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SENATE BILL 293

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

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO HEALTH; ENACTING THE SUBSTANCE ABUSE TREATMENT ACT; PROVIDING FOR NEEDED SUBSTANCE ABUSE PROGRAMS OPERATED BY COUNTIES, MUNICIPALITIES, THE DEPARTMENT OF HEALTH OR PRIVATE ORGANIZATIONS; FUNDING THE PROGRAMS THROUGH A SURTAX ON CIGARETTES; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1 through 6 of this act may be cited as the "Substance Abuse Treatment Act".

Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the Substance Abuse Treatment Act:

- A. "department" means the department of health;
- B. "fund" means the substance abuse treatment

fund;

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1 C. "program" means a full array of treatment
2 services offered by a county, a municipality, the department
3 or a private organization, individually or jointly, with the
4 purpose of providing services for substance abusers; and

5 D. "substance abuser" means any person requesting
6 treatment for substance abuse.

7 Section 3. [NEW MATERIAL] SUBSTANCE ABUSE TREATMENT

8 FUND-- ESTABLISHED. --There is created in the state treasury the
9 "substance abuse treatment fund". Earnings of the fund shall
10 be credited to the fund, and balances in the fund shall not
11 revert or be transferred to any other fund. Balances in the
12 fund are appropriated to the department for the purpose of
13 providing programs and services for the treatment of substance
14 abusers pursuant to the Substance Abuse Treatment Act.
15 Disbursements from the fund shall be made only upon warrant
16 drawn by the secretary of finance and administration pursuant
17 to vouchers signed by the secretary of health.

18 Section 4. [NEW MATERIAL] FUND-- ADMINISTRATION. --The

19 department shall administer the fund and make grants to
20 counties, municipalities or private organizations,
21 individually or jointly, for the purpose of providing programs
22 pursuant to the provisions of the Substance Abuse Treatment
23 Act. The department may also utilize the fund to contract
24 directly for programs. The department shall use no more than
25 ten percent of the annual expenditures from the fund for

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1 administration and monitoring purposes by the state and shall
2 allow no more than ten percent of a grant from the fund to be
3 used for administrative costs incurred by counties,
4 municipalities or private organizations. After proper notice
5 and public hearings, the department shall, by rule, adopt
6 qualification standards for grants, priorities for awarding of
7 funds and other criteria regarding programs operated and
8 grants made pursuant to the provisions of the Substance Abuse
9 Treatment Act.

10 Section 5. [NEW MATERIAL] CRITERIA FOR APPLICATIONS--
11 APPLICATION REVIEW PANEL. --

12 A. Counties, municipalities or private
13 organizations, individually or jointly, may apply for grants
14 from the fund, including grants for counties or municipalities
15 to purchase contractual services from private organizations.

16 Applications shall contain:

17 (1) details concerning how the applicant
18 intends to serve and treat drug abusers, including criteria
19 for determining how persons eligible for treatment will be
20 selected;

21 (2) evidence that the applicant is willing
22 and able to operate the program according to standards
23 provided by the department;

24 (3) letters or other documents showing that
25 the applicant has the support of key drug abuse professionals,

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1 agencies, county DWI planning councils and other concerned
2 entities in the community in which the program will be
3 conducted; and

4 (4) any other information required by rule of
5 the department.

6 B. The department shall establish a panel to
7 review all applications for funding and make recommendations
8 to the secretary of health regarding each application. The
9 panel shall be appointed by the secretary of health and shall
10 include substance abuse professionals, substance abuse
11 providers and representatives of the general public. The
12 secretary, after considering the recommendations of the panel,
13 shall prioritize the applications and, to the extent that
14 money is available in the fund, award program grants; provided
15 that:

16 (1) no grant shall be made for a program that
17 is inconsistent with the statewide substance abuse services
18 plan developed pursuant to Section 43-3-13 NMSA 1978; and

19 (2) no class A county, alone or in
20 conjunction with any municipality within a class A county,
21 shall receive more than forty-nine percent of the total grants
22 made in any single fiscal year.

23 Section 6. [NEW MATERIAL] ANNUAL REPORT. --The department
24 shall submit an annual report to the governor and the
25 legislature not later than December 15 of each year. The

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1 report shall include a summary of funding awards, an analysis
2 of program effectiveness, a summary of monitoring efforts and
3 future recommendations.

4 Section 7. A new section of the Tax Administration Act
5 is enacted to read:

6 "[NEW MATERIAL] DISTRIBUTION--SUBSTANCE ABUSE TREATMENT
7 SURTAX.--

8 A. Except as provided in Subsection B of this
9 section, a distribution pursuant to Section 7-1-6.1 NMSA 1978
10 shall be made to the substance abuse treatment fund in an
11 amount equal to the net receipts, exclusive of penalties and
12 interest, attributable to the substance abuse treatment
13 surtax.

14 B. In any fiscal year, after the amount
15 distributed pursuant to Subsection A of this section equals
16 twenty million dollars (\$20,000,000), the remaining
17 distributions during that fiscal year of the net receipts,
18 exclusive of penalties and interest, attributable to the
19 substance abuse treatment surtax shall be made, pursuant to
20 Section 7-1-6.1 NMSA 1978, to the general fund."

21 Section 8. Section 7-1-28 NMSA 1978 (being Laws 1965,
22 Chapter 248, Section 30, as amended) is amended to read:

23 "7-1-28. AUTHORITY FOR ABATEMENTS OF ASSESSMENTS OF
24 TAX.--

25 A. In response to a written protest against an

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1 assessment, submitted in accordance with the provisions of
2 Section 7-1-24 NMSA 1978, but before any court acquires
3 jurisdiction of the matter, or when a "notice of assessment of
4 taxes" is found to be incorrect, the secretary or the
5 secretary's delegate, with the prior written approval of the
6 attorney general, may abate any part of an assessment
7 determined by the secretary or the secretary's delegate to
8 have been incorrectly, erroneously or illegally made, except
9 that:

10 (1) abatements with respect to the Oil and
11 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
12 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
13 Valorem Production Tax Act, the Natural Gas Processors Tax Act
14 or the Oil and Gas Production Equipment Ad Valorem Tax Act,
15 abatements of gasoline tax made under Section 7-13-17 NMSA
16 1978 and abatements of cigarette tax and substance abuse
17 treatment surtax made under the Cigarette Tax Act may be made
18 without the prior approval of the attorney general regardless
19 of the amount;

20 (2) abatements with respect to the Corporate
21 Income and Franchise Tax Act amounting to less than twenty
22 thousand dollars (\$20,000) may be made without prior approval
23 of the attorney general; and

24 (3) abatements amounting to less than five
25 thousand dollars (\$5,000) may be made without the prior

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1 written approval of the attorney general.

2 B. Pursuant to the final order of the district
3 court for Santa Fe county, the court of appeals, the supreme
4 court of New Mexico or any federal court, from which order,
5 appeal or review is not successfully taken by the department,
6 adjudging that any person is not required to pay any portion
7 of tax assessed to that person, the secretary or the
8 secretary's delegate shall cause that amount of the assessment
9 to be abated.

10 C. Pursuant to a compromise of taxes agreed to by
11 the secretary and according to the terms of the closing
12 agreement formalizing the compromise, the secretary or the
13 secretary's delegate shall cause the abatement of the
14 appropriate amount of any assessment of tax.

15 D. The secretary or the secretary's delegate shall
16 cause the abatement of the amount of an assessment of tax that
17 is equal to the amount of fee paid to or retained by an out-
18 of-state attorney or collection agency from a judgment or the
19 amount collected by the attorney or collection agency pursuant
20 to Section 7-1-58 NMSA 1978.

21 E. Records of abatements made in excess of five
22 thousand dollars (\$5,000) shall be available for inspection by
23 the public. The department shall keep such records for a
24 minimum of three years from the date of the abatement. "

25 Section 9. Section 7-1-29 NMSA 1978 (being Laws 1965,

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1 Chapter 248, Section 31, as amended) is amended to read:

2 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS. --

3 A. In response to a claim for refund made as
4 provided in Section 7-1-26 NMSA 1978, but before any court
5 acquires jurisdiction of the matter, the secretary or the
6 secretary's delegate may authorize the refund to a person of
7 the amount of any overpayment of tax determined by the
8 secretary or the secretary's delegate to have been erroneously
9 made by the person, together with allowable interest. Any
10 refund of tax and interest erroneously paid and amounting to
11 more than five thousand dollars (\$5,000) may be made to any
12 one person only with the prior approval of the attorney
13 general, except that:

14 (1) refunds with respect to the Oil and Gas
15 Severance Tax Act, the Oil and Gas Conservation Tax Act, the
16 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
17 Valorem Production Tax Act, the Natural Gas Processors Tax Act
18 or the Oil and Gas Production Equipment Ad Valorem Tax Act,
19 refunds of gasoline tax made under Section 7-13-17 NMSA 1978
20 and refunds of cigarette tax and substance abuse treatment
21 surtax made under the Cigarette Tax Act may be made without
22 the prior approval of the attorney general regardless of the
23 amount; and

24 (2) refunds with respect to the Corporate
25 Income and Franchise Tax Act amounting to less than twenty

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1 thousand dollars (\$20,000) may be made without the prior
2 approval of the attorney general.

3 B. Pursuant to the final order of the district
4 court, the court of appeals, the supreme court of New Mexico
5 or any federal court, from which order, appeal or review is
6 not successfully taken, adjudging that any person has made an
7 overpayment of tax, the secretary shall authorize the refund
8 to the person of the amount thereof.

9 C. In the discretion of the secretary, any amount
10 of tax due to be refunded may be offset against any amount of
11 tax for the payment of which the person due to receive the
12 refund is liable.

13 D. In an audit by the department or a managed
14 audit covering multiple reporting periods where both
15 underpayments and overpayments of a tax are found to have been
16 made in different reporting periods, the department shall
17 credit the tax overpayments found against the underpayments,
18 provided that the taxpayer files a claim for refund of the
19 overpayments. An overpayment shall be applied as a credit
20 first to the earliest underpayment found and then to
21 succeeding underpayments. An underpayment of tax to which an
22 overpayment is credited pursuant to this section shall be
23 deemed paid in the period in which the overpayment was made or
24 the period in which the overpayment was credited against an
25 underpayment, whichever is later. If the overpayments

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1 credited pursuant to this section exceed the underpayments
2 found for a tax, the amount of the net overpayment for the
3 periods covered in the audit shall be refunded to the
4 taxpayer.

5 E. Records of refunds made in excess of five
6 thousand dollars (\$5,000) shall be available for inspection by
7 the public. The department shall keep such records for a
8 minimum of three years from the date of the refund. "

9 Section 10. Section 7-12-3.1 NMSA 1978 (being Laws 1986,
10 Chapter 13, Section 3, as amended) is amended to read:

11 "7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--
12 DATE PAYMENT OF TAX DUE. --

13 A. A cigarette inventory tax is imposed, measured
14 by the quantity of cigarette stamps, whether or not affixed to
15 packages of cigarettes, in the possession of a person who is
16 required by Subsection C of Section 7-12-5 NMSA 1978 to affix
17 stamps on the date on which an increase in the excise tax
18 imposed by Section 7-12-3 NMSA 1978 is effective or on the
19 date on which the imposition of the substance abuse treatment
20 surtax is effective. The taxable event is the existence of an
21 inventory of cigarette stamps, whether or not affixed to
22 packages of cigarettes, in the possession of a person who is
23 required by Subsection C of Section 7-12-5 NMSA 1978 to affix
24 stamps on the date on which an increase in the excise tax
25 imposed by Section 7-12-3 NMSA 1978 is effective or on the

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1 date on which the imposition of the substance abuse treatment
2 surtax is effective. The rate of the cigarette inventory tax
3 to apply to cigarette stamps held in inventory shall be the
4 amount of the increase in the cigarette tax imposed by Section
5 7-12-3 NMSA 1978 or the amount of the substance abuse
6 treatment surtax imposed by Section 7-12-3.3 NMSA 1978.

7 B. The cigarette inventory tax is to be paid to
8 the department on or before the twenty-fifth day of the month
9 following the month in which the taxable event occurs."

10 Section 11. Section 7-12-3.2 NMSA 1978 (being Laws 1986,
11 Chapter 13, Section 4) is amended to read:

12 "7-12-3.2. CIGARETTE INVENTORIES. --

13 A. On any date on which the excise tax imposed by
14 Section 7-12-3 NMSA 1978 is increased or the date on which the
15 substance abuse treatment surtax is imposed by Section
16 7-12-3.3 NMSA 1978, each person who is required by Subsection
17 C of Section 7-12-5 NMSA 1978 to affix stamps shall take
18 inventory of cigarette stamps on hand, including stamps
19 affixed to packages of cigarettes.

20 B. Each person required to take an inventory by
21 Subsection A of this section shall report the total number of
22 cigarette stamps in inventory on the date on which the tax
23 imposed by Section 7-12-3 NMSA 1978 changes on the date that
24 the tax imposed by Section 7-12-3.3 NMSA 1978 is effective and
25 pay any tax due imposed by Section 7-12-3.1 NMSA 1978."

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1 Section 12. A new section of the Cigarette Tax Act,
2 Section 7-12-3.3 NMSA 1978, is enacted to read:

3 "7-12-3.3. [NEW MATERIAL] SUBSTANCE ABUSE TREATMENT
4 SURTAX. --

5 A. In addition to the tax levied in Section 7-12-3
6 NMSA 1978, for the privilege of selling, giving or consuming
7 cigarettes in New Mexico, there is levied an additional excise
8 tax of one and seventy-five hundredths cents (\$.0175) for each
9 cigarette sold, given or consumed in this state.

10 B. The tax imposed by this section shall be
11 referred to as the "substance abuse treatment surtax".

12 Section 13. Section 7-12-4 NMSA 1978 (being Laws 1971,
13 Chapter 77, Section 4, as amended) is amended to read:

14 "7-12-4. EXEMPTION. --

15 A. Exempted from the cigarette tax and the
16 substance abuse treatment surtax are sales of cigarettes:

17 (1) to the United States or any agency or
18 instrumentality thereof or the state of New Mexico or any
19 political subdivision thereof;

20 (2) to the governing body, or to any enrolled
21 tribal member licensed by the governing body, of any Indian
22 nation, tribe or pueblo for use or sale on that reservation or
23 pueblo grant; and

24 (3) sales which the state is prohibited from
25 taxing by a provision of the United States constitution or the

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constitution of the state of New Mexico.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities. "

Section 14. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2002.