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**SENATE JOINT MEMORIAL 32**

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

**INTRODUCED BY**

**Sue Wilson Beffort**

**A JOINT MEMORIAL**

**REQUESTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY  
THE FEASIBILITY OF TRANSFERRING THE INDEPENDENT HEARING  
OFFICER FUNCTION FROM THE TAXATION AND REVENUE DEPARTMENT.**

**WHEREAS, the Tax Administration Act, being Chapter 7,  
Article 1 NMSA 1978, grants taxpayers the right to protest to  
an independent hearing officer actions taken or not taken by  
the taxation and revenue department in the administration of  
the tax laws of New Mexico; and**

**WHEREAS, sound principles of tax administration mandate  
that taxpayers be allowed to present their protests in a  
neutral environment with no perceived bias in favor of the  
taxing or regulatory agency; and**

**WHEREAS, New Mexico statute places the function of the  
independent hearing officer in the taxation and revenue**

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1 department; and

2 WHEREAS, the independent hearing officers of the taxation  
3 and revenue department have been known to assist in the  
4 drafting of rules and regulations, the application of which  
5 those independent hearing officers may, at some time in the  
6 future, have to rule on in the course of hearing a protest  
7 from a taxpayer; and

8 WHEREAS, the independent hearing officers of the taxation  
9 and revenue department, because of budgetary constraints, are  
10 not totally segregated from and are required to share  
11 resources with the legal staff charged with representing the  
12 taxation and revenue department during the hearing of taxpayer  
13 protests; and

14 WHEREAS, the only alternative to the hearing process  
15 available to taxpayers to protest an action taken or not taken  
16 by the taxation and revenue department is to file suit in the  
17 district court in Santa Fe county; and

18 WHEREAS, because many New Mexico taxpayers are unable to  
19 afford to hire professionals to advise them or represent them  
20 in the protest of an action taken or not taken by the taxation  
21 and revenue department, they must represent themselves before  
22 an independent hearing officer; and

23 WHEREAS, the creation of a separate tax court cannot be  
24 justified based on the number of protests filed annually by  
25 taxpayers; and

1           WHEREAS, the independent hearing officers of the taxation  
2 and revenue department are administrative law judges;

3           NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
4 STATE OF NEW MEXICO that the administrative office of the  
5 courts be requested to study the feasibility of transferring  
6 the independent hearing officer function of the taxation and  
7 revenue department to the administrative office of the courts  
8 or to another appropriate agency within state government; and

9           BE IT FURTHER RESOLVED that the administrative office of  
10 the courts seek input on this issue from the New Mexico  
11 society of certified public accountants, the state bar of New  
12 Mexico and appropriate advocacy organizations representing the  
13 taxpayers of New Mexico; and

14           BE IT FURTHER RESOLVED that the administrative office of  
15 the courts report its findings to the legislative finance  
16 committee prior to the first session of the forty-sixth  
17 legislature; and

18           BE IT FURTHER RESOLVED that copies of this memorial be  
19 transmitted to the administrative office of the courts, the  
20 secretary of taxation and revenue, the executive director of  
21 the New Mexico society of certified public accountants and the  
22 president of the state bar of New Mexico.