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SENATE BILL 111

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Carlos R. Cisneros

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; ENACTING THE ELECTRICITY SALES TAX ACT;
CREATING AN EXEMPTION IN THE GROSS RECEIPTS AND COMPENSATING
TAX ACT FOR CERTAIN SALES OF ELECTRICITY; MAKING CONFORMING
AMENDMENTS IN THE TAX ADMINISTRATION ACT AND THE ELECTRIC
UTILITY INDUSTRY RESTRUCTURING ACT OF 1999; AMENDING AND
ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN
APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1
through 10 of this act may be cited to as the "Electricity
Sales Tax Act".

Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the
Electricity Sales Tax Act:

A. "business location" means a municipality or a

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1 place outside a municipality designated as a business location
2 by the department pursuant to Section 7-1-14 NMSA 1978;

3 B. "consume" or "consumption" means any use of
4 electricity other than selling or exporting electricity or
5 using electricity to generate or transmit electricity;

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

10 D. "price paid" means that total amount of money
11 or the value of other consideration given for purchasing
12 electricity and includes amounts or value given for the
13 performance of any related but separately charged services or
14 the receiving of any related but separately charged licenses
15 but excludes the electricity sales tax. Whenever the amount
16 charged does not represent the value of the electricity,
17 "price paid" means the reasonable value of the electricity.

18 Section 3. [NEW MATERIAL] IMPOSITION OF ELECTRICITY
19 SALES TAX. --

20 A. There is imposed on every person who consumes
21 electricity in this state an excise tax to be known as the
22 "electricity sales tax". The measure of the tax is the price
23 paid for the electricity consumed.

24 B. The rate of tax is equal to the combined rate
25 of state and local option gross receipts tax in effect for the

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1 business location in which the electricity is delivered to the
2 purchaser at the time of delivery.

3 C. For ease of administering and collecting the
4 electricity sales tax, electricity is presumed to be purchased
5 for consumption except for purchases of electricity by
6 competitive power suppliers, generation and transmission
7 cooperatives, distribution cooperative utilities or municipal
8 utilities, as those terms are defined in Section 62-3A-3 NMSA
9 1978.

10 Section 4. [NEW MATERIAL] LIABILITY OF CONSUMER. -- Each
11 consumer of electricity remains liable for payment of the
12 electricity sales tax due with respect to the electricity
13 consumed until the amount due is remitted to the department or
14 to a seller who is collecting the electricity sales tax for
15 remittance to the department.

16 Section 5. [NEW MATERIAL] DUTY OF SELLER TO COLLECT AND
17 REMIT--REPORTING--PAYMENT. -- Except as otherwise provided in
18 the Electricity Sales Tax Act, each seller of electricity for
19 consumption in this state is required to collect from the
20 purchaser the electricity sales tax due with respect to the
21 sale and to remit the amount collected to the department. By
22 the twenty-fifth of each month, the seller shall report to the
23 department by business location the amount of electricity
24 sales tax collected during the preceding month. The report
25 shall be in the form and contain the information prescribed by

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1 the department. The department may require reporting and
2 payment by electronic means. Remittance of the amount
3 collected shall precede or accompany the return. Sellers
4 remain liable for remittance of electricity sales tax amounts
5 collected until the amounts collected are remitted to the
6 department.

7 Section 6. [NEW MATERIAL] EXEMPTIONS. --

8 A. Electricity sold to and used exclusively by the
9 following is exempt from the electricity sales tax:

10 (1) the United States or an agency,
11 department or instrumentality thereof;

12 (2) the state of New Mexico or a political
13 subdivision thereof;

14 (3) an Indian nation, tribe or pueblo for
15 activities or transactions occurring on its sovereign
16 territory;

17 (4) a foreign nation or agency,
18 instrumentality or political subdivision thereof, but only
19 when required by a treaty in force to which the United States
20 is a party; or

21 (5) an organization that has been granted an
22 exemption from the federal income tax by the United States
23 commissioner of internal revenue under Section 501(c)(3) of
24 the Internal Revenue Code of 1986.

25 B. The department may require reporting of

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1 electricity sold but exempt from electricity sales tax.

2 Section 7. [NEW MATERIAL] SALE FOR RESALE OR EXPORT--
3 SELLER SHALL NOT COLLECT TAX. --

4 A. The seller shall not collect or remit
5 electricity sales tax for purchases of electricity for resale
6 or export when the purchaser provides to the seller
7 documentation acceptable to the department that the purchaser
8 is buying the electricity for resale or export.

9 B. Purchases of electricity by competitive power
10 suppliers, generation and transmission cooperatives,
11 distribution cooperative utilities or municipal utilities, as
12 those terms are defined in Section 62-3A-3 NMSA 1978, are
13 presumed to be purchases for resale.

14 C. If the purchaser claims to purchase electricity
15 for resale but consumes and does not resell the electricity,
16 the electricity sales tax is due for that consumption, and the
17 purchaser shall report and pay electricity sales tax in the
18 manner prescribed by the department by the twenty-fifth of the
19 month following the month in which the electricity was
20 consumed.

21 Section 8. [NEW MATERIAL] DIRECT PAYMENT PERMITS--
22 APPLICATION-- DENIAL, CANCELLATION-- PROTEST-- SELLER SHALL NOT
23 COLLECT TAX PENALTY. --

24 A. The department may permit large, nonresidential
25 consumers to pay the electricity sales tax directly to the

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1 department instead of to the seller of the electricity for
2 remittance to the department. The department shall determine
3 the criteria and conditions for granting of a permit to remit
4 electricity sales tax directly. The permit may be granted for
5 specific periods of time and, if so, the time shall be
6 specified on the permit document. The purchaser shall inform
7 the seller of its possession of a valid direct payment permit
8 in the manner required by the department. The seller shall
9 not collect electricity sales tax from any purchaser who holds
10 a valid direct payment permit for purchases in any period in
11 which the permit is valid. The department shall maintain a
12 public listing identifying persons holding valid direct
13 payment permits and, if applicable, the period of time for
14 which the permit is valid.

15 B. The department may deny an application for a
16 direct payment permit if the applicant or circumstances do not
17 meet the criteria established by the department. The
18 department may cancel a direct payment permit if the holder
19 becomes a delinquent taxpayer or violates conditions of the
20 permit. The department shall give at least sixty days' notice
21 of a proposed cancellation.

22 C. The applicant for a direct payment permit may
23 protest pursuant to the provisions of Section 7-1-24 NMSA 1978
24 the denial of a direct payment permit within thirty days of
25 the denial. Within thirty days of the date of notice by the

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1 department, the holder of a direct payment permit may protest
2 a proposed cancellation or revocation of the permit pursuant
3 to the provisions of Section 7-1-24 NMSA 1978.

4 D. Upon cancellation or revocation of a permit,
5 the permit holder shall notify the department of all persons
6 selling electricity to the permit holder, and the department
7 shall notify persons selling electricity to the permit holder
8 at the time of cancellation or revocation of the fact and
9 effective date of the cancellation or revocation. Sellers are
10 not required to collect and remit electricity sales tax from a
11 person whose direct payment permit has been canceled or
12 revoked until the effective date of the cancellation or
13 revocation, or, for sellers whom the department is required to
14 notify, the date of notification, if later.

15 E. If a permit holder whose permit has been
16 canceled fails to notify the department of the names of
17 persons selling electricity to the permit holder, the permit
18 holder shall pay a penalty of one hundred fifty dollars (\$150)
19 for each day after cancellation of the permit that the permit
20 holder fails to notify the department.

21 Section 9. [NEW MATERIAL] FAILURE OF SELLER TO COLLECT
22 TAX. -- Whenever a seller receives all or a portion of the
23 amount charged for electricity subject to tax but less than
24 the full amount of electricity sales tax due on the amount
25 received for the electricity, the amount received for the

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1 electricity shall be multiplied by a fraction, the numerator
2 of which is the applicable rate of tax and the denominator of
3 which is the sum of one plus the applicable rate of tax. If
4 the result exceeds by at least one dollar (\$1.00) the amount
5 of electricity sales tax received from the purchaser, the
6 result is the amount that the seller must remit as collected
7 electricity sales tax and the difference is a debt of the
8 purchaser to the seller for purchase of electricity.
9 Otherwise, the amount collected by the seller as electricity
10 sales tax is the amount to be remitted to the department as
11 electricity sales tax with respect to that purchaser.

12 Section 10. [NEW MATERIAL] INTERPRETATION OF ACT--
13 ADMINISTRATION AND ENFORCEMENT OF TAX. --

14 A. The department shall interpret the provisions
15 of the Electricity Sales Tax Act.

16 B. The department shall administer and enforce the
17 collection of the electricity sales tax, and the Tax
18 Administration Act applies to the administration and
19 enforcement of the tax.

20 Section 11. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
21 Chapter 211, Section 20, as amended) is amended to read:

22 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
23 MUNICIPALITIES OR COUNTIES. --

24 A. The provisions of this section apply to:

25 (1) any distribution to a municipality of

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1 gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or
2 of interstate telecommunications gross receipts tax pursuant
3 to Section 7-1-6.36 NMSA 1978;

4 (2) any transfer to a municipality with
5 respect to any local option gross receipts tax imposed by that
6 municipality;

7 (3) any transfer to a county with respect to
8 any local option gross receipts tax imposed by that county;

9 (4) any distribution to a county pursuant to
10 Section 7-1-6.16 NMSA 1978;

11 (5) any distribution to a municipality or a
12 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA
13 1978;

14 (6) any transfer to a county with respect to
15 any tax imposed in accordance with the Local Liquor Excise Tax
16 Act;

17 (7) any distribution to a municipality or a
18 county of cigarette taxes pursuant to Sections 7-1-6.11,
19 7-12-15 and 7-12-16 NMSA 1978;

20 (8) any distribution to a county from the
21 county government road fund pursuant to Section 7-1-6.26 NMSA
22 1978;

23 (9) any distribution to a municipality of
24 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; [and]

25 (10) any distribution to a municipality,

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1 county, school district or special district of oil and gas ad
2 valorem production tax reduced as a result of a refund
3 requested in December 1998 with respect to production of
4 carbon dioxide; and

5 (11) any distribution to a municipality or
6 county of electricity sales taxes pursuant to Section 7-1-6.42
7 NMSA 1978.

8 B. If the secretary determines that any prior
9 distribution or transfer to a political subdivision was
10 erroneous, the secretary shall increase or decrease the next
11 distribution or transfer amount for that political subdivision
12 after the determination, except as provided in Subsection C, D
13 or E of this section, by the amount necessary to correct the
14 error. Subject to the provisions of Subsection E of this
15 section, the secretary shall notify the political subdivision
16 of the amount of each increase or decrease.

17 C. No decrease shall be made to current or future
18 distributions or transfers to a political subdivision for any
19 excess distribution or transfer made to that political
20 subdivision more than one year prior to the calendar year in
21 which the determination of the secretary was made.

22 D. The secretary, in lieu of recovery from the
23 next distribution or transfer amount, may recover an excess
24 distribution or transfer of one hundred dollars (\$100) or more
25 to the political subdivision in installments from current and

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1 future distributions or transfers to that political
2 subdivision pursuant to an agreement with the officials of the
3 political subdivision whenever the amount of the distribution
4 or transfer decrease for the political subdivision exceeds ten
5 percent of the average distribution or transfer amount for
6 that political subdivision for the twelve months preceding the
7 month in which the secretary's determination is made; provided
8 that for the purposes of this subsection, the "average
9 distribution or transfer amount" shall be the arithmetic mean
10 of the distribution or transfer amounts within the twelve
11 months immediately preceding the month in which the
12 determination is made.

13 E. Except for the provisions of this section, if
14 the amount by which a distribution or transfer would be
15 adjusted pursuant to Subsection B of this section is one
16 hundred dollars (\$100) or less, no adjustment or notice need
17 be made.

18 F. The secretary is authorized to decrease a
19 distribution to a municipality or county upon being directed
20 to do so by the secretary of finance and administration
21 pursuant to the State Aid Intercept Act or to redirect a
22 distribution to the New Mexico finance authority pursuant to
23 an ordinance or a resolution passed by the county or
24 municipality and a written agreement of the municipality or
25 county and the New Mexico finance authority. Upon direction

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1 to decrease a distribution or notice to redirect a
2 distribution to a municipality or county, the secretary
3 shall decrease or redirect the next designated distribution,
4 and succeeding distributions as necessary, by the amount of
5 the state distributions intercept authorized by the
6 secretary of finance and administration pursuant to the
7 State Aid Intercept Act or by the amount of the state
8 distribution intercept authorized pursuant to an ordinance
9 or a resolution passed by the county or municipality and a
10 written agreement with the New Mexico finance authority.

11 The secretary shall transfer the state distributions
12 intercept amount to the municipal or county treasurer or
13 other person designated by the secretary of finance and
14 administration or to the New Mexico finance authority
15 pursuant to written agreement to pay the debt service to
16 avoid default on qualified local revenue bonds or meet other
17 local revenue bond, loan or other debt obligations of the
18 municipality or county to the New Mexico finance authority. "

19 Section 12. A new section of the Tax Administration
20 Act, Section 7-1-6.42 NMSA 1978, is enacted to read:

21 "7-1-6.42. [NEW MATERIAL] DISTRIBUTION-- ELECTRICITY
22 SALES TAX. --

23 A. A distribution pursuant to Section 7-1-6.1
24 NMSA 1978 shall be made to each municipality in an amount,
25 subject to any increase or decrease made pursuant to Section

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1 7-1-6.15 NMSA 1978, equal to the sum of:

2 (1) the net receipts attributable to the
3 electricity sales tax reported for business locations in
4 that municipality times a fraction, the numerator of which
5 is the sum of the local option gross receipts tax rates
6 imposed by that municipality expressed as a percentage and
7 the denominator of which is the total gross receipts tax
8 rate expressed as a percentage effective for business
9 locations in that municipality; plus

10 (2) the product of a fraction, the
11 numerator of which is one and two hundred twenty-five
12 thousandths percent and the denominator of which is the
13 total gross receipts tax rate expressed as a percentage
14 effective for business locations in that municipality, times
15 the net receipts attributable to the electricity sales tax
16 reported for business locations:

- 17 (a) within that municipality;
- 18 (b) on land owned by the state,
19 commonly known as the "state fair grounds", within the
20 exterior boundaries of that municipality; and
- 21 (c) outside the boundaries of any
22 municipality on land owned by that municipality.

23 B. A distribution pursuant to Section 7-1-6.1
24 NMSA 1978 shall be made to each county in an amount, subject
25 to any increase or decrease made pursuant to Section

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1 7-1-6.15 NMSA 1978, equal to the sum of:

2 (1) the net receipts attributable to the
3 electricity sales tax reported for business locations in
4 that county times a fraction, the numerator of which is the
5 sum of the local option gross receipts tax rates imposed by
6 that county on a county-wide basis expressed as a percentage
7 and the denominator of which is the total gross receipts tax
8 rate expressed as a percentage effective for business
9 locations in that county; plus

10 (2) the net receipts attributable to the
11 electricity sales tax reported for business locations in the
12 rest of the county area of that county times a fraction, the
13 numerator of which is the sum of the local option gross
14 receipts tax rates expressed as a percentage imposed by that
15 county only in the rest of county area and the denominator
16 of which is the total gross receipts tax rate expressed as a
17 percentage effective for business locations in the rest of
18 the county area of that county. "

19 Section 13. Section 7-1-8 NMSA 1978 (being Laws 1965,
20 Chapter 248, Section 13, as amended) is amended to read:

21 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
22 INFORMATION.--It is unlawful for any employee of the
23 department or any former employee of the department to
24 reveal to any individual other than another employee of the
25 department any information contained in the return of any

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1 taxpayer made pursuant to any law subject to administration
2 and enforcement under the provisions of the Tax
3 Administration Act or any other information about any
4 taxpayer acquired as a result of his employment by the
5 department, except:

6 A. to an authorized representative of another
7 state; provided that the receiving state has entered into a
8 written agreement with the department to use the information
9 for tax purposes only and that the receiving state has
10 enacted a confidentiality statute similar to this section to
11 which the representative is subject;

12 B. to a representative of the secretary of the
13 treasury or the secretary's delegate pursuant to the terms
14 of a reciprocal agreement entered into with the federal
15 government for exchange of the information;

16 C. to the multistate tax commission or its
17 authorized representative; provided that the information is
18 used for tax purposes only and is disclosed by the
19 multistate tax commission only to states that have met the
20 requirements of Subsection A of this section;

21 D. to a district court or an appellate court or
22 a federal court:

23 (1) in response to an order thereof in an
24 action relating to taxes to which the state is a party and
25 in which the information sought is about a taxpayer who is

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1 party to the action and is material to the inquiry, in which
2 case only that information may be required to be produced in
3 court and admitted in evidence subject to court order
4 protecting the confidentiality of the information and no
5 more;

6 (2) in any action in which the department
7 is attempting to enforce an act with which the department is
8 charged or to collect a tax; or

9 (3) in any matter in which the department
10 is a party and the taxpayer has put his own liability for
11 taxes at issue, in which case only that information
12 regarding the taxpayer who is party to the action may be
13 produced, but this shall not prevent the disclosure of
14 department policy or interpretation of law arising from
15 circumstances of a taxpayer who is not a party;

16 E. to the taxpayer or to the taxpayer's
17 authorized representative; provided, however, that nothing
18 in this subsection shall be construed to require any
19 employee to testify in a judicial proceeding except as
20 provided in Subsection D of this section;

21 F. information obtained through the
22 administration of any law not subject to administration and
23 enforcement under the provisions of the Tax Administration
24 Act to the extent that release of that information is not
25 otherwise prohibited by law;

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1 G. in such manner, for statistical purposes,
2 that the information revealed is not identified as
3 applicable to any individual taxpayer;

4 H. with reference to any information concerning
5 the tax on tobacco imposed by Sections 7-12-1 through
6 7-12-13 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a
7 committee of the legislature for a valid legislative purpose
8 or to the attorney general for purposes of Section 6-4-13
9 NMSA 1978 and the master settlement agreement defined in
10 Section 6-4-12 NMSA 1978;

11 I. to a transferee, assignee, buyer or lessor of
12 a liquor license, the amount and basis of any unpaid
13 assessment of tax for which his transferor, assignor, seller
14 or lessee is liable;

15 J. to a purchaser of a business as provided in
16 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and
17 basis of any unpaid assessment of tax for which the
18 purchaser's seller is liable;

19 K. to a municipality of this state upon its
20 request for any period specified by that municipality within
21 the twelve months preceding the request for the information
22 by that municipality:

23 (1) the names, taxpayer identification
24 numbers and addresses of registered gross receipts taxpayers
25 reporting gross receipts for that municipality under the

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1 Gross Receipts and Compensating Tax Act or a local option
2 gross receipts tax imposed by that municipality. The
3 department may also release the information described in
4 this paragraph quarterly or upon such other periodic basis
5 as the secretary and the municipality may agree; and

6 (2) information indicating whether persons
7 shown on any list of businesses located within that
8 municipality furnished by the municipality have reported
9 gross receipts to the department but have not reported gross
10 receipts for that municipality under the Gross Receipts and
11 Compensating Tax Act or a local option gross receipts tax
12 imposed by that municipality.

13 The employees of municipalities receiving information
14 as provided in this subsection shall be subject to the
15 penalty contained in Section 7-1-76 NMSA 1978 if that
16 information is revealed to individuals other than other
17 employees of the municipality in question or the department;

18 L. to the commissioner of public lands for use
19 in auditing that pertains to rentals, royalties, fees and
20 other payments due the state under land sale, land lease or
21 other land use contracts; the commissioner of public lands
22 and employees of the commissioner are subject to the same
23 provisions regarding confidentiality of information as
24 employees of the department;

25 M the department shall furnish, upon request by

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1 the child support enforcement division of the human services
2 department, the last known address with date of all names
3 certified to the department as being absent parents of
4 children receiving public financial assistance. The child
5 support enforcement division personnel shall use such
6 information only for the purpose of enforcing the support
7 liability of the absent parents and shall not use the
8 information or disclose it for any other purpose; the child
9 support enforcement division and its employees are subject
10 to the provisions of this section with respect to any
11 information acquired from the department;

12 N. with respect to the tax on gasoline imposed
13 by the Gasoline Tax Act, the department shall make available
14 for public inspection at monthly intervals a report covering
15 the amount and gallonage of gasoline and ethanol blended
16 fuels imported, exported, sold and used, including tax-
17 exempt sales to the federal government reported or upon
18 which the gasoline tax was paid and covering taxes received
19 from each distributor in the state of New Mexico;

20 O. the identity of distributors and gallonage
21 reported on returns required under the Gasoline Tax Act,
22 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act
23 to any distributor or supplier, but only when it is
24 necessary to enable the department to carry out its duties
25 under the Gasoline Tax Act, the Special Fuels Supplier Tax

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1 Act or the Alternative Fuel Tax Act;

2 P. the department shall release upon request
3 only the names and addresses of all gasoline or special fuel
4 distributors, wholesalers and retailers to the New Mexico
5 department of agriculture, the employees of which are
6 thereby subject to the penalty contained in Section 7-1-76
7 NMSA 1978 if that information is revealed to individuals
8 other than employees of either the New Mexico department of
9 agriculture or the department;

10 Q. the department shall answer all inquiries
11 concerning whether a person is or is not a registered
12 taxpayer;

13 R. upon request of a municipality or county of
14 this state, the department shall permit officials or
15 employees of the municipality or county to inspect the
16 records of the department pertaining to an increase or
17 decrease to a distribution or transfer made pursuant to
18 Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the
19 basis for the increase or decrease. The municipal or county
20 officials or employees receiving information provided in
21 this subsection shall not reveal that information to any
22 person other than another employee of the municipality or
23 the county, the department or a district court, an appellate
24 court or a federal court in a proceeding relating to a
25 disputed distribution and in which both the state and the

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1 municipality or county are parties. Any information
2 provided pursuant to provisions of this subsection that is
3 revealed other than as provided in this subsection shall
4 subject the person revealing the information to the
5 penalties contained in Section 7-1-76 NMSA 1978;

6 S. to a county of this state that has in effect
7 any local option gross receipts tax imposed by the county
8 upon its request for any period specified by that county
9 within the twelve months preceding the request for the
10 information by that county:

11 (1) the names, taxpayer identification
12 numbers and addresses of registered gross receipts taxpayers
13 reporting gross receipts either for that county in the case
14 of a local option gross receipts tax imposed on a countywide
15 basis or only for the areas of that county outside of any
16 incorporated municipalities within that county in the case
17 of a county local option gross receipts tax imposed only in
18 areas of the county outside of any incorporated
19 municipalities. The department may also release the
20 information described in this paragraph quarterly or upon
21 such other periodic basis as the secretary and the county
22 may agree;

23 (2) in the case of a local option gross
24 receipts tax imposed by a county on a countywide basis,
25 information indicating whether persons shown on any list of

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1 businesses located within the county furnished by the county
2 have reported gross receipts to the department but have not
3 reported gross receipts for that county under the Gross
4 Receipts and Compensating Tax Act or a local option gross
5 receipts tax imposed by that county on a countywide basis;
6 and

7 (3) in the case of a local option gross
8 receipts tax imposed by a county only on persons engaging in
9 business in that area of the county outside of any
10 incorporated municipalities, information indicating whether
11 persons shown on any list of businesses located in the area
12 of that county outside of any incorporated municipalities
13 within that county furnished by the county have reported
14 gross receipts to the department but have not reported gross
15 receipts for the area of that county outside of any
16 incorporated municipalities within that county under the
17 Gross Receipts and Compensating Tax Act or any local option
18 gross receipts tax imposed by the county only on persons
19 engaging in business in that area of the county outside of
20 any incorporated municipalities.

21 The officers and employees of counties receiving
22 information as provided in this subsection shall be subject
23 to the penalty contained in Section 7-1-76 NMSA 1978 if such
24 information is revealed to individuals other than other
25 officers or employees of the county in question or the

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1 department;

2 T. to authorized representatives of an Indian
3 nation, tribe or pueblo, the territory of which is located
4 wholly or partially within New Mexico, pursuant to the terms
5 of a reciprocal agreement entered into with the Indian
6 nation, tribe or pueblo for the exchange of that information
7 for tax purposes only; provided that the Indian nation,
8 tribe or pueblo has enacted a confidentiality statute
9 similar to this section;

10 U. information with respect to the taxes or tax
11 acts administered pursuant to Subsection B of Section 7-1-2
12 NMSA 1978, except that:

13 (1) information for or relating to any
14 period prior to July 1, 1985 with respect to Sections 7-25-1
15 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be
16 released only to a committee of the legislature for a valid
17 legislative purpose;

18 (2) except as provided in Paragraph (3) of
19 this subsection, contracts and other agreements between the
20 taxpayer and other parties and the proprietary information
21 contained in such contracts and agreements shall not be
22 released without the consent of all parties to the contract
23 or agreement; and

24 (3) audit workpapers and the proprietary
25 information contained in such workpapers shall not be

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1 released except to:

2 (a) the minerals management service of
3 the United States department of the interior, if production
4 occurred on federal land;

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

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

9 (d) the authorized representative of
10 any of the persons in Subparagraphs (a) through (c) of this
11 paragraph. This paragraph does not prohibit the release of
12 any proprietary information contained in the workpapers that
13 is also available from returns or from other sources not
14 subject to the provisions of this section;

15 V. information with respect to the taxes,
16 surtaxes, advance payments or tax acts administered pursuant
17 to Subsection C of Section 7-1-2 NMSA 1978;

18 W. to the public regulation commission,
19 information with respect to the Corporate Income and
20 Franchise Tax Act required to enable the commission to carry
21 out its duties and with respect to persons upon whom the
22 Electricity Sales Tax Act imposes an obligation to collect
23 and pay over a tax whether or not such a person is a
24 delinquent taxpayer;

25 X. to the state racing commission, information

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1 with respect to the state, municipal and county gross
2 receipts taxes paid by race tracks;

3 Y. upon request of a corporation authorized to
4 be formed under the Educational Assistance Act, the
5 department shall furnish the last known address and the date
6 of that address of every person certified to the department
7 as being an absent obligor of an educational debt that is
8 due and owed to the corporation or that the corporation has
9 lawfully contracted to collect. The corporation and its
10 officers and employees shall use that information only for
11 the purpose of enforcing the educational debt obligation of
12 such absent obligors and shall not disclose that information
13 or use it for any other purpose;

14 Z. any decision and order made by a hearing
15 officer pursuant to Section 7-1-24 NMSA 1978 with respect to
16 a protest filed with the secretary on or after July 1, 1993;

17 AA. information required by any provision of the
18 Tax Administration Act or tax or tax act administered and
19 enforced pursuant to the Tax Administration Act to be made
20 available to the public by the department;

21 BB. upon request by the Bernalillo county
22 metropolitan court, the department shall furnish the last
23 known address and the date of that address for every person
24 certified to the department by the court as being a person
25 who owes fines, fees or costs to the court or who has failed

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1 to appear pursuant to a court order or a promise to appear;

2 CC. upon request by a magistrate court, the
3 department shall furnish the last known address and the date
4 of that address for every person certified to the department
5 by the court as being a person who owes fines, fees or costs
6 to the court or who has failed to appear pursuant to a court
7 order or a promise to appear; and

8 DD. to the national tax administration agencies
9 of Mexico and Canada, provided the agency receiving the
10 information has entered into a written agreement with the
11 department to use the information for tax purposes only and
12 is subject to a confidentiality statute similar to this
13 section. "

14 Section 14. Section 7-1-24 NMSA 1978 (being Laws 1965,
15 Chapter 248, Section 26, as amended) is amended to read:

16 "7-1-24. ADMINISTRATIVE HEARING--PROCEDURE. --

17 A. Any taxpayer may dispute the assessment to
18 the taxpayer of any amount of tax, the application to the
19 taxpayer of any provision of the Tax Administration Act, the
20 denial or cancellation or revocation of a direct payment
21 permit pursuant to the Electricity Sales Tax Act or the
22 denial of or failure to either allow or deny a claim for
23 refund made in accordance with Section 7-1-26 NMSA 1978 by
24 filing with the secretary a written protest against the
25 assessment or against the application to the taxpayer of the

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1 provision or against the denial of or the failure to allow
2 or deny the amount claimed to have been erroneously paid as
3 tax. Every protest shall identify the taxpayer and the tax
4 involved and state the grounds for the taxpayer's protest
5 and the affirmative relief requested. The statement of
6 grounds for protest shall specify individual grounds upon
7 which the protest is based and a summary statement of the
8 evidence expected to be produced supporting each ground
9 asserted, if any; provided that the taxpayer may supplement
10 the statement at any time prior to ten days before any
11 hearing conducted on the protest pursuant to Subsection [E]
12 D of this section or, if a scheduling order has been issued,
13 in accordance with the scheduling order. The secretary may,
14 in appropriate cases, provide for an informal conference
15 before setting a hearing of the protest or acting on any
16 claim for refund.

17 B. Any protest by a taxpayer shall be filed
18 within thirty days of the date of the mailing to the
19 taxpayer by the department of the notice of assessment or
20 mailing to, or service upon, the taxpayer of other
21 peremptory notice or demand, or the date of mailing or
22 filing a return. Upon written request of the taxpayer made
23 within the time permitted for filing a protest, the
24 secretary may grant an extension of time, not to exceed
25 sixty days, within which to file the protest. If a protest

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1 is not filed within the time required for filing a protest
2 or, if an extension has been granted, within the extended
3 time, the secretary may proceed to enforce collection of any
4 tax if the taxpayer is delinquent within the meaning of
5 Section 7-1-16 NMSA 1978. Upon written request of the
6 taxpayer made after the time for filing a protest but not
7 more than sixty days after the expiration of the time for
8 filing a protest, the secretary may grant a retroactive
9 extension of time, not to exceed sixty days, within which to
10 file the protest; provided that the taxpayer demonstrates to
11 the secretary's satisfaction that the taxpayer was not able
12 to file a protest or to request an extension within the time
13 to file the protest and that the grounds for the protest
14 have substantial merit. 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 or request an extension within the time for filing a protest
20 within the required time. The secretary shall not grant a
21 retroactive extension if a levy has already been served
22 under Section 7-1-31 or 7-1-33 NMSA 1978 or a jeopardy
23 assessment has been made under Section 7-1-59 NMSA 1978. No
24 proceedings other than those to enforce collection of any
25 amount assessed as tax and to protect the interest of the

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1 state by injunction, as provided in Sections 7-1-31, 7-1-33,
2 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are
3 stayed by timely filing of a protest under this section.

4 C. Claims for refund shall be filed as provided
5 for in Section 7-1-26 NMSA 1978.

6 D. Upon timely receipt of a protest, the
7 department or hearing officer shall promptly set a date for
8 hearing and on that date hear the protest or claim.

9 E. A hearing officer shall be designated by the
10 secretary to conduct the hearing. Taxpayers may appear at a
11 hearing for themselves or be represented by a bona fide
12 employee, an attorney, a certified public accountant or a
13 registered public accountant. Hearings shall not be open to
14 the public except upon request of the taxpayer and may be
15 postponed or continued at the discretion of the hearing
16 officer.

17 F. In hearings before the hearing officer, the
18 technical rules of evidence shall not apply, but in ruling
19 on the admissibility of evidence, the hearing officer may
20 require reasonable substantiation of statements or records
21 tendered, the accuracy or truth of which is in reasonable
22 doubt.

23 G. In hearings before the hearing officer, the
24 Rules of Civil Procedure for the District Courts shall not
25 apply, but the hearing shall be conducted so that both

1 complaints and defenses are amply and fairly presented. To
2 this end, the hearing officer shall hear arguments, permit
3 discovery, entertain and dispose of motions, require written
4 expositions of the case as the circumstances justify and
5 render a decision in accordance with the law and the
6 evidence presented and admitted.

7 H. In the case of the hearing of any protest,
8 the hearing officer shall make and preserve a complete
9 record of the proceedings. At the beginning of the hearing,
10 the hearing officer shall inform the taxpayer of the
11 taxpayer's right to representation. The hearing officer,
12 within thirty days of the hearing, shall inform the
13 protestant in writing of the decision, informing the
14 protestant at the same time of the right to, and the
15 requirements for perfection of, an appeal from the decision
16 to the court of appeals and of the consequences of a failure
17 to appeal. The written decision shall embody an order
18 granting or denying the relief requested or granting such
19 part thereof as seems appropriate.

20 I. Nothing in this section shall be construed to
21 authorize any criminal proceedings hereunder or to authorize
22 an administrative protest of the issuance of a subpoena or
23 summons. "

24 Section 15. A new section of the Gross Receipts and
25 Compensating Tax Act, Section 7-9-38.2 NMSA 1978, is enacted

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1 to read:

2 "7-9-38. 2. [NEW MATERIAL] EXEMPTION--GROSS RECEIPTS
3 TAX--SALES OF ELECTRICITY.--Exempted from the gross receipts
4 tax are receipts from sales of electricity that are subject
5 to the provisions of the Electricity Sales Tax Act. "

6 Section 16. Section 62-3A-9 NMSA 1978 (being Laws
7 1999, Chapter 294, Section 9) is amended to read:

8 "62-3A-9. COMPETITIVE POWER SUPPLIERS--LICENSE
9 APPLICATION AND REVOCATION.--

10 A. A competitive power supplier shall file an
11 application with, and obtain a license from, the commission
12 before offering competitive services for sale to customers
13 in the state.

14 B. Prior to receiving a license in the state, a
15 competitive power supplier shall file a report with the
16 commission, with information and in a form prescribed by the
17 commission, disclosing activities and operations and those
18 of any affiliate related to its supply service in this
19 state.

20 C. Any person applying for a competitive power
21 supplier license shall:

22 (1) disclose its name, owners, business
23 addresses and telephone numbers in the state, and if a
24 corporation, its directors and officers;

25 (2) execute, by a person authorized to do

1 so, an affidavit authorizing or reflecting the authorization
2 of the competitive power supplier to a statutory agent of
3 the competitive power supplier to accept service of process
4 in the state, accompanied by an acceptance of such
5 designation by the statutory agent;

6 (3) execute, by a person authorized to do
7 so, an agreement to compensate the state for any applicable
8 taxes for sales to customers in the state;

9 (4) execute, by a person authorized to do
10 so, an agreement that all electricity sold to a customer in
11 the state shall be delivered to that customer;

12 (5) provide proof of financial integrity
13 and a demonstration of adequate supply with reserve margins
14 or the ability to obtain adequate reserve margins;

15 (6) post a bond, the financial security
16 equivalent of a bond or other adequate financial assurances
17 acceptable to the commission to cover system costs in the
18 event the licensee fails to provide supply service in
19 accordance with its obligations;

20 (7) execute, by a person authorized to do
21 so, an agreement to comply with and be bound by the rules
22 promulgated by the commission applicable to competitive
23 power suppliers and supply service in the state;

24 (8) demonstrate capability to meet all
25 obligations undertaken or assumed, for and on behalf of its

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1 customers, so that supply service is available, reliable and
2 deliverable on a real-time basis;

3 (9) execute, by a person authorized to do
4 so, an agreement to produce documents or other records to
5 support any filings, reports or agreements required by the
6 commission and to support any representations made to the
7 commission or customers if required to do so by the
8 commission;

9 (10) execute, by a person authorized to do
10 so, an agreement to compensate a distribution or
11 transmission company that provides open access for delivery
12 of supply service to a customer of the competitive power
13 supplier for shortfalls in supply service pursuant to rules
14 promulgated by the commission; and

15 (11) submit a proposal for renewable energy
16 supply service options to customers.

17 D. An application for a license is deemed
18 approved within forty-five days of its filing with the
19 commission, unless the commission, in its discretion,
20 extends the approval period for thirty days or rejects the
21 application before it is deemed approved. If rejected, the
22 commission shall state its reasons for the rejection and may
23 identify corrective measures to overcome the deficiencies
24 causing the rejection.

25 E. Thirty days before offering any sales of

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1 competitive services in the state, a competitive power
2 supplier shall:

3 (1) provide all public utilities with
4 copies of its application and license; and

5 (2) publish a copy of its license in a
6 newspaper of general circulation in each county of the state
7 in which it intends to offer competitive service.

8 F. The commission shall promulgate rules
9 governing competitive electric suppliers for the protection
10 of customers, including:

11 (1) required disclosures to a potential
12 customer of unbundled prices, generation sources and fuel
13 mix, associated emissions, gross receipts taxes, electricity
14 sales tax, franchise fees and any other charges;

15 (2) fair and reasonable marketing and sales
16 practices, including truthful advertising and disclosure
17 practices; and

18 (3) an expeditious procedure before the
19 commission to resolve a dispute between a customer and a
20 competitive power supplier regarding compliance with
21 commission rules applicable to competitive power suppliers.

22 G. After a hearing initiated on the commission's
23 own investigation or upon the complaint of an affected
24 party, the commission may revoke or suspend the license of
25 or impose a penalty on a competitive power supplier, or

1 both, if it is established that just cause for the
2 revocation, suspension or penalty imposition exists because
3 the competitive power supplier:

4 (1) knowingly provided false information to
5 the commission;

6 (2) switched or caused to be switched the
7 supply service of a customer without first obtaining the
8 customer's informed written permission;

9 (3) failed to provide reasonably adequate
10 supply service for its customers in the state;

11 (4) committed fraud or knowingly engaged in
12 an unfair or deceptive trade practice;

13 (5) is a delinquent taxpayer as to any New
14 Mexico tax;

15 (6) engaged in anti-competitive conduct; or

16 (7) violated any other law or commission
17 rule or order.

18 H. Any person selling or offering to sell
19 competitive services in this state in violation of any
20 provision of the Electric Utility Industry Restructuring Act
21 of 1999 is subject to license revocation or suspension in
22 addition to any administrative, civil or criminal fines or
23 penalties imposed pursuant to that act or pursuant to other
24 law. Nothing in that act shall be construed to limit a
25 person's rights pursuant to the Unfair Practices Act or to

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1 require exhaustion of remedies before bringing an action
2 pursuant to that act."

3 Section 17. Section 62-3A-18 NMSA 1978 (being Laws
4 1999, Chapter 294, Section 18) is amended to read:

5 "62-3A-18. FRANCHISE FEES--GROSS RECEIPTS TAX--TAX
6 REVENUES ANALYSIS.--

7 A. A franchise fee charge shall be stated as a
8 separate line entry on a public utility's or distribution
9 cooperative utility's bills and shall only be recovered from
10 customers located within the jurisdiction of the government
11 authority imposing the franchise fee.

12 B. Any gross receipts or electricity sales taxes
13 [~~collected on electric service received by~~] due for
14 electricity and ancillary services sold to retail customers
15 in the state shall be stated as a separate line entry on a
16 bill for electricity or electric service sent to the
17 customer by a public utility or distribution cooperative
18 utility.

19 C. The New Mexico legislative council shall
20 annually through January 1, 2002, refer to the revenue
21 stabilization and tax policy committee questions and issues
22 related to the amount of state and local tax revenues
23 derived from previously regulated electric utility service
24 and property and report to the legislature annually on the
25 changed impact to state and local government tax revenues

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1 resulting from restructuring and competition in the electric
2 industry.

3 D. On or before January 1, 2003, the revenue
4 stabilization and tax policy committee shall recommend
5 legislative changes, if any, to establish comparable state
6 and local taxation burdens on all market participants in the
7 supply of electricity considering the impacts and changes
8 that have resulted from the restructure and competition in
9 the electric industry in the state. "

10 Section 18. EFFECTIVE DATE. --The provisions of this
11 act are effective upon the date that the customer choice
12 provisions of Paragraph (1) of Subsection A of Section
13 62-3A-4 NMSA 1978 become available.