

1 AN ACT

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

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. SHORT TITLE.--Sections 1 through 9 of this
16 act may be cited as the "Administrative Hearings Office Act".

17 SECTION 2. ADMINISTRATIVE HEARINGS OFFICE--CREATED.--
18 The "administrative hearings office" is created and is
19 administratively attached pursuant to the provisions of
20 Section 9-1-7 NMSA 1978 to the department of finance and
21 administration.

22 SECTION 3. CHIEF HEARING OFFICER--APPOINTMENT.--The
23 head of the administrative hearings office is the "chief
24 hearing officer", who shall be appointed for a term of six
25 years, except that the initial term shall begin on

1 July 1, 2015 and shall end on December 31, 2015. The chief
2 hearing officer may be reappointed to successive terms. An
3 appointed chief hearing officer shall serve and have all the
4 duties, responsibilities and authority of that office during
5 the period of time prior to appointment of a new chief
6 hearing officer. The initial chief hearing officer shall be
7 the person who is the chief of the hearings bureau of the
8 taxation and revenue department on July 1, 2015. The chief
9 hearing officer shall be removed only for malfeasance,
10 misfeasance or abuse of office.

11 SECTION 4. CHIEF HEARING OFFICER SELECTION COMMITTEE--
12 DUTIES.--

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

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

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

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

23 (a) not a candidate for the position of
24 chief hearing officer; and

25 (b) either a former chief of the

1 hearings bureau of the taxation and revenue department, a
2 former chief hearing officer or another person with extensive
3 knowledge of the tax law.

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

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

20 (2) have knowledge of the tax law and
21 substantial experience making the record in an administrative
22 hearing suitable for judicial review; and

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

25 C. Immediately after receiving nominations for

1 chief hearing officer, the governor may make one request of
2 the committee for submission of additional names. The
3 committee shall promptly submit those additional names if a
4 majority of the committee finds that additional persons would
5 be qualified and recommends those persons for appointment as
6 chief hearing officer. The governor shall fill a vacancy or
7 appoint a successor to fill an impending vacancy in the
8 office of chief hearing officer within thirty days after
9 receiving final nominations from the committee by appointing
10 one of the persons nominated by the committee.

11 D. The chief hearing officer selection committee
12 is administratively attached pursuant to the provisions of
13 Section 9-1-7 NMSA 1978 to the department of finance and
14 administration.

15 SECTION 5. CHIEF HEARING OFFICER--POWERS AND DUTIES--
16 EMPLOYEES OF THE OFFICE.--

17 A. The chief hearing officer may:

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

20 (2) subject to appropriations, hire and
21 contract for such professional, technical and support staff
22 as needed to carry out the functions of the administrative
23 hearings office; provided that such hiring and contracting be
24 without regard to party affiliation and solely on the grounds
25 of competence and fitness to perform the duties of the

1 position. Employees of the administrative hearings office,
2 except the chief hearing officer, are subject to the
3 provisions of the Personnel Act.

4 B. The chief hearing officer shall:

5 (1) oversee the administrative hearings
6 office; and

7 (2) considering the knowledge and experience
8 of particular hearing officers, efficiency in the hearing
9 process and potential conflicts of interest, assign and
10 distribute the work of the office.

11 SECTION 6. HEARING OFFICER CODE OF CONDUCT--
12 INDEPENDENCE.--

13 A. The chief hearing officer shall:

14 (1) adopt and promulgate a hearing officer
15 code of conduct; and

16 (2) periodically evaluate each hearing
17 officer's performance for competency, efficiency and
18 professional demeanor in accord with relevant legal standards
19 and the hearing officer code of conduct.

20 B. The chief hearing officer shall ensure that
21 each hearing officer has decisional independence; however,
22 the chief hearing officer may:

23 (1) consult with a hearing officer about a
24 genuine question of law; and

25 (2) review with a hearing officer any issue

1 on appeal addressed by a court of this state.

2 C. The administrative hearings office shall:

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

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

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

9 (4) conduct all adjudicatory hearings
10 pursuant to the Motor Vehicle Code;

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

14 (6) make and preserve a complete record of
15 all proceedings; and

16 (7) maintain confidentiality regarding
17 taxpayer information as required by the provisions of Section
18 7-1-8 NMSA 1978.

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

22 (1) the Rules of Evidence do not apply. The
23 hearing officer may require reasonable substantiation of
24 statements or records tendered, the accuracy or truth of
25 which is in reasonable doubt, to rule on the admissibility of

1 evidence. A taxpayer or the taxation and revenue department
2 may request a written ruling on a contested question of
3 evidence in a matter in which the taxpayer has filed a
4 written protest and for which that protest is pending. The
5 administrative hearings office shall issue a copy of its
6 written ruling to the taxation and revenue department at the
7 time the ruling is issued to the taxpayer;

8 (2) the Rules of Civil Procedure for the
9 District Courts do not apply. The hearing officer shall
10 conduct a hearing to allow the ample and fair presentation of
11 complaints and defenses. The hearing officer shall hear
12 arguments, permit discovery, entertain and dispose of
13 motions, require written expositions of the case as the
14 circumstances justify and render a decision in accordance
15 with the law and the evidence presented and admitted. A
16 taxpayer or the taxation and revenue department may request a
17 written ruling on a contested question of procedure in a
18 matter in which the taxpayer has filed a written protest and
19 for which that protest is pending. The administrative
20 hearings office shall issue a copy of its written ruling to
21 the taxation and revenue department at the time the ruling is
22 issued to the taxpayer; and

23 (3) the hearing officer may administer oaths
24 and issue subpoenas for the attendance of witnesses and the
25 production of relevant books and papers, and for hearings

1 conducted for a license suspension pursuant to Section
2 66-5-30 NMSA 1978, the hearing officer may require a
3 reexamination of the licensee.

4 SECTION 7. CERTAIN ACTIONS PROHIBITED.--A hearing
5 officer shall not:

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

17 B. engage in ex-parte communications concerning
18 the substantive issues of any matter that has been protested
19 while that matter is pending. If the chief hearing officer
20 determines that a hearing officer has engaged in prohibited
21 ex-parte communications, the chief hearing officer shall
22 designate another hearing officer for that matter.

23 SECTION 8. TAX PROTESTS--PROCEDURES.--

24 A. Upon timely receipt of a tax protest filed
25 pursuant to the provisions of Section 7-1-24 NMSA 1978, the

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

16 B. A taxpayer may appear at the hearing on the
17 taxpayer's own behalf or may be represented by a bona fide
18 employee, an attorney, a certified public accountant or, with
19 respect only to tax imposed pursuant to the Income Tax Act, a
20 person who is an enrolled agent for federal income tax
21 purposes. If the taxation and revenue department and the
22 taxpayer agree, the hearing may be conducted via
23 videoconference. At the beginning of the hearing, the
24 hearing officer shall inform the taxpayer of the taxpayer's
25 right to representation. A hearing shall not be open to the

1 public except upon request of the taxpayer. A hearing
2 officer may postpone or continue a hearing at the hearing
3 officer's discretion.

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

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

20 E. Nothing in this section shall be construed to
21 authorize a criminal proceeding or to authorize an
22 administrative protest of the issuance of a subpoena or
23 summons.

24 SECTION 9. MOTOR VEHICLE ADMINISTRATIVE HEARINGS--
25 PROCEDURES.--

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

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

15 C. At the beginning of the hearing, the hearing
16 officer shall inform the person of the person's right to
17 representation. Within thirty days after the hearing, the
18 hearing officer shall inform the protestant in writing of the
19 decision and of the protestant's right to, and the
20 requirements for perfection of, an appeal from the decision
21 to the district court and of the consequences of a failure to
22 appeal. The written decision shall embody an order granting
23 or denying the relief requested or granting such part of the
24 relief requested, as appropriate.

25 D. If the protestant or the secretary of taxation

1 and revenue is dissatisfied with the decision and order of
2 the hearing officer, the party may appeal pursuant to the
3 provisions of Section 39-3-1.1 NMSA 1978.

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

11 F. Nothing in this section shall be construed to
12 authorize a criminal proceeding or to authorize an
13 administrative protest of the issuance of a subpoena or
14 summons.

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

17 "7-1-3. DEFINITIONS.--Unless the context clearly
18 indicates a different meaning, the definitions of words and
19 phrases as they are stated in this section are to be used,
20 and whenever in the Tax Administration Act these words and
21 phrases appear, the singular includes the plural and the
22 plural includes the singular:

23 A. "automated clearinghouse transaction" means an
24 electronic credit or debit transmitted through an automated
25 clearinghouse payable to the state treasurer and deposited

1 with the fiscal agent of New Mexico;

2 B. "department" means the taxation and revenue
3 department, the secretary or any employee of the department
4 exercising authority lawfully delegated to that employee by
5 the secretary;

6 C. "electronic payment" means a payment made by
7 automated clearinghouse deposit, any funds wire transfer
8 system or a credit card, debit card or electronic cash
9 transaction through the internet;

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

16 E. "financial institution" means any state or
17 federally chartered, federally insured depository
18 institution;

19 F. "hearing officer" means a person who has been
20 designated by the chief hearing officer to serve as a hearing
21 officer and who is:

22 (1) the chief hearing officer;

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

25 (3) a contractor of the administrative

1 hearings office;

2 G. "Internal Revenue Code" means the Internal
3 Revenue Code of 1986, as that code may be amended or its
4 sections renumbered;

5 H. "levy" means the lawful power, hereby invested
6 in the secretary, to take into possession or to require the
7 present or future surrender to the secretary or the
8 secretary's delegate of any property or rights to property
9 belonging to a delinquent taxpayer;

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

25 J. "managed audit" means a review and analysis

1 conducted by a taxpayer under an agreement with the
2 department to determine the taxpayer's compliance with a tax
3 administered pursuant to the Tax Administration Act and the
4 presentation of the results to the department for assessment
5 of tax found to be due;

6 K. "net receipts" means the total amount of money
7 paid by taxpayers to the department in a month pursuant to a
8 tax or tax act less any refunds disbursed in that month with
9 respect to that tax or tax act;

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

16 M. "paid" includes the term "paid over";

17 N. "pay" includes the term "pay over";

18 O. "payment" includes the term "payment over";

19 P. "person" means any individual, estate, trust,
20 receiver, cooperative association, club, corporation,
21 company, firm, partnership, limited liability company,
22 limited liability partnership, joint venture, syndicate,
23 other association or gas, water or electric utility owned or
24 operated by a county or municipality; "person" also means, to
25 the extent permitted by law, a federal, state or other

1 governmental unit or subdivision, or an agency, department or
2 instrumentality thereof; and "person", as used in Sections
3 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or
4 employee of a corporation, a member or employee of a
5 partnership or any individual who, as such, is under a duty
6 to perform any act in respect of which a violation occurs;

7 Q. "property" means property or rights to
8 property;

9 R. "property or rights to property" means any
10 tangible property, real or personal, or any intangible
11 property of a taxpayer;

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

19 T. "return information" means a taxpayer's name,
20 address, government-issued identification number and other
21 identifying information; any information contained in or
22 derived from a taxpayer's return; any information with
23 respect to any actual or possible administrative or legal
24 action by an employee of the department concerning a
25 taxpayer's return, such as audits, managed audits, denial of

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

10 U. "secretary" means the secretary of taxation and
11 revenue and, except for purposes of Subsection B of Section
12 7-1-4 NMSA 1978, also includes the deputy secretary or a
13 division director or deputy division director delegated by
14 the secretary;

15 V. "secretary or the secretary's delegate" means
16 the secretary or any employee of the department exercising
17 authority lawfully delegated to that employee by the
18 secretary;

19 W. "security" means money, property or rights to
20 property or a surety bond;

21 X. "state" means any state of the United States,
22 the District of Columbia, the commonwealth of Puerto Rico and
23 any territory or possession of the United States;

24 Y. "tax" means the total amount of each tax
25 imposed and required to be paid, withheld and paid or

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

12 Z. "tax return preparer" means a person who
13 prepares for others for compensation or who employs one or
14 more persons to prepare for others for compensation any
15 return of income tax, a substantial portion of any return of
16 income tax, any claim for refund with respect to income tax
17 or a substantial portion of any claim for refund with respect
18 to income tax; provided that a person shall not be a "tax
19 return preparer" merely because such person:

20 (1) furnishes typing, reproducing or other
21 mechanical assistance;

22 (2) is an employee who prepares an income
23 tax return or claim for refund with respect to an income tax
24 return of the employer, or of an officer or employee of the
25 employer, by whom the person is regularly and continuously

1 employed; or

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

5 AA. "taxpayer" means a person liable for payment
6 of any tax; a person responsible for withholding and payment
7 or for collection and payment of any tax; a person to whom an
8 assessment has been made, if the assessment remains unabated
9 or the amount thereof has not been paid; or a person who
10 entered into a special agreement to assume the liability of
11 gross receipts tax or governmental gross receipts tax of
12 another person and the special agreement was approved by the
13 secretary pursuant to the Tax Administration Act."

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

16 "7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The
17 rights afforded New Mexico taxpayers during the assessment,
18 collection and enforcement of any tax administered by the
19 department as set forth in the Tax Administration Act
20 include:

21 A. the right to available public information and
22 prompt and courteous tax assistance;

23 B. the right to be represented or advised by
24 counsel or other qualified representatives at any time in
25 administrative interactions with the department in accordance

1 with the provisions of Section 7-1-24 NMSA 1978 or the
2 administrative hearings office in accordance with the
3 provisions of the Administrative Hearings Office Act;

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

8 D. the right to have the department conduct its
9 audits in a timely and expeditious manner and be entitled to
10 the tolling of interest as provided in the Tax Administration
11 Act;

12 E. the right to obtain nontechnical information
13 that explains the procedures, remedies and rights available
14 during audit, protest, appeals and collection proceedings
15 pursuant to the Tax Administration Act;

16 F. the right to be provided with an explanation of
17 the results of and the basis for audits, assessments or
18 denials of refunds that identify any amount of tax, interest
19 or penalty due;

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

25 H. the right to have the taxpayer's tax

1 information kept confidential unless otherwise specified by
2 law, in accordance with Section 7-1-8 NMSA 1978;

3 I. the right to abatement of an assessment of
4 taxes determined to have been incorrectly, erroneously or
5 illegally made, as provided in Section 7-1-28 NMSA 1978 and
6 the right to seek a compromise of an asserted tax liability
7 by obtaining a written determination of liability or
8 nonliability when the secretary in good faith is in doubt of
9 the liability as provided in Section 7-1-20 NMSA 1978;

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

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

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

24 "7-1-8.3. INFORMATION THAT MAY BE REVEALED TO PUBLIC.--
25 An employee of the department may reveal:

1 A. information obtained through the administration
2 of a law not subject to administration and enforcement under
3 the provisions of the Tax Administration Act to the extent
4 that revealing that information is not otherwise prohibited
5 by law;

6 B. return information with respect to the taxes or
7 tax acts administered pursuant to Subsection B of Section
8 7-1-2 NMSA 1978, except that:

9 (1) return information for or relating to a
10 period prior to July 1, 1985 with respect to the Resources
11 Excise Tax Act and the Severance Tax Act may be revealed only
12 to a committee of the legislature for a valid legislative
13 purpose;

14 (2) except as provided in Paragraph (3) of
15 this subsection, contracts and other agreements between the
16 taxpayer and other parties and the proprietary information
17 contained in those contracts and agreements shall not be
18 revealed without the consent of all parties to the contract
19 or agreement; and

20 (3) audit workpapers and the proprietary
21 information contained in the workpapers shall not be revealed
22 except to:

23 (a) the bureau of safety and
24 environmental enforcement of the United States department of
25 the interior, if production occurred on federal land;

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

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

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

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

14 D. a decision and order made by a hearing officer
15 pursuant to the provisions of the Administrative Hearings
16 Office Act with respect to a protest filed with the secretary
17 on or after July 1, 1993;

18 E. any written ruling on questions of evidence or
19 procedure made by a hearing officer pursuant to the
20 provisions of the Administrative Hearings Office Act;
21 provided that the name and identification number of the
22 taxpayer requesting the ruling shall not be revealed; and

23 F. return information included in a notice of lien
24 or release or extinguishment of lien."

25 SECTION 13. Section 7-1-8.4 NMSA 1978 (being Laws 2009,

1 Chapter 243, Section 6) is amended to read:

2 "7-1-8.4. INFORMATION THAT MAY BE REVEALED TO JUDICIAL
3 BODIES OR WITH RESPECT TO JUDICIAL PROCEEDINGS OR
4 INVESTIGATIONS AND TO ADMINISTRATIVE HEARINGS OFFICE.--An
5 employee of the department may reveal to:

6 A. a district court, an appellate court or a
7 federal court, a return or return information:

8 (1) in response to an order thereof in an
9 action relating to taxes or an action for tax fraud or any
10 other crime that may involve taxes due to the state and in
11 which the information sought is about a taxpayer that is
12 party to the action and is material to the inquiry, in which
13 case only that information may be required to be produced in
14 court and admitted in evidence subject to court order
15 protecting the confidentiality of the information and no
16 more;

17 (2) in an action in which the department is
18 attempting to enforce an act with which the department is
19 charged or to collect a tax; or

20 (3) in any matter in which the department is
21 a party and the taxpayer has put the taxpayer's own liability
22 for taxes at issue, in which case only that information
23 regarding the taxpayer that is party to the action may be
24 produced, but this shall not prevent revelation of department
25 policy or interpretation of law arising from circumstances of

1 a taxpayer that is not a party;

2 B. the Bernalillo county metropolitan court, upon
3 that court's request, the last known address and the date of
4 that address for every person the court certifies to the
5 department as a person who owes fines, fees or costs to the
6 court or who has failed to appear pursuant to a court order
7 or a promise to appear;

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

14 D. a district attorney, a state district court
15 grand jury or federal grand jury, information for an
16 investigation of or proceeding related to an alleged criminal
17 violation of the tax laws;

18 E. a third party subject to a subpoena or levy
19 issued pursuant to the provisions of the Tax Administration
20 Act, the identity of the taxpayer involved, the taxes or tax
21 acts involved and the nature of the proceeding; and

22 F. the administrative hearings office, information
23 in relation to a protest or other hearing, in which case only
24 that information regarding the taxpayer that is a party to
25 the action may be produced, but this shall not prevent

1 revelation of department policy or interpretation of law
2 arising from circumstances of a taxpayer that is not a party.
3 The office shall maintain confidentiality regarding taxpayer
4 information as required by the provisions of Section 7-1-8
5 NMSA 1978."

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

8 "7-1-22. EXHAUSTION OF ADMINISTRATIVE REMEDIES.--No
9 court of this state has jurisdiction to entertain any
10 proceeding by a taxpayer in which the taxpayer calls into
11 question the taxpayer's liability for any tax or the
12 application to the taxpayer of any provision of the Tax
13 Administration Act, except as a consequence of the appeal by
14 the taxpayer to the court of appeals from the order of a
15 hearing officer, or except as a consequence of a claim for
16 refund as specified in Section 7-1-26 NMSA 1978."

17 SECTION 15. Section 7-1-24 NMSA 1978 (being Laws 1965,
18 Chapter 248, Section 26, as amended) is amended to read:

19 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE
20 PROTEST.--

21 A. A taxpayer may dispute:

22 (1) the assessment to the taxpayer of any
23 amount of tax;

24 (2) the application to the taxpayer of any
25 provision of the Tax Administration Act except the issuance

1 of a subpoena or summons; or

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

4 (a) credit or rebate; or

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

7 B. The taxpayer may dispute a matter described in
8 Subsection A of this section by filing with the secretary a
9 written protest. Every protest shall identify the taxpayer
10 and the tax credit, rebate, property or provision of the Tax
11 Administration Act involved and state the grounds for the
12 taxpayer's protest and the affirmative relief requested. The
13 statement of grounds for protest shall specify individual
14 grounds upon which the protest is based and a summary
15 statement of the evidence, if any, expected to be produced
16 supporting each ground asserted; provided that the taxpayer
17 may supplement the statement at any time prior to ten days
18 before the hearing conducted on the protest pursuant to the
19 provisions of the Administrative Hearings Office Act or, if a
20 scheduling order has been issued, in accordance with the
21 scheduling order. The secretary may, in appropriate cases,
22 provide for an informal conference before a hearing of the
23 protest is set by the administrative hearings office or
24 before acting on a claim for refund. In the case of an
25 assessment of tax by the department, a protest may be filed

1 without making payment of the amount assessed.

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

20 D. No proceedings other than those to enforce
21 collection of an amount assessed as tax and to protect the
22 interest of the state by injunction, as provided in Sections
23 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58
24 NMSA 1978, are stayed by timely filing of a protest pursuant
25 to the provisions of this section.

1 E. Nothing in this section shall be construed to
2 authorize a criminal proceeding or to authorize an
3 administrative protest of the issuance of a subpoena or
4 summons."

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

7 "7-1-25. APPEALS FROM HEARING OFFICER'S DECISION AND
8 ORDER.--

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

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

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

- 1 (1) arbitrary, capricious or an abuse of
2 discretion;
3 (2) not supported by substantial evidence in
4 the record; or
5 (3) otherwise not in accordance with the
6 law.

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

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

17 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT,
18 REBATE OR REFUND.--

19 A. A person who believes that an amount of tax has
20 been paid by or withheld from that person in excess of that
21 for which the person was liable, who has been denied any
22 credit or rebate claimed or who claims a prior right to
23 property in the possession of the department pursuant to a
24 levy made under authority of Sections 7-1-31 through 7-1-34
25 NMSA 1978 may claim a refund by directing to the secretary,

1 within the time limited by the provisions of Subsections D
2 and E of this section, a written claim for refund. Except as
3 provided in Subsection I of this section, a refund claim
4 shall include:

5 (1) the taxpayer's name, address and
6 identification number;

7 (2) the type of tax for which a refund is
8 being claimed, the credit or rebate denied or the property
9 levied upon;

10 (3) the sum of money or other property being
11 claimed;

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

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

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

19 (1) If the claim is denied in whole or in
20 part in writing, no claim may be refiled with respect to that
21 which was denied, but the person, within ninety days after
22 either the mailing or delivery of the denial of all or any
23 part of the claim, may elect to pursue one, but not more than
24 one, of the remedies in Subsection C of this section.

25 (2) If the department has neither granted

1 nor denied any portion of a claim for refund within one
2 hundred twenty days of the date the claim was mailed or
3 delivered to the department, the person may refile it within
4 the time limits set forth in Subsection D of this section or
5 may within ninety days elect to pursue one, but only one, of
6 the remedies in Subsection C of this section. After the
7 expiration of the two hundred ten days from the date the
8 claim was mailed or delivered to the department, the
9 department may not approve or disapprove the claim unless the
10 person has pursued one of the remedies under Subsection C of
11 this section.

12 C. A person may elect to pursue no more than one
13 of the remedies in Paragraphs (1) and (2) of this subsection.
14 A person who timely pursues more than one remedy shall be
15 deemed to have elected the first remedy invoked. The person
16 may:

17 (1) direct to the secretary, pursuant to the
18 provisions of Section 7-1-24 NMSA 1978, a written protest
19 that shall set forth:

20 (a) the circumstances of: 1) an
21 alleged overpayment; 2) a denied credit; 3) a denied rebate;
22 or 4) a denial of a prior right to property levied upon by
23 the department;

24 (b) an allegation that, because of that
25 overpayment or denial, the state is indebted to the taxpayer

1 for a specified amount, including any allowed interest, or
2 for the property;

3 (c) demanding the refund to the
4 taxpayer of that amount or that property; and

5 (d) reciting the facts of the claim for
6 refund; or

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

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

22 (1) within three years of the end of the
23 calendar year in which:

24 (a) the payment was originally due or
25 the overpayment resulted from an assessment by the department

1 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

2 (b) the final determination of value
3 occurs with respect to any overpayment that resulted from a
4 disapproval by any agency of the United States or the state
5 of New Mexico or any court of increase in value of a product
6 subject to taxation under the Oil and Gas Severance Tax Act,
7 the Oil and Gas Conservation Tax Act, the Oil and Gas
8 Emergency School Tax Act, the Oil and Gas Ad Valorem
9 Production Tax Act or the Natural Gas Processors Tax Act;

10 (c) property was levied upon pursuant
11 to the provisions of the Tax Administration Act; or

12 (d) an overpayment of New Mexico tax
13 resulted from: 1) an internal revenue service audit
14 adjustment or a federal refund paid due to an adjustment of
15 an audit by the internal revenue service or an amended
16 federal return; or 2) making a change to a federal return for
17 which federal approval is required by the Internal Revenue
18 Code;

19 (2) when an amount of a claim for credit
20 under the provisions of the Investment Credit Act, Laboratory
21 Partnership with Small Business Tax Credit Act or Technology
22 Jobs Tax Credit Act or for the rural job tax credit pursuant
23 to Section 7-2E-1.1 NMSA 1978 or similar credit has been
24 denied, the taxpayer may claim a refund of the credit no
25 later than one year after the date of the denial;

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

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

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

1 claiming a refund is provided in this section.

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

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

20 G. Any refund of tax paid under any tax or tax act
21 administered under Subsection B of Section 7-1-2 NMSA 1978
22 may be made, at the discretion of the department, in the form
23 of credit against future tax payments if future tax
24 liabilities in an amount at least equal to the credit amount
25 reasonably may be expected to become due.

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

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

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

23 "7-1-29.1. AWARDING OF COSTS AND FEES.--

24 A. In any administrative or court proceeding that
25 is brought by or against the taxpayer on or after

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

10 B. As used in this section:

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

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

16 (3) "reasonable administrative costs" means:

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

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

1 the proceeding of attorneys or of certified public
2 accountants who are authorized to practice in the context of
3 an administrative proceeding; and

4 (4) "reasonable litigation costs" means:

5 (a) reasonable court costs; and

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

13 C. For purposes of this section:

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

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

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

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

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

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

7 (b) the assessment giving rise to the
8 proceeding is not supported by substantial evidence
9 determined 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"
12 means:

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

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

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

23 (a) in the case where the final
24 determination with respect to the tax, interest or penalty
25 is made in an administrative proceeding, by the hearing

1 officer; or

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

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

14 E. No agreement for or award of reasonable
15 administrative costs or reasonable litigation costs in any
16 administrative or court proceeding pursuant to Subsection A
17 of this section shall exceed the lesser of twenty percent of
18 the amount of the settlement or judgment or fifty thousand
19 dollars (\$50,000). A taxpayer awarded administrative
20 litigation costs pursuant to this section may not receive an
21 award of attorney fees pursuant to Subsection D of Section
22 7-1-25 NMSA 1978."

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

25 "7-38-21. PROTESTS--ELECTION OF REMEDIES.--

1 A. A property owner may protest the value or
2 classification determined for the property owner's property
3 for property taxation purposes, the allocation of value of
4 the property to a particular governmental unit or a denial of
5 a claim for an exemption or for a limitation on increase in
6 value either by:

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

9 (a) the administrative hearings office;
10 or

11 (b) the county assessor; or

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

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

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

25 SECTION 20. Section 7-38-22 NMSA 1978 (being Laws 1973,

1 Chapter 258, Section 62, as amended) is amended to read:

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

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

14 B. Petitions shall:

15 (1) be filed no later than thirty days after
16 the mailing by the division of the notice of valuation;

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

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

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

1 and

2 (5) contain such other information as the
3 administrative hearings office may by rule require.

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

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

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

14 "7-38-23. PROTEST HEARINGS--VERBATIM RECORD--ACTION BY
15 HEARING OFFICER--TIME LIMITATIONS.--

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

1 the administrative hearings office to conduct the hearing.

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

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

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

22 E. Changes in the valuation records shall clearly
23 indicate that the prior entry has been superseded by an order
24 of the hearing officer.

25 F. The department shall maintain a file of all

1 orders made pursuant to this section. The file shall be open
2 for public inspection.

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

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

11 "7-38-28. APPEALS FROM ORDERS OF THE HEARING OFFICER OR
12 COUNTY VALUATION PROTESTS BOARDS.--

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

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

21 SECTION 23. Section 9-11-6.2 NMSA 1978 (being Laws
22 1995, Chapter 31, Section 3) is amended to read:

23 "9-11-6.2. ADMINISTRATIVE REGULATIONS, RULINGS,
24 INSTRUCTIONS AND ORDERS--PRESUMPTION OF CORRECTNESS.--

25 A. The secretary is empowered and directed to

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

10 B. Directives issued by the secretary shall be in
11 form substantially as follows:

12 (1) regulations shall be written statements
13 of the secretary of general application, interpreting and
14 exemplifying the statutes to which they relate;

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

21 (3) orders shall be written statements of
22 the secretary or delegate of the secretary to implement a
23 decision after a hearing; and

24 (4) instructions shall be other written
25 statements or directives of the secretary or secretary's

1 delegate not dealing with the merits of any law but otherwise
2 in aid of the accomplishment of the duties of the secretary.

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

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

1 regulation has been on file for not less than sixty days and
2 a public hearing on the proposed action has been held by the
3 secretary or a hearing officer designated by the secretary,
4 the secretary may issue it as a final regulation by signing
5 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
9 with the state records administrator 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,
12 a set of current and superseded rulings and such additional
13 sets of those regulations and rulings as appear necessary,
14 which duplicate or additional sets shall be available for
15 inspection by the public, but superseded regulations need be
16 maintained for no longer than ten years from the date of
17 supersession.

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

1 the department to defray the costs of preparing and
2 distributing regulations and rulings.

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

9 H. The extent to which regulations, rulings and
10 orders will have retroactive effect shall be stated, and if
11 no 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
20 NMSA 1978 or a resident contractor or resident veteran
21 contractor preference pursuant to Section 13-4-2 NMSA 1978, a
22 business or contractor shall submit with its bid or proposal
23 a copy of a valid resident business certificate, valid
24 resident veteran business certificate, valid resident
25 contractor certificate or valid resident veteran contractor

1 certificate issued by the taxation and revenue department.

2 B. An application for a resident business
3 certificate shall include an affidavit from a certified
4 public accountant setting forth that the business is licensed
5 to do 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
8 other tax administered by the state in each of the three
9 years 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
12 on real property in the state and has 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 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
19 business in the year immediately preceding the submission of
20 the affidavit were residents of the state and that, prior to
21 the submission of the affidavit, the business either leased
22 real property for ten years or purchased real property
23 greater than one hundred thousand dollars (\$100,000) in value
24 in the state; or

25 (4) if the business is a previously

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

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

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

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

23 D. An application for a resident contractor
24 certificate shall include an affidavit from a certified
25 public accountant setting forth that the contractor is

1 currently licensed as a contractor in this state and that:

2 (1) the contractor has:

3 (a) registered with the state at least
4 one vehicle; and

5 (b) in each of the five years
6 immediately preceding the submission of the affidavit:

7 1) paid property taxes or rent on real property in the state
8 and paid at least one other tax administered by the state;

9 and 2) paid unemployment insurance on at least three
10 full-time employees who are residents of the state; provided
11 that if a contractor is a legacy contractor, the requirement
12 of at least three full-time employees who are residents of
13 the state is waived;

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

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

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

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

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

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

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

1 or veterans own a majority of the business.

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

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

1 the objection. The taxation and revenue department shall
2 review the evidence and issue a decision within fifteen days
3 of the filing of the objection.

4 H. If, following a hearing and an opportunity to
5 be heard, the administrative hearings office finds that a
6 business or contractor provided false information to the
7 taxation and revenue department in order to obtain a
8 certificate or that a business or contractor used a
9 certificate to obtain a resident business, resident veteran
10 business, resident contractor or resident veteran contractor
11 preference for a bid or proposal and the resident business,
12 resident veteran business, resident contractor or resident
13 veteran contractor did not perform the percentage of the
14 contract specified in the bid or proposal, the business or
15 contractor:

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

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

24 I. In a decision issued pursuant to Subsection G
25 or H of this section, the taxation and revenue department or

1 administrative hearings office shall state the reasons for
2 the action taken and inform an aggrieved business or
3 contractor of the right to judicial review of the
4 determination pursuant to the provisions of Section 39-3-1.1
5 NMSA 1978.

6 J. The taxation and revenue department may assess
7 a reasonable fee for the issuance of a certificate not to
8 exceed the actual cost of administering the taxation and
9 revenue department's duties pursuant to this section.

10 K. The state auditor may audit or review the
11 issuance or validity of certificates.

12 L. For purposes of this section:

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

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

19 (3) "legacy contractor" means a construction
20 business that has been licensed in this state for ten
21 consecutive years; and

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

25 SECTION 25. That version of Section 13-1-22 NMSA 1978

1 (being Laws 2012, Chapter 56, Section 4) that is to become
2 effective July 1, 2022 is amended to read:

3 "13-1-22. RESIDENT BUSINESS AND RESIDENT CONTRACTOR
4 CERTIFICATION.--

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

12 B. An application for a resident business
13 certificate shall include an affidavit from a certified
14 public accountant setting forth that the business is licensed
15 to do business in this state and that:

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

20 (2) if the business is a new business, the
21 owner or majority of owners has paid property taxes or rent
22 on real property in the state and has paid at least one other
23 tax administered by the state in each of the three years
24 immediately preceding the submission of the affidavit and has
25 not applied for a resident business or resident contractor

1 certificate pursuant to this section during that time period;

2 (3) if the business is a relocated business,
3 at least eighty percent of the total personnel of the
4 business in the year immediately preceding the submission of
5 the affidavit were residents of the state and that, prior to
6 the submission of the affidavit, the business either leased
7 real property for ten years or purchased real property
8 greater than one hundred thousand dollars (\$100,000) in value
9 in the state; or

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

18 C. An application for a resident contractor
19 certificate shall include an affidavit from a certified
20 public accountant setting forth that the contractor is
21 currently licensed as a contractor in this state and that:

22 (1) the contractor has:

23 (a) registered with the state at least
24 one vehicle; and

25 (b) in each of the five years

1 immediately preceding the submission of the affidavit:

2 1) paid property taxes or rent on real property in the state
3 and paid at least one other tax administered by the state;
4 and 2) paid unemployment insurance on at least three
5 full-time employees who are residents of the state; provided
6 that if a contractor is a legacy contractor, the requirement
7 of at least three full-time employees who are residents of
8 the state is waived;

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

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

24 (4) if the contractor is a previously
25 certified contractor or was eligible for certification, the

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

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

25 E. A business or contractor whose application for

1 a certificate is denied has fifteen days from the date of the
2 taxation and revenue department's decision to file an
3 objection with the taxation and revenue department. The
4 person filing the objection shall submit evidence to support
5 the objection. The taxation and revenue department shall
6 review the evidence and issue a decision within fifteen days
7 of the filing of the objection.

8 F. If, following a hearing and an opportunity to
9 be heard, the administrative hearings office finds that a
10 business or contractor provided false information to the
11 taxation and revenue department in order to obtain a
12 certificate or that a business or contractor used a
13 certificate to obtain a resident business or resident
14 contractor preference for a bid or proposal and the resident
15 business or contractor did not perform the percentage of the
16 contract specified in the bid or proposal, the business or
17 contractor:

18 (1) is not eligible to receive a
19 certificate or a preference pursuant to Section 13-1-21 or
20 13-4-2 NMSA 1978 for a period of five years from the date on
21 which the taxation and revenue department became aware of the
22 submission of the false information or the failure to perform
23 the contract as specified in the bid or proposal; and

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

1 G. In a decision issued pursuant to Subsection E
2 or F of this section, the taxation and revenue department or
3 the administrative hearings office shall state the reasons
4 for the action taken and inform an aggrieved business or
5 contractor of the right to judicial review of the
6 determination pursuant to the provisions of Section 39-3-1.1
7 NMSA 1978.

8 H. The taxation and revenue department may assess
9 a reasonable fee for the issuance of a certificate not to
10 exceed the actual cost of administering the taxation and
11 revenue department's duties pursuant to this section.

12 I. The state auditor may audit or review the
13 issuance or validity of certificates.

14 J. For purposes of this section:

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

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

21 (3) "legacy contractor" means a construction
22 business that has been licensed in this state for ten
23 consecutive years; and

24 (4) "relocated business" means a business
25 that moved eighty percent of its total domestic personnel

1 from another state to New Mexico in the past five years."

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

4 "40-5A-6. SUSPENSION OR REVOCATION OF LICENSE.--The
5 failure of a licensee to be in compliance with a judgment and
6 order for support or subpoena or warrants relating to
7 paternity or child support proceedings is grounds for
8 suspension or revocation of a license. The proceeding shall
9 be conducted by a board or the administrative hearings office
10 pursuant to the law governing suspension and revocation
11 proceedings for the license."

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

14 "66-2-11. GIVING OF NOTICE.--Whenever the department or
15 the administrative hearings office is authorized or required
16 to give any notice under the Motor Vehicle Code or any other
17 law regulating the operation of vehicles, unless a different
18 method of giving notice is otherwise expressly prescribed,
19 notice shall be given either by personal delivery to the
20 person to be notified or by deposit in the United States mail
21 of the notice in an envelope with postage prepaid, addressed
22 to the person at the person's address as shown by the records
23 of the department. The giving of notice by mail is complete
24 upon the expiration of seven days after deposit of the
25 notice. Proof of the giving of notice in either manner may

1 be made by the certificate of any officer or employee of the
2 department or affidavit of any person over eighteen years of
3 age, naming the person to whom the notice was given and
4 specifying the time, place and manner of the giving of the
5 notice. Notice is given when a person refuses to accept
6 notice."

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

9 "66-2-17. ADMINISTRATIVE HEARING--PROCEDURE.--

10 A. Unless a more specific provision for review
11 exists, any person may dispute the denial of, or failure to
12 either allow or deny, any license, permit, placard or
13 registration provided for under the Motor Vehicle Code by
14 filing with the secretary a written protest against the
15 action or inaction by the department. Every protest shall
16 identify the person and the action or inaction that is in
17 dispute, the grounds for the protest and the affirmative
18 relief requested. The statement of grounds for protest shall
19 specify individual grounds upon which the protest is based
20 and a summary statement of the evidence expected to be
21 produced supporting each ground asserted, if any; provided
22 that the person may supplement the statement at any time
23 prior to a hearing conducted on the protest pursuant to the
24 provisions of the Administrative Hearings Office Act. The
25 secretary may, in appropriate cases, provide for an informal

1 conference before the administrative hearings office sets a
2 hearing of the protest.

3 B. Any protest by a person shall be filed within
4 thirty days of the date of the mailing or verbal notification
5 of the action proposed to be taken by the department. If a
6 protest is not filed within the time required for filing a
7 protest, the secretary may proceed with the action proposed
8 by the department."

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

11 "66-4-3. REFUSAL TO ISSUE LICENSE--CANCELLATION OR
12 SUSPENSION OF LICENSE OR USE OF TEMPORARY PERMITS--HEARING--
13 APPEAL.--

14 A. The department may refuse to issue a license
15 for just cause and may cancel or suspend a license or use of
16 a temporary registration permit, demonstration permit or
17 transport permit for violation of the Motor Vehicle Code.
18 The action authorized in this section shall be taken only
19 after a hearing before the administrative hearings office.
20 Within ten days after completion of the hearing, the hearing
21 officer designated to conduct the hearing shall cause to be
22 served upon all parties, in the manner provided in Section
23 66-2-11 NMSA 1978, the hearing officer's findings and
24 decision. The decision shall be:

25 (1) granting a license or refusing to grant

1 a license;

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

4 (3) continuing use of dealer plates and
5 temporary registration permits, demonstration permits or
6 transport permits, canceling dealer plates and temporary
7 registration permits, demonstration permits or transport
8 permits or suspending use of temporary registration permits,
9 demonstration permits or transport permits for a time stated.

10 B. A party aggrieved by the hearing officer's
11 decision may file an appeal in the district court pursuant to
12 the provisions of Section 39-3-1.1 NMSA 1978."

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

15 "66-5-19. RESTRICTED LICENSES.--

16 A. The division, upon issuing a driver's license
17 or a provisional license, may, whenever good cause appears,
18 impose restrictions, including the shortening of the
19 licensure period suitable to the licensee's driving ability
20 with respect to the type of or special mechanical control
21 devices required on a motor vehicle that the licensee may
22 operate or such other restrictions applicable to the licensee
23 as the division determines to be appropriate to ensure the
24 safe operation of a motor vehicle by the licensee.

25 B. At age seventy-five and thereafter, the

1 applicant shall renew the applicant's license on a yearly
2 basis at no cost to the applicant.

3 C. The division may either issue a special
4 restricted license or may set forth such restrictions upon
5 the usual license form.

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

16 (1) the applicant has no record of moving
17 violations;

18 (2) the necessity of the license is shown to
19 the satisfaction of the director; and

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

23 E. The division may, upon receiving satisfactory
24 evidence of any violation of the restrictions of the license,
25 suspend the license, but the licensee is entitled to a

1 hearing as upon a suspension under Sections 66-5-1.1 through
2 66-5-47 NMSA 1978 and as provided in the Administrative
3 Hearings Office Act.

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

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

9 "66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE
10 LICENSE.--

11 A. The division may suspend the instruction
12 permit, driver's license or provisional license of a driver
13 without preliminary hearing upon a showing by its records or
14 other sufficient evidence, including information provided to
15 the state pursuant to an intergovernmental agreement
16 authorized by Section 66-5-27.1 NMSA 1978, that the licensee:

17 (1) has been convicted of an offense for
18 which mandatory revocation of license is required upon
19 conviction;

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

23 (3) has been convicted with such frequency
24 of offenses against traffic laws or rules governing motor
25 vehicles as to indicate a disrespect for traffic laws and a

1 disregard for the safety of other persons on the highways;

2 (4) is an habitually reckless or negligent
3 driver of a motor vehicle;

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

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

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

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

13 (9) has failed to fulfill a signed promise
14 to appear or notice to appear in court as evidenced by notice
15 from a state court or tribal court, whenever appearance is
16 required by law or by the court as a consequence of a charge
17 or conviction under the Motor Vehicle Code or pursuant to the
18 laws of the tribe;

19 (10) has failed to pay a penalty assessment
20 within thirty days of the date of issuance by the state or a
21 tribe; or

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

1 B. Upon suspending the license of a person as
2 authorized in this section, the division shall immediately
3 notify the licensee in writing of the licensee's right to a
4 hearing before the administrative hearings office and, upon
5 the licensee's request, shall notify the administrative
6 hearings office. The administrative hearings office shall
7 schedule the hearing to take place as early as practicable,
8 but within no more than twenty days, not counting Saturdays,
9 Sundays and legal holidays after receipt of the request. The
10 hearing shall be held in the county in which the licensee
11 resides unless the hearing officer and the licensee agree
12 that the hearing may be held in some other county; provided
13 that the hearing request is received within twenty days from
14 the date that the suspension was deposited in the United
15 States mail. The hearing officer may, in the hearing
16 officer's discretion, extend the twenty-day period. The
17 hearing shall be held as provided in the Administrative
18 Hearings Office Act. After the hearing, the hearing officer
19 shall either rescind the order of suspension or continue,
20 modify or extend the suspension of the license or revoke the
21 license."

22 SECTION 32. Section 66-5-204 NMSA 1978 (being Laws
23 1983, Chapter 318, Section 5, as amended) is amended to read:

24 "66-5-204. ADMINISTRATIVE AND COURT REVIEW.--An owner
25 of a motor vehicle registered in New Mexico who is aggrieved

1 by the decision of the secretary made under the provisions of
2 the Mandatory Financial Responsibility Act may appeal to the
3 administrative hearings office for a hearing to be held
4 within twenty days after the receipt by the administrative
5 hearings office of the appeal. A person who continues to be
6 aggrieved after the decision made by the hearing officer may
7 appeal that decision in the district court pursuant to the
8 provisions of Section 39-3-1.1 NMSA 1978."

9 SECTION 33. Section 66-5-236 NMSA 1978 (being Laws
10 1983, Chapter 318, Section 35, as amended) is amended to
11 read:

12 "66-5-236. SUSPENSION FOR NONPAYMENT OF JUDGMENT OR FOR
13 FALSE AFFIRMATION.--

14 A. Except as otherwise provided, the secretary
15 shall suspend:

16 (1) the motor vehicle registration for all
17 motor vehicles and the driver's license of any person against
18 whom a judgment has been rendered, the department being in
19 receipt of a certified copy of the judgment on a form
20 provided by the department; or

21 (2) the registration for a period not to
22 exceed one year of a person who is operating a motor vehicle
23 in violation of Section 66-5-205 NMSA 1978 or falsely affirms
24 the existence of a motor vehicle insurance policy or some
25 other means of satisfying the financial responsibility

1 requirements of the Mandatory Financial Responsibility Act,
2 but only if evidence of financial responsibility is not
3 submitted within twenty days after the date of the mailing of
4 the department's demand for that evidence. The department
5 shall notify the person that the person may request a hearing
6 before the administrative hearings office within twenty days
7 after the date of the mailing of the department's demand.

8 B. The registration shall remain suspended and
9 shall not be renewed, nor shall any registration be issued
10 thereafter in the name of that person, unless and until every
11 judgment is stayed, satisfied in full or to the extent
12 provided in the Mandatory Financial Responsibility Act and
13 evidence of financial responsibility as required in Section
14 66-5-218 NMSA 1978 is provided to the department."

15 SECTION 34. Section 66-8-111.1 NMSA 1978 (being Laws
16 1984, Chapter 72, Section 7, as amended by Laws 2003, Chapter
17 51, Section 14 and by Laws 2003, Chapter 90, Section 7) is
18 amended to read:

19 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
20 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
21 HEARING.--On behalf of the department, a law enforcement
22 officer requesting a chemical test or directing the
23 administration of a chemical test pursuant to Section
24 66-8-107 NMSA 1978 shall serve immediate written notice of
25 revocation and of right to a hearing before the

1 administrative hearings office pursuant to the Implied
2 Consent Act on a person who refuses to permit chemical
3 testing or on a person who submits to a chemical test the
4 results of which indicate an alcohol concentration in the
5 person's blood or breath of eight one hundredths or more if
6 the person is twenty-one years of age or older, four one
7 hundredths or more if the person is driving a commercial
8 motor vehicle or two one hundredths or more if the person is
9 less than twenty-one years of age. Upon serving notice of
10 revocation, the law enforcement officer shall take the
11 license or permit of the driver, if any, and issue a
12 temporary license valid for twenty days or, if the driver
13 requests a hearing pursuant to Section 66-8-112 NMSA 1978,
14 valid until the date the administrative hearings office
15 issues the order following that hearing; provided that a
16 temporary license shall not be issued to a driver without a
17 valid license or permit. The law enforcement officer shall
18 send the person's driver's license to the department along
19 with the signed statement required pursuant to Section
20 66-8-111 NMSA 1978."

21 SECTION 35. Section 66-8-112 NMSA 1978 (being Laws
22 1978, Chapter 35, Section 520, as amended by Laws 2003,
23 Chapter 51, Section 15 and by Laws 2003, Chapter 90, Section
24 8) is amended to read:

25 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO

1 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--
2 REVIEW.--

3 A. The effective date of revocation pursuant to
4 Section 66-8-111 NMSA 1978 is twenty days after notice of
5 revocation or, if the person whose driver's license or
6 privilege to drive is being revoked or denied requests a
7 hearing pursuant to the Administrative Hearings Office Act,
8 the date that the administrative hearings office issues the
9 order following that hearing. The date of notice of
10 revocation is:

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

14 (2) in the event the results of a chemical
15 test cannot be obtained immediately, the date notice of
16 revocation is served by mail by the department. This notice
17 of revocation and of right to a hearing shall be sent by
18 certified mail and shall be deemed to have been served on the
19 date borne by the return receipt showing delivery, refusal of
20 the addressee to accept delivery or attempted delivery of the
21 notice at the address obtained by the arresting law
22 enforcement officer or on file with the department.

23 B. Within ten days after receipt of notice of
24 revocation pursuant to Subsection A of this section, a person
25 whose license or privilege to drive is revoked or denied or

1 the person's agent may request a hearing. The hearing
2 request shall be made in writing and shall be accompanied by
3 a payment of twenty-five dollars (\$25.00) or a sworn
4 statement of indigency on a form provided by the department.
5 A standard for indigency shall be established pursuant to
6 rules adopted by the department. Failure to request a
7 hearing within ten days shall result in forfeiture of the
8 person's right to a hearing. Any person less than eighteen
9 years of age who fails to request a hearing within ten days
10 shall have notice of revocation sent to the person's parent,
11 guardian or custodian by the department. A date for the
12 hearing shall be set by the administrative hearings office,
13 if practical, within thirty days after receipt of notice of
14 revocation. The hearing shall be held in the county in which
15 the offense for which the person was arrested took place.

16 C. The administrative hearings office may postpone
17 or continue any hearing on its own motion or upon application
18 from the person and for good cause shown for a period not to
19 exceed ninety days from the date of notice of revocation and,
20 provided that, upon a continuance, the department shall
21 extend the validity of the temporary license for the period
22 of the postponement or continuation.

23 D. At the hearing, the administrative hearings
24 office may administer oaths and may issue subpoenas for the
25 attendance of witnesses and the production of relevant books

1 and papers.

2 E. The hearing shall be limited to the following
3 issues:

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

8 (2) whether the person was arrested;

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

11 (4) whether:

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

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

17 (5) whether:

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

20 (b) the test results indicated an
21 alcohol concentration in the person's blood or breath of
22 eight one hundredths or more if the person is twenty-one
23 years of age or older, four one hundredths or more if the
24 person is driving a commercial motor vehicle or two one
25 hundredths or more if the person is less than twenty-one

1 years of age.

2 F. The administrative hearings office shall enter
3 an order sustaining the revocation or denial of the person's
4 license or privilege to drive if the hearing officer from the
5 administrative hearings office finds that:

6 (1) the law enforcement officer had
7 reasonable grounds to believe the driver was driving a motor
8 vehicle while under the influence of intoxicating liquor or
9 drugs;

10 (2) the person was arrested;

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

13 (4) either:

14 (a) the person refused to submit to the
15 test upon request of the law enforcement officer after the
16 law enforcement officer advised the person that the person's
17 failure to submit to the test could result in the revocation
18 of the person's privilege to drive; or

19 (b) that a chemical test was
20 administered pursuant to the provisions of the Implied
21 Consent Act and the test results indicated an alcohol
22 concentration in the person's blood or breath of eight one
23 hundredths or more if the person is twenty-one years of age
24 or older, four one hundredths or more if the person is
25 driving a commercial motor vehicle or two one hundredths or

1 more if the person is less than twenty-one years of age.

2 G. If one or more of the elements set forth in
3 Paragraphs (1) through (4) of Subsection F of this section
4 are not found by the hearing officer, the person's license
5 shall not be revoked.

6 H. A person adversely affected by an order of the
7 administrative hearings office may seek review within thirty
8 days in the district court in the county in which the offense
9 for which the person was arrested took place. The district
10 court, upon thirty days' written notice to the department,
11 shall hear the case. On review, it is for the court to
12 determine only whether reasonable grounds exist for
13 revocation or denial of the person's license or privilege to
14 drive based on the record of the administrative proceeding.

15 I. Any person less than eighteen years of age
16 shall have results of the person's hearing forwarded by the
17 administrative hearings office to the person's parent,
18 guardian or custodian."

19 SECTION 36. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
20 FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL
21 OBLIGATIONS, STATUTORY REFERENCES AND RULES.--

22 A. On the effective date of this act, all
23 personnel, functions, appropriations, money, records,
24 furniture, equipment and other property of, or attributable
25 to, the hearings bureau of the office of the secretary of

1 taxation and revenue shall be transferred to the
2 administrative hearings office.

3 B. On the effective date of this act, all
4 contractual obligations of the hearings bureau of the office
5 of the secretary of taxation and revenue shall be binding on
6 the administrative hearings office.

7 C. On the effective date of this act, all
8 references in statute to the hearings bureau of the office of
9 the secretary of taxation and revenue or hearing officers of
10 the taxation and revenue department in Chapters 7 and 66
11 NMSA 1978 shall be deemed to be references to the
12 administrative hearings office or a hearing officer of the
13 office.

14 D. Rules of the taxation and revenue department
15 pertaining to hearing officers and the conduct of hearings
16 pursuant to actions related to Chapter 7 or 66 NMSA 1978
17 shall be deemed to be the rules of the administrative
18 hearings office until amended or repealed by the office.

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

21 SECTION 38. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2015. _____