied~~  
13 ~~with the decision and order of the hearing officer, the party~~  
14 ~~may appeal pursuant to the provisions of the Administrative~~  
15 ~~Procedures Act.~~

16 ~~I. No court of this state has jurisdiction to~~  
17 ~~entertain any proceeding by any person in which the person~~  
18 ~~calls into question the application to that person of any~~  
19 ~~provision of the Motor Vehicle Code, except as a consequence of~~  
20 ~~the appeal by that person to the district court from the action~~  
21 ~~and order of the secretary or hearing officer as provided for~~  
22 ~~in this section.~~

23 ~~J. Nothing in this section shall be construed to~~  
24 ~~authorize any criminal proceedings hereunder or to authorize an~~  
25 ~~administrative protest of the issuance of a subpoena or~~

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1 ~~summons.]"~~

2 SECTION 29. Section 66-4-3 NMSA 1978 (being Laws 1978,  
3 Chapter 35, Section 216, as amended) is amended to read:

4 "66-4-3. REFUSAL TO ISSUE LICENSE--CANCELLATION OR  
5 SUSPENSION OF LICENSE OR USE OF TEMPORARY PERMITS--HEARING--  
6 APPEAL.--

7 A. The department may refuse to issue a license for  
8 just cause and may cancel or suspend a license or use of a  
9 temporary registration permit, demonstration permit or  
10 transport permit for violation of the Motor Vehicle Code. The  
11 ~~[department shall take the]~~ action authorized in this section  
12 shall be taken only after a hearing ~~[Notice of hearing shall be~~  
13 ~~given the party concerned as provided in Section 66-2-11 NMSA~~  
14 ~~1978. The notice shall state the proposed action of the~~  
15 ~~department and the reason for the proposed action.~~

16 B. ~~The department shall prepare rules for the~~  
17 ~~conduct of the hearing. At the hearing, the technical rules of~~  
18 ~~evidence do not apply, and a party has the right to be~~  
19 ~~represented by counsel, to call witnesses in the party's own~~  
20 ~~behalf and to cross-examine the witnesses of other parties.~~

21 C. ~~The secretary or the secretary's designated~~  
22 ~~agent shall conduct the hearing for the department and shall~~  
23 ~~cause a record of hearing to be made.~~

24 ~~D.]~~ before the administrative hearings office.

25 Within ten days after completion of the hearing, the

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1     ~~[secretary]~~ hearing officer designated to conduct the hearing  
2     shall cause to be served upon all parties, in the manner  
3     provided in Section 66-2-11 NMSA 1978, the ~~[secretary's]~~  
4     hearing officer's findings and decision. The decision shall  
5     be:

6                     (1) granting a license or refusing to grant a  
7     license;

8                     (2) continuing a license, canceling a license  
9     or suspending a license for a time stated; or

10                    (3) continuing use of dealer plates and  
11     temporary registration permits, demonstration permits or  
12     transport permits, canceling dealer plates and temporary  
13     registration permits, demonstration permits or transport  
14     permits or suspending use of temporary registration permits,  
15     demonstration permits or transport permits for a time stated.

16                    ~~[E.]~~ B. A party aggrieved by the ~~[secretary's]~~  
17     hearing officer's decision may file an appeal in the district  
18     court pursuant to the provisions of Section 39-3-1.1 NMSA  
19     1978."

20                    **SECTION 30.** Section 66-5-19 NMSA 1978 (being Laws 1978,  
21     Chapter 35, Section 241, as amended) is amended to read:

22                    "66-5-19. RESTRICTED LICENSES.--

23                    A. The division, upon issuing a driver's license or  
24     a provisional license, ~~[has authority]~~ may, whenever good cause  
25     appears, ~~[to]~~ impose restrictions, including the shortening of

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1 the licensure period suitable to the licensee's driving ability  
2 with respect to the type of or special mechanical control  
3 devices required on a motor vehicle that the licensee may  
4 operate or such other restrictions applicable to the licensee  
5 as the division determines to be appropriate to ensure the safe  
6 operation of a motor vehicle by the licensee.

7 B. At age seventy-five and thereafter, the  
8 applicant shall renew the applicant's license on a yearly basis  
9 at no cost to the applicant.

10 C. The division may either issue a special  
11 restricted license or may set forth such restrictions upon the  
12 usual license form.

13 D. The division may issue a restricted license or a  
14 restricted provisional license for driving during daylight  
15 hours only to some visually impaired persons who fail the usual  
16 eyesight test. The health standards advisory board created  
17 pursuant to the provisions of Section 66-5-6 NMSA 1978 shall  
18 evaluate the extent of the visual impairment and [~~its~~] the  
19 impairment's effect on the driving ability of the applicant  
20 and, based on [~~its~~] the board's recommendations, the director  
21 may issue a restricted license under the following conditions:

22 (1) the applicant has no record of moving  
23 violations;

24 (2) the necessity of the license is shown to  
25 the satisfaction of the director; and

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1 (3) the applicant satisfies the provisions of  
2 Section 66-5-206 NMSA 1978 relating to proof of financial  
3 responsibility.

4 E. The division may, upon receiving satisfactory  
5 evidence of any violation of the restrictions of the license,  
6 suspend the license, but the licensee is entitled to a hearing  
7 as upon a suspension under Sections [~~66-5-1~~] 66-5-1.1 through  
8 66-5-47 NMSA 1978 and as provided in the Administrative  
9 Hearings Office Act.

10 F. It is a misdemeanor for any person to operate a  
11 motor vehicle in any manner in violation of the restrictions  
12 imposed in a restricted license issued to the person."

13 SECTION 31. Section 66-5-30 NMSA 1978 (being Laws 1978,  
14 Chapter 35, Section 252, as amended) is amended to read:

15 "66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE  
16 LICENSE.--

17 A. The division [~~is authorized to~~] may suspend the  
18 instruction permit, driver's license or provisional license of  
19 a driver without preliminary hearing upon a showing by its  
20 records or other sufficient evidence, including information  
21 provided to the state pursuant to an intergovernmental  
22 agreement authorized by Section 66-5-27.1 NMSA 1978, that the  
23 licensee:

24 (1) has been convicted of an offense for which  
25 mandatory revocation of license is required upon conviction;

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1 (2) has been convicted as a driver in an  
2 accident resulting in the death or personal injury of another  
3 or serious property damage;

4 (3) has been convicted with such frequency of  
5 offenses against traffic laws or rules governing motor vehicles  
6 as to indicate a disrespect for traffic laws and a disregard  
7 for the safety of other persons on the highways;

8 (4) is an habitually reckless or negligent  
9 driver of a motor vehicle;

10 (5) is incompetent to drive a motor vehicle;

11 (6) has permitted an unlawful or fraudulent  
12 use of the license;

13 (7) has been convicted of an offense in  
14 another state or tribal jurisdiction that if committed within  
15 this state's jurisdiction would be grounds for suspension or  
16 revocation of the license;

17 (8) has violated provisions stipulated by a  
18 district court in limitation of certain driving privileges;

19 (9) has failed to fulfill a signed promise to  
20 appear or notice to appear in court as evidenced by notice from  
21 a state court or tribal court, whenever appearance is required  
22 by law or by the court as a consequence of a charge or  
23 conviction under the Motor Vehicle Code or pursuant to the laws  
24 of the tribe;

25 (10) has failed to pay a penalty assessment

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1 within thirty days of the date of issuance by the state or a  
2 tribe; or

3 (11) has accumulated seven points, but less  
4 than eleven points, and when the division has received a  
5 recommendation from a municipal or magistrate judge that the  
6 license be suspended for a period not to exceed three months.

7 B. Upon suspending the license of a person as  
8 authorized in this section, the division shall immediately  
9 notify the licensee in writing [~~and upon his request shall~~  
10 ~~afford him an opportunity for a hearing~~] of the licensee's  
11 right to a hearing before the administrative hearings office  
12 and, upon the licensee's request, shall notify the  
13 administrative hearings office. The administrative hearings  
14 office shall schedule the hearing to take place as early as  
15 practicable, but within [~~not to exceed~~] no more than twenty  
16 days, not counting Saturdays, Sundays and legal holidays after  
17 receipt of the request. The hearing shall be held in the  
18 county [~~wherein~~] in which the licensee resides unless the  
19 [~~division~~] hearing officer and the licensee agree that the  
20 hearing may be held in some other county; provided that the  
21 hearing request is received within twenty days from the date  
22 that the suspension was deposited in the United States mail.  
23 The [~~director~~] hearing officer may, in [~~his~~] the hearing  
24 officer's discretion, extend the twenty-day period. [~~Upon the~~  
25 ~~hearing, the director or his duly authorized agent may~~

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1 ~~administer oaths and may issue subpoenas for the attendance of~~  
2 ~~witnesses and the production of relevant books and papers and~~  
3 ~~may require a reexamination of the licensee. Upon] The hearing~~  
4 ~~shall be held as provided in the Administrative Hearings Office~~  
5 ~~Act. After the hearing, the [division] hearing officer shall~~  
6 either rescind [~~its~~] the order of suspension or [~~good cause~~  
7 ~~appearing therefor, may~~] continue, modify or extend the  
8 suspension of the license or revoke the license."

9 SECTION 32. Section 66-5-204 NMSA 1978 (being Laws 1983,  
10 Chapter 318, Section 5, as amended) is amended to read:

11 "66-5-204. ADMINISTRATIVE AND COURT REVIEW.--An owner of  
12 a motor vehicle registered in New Mexico who is aggrieved by  
13 the decision of the secretary made under the provisions of the  
14 Mandatory Financial Responsibility Act may appeal to the  
15 [~~hearing officer of the department~~] administrative hearings  
16 office for a hearing to be held within twenty days [~~of~~] after  
17 the receipt by the [~~department~~] administrative hearings office  
18 of the appeal. A person who continues to be aggrieved after  
19 the decision made by the hearing officer may appeal that  
20 decision in the district court pursuant to the provisions of  
21 Section 39-3-1.1 NMSA 1978."

22 SECTION 33. Section 66-5-236 NMSA 1978 (being Laws 1983,  
23 Chapter 318, Section 35, as amended) is amended to read:

24 "66-5-236. SUSPENSION FOR NONPAYMENT OF JUDGMENT OR FOR  
25 FALSE AFFIRMATION.--

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1           A. Except as otherwise provided, the secretary  
2 shall suspend:

3                   (1) the motor vehicle registration for all  
4 motor vehicles and the driver's license of any person against  
5 whom a judgment has been rendered, the department being in  
6 receipt of a certified copy of the judgment on a form provided  
7 by the department; or

8                   (2) the registration for a period not to  
9 exceed one year of a person who is operating a motor vehicle in  
10 violation of Section 66-5-205 NMSA 1978 or falsely affirms the  
11 existence of a motor vehicle insurance policy or some other  
12 means of satisfying the financial responsibility requirements  
13 of the Mandatory Financial Responsibility Act, but only if  
14 evidence of financial responsibility is not submitted within  
15 twenty days after the date of the mailing of the department's  
16 demand ~~[therefor]~~ for that evidence. The department shall  
17 notify the person that ~~[he]~~ the person may request a hearing  
18 before the administrative hearings office within twenty days  
19 after the date of the mailing of the department's demand ~~[as~~  
20 ~~provided under this subsection]~~.

21           B. The registration shall remain suspended and  
22 shall not be renewed, nor shall any registration be issued  
23 thereafter in the name of that person, unless and until every  
24 judgment is stayed, satisfied in full or to the extent provided  
25 in the Mandatory Financial Responsibility Act and evidence of

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1 financial responsibility as required in Section 66-5-218 NMSA  
2 1978 is provided to the department."

3 SECTION 34. Section 66-8-111.1 NMSA 1978 (being Laws  
4 1984, Chapter 72, Section 7, as amended by Laws 2003, Chapter  
5 51, Section 14 and by Laws 2003, Chapter 90, Section 7) is  
6 amended to read:

7 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR  
8 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO  
9 HEARING.--On behalf of the department, a law enforcement  
10 officer requesting a chemical test or directing the  
11 administration of a chemical test pursuant to Section 66-8-107  
12 NMSA 1978 shall serve immediate written notice of revocation  
13 and of right to a hearing before the administrative hearings  
14 office pursuant to the Implied Consent Act on a person who  
15 refuses to permit chemical testing or on a person who submits  
16 to a chemical test the results of which indicate an alcohol  
17 concentration in the person's blood or breath of eight one  
18 hundredths or more if the person is twenty-one years of age or  
19 older, four one hundredths or more if the person is driving a  
20 commercial motor vehicle or two one hundredths or more if the  
21 person is less than twenty-one years of age. Upon serving  
22 notice of revocation, the law enforcement officer shall take  
23 the license or permit of the driver, if any, and issue a  
24 temporary license valid for twenty days or, if the driver  
25 requests a hearing pursuant to Section 66-8-112 NMSA 1978,

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1 valid until the date the [~~department~~] administrative hearings  
2 office issues the order following that hearing; provided that a  
3 temporary license shall not be issued to a driver without a  
4 valid license or permit. The law enforcement officer shall  
5 send the person's driver's license to the department along with  
6 the signed statement required pursuant to Section 66-8-111 NMSA  
7 1978."

8 SECTION 35. Section 66-8-112 NMSA 1978 (being Laws 1978,  
9 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,  
10 Section 15 and by Laws 2003, Chapter 90, Section 8) is amended  
11 to read:

12 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO  
13 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--  
14 REVIEW.--

15 A. The effective date of revocation pursuant to  
16 Section 66-8-111 NMSA 1978 is twenty days after notice of  
17 revocation or, if the person whose driver's license or  
18 privilege to drive is being revoked or denied requests a  
19 hearing pursuant to [~~this section~~] the Administrative Hearings  
20 Office Act, the date that the [~~department~~] administrative  
21 hearings office issues the order following that hearing. The  
22 date of notice of revocation is:

23 (1) the date the law enforcement officer  
24 serves written notice of revocation and of right to a hearing  
25 pursuant to Section 66-8-111.1 NMSA 1978; or

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1 (2) in the event the results of a chemical  
2 test cannot be obtained immediately, the date notice of  
3 revocation is served by mail by the department. This notice of  
4 revocation and of right to a hearing shall be sent by certified  
5 mail and shall be deemed to have been served on the date borne  
6 by the return receipt showing delivery, refusal of the  
7 addressee to accept delivery or attempted delivery of the  
8 notice at the address obtained by the arresting law enforcement  
9 officer or on file with the department.

10 B. Within ten days after receipt of notice of  
11 revocation pursuant to Subsection A of this section, a person  
12 whose license or privilege to drive is revoked or denied or the  
13 person's agent may request a hearing. The hearing request  
14 shall be made in writing and shall be accompanied by a payment  
15 of twenty-five dollars (\$25.00) or a sworn statement of  
16 indigency on a form provided by the department. A standard for  
17 indigency shall be established pursuant to ~~[regulations]~~ rules  
18 adopted by the department. Failure to request a hearing within  
19 ten days shall result in forfeiture of the person's right to a  
20 hearing. Any person less than eighteen years of age who fails  
21 to request a hearing within ten days shall have notice of  
22 revocation sent to ~~[his]~~ the person's parent, guardian or  
23 custodian by the department. A date for the hearing shall be  
24 set by the ~~[department]~~ administrative hearings office, if  
25 practical, within thirty days after receipt of notice of

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1 revocation. The hearing shall be held in the county in which  
2 the offense for which the person was arrested took place.

3 C. The ~~[department]~~ administrative hearings office  
4 may postpone or continue any hearing on its own motion or upon  
5 application from the person and for good cause shown for a  
6 period not to exceed ninety days from the date of notice of  
7 revocation and, provided that, upon a continuance, the  
8 department ~~[extends]~~ shall extend the validity of the temporary  
9 license for the period of the postponement or continuation.

10 D. At the hearing, the ~~[department or its agent]~~  
11 administrative hearings office may administer oaths and may  
12 issue subpoenas for the attendance of witnesses and the  
13 production of relevant books and papers.

14 E. The hearing shall be limited to the following  
15 issues:

16 (1) whether the law enforcement officer had  
17 reasonable grounds to believe that the person had been driving  
18 a motor vehicle within this state while under the influence of  
19 intoxicating liquor or drugs;

20 (2) whether the person was arrested;

21 (3) whether this hearing is held no later than  
22 ninety days after notice of revocation; and either

23 (4) whether:

24 (a) the person refused to submit to a  
25 test upon request of the law enforcement officer; and

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1 (b) the law enforcement officer advised  
2 that the failure to submit to a test could result in revocation  
3 of the person's privilege to drive; or

4 (5) whether:

5 (a) the chemical test was administered  
6 pursuant to the provisions of the Implied Consent Act; and

7 (b) the test results indicated an  
8 alcohol concentration in the person's blood or breath of eight  
9 one hundredths or more if the person is twenty-one years of age  
10 or older, four one hundredths or more if the person is driving  
11 a commercial motor vehicle or two one hundredths or more if the  
12 person is less than twenty-one years of age.

13 F. The [~~department~~] administrative hearings office  
14 shall enter an order sustaining the revocation or denial of the  
15 person's license or privilege to drive if the [~~department~~]  
16 hearing officer from the administrative hearings office finds  
17 that:

18 (1) the law enforcement officer had reasonable  
19 grounds to believe the driver was driving a motor vehicle while  
20 under the influence of intoxicating liquor or drugs;

21 (2) the person was arrested;

22 (3) this hearing is held no later than ninety  
23 days after notice of revocation; and

24 (4) either:

25 (a) the person refused to submit to the

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1 test upon request of the law enforcement officer after the law  
2 enforcement officer advised [~~him~~] the person that [~~his~~] the  
3 person's failure to submit to the test could result in the  
4 revocation of [~~his~~] the person's privilege to drive; or

5 (b) that a chemical test was  
6 administered pursuant to the provisions of the Implied Consent  
7 Act and the test results indicated an alcohol concentration in  
8 the person's blood or breath of eight one hundredths or more if  
9 the person is twenty-one years of age or older, four one  
10 hundredths or more if the person is driving a commercial motor  
11 vehicle or two one hundredths or more if the person is less  
12 than twenty-one years of age.

13 G. If one or more of the elements set forth in  
14 Paragraphs (1) through (4) of Subsection F of this section are  
15 not found by the [~~department~~] hearing officer, the person's  
16 license shall not be revoked.

17 H. A person adversely affected by an order of the  
18 [~~department~~] administrative hearings office may seek review  
19 within thirty days in the district court in the county in which  
20 the offense for which the person was arrested took place. The  
21 district court, upon thirty days' written notice to the  
22 department, shall hear the case. On review, it is for the  
23 court to determine only whether reasonable grounds exist for  
24 revocation or denial of the person's license or privilege to  
25 drive based on the record of the administrative proceeding.

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1 I. Any person less than eighteen years of age shall  
2 have results of [~~his~~] the person's hearing forwarded by the  
3 [~~department~~] administrative hearings office to [~~his~~] the  
4 person's parent, guardian or custodian."

5 SECTION 36. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,  
6 FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL  
7 OBLIGATIONS, STATUTORY REFERENCES AND RULES.--

8 A. On the effective date of this act, all  
9 personnel, functions, appropriations, money, records,  
10 furniture, equipment and other property of, or attributable to,  
11 the hearings bureau of the office of the secretary of taxation  
12 and revenue shall be transferred to the administrative hearings  
13 office.

14 B. On the effective date of this act, all  
15 contractual obligations of the hearings bureau of the office of  
16 the secretary of taxation and revenue shall be binding on the  
17 administrative hearings office.

18 C. On the effective date of this act, all  
19 references in statute to the hearings bureau of the office of  
20 the secretary of taxation and revenue or hearing officers of  
21 the taxation and revenue department in Chapters 7 and 66 NMSA  
22 1978 shall be deemed to be references to the administrative  
23 hearings office or a hearing officer of the office.

24 D. Rules of the taxation and revenue department  
25 pertaining to hearing officers and the conduct of hearings

.197777.7

underscoring material = new  
~~[bracketed material] = delete~~

1 pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall  
2 be deemed to be the rules of the administrative hearings office  
3 until amended or repealed by the office.

4 SECTION 37. REPEAL.--Section 7-1-24.1 NMSA 1978 (being  
5 Laws 2013, Chapter 27, Section 7) is repealed.

6 SECTION 38. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2015.