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HOUSE BILL 590

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO TAX ADMINISTRATION; AUTHORIZING CERTAIN AGREEMENTS BETWEEN THE TAXATION AND REVENUE DEPARTMENT AND THE HUMAN SERVICES DEPARTMENT TO DISTRIBUTE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES FUNDS AS REBATES OR REFUNDS; PROVIDING AUTHORITY FOR THE TAXATION AND REVENUE DEPARTMENT TO REVEAL CERTAIN TAXPAYER INFORMATION CONCERNING THE USE OF FEDERAL FUNDS TO THE HUMAN SERVICES DEPARTMENT FOR OUTREACH TO LOW-INCOME PERSONS TO PROVIDE INFORMATION REGARDING PUBLIC ASSISTANCE, HEALTH CARE PROGRAMS AND OTHER BENEFITS; MAKING AN APPROPRIATION.

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

Section 1. Section 7-1-6 NMSA 1978 (being Laws 1978, Chapter 55, Section 1, as amended) is amended to read:

"7-1-6. RECEIPTS--DISBURSEMENTS--FUNDS CREATED.--

A. All money received by the department with

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1 respect to laws administered [~~under~~] pursuant to the provisions  
2 of the Tax Administration Act shall be deposited with the state  
3 treasurer before the close of the next succeeding business day  
4 after receipt of the money, except that for 1989 and every  
5 subsequent year, money received with respect to the Income Tax  
6 Act during the period starting with the fifth day prior to the  
7 due date for payment of income tax for the year and ending on  
8 the tenth day following that due date shall be deposited before  
9 the close of the tenth business day after receipt of the money.

10 B. Money received or disbursed by the department  
11 shall be accounted for by the department as required by law or  
12 regulation of the secretary of finance and administration.

13 C. Disbursements for tax credits, tax rebates,  
14 refunds, the payment of interest, the payment of fees charged  
15 by attorneys or collection agencies for collection of accounts  
16 as agent for the department, attorney fees and costs awarded by  
17 a court or hearing officer, as the result of oil and gas  
18 litigation, the payment of credit card service charges on  
19 payments of taxes by use of credit cards, distributions and  
20 transfers shall be made by the department of finance and  
21 administration upon request and certification of their  
22 appropriateness by the secretary or the secretary's delegate.

23 D. There are hereby created in the state treasury  
24 the "tax administration suspense fund", the "extraction taxes  
25 suspense fund" and the "workers' compensation collections

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1 suspense fund" for the purpose of making the disbursements  
2 authorized by the Tax Administration Act.

3 ~~[D.]~~ E. All revenues collected or received by the  
4 department pursuant to the provisions of the taxes and tax acts  
5 ~~[administered under]~~ set forth in Subsection A of Section 7-1-2  
6 NMSA 1978 shall be credited to the tax administration suspense  
7 fund and are appropriated for the purpose of making the  
8 disbursements authorized ~~[under]~~ in this section or otherwise  
9 authorized or required by law to be made from the tax  
10 administration suspense fund.

11 F. The department is authorized to enter into an  
12 agreement with the human services department, in accordance  
13 with federal law, to accept federal funds from the temporary  
14 assistance for needy families program for the purpose of  
15 disbursing those funds for tax credit refunds or rebates to  
16 low-income families with dependent children otherwise  
17 authorized by state statute and in exchange for providing to  
18 the human services department state funds that are appropriated  
19 to the department. The amounts received by the department  
20 pursuant to the agreement shall be credited to the tax  
21 administration suspense fund and are appropriated for the  
22 purpose of making disbursements for tax credit refunds or  
23 rebates authorized by this subsection.

24 ~~[E.]~~ G. All revenues collected or received by the  
25 department pursuant to the taxes or tax acts ~~[administered~~

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1 ~~under~~] set forth in Subsection B of Section 7-1-2 NMSA 1978  
2 shall be credited to the extraction taxes suspense fund and are  
3 appropriated for the purpose of making the disbursements  
4 authorized [~~under~~] in this section or otherwise authorized or  
5 required by law to be made from the extraction taxes suspense  
6 fund.

7 [~~F.~~] H. All revenues collected or received by the  
8 department pursuant to the taxes or tax acts [~~administered~~  
9 ~~under~~] set forth in Subsection C of Section 7-1-2 NMSA 1978 may  
10 be credited to the tax administration suspense fund, unless  
11 otherwise directed by law to be credited to another fund or  
12 agency, and are appropriated for the purpose of making  
13 disbursements authorized [~~under~~] in this section or otherwise  
14 authorized or required by law.

15 [~~G.~~] I. All revenues collected or received by the  
16 department pursuant to the provisions of Section 52-5-19 NMSA  
17 1978 shall be credited to the workers' compensation collections  
18 suspense fund and are appropriated for the purpose of making  
19 the disbursements authorized [~~under~~] in this section or  
20 otherwise authorized or required by law to be made from the  
21 workers' compensation collections suspense fund.

22 [~~H.~~] J. Disbursements to cover expenditures of the  
23 department shall be made only upon approval of the secretary or  
24 the secretary's delegate.

25 [~~I.~~] K. Miscellaneous receipts from charges made by  
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1 the department to defray expenses pursuant to the provisions of  
2 Section 9-11-6.2 NMSA 1978 and similar charges are appropriated  
3 to the department for its use.

4 [~~J~~] L. From the tax administration suspense fund,  
5 there may be disbursed each month amounts approved by the  
6 secretary or the secretary's delegate necessary to maintain a  
7 fund hereby created and to be known as the "income tax suspense  
8 fund". The income tax suspense fund shall be used for the  
9 payment of income tax refunds."

10 Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965,  
11 Chapter 248, Section 13, as amended) is amended to read:

12 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER  
13 INFORMATION.--It is unlawful for an employee of the department  
14 or a former employee of the department to reveal to an  
15 individual other than another employee of the department  
16 information contained in the return of a taxpayer made pursuant  
17 to a law subject to administration and enforcement under the  
18 provisions of the Tax Administration Act or any other  
19 information about a taxpayer acquired as a result of the  
20 employee's employment by the department and not available from  
21 public sources, except:

22 A. to an authorized representative of another  
23 state; provided that the receiving state has entered into a  
24 written agreement with the department to use the information  
25 for tax purposes only and that the receiving state has enacted

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1 a confidentiality statute similar to this section to which the  
2 representative is subject;

3 B. to a representative of the secretary of the  
4 treasury or the secretary's delegate pursuant to the terms of a  
5 reciprocal agreement entered into with the federal government  
6 for exchange of the information;

7 C. to the multistate tax commission, the federation  
8 of tax administrators or their authorized representatives;  
9 provided that the information is used for tax purposes only and  
10 is disclosed by the multistate tax commission or the federation  
11 of tax administrators only to states that have met the  
12 requirements of Subsection A of this section;

13 D. to another jurisdiction pursuant to an  
14 international fuel tax agreement; provided that the information  
15 is used for tax purposes only;

16 E. to a district court, an appellate court or a  
17 federal court:

18 (1) in response to an order thereof in an  
19 action relating to taxes or an action for tax fraud or any  
20 other crime that may affect taxes due to the state to which the  
21 state is a party and in which the information sought is about a  
22 taxpayer who is party to the action and is material to the  
23 inquiry, in which case only that information may be required to  
24 be produced in court and admitted in evidence subject to court  
25 order protecting the confidentiality of the information and no

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1 more;

2 (2) in an action in which the department is  
3 attempting to enforce an act with which the department is  
4 charged or to collect a tax; or

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

12 F. to the taxpayer or to the taxpayer's authorized  
13 representative; provided, however, that nothing in this  
14 subsection shall be construed to require any employee to  
15 testify in a judicial proceeding except as provided in  
16 Subsection E of this section;

17 G. information obtained through the administration  
18 of a law not subject to administration and enforcement under  
19 the provisions of the Tax Administration Act to the extent that  
20 release of that information is not otherwise prohibited by law;

21 H. in a manner, for statistical purposes, that the  
22 information revealed is not identified as applicable to an  
23 individual taxpayer;

24 I. with reference to information concerning the tax  
25 on tobacco imposed by [~~Sections 7-12-1 through 7-12-13, 7-12-15~~  
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1 ~~and 7-12-17 NMSA 1978]~~ the Cigarette Tax Act to a committee of  
2 the legislature for a valid legislative purpose or to the  
3 attorney general for purposes of Section 6-4-13 NMSA 1978 and  
4 the master settlement agreement defined in Section 6-4-12 NMSA  
5 1978;

6 J. to a transferee, assignee, buyer or lessor of a  
7 liquor license, the amount and basis of an unpaid assessment of  
8 tax for which the transferor, assignor, seller or lessee is  
9 liable;

10 K. to a purchaser of a business as provided in  
11 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis  
12 of an unpaid assessment of tax for which the purchaser's seller  
13 is liable;

14 L. to a municipality of this state upon its request  
15 for a period specified by that municipality within the twelve  
16 months preceding the request for the information by that  
17 municipality:

18 (1) the names, taxpayer identification numbers  
19 and addresses of registered gross receipts taxpayers reporting  
20 gross receipts for that municipality under the Gross Receipts  
21 and Compensating Tax Act or a local option gross receipts tax  
22 imposed by that municipality. The department may also release  
23 the information described in this paragraph quarterly or upon  
24 such other periodic basis as the secretary and the municipality  
25 may agree; and

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

8                   The employees of municipalities receiving information as  
9 provided in this subsection shall be subject to the penalty  
10 contained in Section 7-1-76 NMSA 1978 if that information is  
11 revealed to individuals other than other employees of the  
12 municipality in question or the department;

13                   M. to the commissioner of public lands for use in  
14 auditing that pertains to rentals, royalties, fees and other  
15 payments due the state under land sale, land lease or other  
16 land use contracts; the commissioner of public lands and  
17 employees of the commissioner are subject to the same  
18 provisions regarding confidentiality of information as  
19 employees of the department;

20                   N. the department shall furnish, upon request by  
21 the child support enforcement division of the human services  
22 department, the last known address with date of all names  
23 certified to the department as being absent parents of children  
24 receiving public financial assistance. The child support  
25 enforcement division personnel shall use such information only

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1 for the purpose of enforcing the support liability of the  
2 absent parents and shall not use the information or disclose it  
3 for any other purpose; the child support enforcement division  
4 and its employees are subject to the provisions of this section  
5 with respect to any information acquired from the department;

6 O. the department shall furnish to the [~~information~~  
7 ~~systems division of the general services~~] department of of  
8 information technology, by electronic media, a database  
9 containing New Mexico personal income tax filers by county,  
10 which shall be updated quarterly. The database information  
11 shall be used only for the purpose of producing the random jury  
12 list for the selection of petit or grand jurors for the state  
13 courts pursuant to Section 38-5-3 NMSA 1978. The database  
14 shall not contain any financial information. If any  
15 information in the database is revealed by an employee of the  
16 administrative office of the courts or the [~~information systems~~  
17 ~~division~~] department of information technology to individuals  
18 other than employees of the administrative office of the  
19 courts, the state courts, the [~~information systems division~~]  
20 department of information technology or the department, the  
21 employee shall be subject to the penalty provisions of Section  
22 7-1-76 NMSA 1978;

23 P. with respect to the tax on gasoline imposed by  
24 the Gasoline Tax Act, the department shall make available for  
25 public inspection at monthly intervals a report covering the

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1 number of gallons of gasoline and ethanol blended fuels  
2 received and deducted and the amount of tax paid by each person  
3 required to file a gasoline tax return or pay gasoline tax in  
4 the state of New Mexico;

5 Q. the identity of a rack operator, importer,  
6 blender, supplier or distributor and the number of gallons  
7 reported on returns required under the Gasoline Tax Act, the  
8 Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act  
9 to a rack operator, importer, blender, distributor or supplier,  
10 but only when it is necessary to enable the department to carry  
11 out its duties under the Gasoline Tax Act, the Special Fuels  
12 Supplier Tax Act or the Alternative Fuel Tax Act;

13 R. the department shall release upon request only  
14 the names and addresses of all gasoline or special fuel  
15 distributors, wholesalers and retailers to the New Mexico  
16 department of agriculture, the employees of which are thereby  
17 subject to the penalty contained in Section 7-1-76 NMSA 1978 if  
18 that information is revealed to individuals other than  
19 employees of either the New Mexico department of agriculture or  
20 the department;

21 S. the department shall answer all inquiries  
22 concerning whether a person is or is not a registered taxpayer  
23 for tax programs that require registration, but nothing in this  
24 subsection shall be construed to allow the department to answer  
25 inquiries concerning whether a person has filed a tax return;

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1           T. upon request of a municipality or county of this  
2 state, the department shall permit officials or employees of  
3 the municipality or county to inspect the records of the  
4 department pertaining to an increase or decrease to a  
5 distribution or transfer made pursuant to Section 7-1-6.15 NMSA  
6 1978 for the purpose of reviewing the basis for the increase or  
7 decrease. The municipal or county officials or employees  
8 receiving information provided in this subsection shall not  
9 reveal that information to any person other than another  
10 employee of the municipality or the county, the department or a  
11 district court, an appellate court or a federal court in a  
12 proceeding relating to a disputed distribution and in which  
13 both the state and the municipality or county are parties.  
14 Information provided pursuant to provisions of this subsection  
15 that is revealed other than as provided in this subsection  
16 shall subject the person revealing the information to the  
17 penalty contained in Section 7-1-76 NMSA 1978;

18           U. to a county of this state that has in effect a  
19 local option gross receipts tax imposed by the county upon its  
20 request for a period specified by that county within the twelve  
21 months preceding the request for the information by that  
22 county:

23                   (1) the names, taxpayer identification numbers  
24 and addresses of registered gross receipts taxpayers reporting  
25 gross receipts either for that county in the case of a local

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1 option gross receipts tax imposed on a countywide basis or only  
2 for the areas of that county outside of any incorporated  
3 municipalities within that county in the case of a county local  
4 option gross receipts tax imposed only in areas of the county  
5 outside of any incorporated municipalities. The department may  
6 also release the information described in this paragraph  
7 quarterly or upon such other periodic basis as the secretary  
8 and the county may agree;

9 (2) in the case of a local option gross  
10 receipts tax imposed by a county on a countywide basis,  
11 information indicating whether persons shown on a list of  
12 businesses located within the county furnished by the county  
13 have reported gross receipts to the department but have not  
14 reported gross receipts for that county under the Gross  
15 Receipts and Compensating Tax Act or a local option gross  
16 receipts tax imposed by that county on a countywide basis; and

17 (3) in the case of a local option gross  
18 receipts tax imposed by a county only on persons engaging in  
19 business in that area of the county outside of incorporated  
20 municipalities, information indicating whether persons on a  
21 list of businesses located in that county outside of the  
22 incorporated municipalities but within that county furnished by  
23 the county have reported gross receipts to the department but  
24 have not reported gross receipts for that county outside of the  
25 incorporated municipalities within that county under the Gross

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1 Receipts and Compensating Tax Act or a local option gross  
2 receipts tax imposed by the county only on persons engaging in  
3 business in that county outside of the incorporated  
4 municipalities.

5 The officers and employees of counties receiving  
6 information as provided in this subsection shall be subject to  
7 the penalty contained in Section 7-1-76 NMSA 1978 if the  
8 information is revealed to individuals other than other  
9 officers or employees of the county in question or the  
10 department;

11 V. to authorized representatives of an Indian  
12 nation, tribe or pueblo, the territory of which is located  
13 wholly or partially within New Mexico, pursuant to the terms of  
14 a reciprocal agreement entered into with the Indian nation,  
15 tribe or pueblo for the exchange of that information for tax  
16 purposes only; provided that the Indian nation, tribe or pueblo  
17 has enacted a confidentiality statute similar to this section;

18 W. information with respect to the taxes or tax  
19 acts administered pursuant to Subsection B of Section 7-1-2  
20 NMSA 1978, except that:

21 (1) information for or relating to a period  
22 prior to July 1, 1985 with respect to Sections 7-25-1 through  
23 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only  
24 to a committee of the legislature for a valid legislative  
25 purpose;

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1 (2) except as provided in Paragraph (3) of  
2 this subsection, contracts and other agreements between the  
3 taxpayer and other parties and the proprietary information  
4 contained in those contracts and agreements shall not be  
5 released without the consent of all parties to the contract or  
6 agreement; and

7 (3) audit [~~workpapers~~] work papers and the  
8 proprietary information contained in the [~~workpapers~~] work  
9 papers shall not be released except to:

10 (a) the minerals management service of  
11 the United States department of the interior, if production  
12 occurred on federal land;

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

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

17 (d) the authorized representative of any  
18 of the persons in Subparagraphs (a) through (c) of this  
19 paragraph. This paragraph does not prohibit the release of  
20 proprietary information contained in the [~~workpapers~~] work  
21 papers that is also available from returns or from other  
22 sources not subject to the provisions of this section;

23 X. information with respect to the taxes, surtaxes,  
24 advance payments or tax acts administered pursuant to  
25 Subsection C of Section 7-1-2 NMSA 1978;

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1           Y. to the public regulation commission, information  
2 with respect to the Corporate Income and Franchise Tax Act  
3 required to enable the commission to carry out its duties;

4           Z. to the state racing commission, information with  
5 respect to the state, municipal and county gross receipts taxes  
6 paid by racetracks;

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

17           BB. a decision and order made by a hearing officer  
18 pursuant to Section 7-1-24 NMSA 1978 with respect to a protest  
19 filed with the secretary on or after July 1, 1993;

20           CC. information required by a provision of the Tax  
21 Administration Act to be made available to the public by the  
22 department;

23           DD. upon request by the Bernalillo county  
24 metropolitan court, the department shall furnish the last known  
25 address and the date of that address for every person the court

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1 certifies to the department as a person who owes fines, fees or  
2 costs to the court or who has failed to appear pursuant to a  
3 court order or a promise to appear;

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

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

15 GG. to a district attorney, a state district court  
16 grand jury or federal grand jury for an investigation of or  
17 proceeding related to an alleged criminal violation of the tax  
18 laws;

19 HH. to a third party subject to a subpoena or levy  
20 issued pursuant to the provisions of the Tax Administration  
21 Act, the identity of the taxpayer involved, the taxes or tax  
22 acts involved and the nature of the proceeding;

23 II. to the gaming control board, tax returns of  
24 license applicants and their affiliates as provided in  
25 Subsection E of Section 60-2E-14 NMSA 1978;

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1 JJ. any written ruling on questions of evidence or  
2 procedure made by a hearing officer pursuant to Section 7-1-24  
3 NMSA 1978; provided that the name and identification number of  
4 the taxpayer requesting the ruling shall not be disclosed;

5 KK. to representatives of the workers' compensation  
6 administration, authorized by the director of the workers'  
7 compensation administration for this purpose, to facilitate the  
8 identification of taxpayers that are delinquent or noncompliant  
9 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA  
10 1978;

11 LL. to the secretary of [~~labor~~] workforce solutions  
12 or the secretary's delegate for use in enforcement of  
13 unemployment insurance collections pursuant to the terms of a  
14 reciprocal agreement entered into with the secretary of [~~labor~~]  
15 workforce solutions for exchange of information; the secretary  
16 of [~~labor~~] workforce solutions and employees of the [~~labor~~]  
17 workforce solutions department are subject to the provisions  
18 regarding confidentiality of information contained in the Tax  
19 Administration Act;

20 MM. information that the department is authorized  
21 by the Tax Administration Act to release to a local body that  
22 licenses professions or occupations pursuant to Chapter 36,  
23 Article 2 NMSA 1978 or Chapter 61 NMSA 1978; [~~and~~]

24 NN. upon request for inspection by the public  
25 pursuant to Section 7-1-29 NMSA 1978, the department shall

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1 furnish the taxpayer name, refund or credit amount, tax program  
2 or business tax credit and the date the refund or credit was  
3 issued; nothing in this subsection shall be construed to  
4 require the release of information that would violate an  
5 agreement between the state and the federal internal revenue  
6 service for sharing of information or any provision or rule of  
7 the federal Internal Revenue Code to which a state is subject;  
8 and

9 00. the following to the secretary of human  
10 services or the secretary's delegate; provided that a person  
11 who receives the confidential information on behalf of the  
12 human services department shall not reveal the information and  
13 shall be subject to the penalties in Section 7-1-76 NMSA 1978  
14 if the person fails to maintain the confidentiality required:

15 (1) that information needed for reports  
16 required to be made to the federal government concerning the  
17 use of federal funds for low-income working families; and

18 (2) the names and addresses of low-income  
19 taxpayers for the limited purpose of outreach to taxpayers with  
20 dependent children; provided that the human services department  
21 shall pay the department for expenses incurred by the  
22 department to derive the information requested by the human  
23 services department if the information requested is not readily  
24 available in reports for which the department's information  
25 systems are programmed."

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1           Section 3. EFFECTIVE DATE.--The effective date of the  
2 provisions of this act is July 1, 2009.

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