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SENATE BILL 221

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

INTRODUCED BY

Mary Jane Garcia

AN ACT

RELATING TO THE LODGERS' TAX ACT; AUTHORIZING CERTAIN MUNICIPALITIES TO IMPOSE A DAILY SURCHARGE ON LODGING WITHIN THE MUNICIPALITY; AUTHORIZING ISSUANCE OF BONDS.

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

Section 1. Section 3-38-14 NMSA 1978 (being Laws 1969, Chapter 199, Section 2, as amended) is amended to read:

"3-38-14. DEFINITIONS. --As used in the Lodgers' Tax Act:

A. "gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes;

B. "lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has the right to use or possess the rooms or other units of accommodations in or at a taxable

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1       premi ses;

2                   C. "lodging surcharge" means the surcharge on  
3       lodging authorized in Section 3-38-15.1 NMSA 1978;

4                   ~~[C.]~~ D. "lodgings" means the rooms or other  
5       accommodations furnished by a vendor to a vendee by a taxable  
6       service of lodgings;

7                   ~~[D.]~~ E. "occupancy tax" means the tax on lodging  
8       authorized by the Lodgers' Tax Act;

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

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

22                   ~~[G.]~~ H. "taxable premises" means a hotel,  
23       apartment, apartment hotel, apartment house, lodge, lodging  
24       house, rooming house, motor hotel, guest house, guest ranch,  
25       ranch resort, guest resort, mobile home, motor court, auto

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1 court, auto camp, trailer court, trailer camp, trailer park,  
2 tourist camp, cabin or other premises used for lodging;

3 ~~[H.]~~ I. "tourist" means a person who travels for  
4 the purpose of business, pleasure or culture to a municipality  
5 or county imposing an occupancy tax;

6 ~~[I.]~~ J. "tourist-related events" means events that  
7 are planned for, promoted to and attended by tourists;

8 ~~[J.]~~ K. "tourist-related facilities and  
9 attractions" means facilities and attractions that are  
10 intended to be used by or visited by tourists;

11 ~~[K.]~~ L. "tourist-related transportation systems"  
12 means transportation systems that provide transportation for  
13 tourists to and from tourist-related facilities and  
14 attractions and tourist-related events;

15 ~~[L.]~~ M. "vendee" means a natural person to whom  
16 lodgings are furnished in the exercise of the taxable service  
17 of lodging; and

18 ~~[M.]~~ N. "vendor" means a person or his agent  
19 furnishing lodgings in the exercise of the taxable service of  
20 lodging. "

21 Section 2. A new section of the Lodgers' Tax Act,  
22 Section 3-38-15.1 NMSA 1978, is enacted to read:

23 "3-38-15.1. [NEW MATERIAL] AUTHORIZATION OF LODGING  
24 SURCHARGE--USE OF PROCEEDS.--

25 A. The governing body of a municipality that is

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1 located in a class A county and that had a population of more  
2 than sixty thousand but less than seventy thousand according  
3 to the 1990 federal decennial census and that has imposed an  
4 occupancy tax as authorized in Section 3-38-15 NMSA 1978 may  
5 impose by ordinance a surcharge on lodging within the  
6 municipality. The amount of this surcharge is two dollars  
7 fifty cents (\$2.50) per room or other unit of accommodation in  
8 or at a taxable premises for each day the room or other unit  
9 of accommodation is rented by a vendor to a vendee. The  
10 surcharge may be referred to as the "lodging surcharge".

11 B. A lodging surcharge may be imposed only once  
12 for a period not to exceed ten years from the effective date  
13 of the ordinance imposing the tax.

14 C. The governing body of the municipality, at the  
15 time of enacting the ordinance imposing the lodging surcharge,  
16 shall dedicate the revenue from the surcharge as provided in  
17 this subsection. The revenue from the surcharge may be  
18 dedicated for any portion of:

19 (1) acquisition of land for and the design,  
20 construction, equipping, furnishing, operation and maintenance  
21 of a convention center located within the municipality;

22 (2) payments of principal and interest on any  
23 prior redemption premiums due in connection with and any other  
24 charges pertaining to revenue bonds authorized by Subsection C  
25 of Section 3-38-23 or 3-38-24 NMSA 1978; or

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1 (3) costs of collecting and otherwise  
2 administering the surcharge, including the performance of  
3 audits required by the Lodgers' Tax Act pursuant to guidelines  
4 issued by the department of finance and administration. "

5 Section 3. Section 3-38-16 NMSA 1978 (being Laws 1969,  
6 Chapter 199, Section 4, as amended) is amended to read:

7 "3-38-16. EXEMPTIONS. --The occupancy tax and the lodging  
8 surcharge shall not apply:

9 A. if a vendee:

10 (1) has been a permanent resident of the  
11 taxable premises for a period of at least thirty consecutive  
12 days; or

13 (2) enters into or has entered into a written  
14 agreement for lodgings at the taxable premises for a period of  
15 at least thirty consecutive days;

16 B. if the rent paid by a vendee is less than two  
17 dollars (\$2.00) a day;

18 C. to lodging accommodations at institutions of  
19 the federal government, the state or any political subdivision  
20 thereof;

21 D. to lodging accommodations at religious,  
22 charitable, educational or philanthropic institutions,  
23 including accommodations at summer camps operated by such  
24 institutions;

25 E. to clinics, hospitals or other medical

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1 facilities;

2 F. to privately owned and operated convalescent  
3 homes or homes for the aged, infirm, indigent or chronically  
4 ill; or

5 G. if the vendor does not offer at least three  
6 rooms within or attached to a taxable premises for lodging or  
7 at least three other premises for lodging or a combination of  
8 these within the taxing jurisdiction. "

9 Section 4. Section 3-38-17 NMSA 1978 (being Laws 1969,  
10 Chapter 199, Section 5, as amended) is amended to read:

11 "3-38-17. COLLECTION OF TAXES. --

12 A. Every vendor providing lodgings in a  
13 municipality or county imposing an occupancy tax or a lodging  
14 surcharge shall collect the proceeds thereof on behalf of the  
15 municipality or county and shall act as a trustee therefor.

16 B. The tax and surcharge shall be collected from  
17 vendees in accordance with the ordinance imposing the tax or  
18 surcharge and shall be charged separately from the rent fixed  
19 by the vendor for the lodgings. "

20 Section 5. Section 3-38-18 NMSA 1978 (being Laws 1969,  
21 Chapter 199, Section 6, as amended) is amended to read:

22 "3-38-18. COLLECTION OF DELINQUENCIES. --

23 A. The governing body of [~~the~~] a municipality or  
24 county shall, by ordinance, provide that a vendor is liable  
25 for the payment of the proceeds of any occupancy tax or

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1 lodging surcharge that the vendor failed to remit to the  
2 municipality or county, due to his failure to collect the tax  
3 or surcharge or otherwise, and shall provide for a civil  
4 penalty for any such failure in an amount equal to the greater  
5 of ten percent of the amount that was not duly remitted to the  
6 municipality or county or one hundred dollars (\$100).

7 B. ~~[The]~~ A municipality or county may bring an  
8 action in law or equity in the district court for the  
9 collection of any amounts due, including without limitation  
10 penalties thereon, interest on the unpaid principal at a rate  
11 of not exceeding one percent a month, the costs of collection  
12 and reasonable ~~[attorneys']~~ attorney fees incurred in  
13 connection therewith. "

14 Section 6. Section 3-38-18.1 NMSA 1978 (being Laws 1992,  
15 Chapter 12, Section 1) is amended to read:

16 "3-38-18.1. LIEN FOR OCCUPANCY TAX--PAYMENT--CERTIFICATE  
17 OF LIENS.--

18 A. The occupancy tax or lodging surcharge imposed  
19 by a municipality or county constitutes a lien in favor of  
20 that municipality or county upon the personal and real  
21 property of the vendor providing lodgings in that municipality  
22 or county. The lien may be enforced as provided in Sections  
23 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall  
24 be determined from the date of filing.

25 B. Under process or order of court, no person

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1 shall sell the property of any vendor without first  
2 ascertaining from the clerk or treasurer of the municipality  
3 or county in which the vendor is located the amount of any  
4 occupancy tax or lodging surcharge due the municipality or  
5 county. Any occupancy tax or lodging surcharge due the  
6 municipality or county shall be paid from the proceeds of the  
7 sale before payment is made to the judgment creditor or any  
8 other person with a claim on the sale proceeds.

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

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

16 "3-38-19. PENALTIES. --The governing body of [~~the~~] a  
17 municipality or county shall, by ordinance, provide for  
18 penalties by creating a misdemeanor and imposing a fine of not  
19 more than five hundred dollars (\$500) or imprisonment for not  
20 more than ninety days or both for a violation by any person of  
21 the provisions of the occupancy tax ordinance or the lodging  
22 surcharge ordinance for a failure to pay the tax or surcharge,  
23 to remit the proceeds thereof to the municipality or county or  
24 to account properly for any lodging and the tax or surcharge  
25 proceeds pertaining thereto. "

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

3           "3-38-20.   ORDINANCE REQUIREMENTS. -- The ordinance  
4 imposing an occupancy tax or lodging surcharge or any  
5 ordinance amendatory thereof or supplemental thereto, except  
6 as limited by or otherwise provided in the Lodgers' Tax Act,  
7 shall:

8           A.   provide a procedure for licensing each vendor  
9 and for refusing a vendor a license after an opportunity has  
10 been given to the vendor of a public hearing thereon by the  
11 governing body of the municipality or county, as the case may  
12 be;

13           B.   state the rate or other amount of the occupancy  
14 tax or lodging surcharge; the times, place and method for the  
15 payment of the occupancy tax or lodging surcharge proceeds to  
16 the municipality or county; the accounts and other records to  
17 be maintained in connection with the occupancy tax or lodging  
18 surcharge; a procedure for making refunds and resolving  
19 disputes relating to the occupancy tax or lodging surcharge,  
20 including exemptions pertaining thereto; the procedure for  
21 preservation and destruction of records and their inspection  
22 and investigation; vendor audit requirements; applicable civil  
23 and criminal penalties; and a procedure of liens, distraint  
24 and sales to satisfy such liens; and

25           C.   provide other rights, privileges, powers,

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1 immunities and other details relating to any such vendor  
2 licenses, the collection of the occupancy tax or lodging  
3 surcharge and the remittance of the proceeds thereof to the  
4 municipality or county. "

5 Section 9. Section 3-38-23 NMSA 1978 (being Laws 1969,  
6 Chapter 199, Section 10, as amended) is amended to read:

7 "3-38-23. REVENUE BONDS. --

8 A. Revenue bonds may be issued at any time or from  
9 time to time by a municipality or county to defray wholly or  
10 in part the costs of any one, all or any combination of  
11 purposes authorized in Subsections B through E of Section  
12 3-38-21 NMSA 1978.

13 B. The revenue bonds authorized in Subsection A of  
14 this section may be payable from and such payment may be  
15 secured by a pledge of and lien on the revenues derived from:

16 (1) the proceeds of the occupancy tax of the  
17 municipality or county after the deduction of those amounts  
18 required to be expended pursuant to [~~Subsections~~] Subsection D  
19 [~~and E~~] of Section 3-38-15 NMSA 1978 and the administration  
20 costs pertaining to the occupancy tax in an amount not to  
21 exceed ten percent of the occupancy tax receipts collected by  
22 the municipality or county in any fiscal year, excluding from  
23 the computation of such costs the administration costs  
24 ultimately recovered from delinquent vendors by civil action  
25 as penalties, costs of collection and [~~attorneys'~~] attorney

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1 fees but not as interest on unpaid principal;

2 (2) the tourist-related facilities and  
3 attractions or tourist-related transportation systems to which  
4 the bonds pertain, after provision is made for the payment of  
5 the operation and maintenance expenses of [~~such~~] the tourist-  
6 related facilities and attractions or tourist-related  
7 transportation systems; or

8 (3) a combination of such net revenues from  
9 both sources designated in Paragraphs (1) and (2) of this  
10 subsection.

11 C. Revenue bonds may be issued at any time or from  
12 time to time by a municipality that has imposed the lodging  
13 surcharge to defray wholly or in part the costs of one or both  
14 of the purposes authorized in Paragraphs (1) and (2) of  
15 Subsection C of Section 3-38-15.1 NMSA 1978. The revenue  
16 bonds may be payable from and payment may be secured by a  
17 pledge of and lien on the revenues derived from:

18 (1) the proceeds of the lodging surcharge of  
19 the municipality after the deduction of the administration  
20 costs pertaining to the lodging surcharge in an amount not to  
21 exceed ten percent of the lodging surcharge receipts collected  
22 by the municipality in any fiscal year;

23 (2) a convention center to which the bonds  
24 pertain, after provision is made for the payment of the  
25 operation and maintenance expenses of the convention center;

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or

(3) a combination of net revenues from both sources designated in Paragraphs (1) and (2) of this subsection.

~~[C.]~~ D. The bonds shall bear interest at a rate ~~[or rates]~~ as authorized in the Public Securities Act, and the first interest payment may be for any period authorized in the Public Securities Act.

~~[D.]~~ E. Except as otherwise provided in the Lodgers' Tax Act, revenue bonds authorized in the Lodgers' Tax Act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978. "