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**SENATE BILL 394**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Richard C. Martinez**

**AN ACT**

**RELATING TO TAXATION; ENACTING THE SCHOOL DISTRICT LOCAL  
OPTION GROSS RECEIPTS TAX ACT; AUTHORIZING CERTAIN SCHOOL  
DISTRICTS TO IMPOSE A SCHOOL DISTRICT GROSS RECEIPTS TAX  
DISTRICT WIDE FOR CONSTRUCTION AND RENOVATION OF PUBLIC  
SCHOOLS AND OTHER EDUCATIONAL FACILITIES; AUTHORIZING THE  
ISSUANCE OF SCHOOL DISTRICT GROSS RECEIPTS TAX REVENUE BONDS;  
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN  
EMERGENCY.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1  
through 16 of this act may be cited as the "School District  
Local Option Gross Receipts Tax Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the  
School District Local Option Gross Receipts Tax Act:**

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1           A. "board" means the school board of a school  
2 district;

3           B. "capital project" means planning, designing,  
4 constructing, equipping, furnishing or landscaping new  
5 buildings; remodeling, renovation or expansion of existing  
6 buildings; replacement or upgrading of equipment or  
7 furnishings in an existing building; or improving or equipping  
8 the grounds surrounding buildings;

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

13           D. "district" means a school district that is  
14 located in two counties and that has final property valuation  
15 in fiscal year 2001 as determined by the state department of  
16 public education that was greater than three hundred sixty  
17 million dollars (\$360,000,000) but less than three hundred  
18 sixty-five million dollars (\$365,000,000);

19           E. "off-campus instruction program" means a  
20 program established by a school district pursuant to the Off-  
21 Campus Instruction Act;

22           F. "resolution" means a formal written statement  
23 adopted by a board that states that a district has imposed a  
24 tax or taken other action pursuant to the School District  
25 Local Option Gross Receipts Tax Act; and

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1           G. "state gross receipts tax" means the gross  
2 receipts tax imposed pursuant to the Gross Receipts and  
3 Compensating Tax Act.

4           Section 3. [NEW MATERIAL] SCHOOL DISTRICT GROSS RECEIPTS  
5 TAX--AUTHORITY TO IMPOSE--RATE. --

6           A. The board of a district may impose a "school  
7 district gross receipts tax" by enacting a resolution imposing  
8 an excise tax at a rate of no less than one-half of one  
9 percent and no more than one percent on any person engaging in  
10 business in the district for the privilege of engaging in  
11 business in the district.

12           B. The board, at the time of enacting a resolution  
13 imposing a school district gross receipts tax pursuant to  
14 Subsection A of this section, shall dedicate the revenue only  
15 for the payment of school district gross receipts tax revenue  
16 bonds for public school capital projects and off-campus  
17 instruction program capital projects, if any, in the district.  
18 The tax shall be imposed for the period necessary for payment  
19 of the principal and interest on the school district gross  
20 receipts tax revenue bonds issued to accomplish the purpose  
21 for which the revenue is dedicated, but the period shall not  
22 exceed ten years from the effective date of the resolution  
23 imposing the tax.

24           C. The proceeds from school district gross  
25 receipts tax revenue bonds shall be administered by the board

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1 and disbursed by the board treasurer in the amounts and for  
2 the purposes authorized in this section and as set out in a  
3 resolution of the board.

4 Section 4. [NEW MATERIAL] EFFECTIVE DATE OF  
5 RESOLUTION. -- A resolution imposing, amending or repealing a  
6 tax or an increment of tax authorized by the School District  
7 Local Option Gross Receipts Tax Act shall be effective on July  
8 1 or January 1, whichever date occurs first after the  
9 expiration of at least three months from the date the adopted  
10 resolution is mailed or delivered to the department. The  
11 resolution shall include that effective date.

12 Section 5. [NEW MATERIAL] RESOLUTION SHALL CONFORM TO  
13 CERTAIN PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX  
14 ACT AND REQUIREMENTS OF THE DEPARTMENT. --

15 A. A resolution imposing a tax pursuant to the  
16 provisions of the School District Local Option Gross Receipts  
17 Tax Act shall adopt by reference the same definitions and the  
18 same provisions relating to exemptions and deductions as are  
19 contained in the Gross Receipts and Compensating Tax Act then  
20 in effect and as it may be amended from time to time.

21 B. The board of a district imposing a tax  
22 authorized by the School District Local Option Gross Receipts  
23 Tax Act shall impose the tax by adopting the model resolution  
24 with respect to the tax furnished to the district by the  
25 department. A resolution that does not conform substantially

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1 to the model resolution of the department is not valid.

2 Section 6. [NEW MATERIAL] SPECIFIC EXEMPTIONS.--No tax  
3 authorized pursuant to the provisions of the School District  
4 Local Option Gross Receipts Tax Act shall be imposed on the  
5 gross receipts arising from transporting persons or property  
6 for hire by railroad, motor vehicle, air transportation or any  
7 other means from one point within the district to another  
8 point outside the district.

9 Section 7. [NEW MATERIAL] COPY OF RESOLUTION TO BE  
10 SUBMITTED TO DEPARTMENT.--A certified copy of a resolution  
11 imposing or repealing a tax or an increment of a tax  
12 authorized by the School District Local Option Gross Receipts  
13 Tax Act or changing the tax rate imposed shall be mailed or  
14 delivered to the department within five days after the date  
15 the resolution is adopted.

16 Section 8. [NEW MATERIAL] COLLECTION BY DEPARTMENT--  
17 TRANSFER OF PROCEEDS--DEDUCTIONS.--

18 A. The department shall collect the tax imposed  
19 pursuant to the provisions of the School District Local Option  
20 Gross Receipts Tax Act in the same manner and at the same time  
21 it collects the state gross receipts tax.

22 B. The department shall withhold an administrative  
23 fee pursuant to Section 7-1-6.41 NMSA 1978. The department  
24 shall transfer to each district for which it is collecting a  
25 tax pursuant to the provisions of the School District Local

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1 Option Gross Receipts Tax Act the amount of the tax collected  
2 for that district, less the administrative fee withheld and  
3 less any disbursements for tax credits, refunds and the  
4 payment of interest applicable to the tax. The transfer to  
5 the district shall be made within the month following the  
6 month in which the tax is collected.

7 Section 9. [NEW MATERIAL] INTERPRETATION OF ACT--  
8 ADMINISTRATION AND ENFORCEMENT OF ACT. --

9 A. The department shall interpret the provisions  
10 of the School District Local Option Gross Receipts Tax Act.

11 B. The department shall administer and enforce the  
12 collection of the school district gross receipts tax  
13 authorized by the provisions of the School District Local  
14 Option Gross Receipts Tax Act, and the Tax Administration Act  
15 applies to the administration and enforcement of the tax.

16 Section 10. [NEW MATERIAL] DISTRICT MAY ISSUE SCHOOL  
17 DISTRICT REVENUE BONDS. --

18 A. A district is authorized to issue and sell  
19 revenue bonds, known as "school district gross receipts tax  
20 revenue bonds", payable solely from the school district gross  
21 receipts tax revenue, in compliance with the School District  
22 Local Option Gross Receipts Tax Act for the purpose of funding  
23 capital projects of the district when the board certifies by  
24 resolution the need for the issuance of the bonds.

25 B. No issue of bonds shall be valid or binding on

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1 a district unless prior to the issuance of the bonds the  
2 attorney general approves the bond issue as to form and  
3 legality. The written approval of the attorney general shall  
4 be made a part of the transcript of the proceedings in  
5 connection with each bond issue. The district shall provide  
6 the attorney general with all information required by the  
7 attorney general to determine the form and legality of the  
8 bond issue.

9 C. The district shall schedule the issuance and  
10 sale of the bonds in the most expeditious and economical  
11 manner possible upon a finding by the board that the projects  
12 can proceed within a reasonable time. The board shall further  
13 take the appropriate steps necessary to comply with the  
14 Internal Revenue Code of 1986, as amended. Proceeds from the  
15 sale of the bonds shall be deposited in the treasury of the  
16 district and expended for the capital projects for which the  
17 bonds were issued.

18 D. The board shall determine at its discretion the  
19 terms, covenants and conditions of the school district gross  
20 receipts tax revenue bonds, including the date of issuance,  
21 denomination, maturity, coupon rates, premium, registration,  
22 refundability and other matters covering the general and  
23 technical aspects of their issuance. The bonds shall not be  
24 considered to be general obligations of the district issuing  
25 them and are payable solely from the revenue accruing from the

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1 school district local option gross receipts tax. The  
2 resolution authorizing the tax shall not be subject to repeal  
3 until the bonds are fully paid.

4 E. School district gross receipts tax revenue  
5 bonds shall be signed and attested by the secretary of the  
6 board and shall be executed with the facsimile signature of  
7 the president of the board, except for bonds issued in book  
8 entry or similar form without the delivery of physical  
9 securities. Any interest coupons attached to the bonds shall  
10 bear the facsimile signature of the secretary of the board,  
11 who shall adopt, by the execution of the bonds, as his own  
12 signature the facsimile appearing on the coupons. Except for  
13 bonds issued in book entry or similar form without the  
14 delivery of physical securities, the Uniform Facsimile  
15 Signature of Public Officials Act shall apply, and the board  
16 shall determine the manual signature to be affixed on the  
17 bonds.

18 Section 11. [NEW MATERIAL] AUTHORITY TO REFUND BONDS. -- A  
19 district may issue and sell at public or private sale school  
20 district gross receipts tax refunding revenue bonds to refund  
21 outstanding school district gross receipts tax revenue bonds  
22 by exchange, immediate or prospective redemption, cancellation  
23 or escrow, including the escrow of debt service funds  
24 accumulated for payment of outstanding bonds, or any  
25 combination thereof when, in its opinion, such action will be

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1 beneficial to the district.

2 Section 12. [NEW MATERIAL] PROCEDURE FOR SALE OF  
3 BONDS. --

4 A. School district gross receipts tax revenue  
5 bonds shall be sold by a district at the time and in the  
6 manner determined by the board, either at private sale for a  
7 negotiated price or to the highest bidder at public sale for  
8 cash at not less than par and accrued interest.

9 B. In connection with any public sale of school  
10 district gross receipts tax revenue bonds, the district shall  
11 publish a notice of the time and place of sale in a newspaper  
12 of general circulation in the state and also in a recognized  
13 financial journal outside the state. Publication shall be  
14 made once each week for two consecutive weeks prior to the  
15 date fixed for the sale, the last publication to be two  
16 business days prior to the date of sale. The notice shall  
17 specify the amount, denomination, maturity and description of  
18 the bonds to be offered for sale and the place, day and hour  
19 at which sealed bids therefor shall be received. All bids,  
20 except that of the state, shall be accompanied by a deposit of  
21 two percent of the principal amount of the bonds. Deposits of  
22 unsuccessful bidders shall be returned upon rejection of the  
23 bid. At the time and place specified in the notice, the  
24 district shall open the bids in public and shall award the  
25 bonds, or any part thereof, to the bidder or bidders offering

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1 the best price. The district may reject any or all bids and  
2 resubmit the advertisement.

3 C. A district may sell a school district gross  
4 receipts tax revenue bond issue, or any part thereof, to the  
5 state or to one or more investment bankers or institutional  
6 investors at private sale.

7 Section 13. [NEW MATERIAL] SCHOOL DISTRICT LOCAL OPTION  
8 GROSS RECEIPTS TAX ACT IS FULL AUTHORITY FOR ISSUANCE OF  
9 BONDS-- BONDS ARE LEGAL INVESTMENTS. --

10 A. The School District Local Option Gross Receipts  
11 Tax Act shall, without reference to any other act of the  
12 legislature, be full authority for the issuance and sale of  
13 school district gross receipts tax revenue bonds. The school  
14 district gross receipts tax revenue bonds shall have all the  
15 qualities of investment securities under the Uniform  
16 Commercial Code and shall not be invalid for any irregularity  
17 of defect or be contestable in the hands of bona fide  
18 purchasers or holders thereof for value.

19 B. School district gross receipts tax revenue  
20 bonds are legal investments for any person or board charged  
21 with the investment of any public funds and are acceptable as  
22 security for any deposit of public money.

23 Section 14. [NEW MATERIAL] SUIT MAY BE BROUGHT TO COMPEL  
24 PERFORMANCE.--Any holder of school district gross receipts tax  
25 revenue bonds or any person or officer being a party in

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1 interest may sue to enforce and compel the performance of the  
2 provisions of the School District Local Option Gross Receipts  
3 Tax Act.

4 Section 15. [NEW MATERIAL] BONDS TAX EXEMPT.--All school  
5 district gross receipts tax revenue bonds shall be exempt from  
6 taxation by the state or any of its political subdivisions.

7 Section 16. [NEW MATERIAL] DISTRICT BUDGET PROVISIONS--  
8 PAYMENT OF PRINCIPAL AND INTEREST.--A board shall establish  
9 adequate budgetary provisions, approved by the department, to  
10 promptly pay, as it becomes due, all principal and interest on  
11 school district gross receipts tax revenue bonds issued by the  
12 district.

13 Section 17. A new section of the Tax Administration Act  
14 is enacted to read:

15 "[NEW MATERIAL] TRANSFER--REVENUES FROM SCHOOL DISTRICT  
16 GROSS RECEIPTS TAX.--A transfer pursuant to Section 7-1-6.1  
17 NMSA 1978 shall be made to a school district for which the  
18 department is collecting a school district gross receipts tax  
19 imposed by that school district in an amount, subject to any  
20 increase or decrease made pursuant to Section 7-1-6.15 NMSA  
21 1978, equal to the net receipts attributable to the school  
22 district gross receipts tax imposed by that school district,  
23 less any deduction for administrative cost determined and made  
24 by the department pursuant to the provisions of Section  
25 7-1-6.41 NMSA 1978. "

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1           Section 18. Section 7-1-6.15 NMSA 1978 (being Laws 1983,  
2 Chapter 211, Section 20, as amended) is amended to read:

3           "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO  
4 SCHOOL DISTRICTS, MUNICIPALITIES OR COUNTIES. --

5           A. The provisions of this section apply to:

6                   (1) any distribution to a municipality of  
7 gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or  
8 of interstate telecommunications gross receipts tax pursuant  
9 to Section 7-1-6.36 NMSA 1978;

10                   (2) any transfer to a municipality with  
11 respect to any local option gross receipts tax imposed by that  
12 municipality;

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

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

17                   (5) any distribution to a municipality or a  
18 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA  
19 1978;

20                   (6) any transfer to a county with respect to  
21 any tax imposed in accordance with the Local Liquor Excise Tax  
22 Act;

23                   (7) any distribution to a municipality or a  
24 county of cigarette taxes pursuant to Sections 7-1-6.11,  
25 7-12-15 and 7-12-16 NMSA 1978;

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1 (8) any distribution to a county from the  
2 county government road fund pursuant to Section 7-1-6.26 NMSA  
3 1978;

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

6 (10) any distribution to a municipality,  
7 county, school district or special district of oil and gas ad  
8 valorem production tax reduced as a result of a refund  
9 requested in December 1998 with respect to production of  
10 carbon dioxide; and

11 (11) any distribution to a school district of  
12 school district gross receipts taxes imposed in accordance  
13 with the School District Local Option Gross Receipts Tax Act.

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

23 C. No decrease shall be made to current or future  
24 distributions or transfers to a political subdivision for any  
25 excess distribution or transfer made to that political

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1 subdivision more than one year prior to the calendar year in  
2 which the determination of the secretary was made.

3 D. The secretary, in lieu of recovery from the  
4 next distribution or transfer amount, may recover an excess  
5 distribution or transfer of one hundred dollars (\$100) or more  
6 to the political subdivision in installments from current and  
7 future distributions or transfers to that political  
8 subdivision pursuant to an agreement with the officials of the  
9 political subdivision whenever the amount of the distribution  
10 or transfer decrease for the political subdivision exceeds ten  
11 percent of the average distribution or transfer amount for  
12 that political subdivision for the twelve months preceding the  
13 month in which the secretary's determination is made; provided  
14 that for the purposes of this subsection, the "average  
15 distribution or transfer amount" shall be the arithmetic mean  
16 of the distribution or transfer amounts within the twelve  
17 months immediately preceding the month in which the  
18 determination is made.

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

24 F. The secretary is authorized to decrease a  
25 distribution to a municipality or county upon being directed

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1 to do so by the secretary of finance and administration  
2 pursuant to the State Aid Intercept Act or to redirect a  
3 distribution to the New Mexico finance authority pursuant to  
4 an ordinance or a resolution passed by the county or  
5 municipality and a written agreement of the municipality or  
6 county and the New Mexico finance authority. Upon direction  
7 to decrease a distribution or notice to redirect a  
8 distribution to a municipality or county, the secretary  
9 shall decrease or redirect the next designated distribution,  
10 and succeeding distributions as necessary, by the amount of  
11 the state distributions intercept authorized by the  
12 secretary of finance and administration pursuant to the  
13 State Aid Intercept Act or by the amount of the state  
14 distribution intercept authorized pursuant to an ordinance  
15 or a resolution passed by the county or municipality and a  
16 written agreement with the New Mexico finance authority.  
17 The secretary shall transfer the state distributions  
18 intercept amount to the municipal or county treasurer or  
19 other person designated by the secretary of finance and  
20 administration or to the New Mexico finance authority  
21 pursuant to written agreement to pay the debt service to  
22 avoid default on qualified local revenue bonds or meet other  
23 local revenue bond, loan or other debt obligations of the  
24 municipality or county to the New Mexico finance authority. "

25 Section 19. Section 7-1-6.41 NMSA 1978 (being Laws

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1 1997, Chapter 125, Section 1) is amended to read:

2 "7-1-6.41. ADMINISTRATIVE FEE IMPOSED--

3 APPROPRIATION.--

4 A. The [~~taxation and revenue~~] department is  
5 directed to withhold an administrative fee of three percent  
6 of the net amount to be distributed under the provisions of:

7 (1) Section 7-1-6.32 NMSA 1978;

8 (2) Section 66-12-20 NMSA 1978; and

9 (3) Section 74-1-13 NMSA 1978.

10 B. The administrative fee to be withheld  
11 pursuant to Subsection A of this section shall be withheld  
12 on distributions made on or after July 1, 1997 and shall  
13 continue until the earlier of December 31, 2006 or the date  
14 on which the New Mexico finance authority certifies to the  
15 [~~taxation and revenue~~] department that all obligations for  
16 bonds issued pursuant to [~~Section 12 of this 1997 act~~] Laws  
17 1997, Chapter 125, Section 12 have been fully discharged and  
18 directs the department to cease distributing money to the  
19 authority pursuant to this section.

20 C. The [~~taxation and revenue~~] department is  
21 directed to withhold an additional administrative fee at the  
22 following percentage of the net amount to be distributed  
23 pursuant to the following provisions of law:

24 (1) two percent of the net amount to be  
25 distributed pursuant to Section 7-1-6.12 NMSA 1978; and

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1                   (2) six-tenths of one percent of the net  
2 amount to be distributed pursuant to Section 7-1-6.13 NMSA  
3 1978.

4                   D. The administrative fee to be withheld under  
5 Subsection C of this section shall be withheld on  
6 distributions made on or after July 1, 1997 and shall  
7 continue until the earlier of July 1, 2000 or the date on  
8 which the New Mexico finance authority certifies to the  
9 [~~taxation and revenue~~] department that all obligations for  
10 bonds issued pursuant to [~~Section 12 of this 1997 act~~] Laws  
11 1997, Chapter 125, Section 12 have been fully discharged and  
12 directs the department to cease distributing money to the  
13 authority pursuant to this section.

14                   E. The administrative fee to be withheld by the  
15 [~~taxation and revenue~~] department under [~~Section~~] Sections  
16 7-1-6.12 and 7-1-6.13 NMSA 1978 shall be set at three  
17 percent of the net amount to be distributed pursuant to the  
18 provisions of those sections.

19                   F. The administrative fee to be withheld under  
20 Subsection E of this section shall be withheld on  
21 distributions made on or after July 1, 2000 and shall  
22 continue until the earlier of December 31, 2006 or the date  
23 on which the New Mexico finance authority certifies to the  
24 [~~taxation and revenue~~] department that all obligations for  
25 bonds issued pursuant to [~~Section 12 of this 1997 act~~] Laws

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1 1997, Chapter 125, Section 12 have been fully discharged and  
2 directs the department to cease distributing money to the  
3 authority pursuant to this section. After the department  
4 has been directed by the authority to cease distributing  
5 money to the authority pursuant to this section, the  
6 administrative fee shall be remitted to the state treasurer  
7 for deposit in the state general fund each month.

8 G. The administrative fee shall be distributed  
9 monthly to the New Mexico finance authority to be pledged  
10 irrevocably for the payment of principal, interest and any  
11 expenses or obligations related to the bonds issued by the  
12 authority to finance the taxation and revenue information  
13 management systems project.

14 H. The administrative fee to be withheld by the  
15 department pursuant to the School District Local Option  
16 Gross Receipts Tax Act shall be set at three percent of the  
17 net amount to be distributed pursuant to the provisions of  
18 the Tax Administration Act. The administrative fee withheld  
19 pursuant to this subsection shall be distributed monthly to  
20 the general fund. "

21 Section 20. EMERGENCY.--It is necessary for the public  
22 peace, health and safety that this act take effect  
23 immediately.