

HOUSE BILL 292

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Andy Nunez

AN ACT

RELATING TO TAX ADMINISTRATION; ENACTING THE ADMINISTRATIVE  
HEARINGS OFFICE ACT; PROVIDING FOR INDEPENDENT HEARING  
OFFICERS; CREATING A HEARING OFFICE SEPARATE FROM THE TAXATION  
AND REVENUE DEPARTMENT FOR ADMINISTRATIVE HEARINGS; PROVIDING  
POWERS AND DUTIES; PROVIDING PROCEDURES; TRANSFERRING  
FUNCTIONS, PERSONNEL, APPROPRIATIONS, MONEY, PROPERTY,  
CONTRACTUAL OBLIGATIONS, STATUTORY REFERENCES AND RULES;  
REPEALING SECTION 7-1-24.1 NMSA 1978 (BEING LAWS 2013, CHAPTER  
27, SECTION 7); CREATING A PRIVATE RIGHT TO REQUEST THE  
SECRETARY OF TAXATION AND REVENUE TO PROMULGATE, AMEND OR  
REPEAL A DEPARTMENT RULE; CREATING A PRIVATE RIGHT TO APPEAL TO  
THE COURT OF APPEALS A RULE PROMULGATED BY THE SECRETARY OR THE  
SECRETARY'S DENIAL OF A REQUEST TO PROMULGATE, AMEND OR REPEAL  
A RULE.

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

2 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
3 through 6 of this act may be cited as the "Administrative  
4 Hearings Office Act".

5 SECTION 2. [NEW MATERIAL] ADMINISTRATIVE HEARINGS  
6 OFFICE--CREATED--POWERS AND DUTIES--EMPLOYEES OF THE OFFICE.--

7 A. The "administrative hearings office" is created  
8 and is administratively attached pursuant to the provisions of  
9 Section 9-1-7 NMSA 1978 to the department of finance and  
10 administration.

11 B. The head of the administrative hearings office  
12 is the "chief hearing officer", who shall be appointed by the  
13 governor with the advice and consent of the senate for a term  
14 of six years, except that the initial term shall begin on July  
15 1, 2015 and shall end on December 31, 2015. In appointing a  
16 chief hearing officer, the governor shall select a person who,  
17 at the time of appointment, is a licensed New Mexico attorney  
18 who has knowledge of the tax law and substantial experience  
19 making the record in an administrative hearing suitable for  
20 judicial review. The governor shall appoint a chief hearing  
21 officer without regard to party affiliation and solely on the  
22 grounds of professional experience and competence and fitness  
23 to perform the duties of chief hearing officer. The chief may  
24 be reappointed to successive terms. The initial chief hearing  
25 officer shall be the person who is the chief of the hearings

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1 bureau of the taxation and revenue department on July 1, 2015.  
2 The chief hearing officer shall be removed only for  
3 malfeasance, misfeasance or abuse of office.

4 C. The chief hearing officer may:

5 (1) adopt and promulgate rules pertaining to  
6 administrative hearings; and

7 (2) subject to appropriations, hire and  
8 contract for such professional, technical and support staff as  
9 needed to carry out the functions of the administrative  
10 hearings office; provided that such hiring and contracting be  
11 without regard to party affiliation and solely on the grounds  
12 of competence and fitness to perform the duties of the  
13 position. Employees of the administrative hearings office,  
14 except the chief hearing officer, are subject to the provisions  
15 of the Personnel Act.

16 D. The chief hearing officer shall:

17 (1) oversee the administrative hearings  
18 office; and

19 (2) considering the knowledge and experience  
20 of particular hearing officers, efficiency in the hearing  
21 process and potential conflicts of interest, assign and  
22 distribute the work of the office.

23 SECTION 3. [NEW MATERIAL] HEARING OFFICER CODE OF  
24 CONDUCT--INDEPENDENCE.--

25 A. The chief hearing officer shall:

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1 (1) adopt and promulgate a hearing officer  
2 code of conduct; and

3 (2) periodically evaluate each hearing  
4 officer's performance for competency, efficiency and  
5 professional demeanor in accord with relevant legal standards  
6 and the hearing officer code of conduct.

7 B. The chief hearing officer shall ensure that each  
8 hearing officer has decisional independence; however, the chief  
9 hearing officer may:

10 (1) consult with a hearing officer about a  
11 genuine question of law; and

12 (2) review with a hearing officer any issue on  
13 appeal addressed by a court of this state.

14 C. The administrative hearings office shall:

15 (1) hear all tax protests pursuant to the  
16 provisions of the Tax Administration Act;

17 (2) hear property tax protests pursuant to the  
18 provisions of Sections 7-38-22 and 7-38-23 NMSA 1978;

19 (3) conduct all adjudicatory hearings pursuant  
20 to the Motor Vehicle Code;

21 (4) conduct all driver's license revocation  
22 hearings pursuant to the provisions of the Implied Consent Act;

23 (5) make and preserve a complete record of all  
24 proceedings; and

25 (6) maintain confidentiality regarding

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1 taxpayer information as required by the provisions of Section  
2 7-1-8 NMSA 1978.

3 D. In hearings conducted pursuant to the Tax  
4 Administration Act and the Motor Vehicle Code:

5 (1) the Rules of Evidence do not apply. The  
6 hearing officer may require reasonable substantiation of  
7 statements or records tendered, the accuracy or truth of which  
8 is in reasonable doubt, to rule on the admissibility of  
9 evidence. A taxpayer may request a written ruling on a  
10 contested question of evidence in a matter in which the  
11 taxpayer has filed a written protest and for which that protest  
12 is pending. The administrative hearings office shall issue a  
13 copy of its written ruling to the taxation and revenue  
14 department at the time the ruling is issued to the taxpayer;

15 (2) the Rules of Civil Procedure for the  
16 District Courts do not apply. The hearing officer shall  
17 conduct a hearing to allow the ample and fair presentation of  
18 complaints and defenses. The hearing officer shall hear  
19 arguments, permit discovery, entertain and dispose of motions,  
20 require written expositions of the case as the circumstances  
21 justify and render a decision in accordance with the law and  
22 the evidence presented and admitted. A taxpayer may request a  
23 written ruling on a contested question of procedure in a matter  
24 in which the taxpayer has filed a written protest and for which  
25 that protest is pending. The administrative hearings office

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1 shall issue a copy of its written ruling to the taxation and  
2 revenue department at the time the ruling is issued to the  
3 taxpayer; and

4 (3) the hearing officer may administer oaths  
5 and issue subpoenas for the attendance of witnesses and the  
6 production of relevant books and papers.

7 SECTION 4. [NEW MATERIAL] CERTAIN ACTIONS PROHIBITED.--A  
8 hearing officer shall not:

9 A. engage or participate in any way in the  
10 enforcement or formulation of general tax policy other than to  
11 conduct hearings. A taxpayer or the taxation and revenue  
12 department may request that the chief hearing officer determine  
13 whether a hearing officer has engaged or participated in the  
14 enforcement or formulation of general tax policy and whether  
15 that engagement or participation affects the hearing officer's  
16 impartiality in a particular matter. To avoid actual or  
17 apparent prejudice, the chief hearing officer may designate  
18 another hearing officer for the matter; and

19 B. engage in ex-parte communications concerning the  
20 substantive issues of any matter that has been protested while  
21 that matter is pending. If the chief hearing officer  
22 determines that a hearing officer has engaged in prohibited  
23 ex-parte communications, the chief hearing officer shall  
24 designate another hearing officer for that matter.

25 SECTION 5. [NEW MATERIAL] TAX PROTESTS--PROCEDURES.--

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1           A. Upon timely receipt of a tax protest filed  
2 pursuant to the provisions of Section 7-1-24 NMSA 1978, the  
3 taxation and revenue department shall promptly acknowledge the  
4 protest by letter to the protesting taxpayer or the taxpayer's  
5 representative. If the protest is not filed in accordance with  
6 the provisions of Section 7-1-24 NMSA 1978, the department  
7 shall inform the taxpayer of the deficiency and the opportunity  
8 to correct it. Within forty-five days after receipt of a  
9 protest filed pursuant to the provisions of Section 7-1-24 NMSA  
10 1978 that has not been resolved, the taxation and revenue  
11 department shall request from the administrative hearings  
12 office a hearing and shall send to the office a copy of the  
13 protest. The chief hearing officer shall promptly designate a  
14 hearing officer and shall set a date for a hearing to take  
15 place within ninety days from the date the protest was filed  
16 pursuant to Section 7-1-24 NMSA 1978.

17           B. A taxpayer may appear at the hearing on the  
18 taxpayer's own behalf or may be represented by a bona fide  
19 employee, an attorney, a certified public accountant or, with  
20 respect only to tax imposed pursuant to the Income Tax Act, a  
21 person who is an enrolled agent for federal income tax  
22 purposes. If the taxation and revenue department and the  
23 taxpayer agree, the hearing may be conducted via  
24 videoconference. At the beginning of the hearing, the hearing  
25 officer shall inform the taxpayer of the taxpayer's right to

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1 representation. A hearing shall not be open to the public  
2 except upon request of the taxpayer. A hearing officer may  
3 postpone or continue a hearing at the hearing officer's  
4 discretion.

5 C. Within thirty days after the hearing, the  
6 hearing officer shall inform the taxation and revenue  
7 department and the taxpayer in writing of the decision and,  
8 pursuant to the provisions of Section 7-1-25 NMSA 1978, of the  
9 aggrieved party's right to, and the requirements for perfection  
10 of, an appeal from the decision to the court of appeals and of  
11 the consequences of a failure to appeal. The written decision  
12 shall embody an order granting or denying the relief requested  
13 or granting or denying a part of the relief requested, as  
14 appropriate.

15 D. A taxpayer with two or more protests containing  
16 related issues may request that the protests be combined and  
17 heard jointly. The hearing officer shall grant the request to  
18 combine protests unless it would create an unreasonable burden  
19 on the administrative hearings office or the taxation and  
20 revenue department.

21 E. Nothing in this section shall be construed to  
22 authorize a criminal proceeding or to authorize an  
23 administrative protest of the issuance of a subpoena or  
24 summons.

25 SECTION 6. [NEW MATERIAL] MOTOR VEHICLE ADMINISTRATIVE

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1 HEARINGS--PROCEDURES.--

2 A. A person may dispute the denial of or failure to  
3 either allow or deny a license, permit, placard or registration  
4 provided for in the Motor Vehicle Code. Upon timely receipt of  
5 a protest, the chief hearing officer shall promptly designate a  
6 hearing officer to conduct a hearing and shall set a date for  
7 the hearing. On that date, the hearing officer shall hear the  
8 protest.

9 B. A person may appear at a hearing set pursuant to  
10 the provisions of Subsection A of this section for the person's  
11 self or be represented by a bona fide employee or an attorney.  
12 A hearing shall not be open to the public except if held  
13 pursuant to the provisions of the Implied Consent Act or upon  
14 request of the person. A hearing officer may postpone or  
15 continue a hearing.

16 C. At the beginning of the hearing, the hearing  
17 officer shall inform the person of the person's right to  
18 representation. Within thirty days after the hearing, the  
19 hearing officer shall inform the protestant in writing of the  
20 decision and of the protestant's right to, and the requirements  
21 for perfection of, an appeal from the decision to the district  
22 court and of the consequences of a failure to appeal. The  
23 written decision shall embody an order granting or denying the  
24 relief requested or granting such part of the relief requested,  
25 as appropriate.

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1           D. If the protestant or the secretary of taxation  
2 and revenue is dissatisfied with the decision and order of the  
3 hearing officer, the party may appeal pursuant to the  
4 provisions of Section 39-3-1.1 NMSA 1978.

5           E. No court of this state has jurisdiction to  
6 entertain a proceeding by any person in which the person calls  
7 into question the application to that person of any provision  
8 of the Motor Vehicle Code, except as a consequence of the  
9 appeal by that person to the district court from the action and  
10 order of the hearing officer as provided for in this section.

11           F. Nothing in this section shall be construed to  
12 authorize a criminal proceeding or to authorize an  
13 administrative protest of the issuance of a subpoena or  
14 summons.

15           **SECTION 7.** Section 7-1-3 NMSA 1978 (being Laws 1965,  
16 Chapter 248, Section 3, as amended) is amended to read:

17           "7-1-3. DEFINITIONS.--Unless the context clearly  
18 indicates a different meaning, the definitions of words and  
19 phrases as they are stated in this section are to be used, and  
20 whenever in the Tax Administration Act these words and phrases  
21 appear, the singular includes the plural and the plural  
22 includes the singular:

23           A. "automated clearinghouse transaction" means an  
24 electronic credit or debit transmitted through an automated  
25 clearinghouse payable to the state treasurer and deposited with

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1 the fiscal agent of New Mexico;

2 B. "department" means the taxation and revenue  
3 department, the secretary or any employee of the department  
4 exercising authority lawfully delegated to that employee by the  
5 secretary;

6 C. "electronic payment" means a payment made by  
7 automated clearinghouse deposit, any funds wire transfer system  
8 or a credit card, debit card or electronic cash transaction  
9 through the internet;

10 D. "employee of the department" means any employee  
11 of the department, including the secretary, or any person  
12 acting as agent or authorized to represent or perform services  
13 for the department in any capacity with respect to any law made  
14 subject to administration and enforcement under the provisions  
15 of the Tax Administration Act;

16 E. "financial institution" means any state or  
17 federally chartered, federally insured depository institution;

18 F. "hearing officer" means a person who has been  
19 designated by the chief hearing officer to serve as a hearing  
20 officer and who is:

21 (1) the chief hearing officer;

22 (2) an employee of the administrative hearings  
23 office; or

24 (3) a contractor of the administrative  
25 hearings office;

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1           ~~[F.]~~ G. "Internal Revenue Code" means the Internal  
2 Revenue Code of 1986, as that code may be amended or its  
3 sections renumbered;

4           ~~[G.]~~ H. "levy" means the lawful power, hereby  
5 invested in the secretary, to take into possession or to  
6 require the present or future surrender to the secretary or the  
7 secretary's delegate of any property or rights to property  
8 belonging to a delinquent taxpayer;

9           ~~[H.]~~ I. "local option gross receipts tax" means a  
10 tax authorized to be imposed by a county or municipality upon  
11 the taxpayer's gross receipts, as that term is defined in the  
12 Gross Receipts and Compensating Tax Act, and required to be  
13 collected by the department at the same time and in the same  
14 manner as the gross receipts tax; "local option gross receipts  
15 tax" includes the taxes imposed pursuant to the Municipal Local  
16 Option Gross Receipts Taxes Act, Supplemental Municipal Gross  
17 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,  
18 Local Hospital Gross Receipts Tax Act, County Correctional  
19 Facility Gross Receipts Tax Act and such other acts as may be  
20 enacted authorizing counties or municipalities to impose taxes  
21 on gross receipts, which taxes are to be collected by the  
22 department in the same time and in the same manner as it  
23 collects the gross receipts tax;

24           ~~[I.]~~ J. "managed audit" means a review and analysis  
25 conducted by a taxpayer under an agreement with the department

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1 to determine the taxpayer's compliance with a tax administered  
2 pursuant to the Tax Administration Act and the presentation of  
3 the results to the department for assessment of tax found to be  
4 due;

5 ~~[J-]~~ K. "net receipts" means the total amount of  
6 money paid by taxpayers to the department in a month pursuant  
7 to a tax or tax act less any refunds disbursed in that month  
8 with respect to that tax or tax act;

9 ~~[K-]~~ L. "overpayment" means an amount paid,  
10 pursuant to any law subject to administration and enforcement  
11 under the provisions of the Tax Administration Act, by a person  
12 to the department or withheld from the person in excess of tax  
13 due from the person to the state at the time of the payment or  
14 at the time the amount withheld is credited against tax due;

15 ~~[L-]~~ M. "paid" includes the term "paid over";

16 ~~[M-]~~ N. "pay" includes the term "pay over";

17 ~~[N-]~~ O. "payment" includes the term "payment over";

18 ~~[O-]~~ P. "person" means any individual, estate,  
19 trust, receiver, cooperative association, club, corporation,  
20 company, firm, partnership, limited liability company, limited  
21 liability partnership, joint venture, syndicate, other  
22 association or gas, water or electric utility owned or operated  
23 by a county or municipality; "person" also means, to the extent  
24 permitted by law, a federal, state or other governmental unit  
25 or subdivision, or an agency, department or instrumentality

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1       thereof; and "person", as used in Sections 7-1-72 through  
2       7-1-74 NMSA 1978, also includes an officer or employee of a  
3       corporation, a member or employee of a partnership or any  
4       individual who, as such, is under a duty to perform any act in  
5       respect of which a violation occurs;

6               [~~P-~~] Q. "property" means property or rights to  
7       property;

8               [~~Q-~~] R. "property or rights to property" means any  
9       tangible property, real or personal, or any intangible property  
10      of a taxpayer;

11              [~~R-~~] S. "return" means any tax or information  
12      return, declaration of estimated tax or claim for refund,  
13      including any amendments or supplements to the return, required  
14      or permitted pursuant to a law subject to administration and  
15      enforcement pursuant to the Tax Administration Act and filed  
16      with the secretary or the secretary's delegate by or on behalf  
17      of any person;

18              [~~S-~~] T. "return information" means a taxpayer's  
19      name, address, government-issued identification number and  
20      other identifying information; any information contained in or  
21      derived from a taxpayer's return; any information with respect  
22      to any actual or possible administrative or legal action by an  
23      employee of the department concerning a taxpayer's return, such  
24      as audits, managed audits, denial of credits or refunds,  
25      assessments of tax, penalty or interest, protests of

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1 assessments or denial of refunds or credits, levies or liens;  
2 or any other information with respect to a taxpayer's return or  
3 tax liability that was not obtained from public sources or that  
4 was created by an employee of the department; but "return  
5 information" does not include statistical data or other  
6 information that cannot be associated with or directly or  
7 indirectly identify a particular taxpayer;

8 [F.] U. "secretary" means the secretary of taxation  
9 and revenue and, except for purposes of Subsection B of Section  
10 7-1-4 NMSA 1978 [~~and Subsection E of Section 7-1-24 NMSA 1978~~],  
11 also includes the deputy secretary or a division director or  
12 deputy division director delegated by the secretary;

13 [H.] V. "secretary or the secretary's delegate"  
14 means the secretary or any employee of the department  
15 exercising authority lawfully delegated to that employee by the  
16 secretary;

17 [V.] W. "security" means money, property or rights  
18 to property or a surety bond;

19 [W.] X. "state" means any state of the United  
20 States, the District of Columbia, the commonwealth of Puerto  
21 Rico and any territory or possession of the United States;

22 [X.] Y. "tax" means the total amount of each tax  
23 imposed and required to be paid, withheld and paid or collected  
24 and paid under provision of any law made subject to  
25 administration and enforcement according to the provisions of

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1 the Tax Administration Act and, unless the context otherwise  
2 requires, includes the amount of any interest or civil penalty  
3 relating thereto; "tax" also means any amount of any abatement  
4 of tax made or any credit, rebate or refund paid or credited by  
5 the department under any law subject to administration and  
6 enforcement under the provisions of the Tax Administration Act  
7 to any person contrary to law and includes, unless the context  
8 requires otherwise, the amount of any interest or civil penalty  
9 relating thereto;

10 ~~[Y. "taxpayer" means a person liable for payment of~~  
11 ~~any tax, a person responsible for withholding and payment or~~  
12 ~~for collection and payment of any tax a person to whom an~~  
13 ~~assessment has been made, if the assessment remains unabated or~~  
14 ~~the amount thereof has not been paid, or a person who entered~~  
15 ~~into a special agreement to assume the liability of gross~~  
16 ~~receipts tax or governmental gross receipts tax of another~~  
17 ~~person and the special agreement was approved by the secretary~~  
18 ~~pursuant to the Tax Administration Act; and]~~

19 Z. "tax return preparer" means a person who  
20 prepares for others for compensation or who employs one or more  
21 persons to prepare for others for compensation any return of  
22 income tax, a substantial portion of any return of income tax,  
23 any claim for refund with respect to income tax or a  
24 substantial portion of any claim for refund with respect to  
25 income tax; provided that a person shall not be a "tax return

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1 preparer" merely because such person:

2 (1) furnishes typing, reproducing or other  
3 mechanical assistance;

4 (2) is an employee who prepares an income tax  
5 return or claim for refund with respect to an income tax return  
6 of the employer, or of an officer or employee of the employer,  
7 by whom the person is regularly and continuously employed; or

8 (3) prepares as a trustee or other fiduciary  
9 an income tax return or claim for refund with respect to income  
10 tax for any person; and

11 AA. "taxpayer" means a person liable for payment of  
12 any tax; a person responsible for withholding and payment or  
13 for collection and payment of any tax; a person to whom an  
14 assessment has been made, if the assessment remains unabated or  
15 the amount thereof has not been paid; or a person who entered  
16 into a special agreement to assume the liability of gross  
17 receipts tax or governmental gross receipts tax of another  
18 person and the special agreement was approved by the secretary  
19 pursuant to the Tax Administration Act."

20 SECTION 8. Section 7-1-4.2 NMSA 1978 (being Laws 2003,  
21 Chapter 398, Section 2) is amended to read:

22 "7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights  
23 afforded New Mexico taxpayers during the assessment, collection  
24 and enforcement of any tax administered by the department as  
25 set forth in the Tax Administration Act include:

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1           A. the right to available public information and  
2 prompt and courteous tax assistance;

3           B. the right to be represented or advised by  
4 counsel or other qualified representatives at any time in  
5 administrative interactions with the department in accordance  
6 with the provisions of Section 7-1-24 NMSA 1978 or the  
7 administrative hearings office in accordance with the  
8 provisions of the Administrative Hearings Office Act;

9           C. the right to have audits, inspections of records  
10 and meetings conducted at a reasonable time and place in  
11 accordance with the provisions of Section 7-1-11 NMSA 1978;

12           D. the right to have the department conduct its  
13 audits in a timely and expeditious manner and be entitled to  
14 the tolling of interest as provided in the Tax Administration  
15 Act;

16           E. the right to obtain nontechnical information  
17 that explains the procedures, remedies and rights available  
18 during audit, protest, appeals and collection proceedings  
19 pursuant to the Tax Administration Act;

20           F. the right to be provided with an explanation of  
21 the results of and the basis for audits, assessments or denials  
22 of refunds that identify any amount of tax, interest or penalty  
23 due;

24           G. the right to seek review, through formal or  
25 informal proceedings, of any findings or adverse decisions

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1 relating to determinations during audit or protest procedures  
2 in accordance with the provisions of Section 7-1-24 NMSA 1978  
3 and the Administrative Hearings Office Act;

4 H. the right to have the taxpayer's tax information  
5 kept confidential unless otherwise specified by law, in  
6 accordance with Section 7-1-8 NMSA 1978;

7 I. the right to abatement of an assessment of taxes  
8 determined to have been incorrectly, erroneously or illegally  
9 made, as provided in Section 7-1-28 NMSA 1978 and the right to  
10 seek a compromise of an asserted tax liability by obtaining a  
11 written determination of liability or nonliability when the  
12 secretary in good faith is in doubt of the liability as  
13 provided in Section 7-1-20 NMSA 1978;

14 J. upon receipt of a tax assessment, the right to  
15 be informed clearly that if the assessment is not paid,  
16 secured, protested or otherwise provided for in accordance with  
17 the provisions of Section 7-1-16 NMSA 1978, the taxpayer will  
18 be a delinquent taxpayer and, upon notice of delinquency, the  
19 right to timely notice of any collection actions that will  
20 require sale or seizure of the taxpayer's property in  
21 accordance with the provisions of the Tax Administration Act;  
22 and

23 K. the right to procedures for payment of tax  
24 obligations by installment payment agreements, in accordance  
25 with Section 7-1-21 NMSA 1978."

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1           SECTION 9. Section 7-1-8.3 NMSA 1978 (being Laws 2009,  
2 Chapter 243, Section 5) is amended to read:

3           "7-1-8.3. INFORMATION THAT MAY BE REVEALED TO PUBLIC.--An  
4 employee of the department may reveal:

5           A. information obtained through the administration  
6 of a law not subject to administration and enforcement under  
7 the provisions of the Tax Administration Act to the extent that  
8 revealing that information is not otherwise prohibited by law;

9           B. return information with respect to the taxes or  
10 tax acts administered pursuant to Subsection B of Section 7-1-2  
11 NMSA 1978, except that:

12                   (1) return information for or relating to a  
13 period prior to July 1, 1985 with respect to [~~Sections 7-25-1~~  
14 ~~through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978~~] the  
15 Resources Excise Tax Act and the Severance Tax Act may be  
16 revealed only to a committee of the legislature for a valid  
17 legislative purpose;

18                   (2) except as provided in Paragraph (3) of  
19 this subsection, contracts and other agreements between the  
20 taxpayer and other parties and the proprietary information  
21 contained in those contracts and agreements shall not be  
22 revealed without the consent of all parties to the contract or  
23 agreement; and

24                   (3) audit workpapers and the proprietary  
25 information contained in the workpapers shall not be revealed

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1 except to:

2 (a) the ~~[minerals management service]~~  
3 bureau of safety and environmental enforcement of the United  
4 States department of the interior, if production occurred on  
5 federal land;

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

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

10 (d) the authorized representative of any  
11 of the persons in Subparagraphs (a) through (c) of this  
12 paragraph. This paragraph does not prohibit the revelation of  
13 proprietary information contained in the workpapers that is  
14 also available from returns or from other sources not subject  
15 to the provisions of Section 7-1-8 NMSA 1978;

16 C. return information with respect to the taxes,  
17 surtaxes, advance payments or tax acts administered pursuant to  
18 Subsection C of Section 7-1-2 NMSA 1978;

19 D. a decision and order made by a hearing officer  
20 pursuant to ~~[Section 7-1-24 NMSA 1978]~~ the provisions of the  
21 Administrative Hearings Office Act with respect to a protest  
22 filed with the secretary on or after July 1, 1993;

23 E. any written ruling on questions of evidence or  
24 procedure made by a hearing officer pursuant to ~~[Section 7-1-24~~  
25 ~~NMSA 1978]~~ the provisions of the Administrative Hearings Office

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1 Act; provided that the name and identification number of the  
2 taxpayer requesting the ruling shall not be revealed; and

3 F. return information included in a notice of lien  
4 or release or extinguishment of lien."

5 SECTION 10. Section 7-1-8.4 NMSA 1978 (being Laws 2009,  
6 Chapter 243, Section 6) is amended to read:

7 "7-1-8.4. INFORMATION THAT MAY BE REVEALED TO JUDICIAL  
8 BODIES OR WITH RESPECT TO JUDICIAL PROCEEDINGS OR  
9 INVESTIGATIONS AND TO ADMINISTRATIVE HEARINGS OFFICE.--An  
10 employee of the department may reveal to:

11 A. a district court, an appellate court or a  
12 federal court, a return or return information:

13 (1) in response to an order thereof in an  
14 action relating to taxes or an action for tax fraud or any  
15 other crime that may involve taxes due to the state and in  
16 which the information sought is about a taxpayer ~~[who]~~ that is  
17 party to the action and is material to the inquiry, in which  
18 case only that information may be required to be produced in  
19 court and admitted in evidence subject to court order  
20 protecting the confidentiality of the information and no more;

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

24 (3) in any matter in which the department is a  
25 party and the taxpayer has put the taxpayer's own liability for

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1 taxes at issue, in which case only that information regarding  
2 the taxpayer [~~who~~] that is party to the action may be produced,  
3 but this shall not prevent revelation of department policy or  
4 interpretation of law arising from circumstances of a taxpayer  
5 [~~who~~] that is not a party;

6 B. the Bernalillo county metropolitan court, upon  
7 that court's request, the last known address and the date of  
8 that address for every person the court certifies to the  
9 department as a person who owes fines, fees or costs to the  
10 court or who has failed to appear pursuant to a court order or  
11 a promise to appear;

12 C. a magistrate court, upon the magistrate court's  
13 request, the last known address and the date of that address  
14 for every person the court certifies to the department as a  
15 person who owes fines, fees or costs to the court or who has  
16 failed to appear pursuant to a court order or a promise to  
17 appear;

18 D. a district attorney, a state district court  
19 grand jury or federal grand jury, information for an  
20 investigation of or proceeding related to an alleged criminal  
21 violation of the tax laws; [~~and~~]

22 E. a third party subject to a subpoena or levy  
23 issued pursuant to the provisions of the Tax Administration  
24 Act, the identity of the taxpayer involved, the taxes or tax  
25 acts involved and the nature of the proceeding; and

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1           F. the administrative hearings office, information  
2 in relation to a protest or other hearing, in which case only  
3 that information regarding the taxpayer that is a party to the  
4 action may be produced, but this shall not prevent revelation  
5 of department policy or interpretation of law arising from  
6 circumstances of a taxpayer that is not a party. The office  
7 shall maintain confidentiality regarding taxpayer information  
8 as required by the provisions of Section 7-1-8 NMSA 1978."

9           SECTION 11. Section 7-1-22 NMSA 1978 (being Laws 1965,  
10 Chapter 248, Section 24, as amended) is amended to read:

11           "7-1-22. EXHAUSTION OF ADMINISTRATIVE REMEDIES.--No court  
12 of this state has jurisdiction to entertain any proceeding by a  
13 taxpayer in which the taxpayer calls into question the  
14 taxpayer's liability for any tax or the application to the  
15 taxpayer of any provision of the Tax Administration Act, except  
16 as a consequence of the appeal by the taxpayer to the court of  
17 appeals from the ~~[action and order of the secretary, all as~~  
18 ~~specified in Section 7-1-24 NMSA 1978]~~ order of a hearing  
19 officer, or except as a consequence of a claim for refund as  
20 specified in Section 7-1-26 NMSA 1978."

21           SECTION 12. Section 7-1-24 NMSA 1978 (being Laws 1965,  
22 Chapter 248, Section 26, as amended) is amended to read:

23           "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

24           A. ~~[Any]~~ A taxpayer may dispute:

25                   (1) the assessment to the taxpayer of any



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1 amount of tax;

2 (2) the application to the taxpayer of any  
3 provision of the Tax Administration Act except the issuance of  
4 a subpoena or summons; or

5 (3) the denial of or failure either to allow  
6 or to deny a:

7 (a) credit or rebate; or

8 (b) claim for refund made in accordance  
9 with Section 7-1-26 NMSA 1978.

10 B. The taxpayer may dispute a matter described in  
11 Subsection A of this section by filing with the secretary a  
12 written protest. Every protest shall identify the taxpayer and  
13 the tax credit, rebate, property or provision of the Tax  
14 Administration Act involved and state the grounds for the  
15 taxpayer's protest and the affirmative relief requested. The  
16 statement of grounds for protest shall specify individual  
17 grounds upon which the protest is based and a summary statement  
18 of the evidence, if any, expected to be produced supporting  
19 each ground asserted; provided that the taxpayer may supplement  
20 the statement at any time prior to ten days before [~~any~~] the  
21 hearing conducted on the protest pursuant to [~~Section 7-1-24.1~~  
22 ~~NMSA 1978~~] the provisions of the Administrative Hearings Office  
23 Act or, if a scheduling order has been issued, in accordance  
24 with the scheduling order. The secretary may, in appropriate  
25 cases, provide for an informal conference before [~~setting~~] a

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1 hearing of the protest is set by the administrative hearings  
2 office or before acting on [~~any~~] a claim for refund. In the  
3 case of an assessment of tax by the department, a protest may  
4 be filed without making payment of the amount assessed.

5 C. [~~Any~~] A protest by a taxpayer shall be filed  
6 within ninety days of the date of the mailing to or service  
7 upon the taxpayer by the department of the notice of assessment  
8 or other peremptory notice or demand, the date of mailing or  
9 filing a return, the date of the application to the taxpayer of  
10 the applicable provision of the Tax Administration Act, the  
11 date of denial of a claim pursuant to Section [~~7-1-24.1~~] 7-1-26  
12 NMSA 1978 or the last date upon which the department was  
13 required to take action on the claim but failed to take action.  
14 If a protest is not filed within the time required, the  
15 secretary may proceed to enforce collection of any tax if the  
16 taxpayer is delinquent within the meaning of Section 7-1-16  
17 NMSA 1978. The fact that the department did not mail the  
18 assessment or other peremptory notice or demand by certified or  
19 registered mail or otherwise demand and receive acknowledgment  
20 of receipt by the taxpayer shall not be deemed to demonstrate  
21 the taxpayer's inability to protest within the required time.

22 D. No proceedings other than those to enforce  
23 collection of [~~any~~] an amount assessed as tax and to protect  
24 the interest of the state by injunction, as provided in  
25 Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and

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1 7-1-58 NMSA 1978, are stayed by timely filing of a protest  
2 ~~[under]~~ pursuant to the provisions of this section.

3 E. Nothing in this section shall be construed to  
4 authorize ~~[any]~~ a criminal ~~[proceedings hereunder]~~ proceeding  
5 or to authorize an administrative protest of the issuance of a  
6 subpoena or summons."

7 SECTION 13. Section 7-1-25 NMSA 1978 (being Laws 1965,  
8 Chapter 248, Section 27, as amended) is amended to read:

9 "7-1-25. APPEALS FROM ~~[SECRETARY'S]~~ HEARING OFFICER'S  
10 DECISION AND ORDER.--

11 A. If the protestant or secretary is dissatisfied  
12 with the decision and order of the hearing officer, the party  
13 may appeal to the court of appeals for further relief, but only  
14 to the same extent and upon the same theory as was asserted in  
15 the hearing before the hearing officer. All such appeals shall  
16 be upon the record made at the hearing and shall not be de  
17 novo. All such appeals to the court of appeals shall be taken  
18 within thirty days of the date of mailing or delivery of the  
19 written decision and order of the hearing officer to the  
20 protestant, and, if not so taken, the decision and order are  
21 conclusive.

22 B. The procedure for perfecting an appeal under  
23 this section to the court of appeals shall be as provided by  
24 the Rules of Appellate Procedure.

25 C. Upon appeal, the court shall set aside a

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1 decision and order of the hearing officer only if found to be:

2 (1) arbitrary, capricious or an abuse of  
3 discretion;

4 (2) not supported by substantial evidence in  
5 the record; or

6 (3) otherwise not in accordance with the law.

7 D. If the secretary appeals a decision of the  
8 hearing officer and the court's decision, from which either no  
9 appeal is taken or no appeal may be taken, upholds the decision  
10 of the hearing officer, the court shall award reasonable  
11 ~~[attorney's]~~ attorney fees to the protestant. If the decision  
12 upholds the hearing officer's decision only in part, the award  
13 shall be limited to reasonable ~~[attorney's]~~ attorney fees  
14 associated with the portion upheld."

15 SECTION 14. Section 7-1-26 NMSA 1978 (being Laws 1965,  
16 Chapter 248, Section 28, as amended) is amended to read:

17 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE  
18 OR REFUND.--

19 A. ~~[Any]~~ A person who believes that an amount of  
20 tax has been paid by or withheld from that person in excess of  
21 that for which the person was liable, who has been denied any  
22 credit or rebate claimed or who claims a prior right to  
23 property in the possession of the department pursuant to a levy  
24 made under authority of Sections 7-1-31 through 7-1-34 NMSA  
25 1978 may claim a refund by directing to the secretary, within

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1 the time limited by the provisions of Subsections D and E of  
2 this section, a written claim for refund. Except as provided  
3 in Subsection I of this section, a refund claim shall include:

4 (1) the taxpayer's name, address and  
5 identification number;

6 (2) the type of tax for which a refund is  
7 being claimed, the credit or rebate denied or the property  
8 levied upon;

9 (3) the sum of money or other property being  
10 claimed;

11 (4) with respect to refund, the period for  
12 which overpayment was made; and

13 (5) a brief statement of the facts and the law  
14 on which the claim is based, which may be referred to as the  
15 "basis for the refund".

16 B. The secretary or the secretary's delegate may  
17 allow the claim in whole or in part or may deny the claim.

18 (1) If the claim is denied in whole or in part  
19 in writing, no claim may be refiled with respect to that which  
20 was denied, but the person, within ninety days after either the  
21 mailing or delivery of the denial of all or any part of the  
22 claim, may elect to pursue one, but not more than one, of the  
23 remedies in Subsection C of this section.

24 (2) If the department has neither granted nor  
25 denied any portion of a claim for refund within one hundred

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1 twenty days of the date the claim was mailed or delivered to  
2 the department, the person may refile it within the time limits  
3 set forth in Subsection D of this section or may within ninety  
4 days elect to pursue one, but only one, of the remedies in  
5 Subsection C of this section. After the expiration of the two  
6 hundred ten days from the date the claim was mailed or  
7 delivered to the department, the department may not approve or  
8 disapprove the claim unless the person has pursued one of the  
9 remedies under Subsection C of this section.

10 C. A person may elect to pursue ~~[one, but only]~~ no  
11 more than one of the remedies in Paragraphs (1) and (2) of this  
12 subsection. ~~[In any case, if]~~ A person ~~[does timely pursue]~~  
13 who timely pursues more than one remedy ~~[the person]~~ shall be  
14 deemed to have elected the first remedy invoked. The ~~[remedies~~  
15 ~~are as follows: (1) the]~~ person may:

16 (1) direct to the secretary, pursuant to the  
17 provisions of Section 7-1-24 NMSA 1978, a written protest  
18 ~~[against the denial of, or failure to either allow or deny, the~~  
19 ~~claim or portion of the claim]~~ that shall set forth:

20 (a) the circumstances of: 1) an alleged  
21 overpayment; 2) a denied credit; 3) a denied rebate; or 4) a  
22 denial of a prior right to property levied upon by the  
23 department;

24 (b) an allegation that, because of that  
25 overpayment or denial, the state is indebted to the taxpayer

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1 for a specified amount, including any allowed interest, or for  
2 the property;

3 (c) demanding the refund to the taxpayer  
4 of that amount or that property; and

5 (d) reciting the facts of the claim for  
6 refund; or

7 (2) [~~the person may~~] commence a civil action  
8 in the district court for Santa Fe county by filing a complaint  
9 setting forth the circumstance of the claimed overpayment,  
10 denied credit or rebate or denial of a prior right to property  
11 levied upon by the department alleging that on account thereof  
12 the state is indebted to the plaintiff in the amount or  
13 property stated, together with any interest allowable,  
14 demanding the refund to the plaintiff of that amount or  
15 property and reciting the facts of the claim for refund. The  
16 plaintiff or the secretary may appeal from any final decision  
17 or order of the district court to the court of appeals.

18 D. Except as otherwise provided in Subsection E of  
19 this section, no credit or refund of any amount may be allowed  
20 or made to any person unless as the result of a claim made by  
21 that person as provided in this section:

22 (1) within three years of the end of the  
23 calendar year in which:

24 (a) the payment was originally due or  
25 the overpayment resulted from an assessment by the department

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1 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

2 (b) the final determination of value  
3 occurs with respect to any overpayment that resulted from a  
4 disapproval by any agency of the United States or the state of  
5 New Mexico or any court of increase in value of a product  
6 subject to taxation under the Oil and Gas Severance Tax Act,  
7 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency  
8 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act  
9 or the Natural Gas Processors Tax Act;

10 (c) property was levied upon pursuant to  
11 the provisions of the Tax Administration Act; or

12 (d) an overpayment of New Mexico tax  
13 resulted from: 1) an internal revenue service audit adjustment  
14 or a federal refund paid due to an adjustment of an audit by  
15 the internal revenue service or an amended federal return; or  
16 2) making a change to a federal return for which federal  
17 approval is required by the Internal Revenue Code;

18 (2) when an amount of a claim for credit under  
19 the provisions of the Investment Credit Act, Laboratory  
20 Partnership with Small Business Tax Credit Act or Technology  
21 Jobs Tax Credit Act or for the rural job tax credit pursuant to  
22 Section 7-2E-1.1 NMSA 1978 or similar credit has been denied,  
23 the taxpayer may claim a refund of the credit no later than one  
24 year after the date of the denial;

25 (3) when a taxpayer under audit by the

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1 department has signed a waiver of the limitation on assessments  
2 on or after July 1, 1993 pursuant to Subsection F of Section  
3 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of  
4 the same tax paid for the same period for which the waiver was  
5 given, until a date one year after the later of the date of the  
6 mailing of an assessment issued pursuant to the audit, the date  
7 of the mailing of final audit findings to the taxpayer or the  
8 date a proceeding is begun in court by the department with  
9 respect to the same tax and the same period;

10 (4) if the payment of an amount of tax was not  
11 made within three years of the end of the calendar year in  
12 which the original due date of the tax or date of the  
13 assessment of the department occurred, a claim for refund of  
14 that amount of tax can be made within one year of the date on  
15 which the tax was paid; or

16 (5) when a taxpayer has been assessed a tax on  
17 or after July 1, 1993 under Subsection B, C or D of Section  
18 7-1-18 NMSA 1978 and when the assessment applies to a period  
19 ending at least three years prior to the beginning of the year  
20 in which the assessment was made, the taxpayer may claim a  
21 refund for the same tax for the period of the assessment or for  
22 any period following that period within one year of the date of  
23 the assessment unless a longer period for claiming a refund is  
24 provided in this section.

25 E. No credit or refund shall be allowed or made to

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1 any person claiming a refund of gasoline tax under Section  
2 7-13-11 NMSA 1978 unless notice of the destruction of the  
3 gasoline was given the department within thirty days of the  
4 actual destruction and the claim for refund is made within six  
5 months of the date of destruction. No credit or refund shall  
6 be allowed or made to any person claiming a refund of gasoline  
7 tax under Section 7-13-17 NMSA 1978 unless the refund is  
8 claimed within six months of the date of purchase of the  
9 gasoline and the gasoline has been used at the time the claim  
10 for refund is made.

11 F. If as a result of an audit by the department or  
12 a managed audit covering multiple periods an overpayment of tax  
13 is found in any period under the audit, that overpayment may be  
14 credited against an underpayment of the same tax found in  
15 another period under audit pursuant to Section 7-1-29 NMSA  
16 1978, provided that the taxpayer files a claim for refund for  
17 the overpayments identified in the audit.

18 G. Any refund of tax paid under any tax or tax act  
19 administered under Subsection B of Section 7-1-2 NMSA 1978 may  
20 be made, at the discretion of the department, in the form of  
21 credit against future tax payments if future tax liabilities in  
22 an amount at least equal to the credit amount reasonably may be  
23 expected to become due.

24 H. For the purposes of this section, ~~[the term]~~  
25 "oil and gas tax return" means a return reporting tax due with

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1 respect to oil, natural gas, liquid hydrocarbons, carbon  
2 dioxide, helium or nonhydrocarbon gas pursuant to the Oil and  
3 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,  
4 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad  
5 Valorem Production Tax Act, the Natural Gas Processors Tax Act  
6 or the Oil and Gas Production Equipment Ad Valorem Tax Act.

7 I. The filing of a fully completed original income  
8 tax return, corporate income tax return, corporate income and  
9 franchise tax return, estate tax return or special fuel excise  
10 tax return that shows a balance due the taxpayer or a fully  
11 completed amended income tax return, an amended corporate  
12 income tax return, an amended corporate income and franchise  
13 tax return, an amended estate tax return, an amended special  
14 fuel excise tax return or an amended oil and gas tax return  
15 that shows a lesser tax liability than the original return  
16 constitutes the filing of a claim for refund for the difference  
17 in tax due shown on the original and amended returns."

18 SECTION 15. Section 7-1-29.1 NMSA 1978 (being Laws 2003,  
19 Chapter 398, Section 12) is amended to read:

20 "7-1-29.1. AWARDING OF COSTS AND FEES.--

21 A. In any administrative or court proceeding that  
22 is brought by or against the taxpayer on or after July 1, 2003  
23 in connection with the determination, collection or refund of  
24 any tax, interest or penalty for a tax governed by the  
25 provisions of the Tax Administration Act, the taxpayer shall be

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1 awarded a judgment or a settlement for reasonable  
2 administrative costs incurred in connection with an  
3 administrative proceeding with the department or the  
4 administrative hearings office or reasonable litigation costs  
5 incurred in connection with a court proceeding, if the taxpayer  
6 is the prevailing party.

7 B. As used in this section:

8 (1) "administrative proceeding" means any  
9 procedure or other action before the department or the  
10 administrative hearings office;

11 (2) "court proceeding" means any civil action  
12 brought in state district court;

13 (3) "reasonable administrative costs" means:

14 (a) any administrative fees or similar  
15 charges imposed by the department or the administrative  
16 hearings office; and

17 (b) actual charges for: 1) filing fees,  
18 court reporter fees, service of process fees and similar  
19 expenses; 2) the services of expert witnesses; 3) any study,  
20 analysis, report, test or project reasonably necessary for the  
21 preparation of the party's case; and 4) fees and costs paid or  
22 incurred for the services in connection with the proceeding of  
23 attorneys or of certified public accountants who are authorized  
24 to practice [~~before the department~~] in the context of an  
25 administrative proceeding; and

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1 (4) "reasonable litigation costs" means:  
2 (a) reasonable court costs; and  
3 (b) actual charges for: 1) filing fees,  
4 court reporter fees, service of process fees and similar  
5 expenses; 2) the services of expert witnesses; 3) any study,  
6 analysis, report, test or project reasonably necessary for the  
7 preparation of the party's case; and 4) fees and costs paid or  
8 incurred for the services of attorneys in connection with the  
9 proceeding.

10 C. For purposes of this section:

11 (1) the taxpayer is the prevailing party if  
12 the taxpayer has:

13 (a) substantially prevailed with respect  
14 to the amount in controversy; or

15 (b) substantially prevailed with respect  
16 to most of the issues involved in the case or the most  
17 significant issue or set of issues involved in the case;

18 (2) the taxpayer shall not be treated as the  
19 prevailing party if, prior to July 1, 2015, the department, or,  
20 on or after July 1, 2015, the hearing officer, establishes that  
21 the position of the department in the proceeding was based upon  
22 a reasonable application of the law to the facts of the case.  
23 For purposes of this paragraph, the position of the department  
24 shall be presumed not to be based upon a reasonable application  
25 of the law to the facts of the case if:

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1 (a) the department did not follow ~~[its]~~  
2 applicable published guidance in the proceeding; or

3 (b) the assessment giving rise to the  
4 proceeding is not supported by substantial evidence determined  
5 at the time of the issuance of the assessment;

6 (3) as used in Subparagraph (a) of Paragraph  
7 (2) of this subsection, "applicable published guidance" means:

8 (a) department or administrative  
9 hearings office regulations, information releases,  
10 instructions, notices, technical advice memoranda and  
11 announcements; and

12 (b) private letter rulings and letters  
13 issued by the department to the taxpayer; and

14 (4) the determination of whether the taxpayer  
15 is the prevailing party and the amount of reasonable litigation  
16 costs or reasonable administrative costs shall be made by  
17 agreement of the parties or:

18 (a) in the case where the final  
19 determination with respect to the tax, interest or penalty is  
20 made in an administrative proceeding, by the ~~[department]~~  
21 hearing officer; or

22 (b) in the case where the final  
23 determination is made by the court, the court.

24 D. An order granting or denying in whole or in part  
25 an award for reasonable litigation costs pursuant to Subsection

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1 A of this section in a court proceeding may be incorporated as  
2 a part of the decision or judgment in the court proceeding and  
3 shall be subject to appeal in the same manner as the decision  
4 or judgment. A decision or order granting or denying in whole  
5 or in part an award for reasonable administrative costs  
6 pursuant to Subsection A of this section by [~~the department~~] a  
7 hearing officer shall be reviewable in the same manner as a  
8 decision of [~~the department~~] a hearing officer.

9 E. No agreement for or award of reasonable  
10 administrative costs or reasonable litigation costs in any  
11 administrative or court proceeding pursuant to Subsection A of  
12 this section shall exceed the lesser of twenty percent of the  
13 amount of the settlement or judgment or fifty thousand dollars  
14 (\$50,000). A taxpayer awarded administrative litigation costs  
15 pursuant to this section may not receive an award of attorney  
16 fees pursuant to Subsection D of Section 7-1-25 NMSA 1978."

17 SECTION 16. Section 7-38-21 NMSA 1978 (being Laws 1973,  
18 Chapter 258, Section 61, as amended) is amended to read:

19 "7-38-21. PROTESTS--ELECTION OF REMEDIES.--

20 A. A property owner may protest the value or  
21 classification determined for [~~his~~] the property owner's  
22 property for property taxation purposes, the allocation of  
23 value of [~~his~~] the property to a particular governmental unit  
24 or a denial of a claim for an exemption or for a limitation on  
25 increase in value either by:

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1 (1) filing, as provided in the Property Tax  
2 Code, a petition of protest with:

3 (a) the ~~[director]~~ administrative  
4 hearings office; or

5 (b) the county assessor ~~[as provided in~~  
6 ~~the Property Tax Code]~~; or

7 (2) filing a claim for refund after paying  
8 ~~[his]~~ the property owner's taxes as provided in the Property  
9 Tax Code.

10 B. The initiation of a protest under Paragraph (1)  
11 of Subsection A of this section is an election to pursue that  
12 remedy and is an unconditional and irrevocable waiver of the  
13 right to pursue the remedy provided ~~[under]~~ in Paragraph (2) of  
14 Subsection A of this section.

15 C. A property owner may also protest the  
16 application to ~~[his]~~ the property owner's property of any  
17 administrative fee adopted pursuant to Section 7-38-36.1 NMSA  
18 1978 by filing a claim for refund after paying ~~[his]~~ the  
19 property owner's taxes as provided in the Property Tax Code."

20 SECTION 17. Section 7-38-22 NMSA 1978 (being Laws 1973,  
21 Chapter 258, Section 62, as amended) is amended to read:

22 "7-38-22. PROTESTING VALUES, CLASSIFICATION, ALLOCATION  
23 OF VALUES AND DENIAL OF EXEMPTION DETERMINED BY THE DIVISION.--

24 A. A property owner may protest the value or  
25 classification determined by the division for ~~[his]~~ the

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1 property owner's property for property taxation purposes or the  
2 division's allocation of value of [~~his~~] the property owner's  
3 property to a particular governmental unit or the denial of a  
4 claim for an exemption by filing a petition with the [~~director~~]  
5 administrative hearings office. Filing a petition in  
6 accordance with this section entitles a property owner to a  
7 hearing on [~~his~~] the property owner's protest.

8 B. Petitions shall:

9 (1) be filed [~~with the division~~] no later than  
10 thirty days after the mailing by the division of the notice of  
11 valuation;

12 (2) state the property owner's name and  
13 address and the description of the property;

14 (3) state why the property owner believes the  
15 value, classification, [~~the~~] allocation of value or denial of  
16 an exemption is incorrect and what [~~he~~] the property owner  
17 believes the correct value, classification, allocation of value  
18 or exemption to be;

19 (4) state the value, classification,  
20 allocation of value or exemption that is not in controversy;  
21 and

22 (5) contain such other information as the  
23 [~~division~~] administrative hearings office may by [~~regulation~~]  
24 rule require.

25 C. The [~~division~~] administrative hearings office

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1 shall notify the director and the property owner by certified  
2 mail of the date, time and place that [~~he~~] the parties may  
3 appear before the [~~director~~] administrative hearings office to  
4 [~~support his~~] present evidence related to the petition. The  
5 notice shall be mailed at least fifteen days prior to the  
6 hearing date.

7 D. The director may provide for an informal  
8 conference on the protest before the hearing."

9 SECTION 18. Section 7-38-23 NMSA 1978 (being Laws 1973,  
10 Chapter 258, Section 63, as amended) is amended to read:

11 "7-38-23. PROTEST HEARINGS--VERBATIM RECORD--ACTION BY  
12 HEARING OFFICER--TIME LIMITATIONS.--

13 A. Except for the rules relating to discovery, the  
14 technical rules of evidence and the Rules of Civil Procedure  
15 for the District Courts do not apply at a protest [~~hearings~~  
16 ~~before the hearing officer~~] hearing conducted pursuant to the  
17 provisions of the Property Tax Code, but the [~~hearings~~] hearing  
18 shall be conducted so that an ample opportunity is provided for  
19 the presentation of complaints and defenses. All testimony  
20 shall be taken under oath. A verbatim record of the hearings  
21 shall be made but need not be transcribed unless required for  
22 appeal purposes. A hearing officer shall be designated by the  
23 [~~secretary~~] chief hearing officer of the administrative  
24 hearings office to conduct the hearing.

25 B. Final action taken by the hearing officer on a

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1 petition shall be by written order. The hearing officer's  
2 order shall be made within thirty days after the date of the  
3 hearing, but this time limitation may be extended by agreement  
4 of the department and the protestant. A copy of the order  
5 shall be sent immediately by certified mail to the property  
6 owner. A copy of the order shall also be sent to the county  
7 assessor.

8 C. All protests shall be decided within one hundred  
9 twenty days of the date the protest is filed unless the parties  
10 otherwise agree. The protest shall be denied if the property  
11 owner or [~~his~~] the property owner's authorized representative  
12 fails, without reasonable justification, to appear at the  
13 hearing.

14 D. The hearing officer's order shall be in the name  
15 of the [~~secretary~~] chief hearing officer, dated, state the  
16 changes to be made in the valuation records, if any, and direct  
17 the county assessor to take appropriate action. The department  
18 shall make any changes in its valuation records required by the  
19 order.

20 E. Changes in the valuation records shall clearly  
21 indicate that the prior entry has been superseded by an order  
22 of the hearing officer.

23 F. The department shall maintain a file of all  
24 orders made pursuant to this section. The file shall be open  
25 for public inspection.

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1           G. If an order of the hearing officer is appealed  
2 under Section 7-38-28 NMSA 1978, the department shall  
3 immediately notify the appropriate county assessor of the  
4 appeal. Notations shall be made in the valuation records of  
5 the assessor and the department indicating the pendency of the  
6 appeal."

7           **SECTION 19.** Section 7-38-28 NMSA 1978 (being Laws 1973,  
8 Chapter 258, Section 68, as amended) is amended to read:

9           "7-38-28. APPEALS FROM ORDERS OF THE [~~DIRECTOR~~] HEARING  
10 OFFICER OR COUNTY VALUATION PROTESTS BOARDS.--

11           A. A property owner may appeal an order made by  
12 [~~the director~~] a hearing officer or a county valuation protests  
13 board by filing an appeal pursuant to the provisions of Section  
14 39-3-1.1 NMSA 1978.

15           B. The director shall notify the appropriate county  
16 assessor of the decision and order of the district court and  
17 shall direct the assessor to take appropriate action to comply  
18 with the decision and order."

19           **SECTION 20.** Section 9-11-6.2 NMSA 1978 (being Laws 1995,  
20 Chapter 31, Section 3) is amended to read:

21           "9-11-6.2. ADMINISTRATIVE REGULATIONS, RULINGS,  
22 INSTRUCTIONS AND ORDERS--PRESUMPTION OF CORRECTNESS.--

23           A. The secretary is empowered and directed to issue  
24 and file as required by law all regulations, rulings,  
25 instructions or orders necessary to implement and enforce any

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1 provision of any law the administration and enforcement of  
2 which the department, the secretary, any division of the  
3 department or any director of any division of the department is  
4 charged, including all rules and regulations necessary by  
5 reason of any alteration of any such law. In order to  
6 accomplish its purpose, this provision is to be liberally  
7 construed.

8 B. Directives issued by the secretary shall be in  
9 form substantially as follows:

10 (1) regulations shall be written statements of  
11 the secretary of general application, interpreting and  
12 exemplifying the ~~[statues]~~ statutes to which they relate;

13 (2) rulings shall be written statements of the  
14 secretary, of limited application to one or a small number of  
15 persons, interpreting the statutes to which they relate,  
16 ordinarily issued in response to a request for clarification of  
17 the consequences of a specified set of circumstances;

18 (3) orders shall be written statements of the  
19 secretary or ~~[a hearing officer or]~~ other delegate of the  
20 secretary to implement a decision after a hearing; and

21 (4) instructions shall be other written  
22 statements or directives of the secretary or secretary's  
23 delegate not dealing with the merits of any law but otherwise  
24 in aid of the accomplishment of the duties of the secretary.

25 C. To be effective, any ruling or regulation issued

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1 by the secretary shall be reviewed by the attorney general or  
2 other legal counsel of the department prior to being filed as  
3 required by law, and the fact of the review shall be indicated  
4 on the ruling or regulation.

5 D. To be effective, a regulation shall first be  
6 issued as a proposed regulation and filed for public inspection  
7 in the office of the secretary. Unless otherwise provided by  
8 statute, no regulation affecting any person or agency outside  
9 the department shall be adopted, amended or repealed without a  
10 public hearing on the proposed action before the secretary or a  
11 hearing officer designated by the secretary. The public  
12 hearing shall be held in Santa Fe unless otherwise permitted by  
13 statute. Notice of the subject matter of the regulation, the  
14 action proposed to be taken, the time and place of the hearing,  
15 the manner in which interested parties may present their views  
16 and the method by which copies of the proposed regulation,  
17 proposed amendment or repeal of an existing regulation may be  
18 obtained shall be published at least thirty days prior to the  
19 hearing date in [a] the New Mexico register and mailed at least  
20 thirty days prior to the hearing date to all persons who have  
21 made a written request for advance notice of hearing. After  
22 the proposed regulation has been on file for not less than  
23 sixty days and a public hearing on the proposed action has been  
24 held by the secretary or a hearing officer designated by the  
25 secretary, the secretary may issue it as a final regulation by

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1 signing the regulation and filing the regulation in the manner  
2 required by law. The secretary shall not delegate the  
3 authority to sign regulations.

4 E. In addition to filing copies of regulations with  
5 the state records center and archives as required by law, the  
6 secretary shall maintain in the office of the secretary a  
7 duplicate official set of current and superseded regulations, a  
8 set of current and superseded rulings and such additional sets  
9 of those regulations and rulings as appear necessary, which  
10 duplicate or additional sets shall be available for inspection  
11 by the public, but superseded regulations need be maintained  
12 for no longer than ten years from the date of supersession.

13 F. The secretary shall develop and maintain a file  
14 of names and addresses of individuals and professional and  
15 industry groups having an interest in the promulgation of new,  
16 revised or proposed regulations. At convenient times, the  
17 secretary shall distribute to these persons all such  
18 regulations and all pertinent rulings, making such charges as  
19 will defray the expense incurred in their physical preparation  
20 and mailing. Such charges are appropriated to the department  
21 to defray the costs of preparing and distributing regulations  
22 and rulings.

23 G. Any regulation, ruling, instruction or order  
24 issued by the secretary or [~~order or instruction issued by a~~  
25 ~~hearing officer or other~~] delegate of the secretary is presumed

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1 to be a proper implementation of the provisions of the laws  
2 that are charged to the department, the secretary, any division  
3 of the department or any director of any division of the  
4 department.

5 H. The extent to which regulations, rulings and  
6 orders will have retroactive effect shall be stated and, if no  
7 such statement is made, they will be applied prospectively  
8 only.

9 I. An interested person may petition the secretary  
10 to request the promulgation, amendment or repeal of a rule and  
11 may accompany the petition with data, views and arguments in  
12 support of the petition. Within thirty days after the  
13 submission of the petition, the secretary shall deny the  
14 petition in writing, stating the reasons for the denial, or  
15 initiate rulemaking proceedings.

16 J. An interested person who is adversely affected  
17 by a rule promulgated by the secretary or, pursuant to  
18 Subsection I of this section, by an action of the secretary to  
19 promulgate, amend or repeal a rule or deny a petition  
20 requesting the secretary to promulgate, amend or repeal a rule,  
21 may appeal to the court of appeals for relief. An appeal shall  
22 be on the record made at a hearing before the secretary and  
23 shall be taken to the court of appeals within thirty days after  
24 the date of the secretary's action.

25 K. On appeal of a rule, or of an action made by the

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1 secretary pursuant to Subsection I of this section, the court  
2 shall set aside the rule or the secretary's action only if it  
3 is found to be:

4 (1) arbitrary, capricious or an abuse of  
5 discretion;

6 (2) not supported by substantial evidence in  
7 the record; or

8 (3) otherwise not in accordance with law.

9 L. After a hearing and a showing of good cause by  
10 the appellant, a stay of the rule, or the secretary's action  
11 made pursuant to Subsection I of this section, being appealed  
12 may be granted, pending the outcome of the judicial review.  
13 The stay of the rule or the secretary's action may be granted  
14 by the secretary on application for a stay or, if the secretary  
15 denies a stay within ninety days after receipt of the  
16 application, by the court of appeals."

17 SECTION 21. Section 66-2-11 NMSA 1978 (being Laws 1978,  
18 Chapter 35, Section 15, as amended) is amended to read:

19 "66-2-11. GIVING OF NOTICE.--Whenever the department or  
20 the administrative hearings office is authorized or required to  
21 give any notice under the Motor Vehicle Code or any other law  
22 regulating the operation of vehicles, unless a different method  
23 of giving notice is otherwise expressly prescribed, notice  
24 shall be given either by personal delivery to the person to be  
25 notified or by deposit in the United States mail of the notice

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1 in an envelope with postage prepaid, addressed to the person at  
2 [his] the person's address as shown by the records of the  
3 department. The giving of notice by mail is complete upon the  
4 expiration of seven days after deposit of the notice. Proof of  
5 the giving of notice in either manner may be made by the  
6 certificate of any officer or employee of the department or  
7 affidavit of any person over eighteen years of age, naming the  
8 person to whom the notice was given and specifying the time,  
9 place and manner of the giving of the notice. Notice is given  
10 when a person refuses to accept notice."

11 SECTION 22. Section 66-2-17 NMSA 1978 (being Laws 1995,  
12 Chapter 129, Section 3) is amended to read:

13 "66-2-17. ADMINISTRATIVE HEARING--PROCEDURE [~~APPEALS FROM~~  
14 ~~SECRETARY'S DECISION AND ORDER--EXHAUSTION OF ADMINISTRATIVE~~  
15 ~~REMEDIES]~~.--

16 A. Unless a more specific provision for review  
17 exists, any person may dispute the denial of, or failure to  
18 either allow or deny, any license, permit, placard or  
19 registration provided for under the Motor Vehicle Code by  
20 filing with the secretary a written protest against the action  
21 or inaction [~~taken~~] by the department. Every protest shall  
22 identify the person and the action or inaction that is in  
23 dispute, the grounds for the protest and the affirmative relief  
24 requested. The statement of grounds for protest shall specify  
25 individual grounds upon which the protest is based and a

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1 summary statement of the evidence expected to be produced  
2 supporting each ground asserted, if any; provided that the  
3 person may supplement the statement at any time prior to ~~[any]~~  
4 a hearing conducted on the protest ~~[under Subsection D of this~~  
5 ~~section]~~ pursuant to the provisions of the Administrative  
6 Hearings Office Act. The secretary may, in appropriate cases,  
7 provide for an informal conference before ~~[setting]~~ the  
8 administrative hearings office sets a hearing of the protest.

9 B. Any protest by a person shall be filed within  
10 thirty days of the date of the mailing or verbal notification  
11 of the action proposed to be taken by the department. If a  
12 protest is not filed within the time required for filing a  
13 protest, the secretary may proceed with the action ~~[or~~  
14 ~~inaction]~~ proposed by the department.

15 ~~[G. Upon timely receipt of a protest, the~~  
16 ~~department or hearing officer shall promptly set a date for~~  
17 ~~hearing and on that date hear the protest.~~

18 ~~D. A hearing officer shall be designated by the~~  
19 ~~secretary to conduct the hearing. A person may appear at a~~  
20 ~~hearing for himself or be represented by a bona fide employee~~  
21 ~~or an attorney. Hearings shall not be open to the public~~  
22 ~~except upon request of the person and may be postponed or~~  
23 ~~continued at the discretion of the hearing officer.~~

24 ~~E. In hearings before the hearing officer, the~~  
25 ~~technical rules of evidence shall not apply, but in ruling on~~

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1 ~~the admissibility of evidence, the hearing officer may require~~  
2 ~~reasonable substantiation of statements or records tendered,~~  
3 ~~the accuracy or truth of which is in reasonable doubt.~~

4 ~~F. In hearings before the hearing officer, the~~  
5 ~~Rules of Civil Procedure for the District Courts shall not~~  
6 ~~apply, but the hearing shall be conducted so that both~~  
7 ~~complaints and defenses are amply and fairly presented. To~~  
8 ~~this end, the hearing officer shall hear arguments, permit~~  
9 ~~discovery, entertain and dispose of motions, require written~~  
10 ~~expositions of the case as the circumstances justify and render~~  
11 ~~a decision in accordance with the law and the evidence~~  
12 ~~presented and admitted.~~

13 ~~G. In the case of the hearing of any protest, the~~  
14 ~~hearing officer shall make and preserve a complete record of~~  
15 ~~the proceedings. At the beginning of the hearing, the hearing~~  
16 ~~officer shall inform the person of the person's right to~~  
17 ~~representation. The hearing officer, within thirty days of the~~  
18 ~~hearing, shall inform the protestant in writing of the~~  
19 ~~decision, informing the protestant at the same time of the~~  
20 ~~right to, and the requirements for perfection of, an appeal~~  
21 ~~from the decision to the district court and of the consequences~~  
22 ~~of a failure to appeal. The written decision shall embody an~~  
23 ~~order granting or denying the relief requested or granting such~~  
24 ~~part thereof as seems appropriate.~~

25 ~~H. If the protestant or secretary is dissatisfied~~

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1 with the decision and order of the hearing officer, the party  
2 may appeal pursuant to the provisions of the Administrative  
3 Procedures Act.

4 I. ~~No court of this state has jurisdiction to~~  
5 ~~entertain any proceeding by any person in which the person~~  
6 ~~calls into question the application to that person of any~~  
7 ~~provision of the Motor Vehicle Code, except as a consequence of~~  
8 ~~the appeal by that person to the district court from the action~~  
9 ~~and order of the secretary or hearing officer as provided for~~  
10 ~~in this section.~~

11 J. ~~Nothing in this section shall be construed to~~  
12 ~~authorize any criminal proceedings hereunder or to authorize an~~  
13 ~~administrative protest of the issuance of a subpoena or~~  
14 ~~summons.]"~~

15 SECTION 23. Section 66-4-3 NMSA 1978 (being Laws 1978,  
16 Chapter 35, Section 216, as amended) is amended to read:

17 "66-4-3. REFUSAL TO ISSUE LICENSE--CANCELLATION OR  
18 SUSPENSION OF LICENSE OR USE OF TEMPORARY PERMITS--HEARING--  
19 APPEAL.--

20 A. The department may refuse to issue a license for  
21 just cause and may cancel or suspend a license or use of a  
22 temporary registration permit, demonstration permit or  
23 transport permit for violation of the Motor Vehicle Code. The  
24 [department shall take the] action authorized in this section  
25 shall be taken only after a hearing [Notice of hearing shall be

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1 ~~given the party concerned as provided in Section 66-2-11 NMSA~~  
2 ~~1978. The notice shall state the proposed action of the~~  
3 ~~department and the reason for the proposed action.~~

4 ~~B. The department shall prepare rules for the~~  
5 ~~conduct of the hearing. At the hearing, the technical rules of~~  
6 ~~evidence do not apply, and a party has the right to be~~  
7 ~~represented by counsel, to call witnesses in the party's own~~  
8 ~~behalf and to cross-examine the witnesses of other parties.~~

9 ~~C. The secretary or the secretary's designated~~  
10 ~~agent shall conduct the hearing for the department and shall~~  
11 ~~cause a record of hearing to be made.~~

12 ~~D.]~~ before the administrative hearings office.

13 Within ten days after completion of the hearing, the  
14 [~~secretary~~] hearing officer designated to conduct the hearing  
15 shall cause to be served upon all parties, in the manner  
16 provided in Section 66-2-11 NMSA 1978, the [~~secretary's~~]  
17 hearing officer's findings and decision. The decision shall  
18 be:

19 (1) granting a license or refusing to grant a  
20 license;

21 (2) continuing a license, canceling a license  
22 or suspending a license for a time stated; or

23 (3) continuing use of dealer plates and  
24 temporary registration permits, demonstration permits or  
25 transport permits, canceling dealer plates and temporary

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1 registration permits, demonstration permits or transport  
2 permits or suspending use of temporary registration permits,  
3 demonstration permits or transport permits for a time stated.

4 ~~[E.]~~ B. A party aggrieved by the ~~[secretary's]~~  
5 hearing officer's decision may file an appeal in the district  
6 court pursuant to the provisions of Section 39-3-1.1 NMSA  
7 1978."

8 **SECTION 24.** Section 66-5-19 NMSA 1978 (being Laws 1978,  
9 Chapter 35, Section 241, as amended) is amended to read:

10 "66-5-19. RESTRICTED LICENSES.--

11 A. The division, upon issuing a driver's license or  
12 a provisional license, ~~[has authority]~~ may, whenever good cause  
13 appears, ~~[to]~~ impose restrictions, including the shortening of  
14 the licensure period suitable to the licensee's driving ability  
15 with respect to the type of or special mechanical control  
16 devices required on a motor vehicle that the licensee may  
17 operate or such other restrictions applicable to the licensee  
18 as the division determines to be appropriate to ensure the safe  
19 operation of a motor vehicle by the licensee.

20 B. At age seventy-five and thereafter, the  
21 applicant shall renew the applicant's license on a yearly basis  
22 at no cost to the applicant.

23 C. The division may either issue a special  
24 restricted license or may set forth such restrictions upon the  
25 usual license form.

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1           D. The division may issue a restricted license or a  
2 restricted provisional license for driving during daylight  
3 hours only to some visually impaired persons who fail the usual  
4 eyesight test. The health standards advisory board created  
5 pursuant to the provisions of Section 66-5-6 NMSA 1978 shall  
6 evaluate the extent of the visual impairment and [~~its~~] the  
7 impairment's effect on the driving ability of the applicant  
8 and, based on [~~its~~] the board's recommendations, the director  
9 may issue a restricted license under the following conditions:

10                         (1) the applicant has no record of moving  
11 violations;

12                         (2) the necessity of the license is shown to  
13 the satisfaction of the director; and

14                         (3) the applicant satisfies the provisions of  
15 Section 66-5-206 NMSA 1978 relating to proof of financial  
16 responsibility.

17           E. The division may, upon receiving satisfactory  
18 evidence of any violation of the restrictions of the license,  
19 suspend the license, but the licensee is entitled to a hearing  
20 as upon a suspension under Sections [~~66-5-1~~] 66-5-1.1 through  
21 66-5-47 NMSA 1978 and as provided in the Administrative  
22 Hearings Office Act.

23           F. It is a misdemeanor for any person to operate a  
24 motor vehicle in any manner in violation of the restrictions  
25 imposed in a restricted license issued to the person."

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1           SECTION 25. Section 66-5-30 NMSA 1978 (being Laws 1978,  
2 Chapter 35, Section 252, as amended) is amended to read:

3           "66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE  
4 LICENSE.--

5           A. The division [~~is authorized to~~] may suspend the  
6 instruction permit, driver's license or provisional license of  
7 a driver without preliminary hearing upon a showing by its  
8 records or other sufficient evidence, including information  
9 provided to the state pursuant to an intergovernmental  
10 agreement authorized by Section 66-5-27.1 NMSA 1978, that the  
11 licensee:

12                           (1) has been convicted of an offense for which  
13 mandatory revocation of license is required upon conviction;

14                           (2) has been convicted as a driver in an  
15 accident resulting in the death or personal injury of another  
16 or serious property damage;

17                           (3) has been convicted with such frequency of  
18 offenses against traffic laws or rules governing motor vehicles  
19 as to indicate a disrespect for traffic laws and a disregard  
20 for the safety of other persons on the highways;

21                           (4) is an habitually reckless or negligent  
22 driver of a motor vehicle;

23                           (5) is incompetent to drive a motor vehicle;

24                           (6) has permitted an unlawful or fraudulent  
25 use of the license;

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1 (7) has been convicted of an offense in  
2 another state or tribal jurisdiction that if committed within  
3 this state's jurisdiction would be grounds for suspension or  
4 revocation of the license;

5 (8) has violated provisions stipulated by a  
6 district court in limitation of certain driving privileges;

7 (9) has failed to fulfill a signed promise to  
8 appear or notice to appear in court as evidenced by notice from  
9 a state court or tribal court, whenever appearance is required  
10 by law or by the court as a consequence of a charge or  
11 conviction under the Motor Vehicle Code or pursuant to the laws  
12 of the tribe;

13 (10) has failed to pay a penalty assessment  
14 within thirty days of the date of issuance by the state or a  
15 tribe; or

16 (11) has accumulated seven points, but less  
17 than eleven points, and when the division has received a  
18 recommendation from a municipal or magistrate judge that the  
19 license be suspended for a period not to exceed three months.

20 B. Upon suspending the license of a person as  
21 authorized in this section, the division shall immediately  
22 notify the licensee in writing [~~and upon his request shall~~  
23 ~~afford him an opportunity for a hearing~~] of the licensee's  
24 right to a hearing before the administrative hearings office  
25 and shall notify the office. The office shall schedule the

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1 hearing to take place as early as practicable, but within [~~not~~  
2 ~~to exceed~~] no more than twenty days, not counting Saturdays,  
3 Sundays and legal holidays after receipt of the request. The  
4 hearing shall be held in the county [~~wherein~~] in which the  
5 licensee resides unless the [~~division~~] hearing officer and the  
6 licensee agree that the hearing may be held in some other  
7 county; provided that the hearing request is received within  
8 twenty days from the date that the suspension was deposited in  
9 the United States mail. The [~~director may, in his discretion,~~  
10 ~~extend the twenty-day period.~~ Upon the hearing, the director  
11 ~~or his duly authorized agent may administer oaths and may issue~~  
12 ~~subpoenas for the attendance of witnesses and the production of~~  
13 ~~relevant books and papers and may require a reexamination of~~  
14 ~~the licensee.~~ Upon] hearing shall be held as provided in the  
15 Administrative Hearings Office Act. After the hearing, the  
16 [~~division~~] hearing officer shall either rescind [~~its~~] the order  
17 of suspension or [~~good cause appearing therefor, may~~] continue,  
18 modify or extend the suspension of the license or revoke the  
19 license."

20 SECTION 26. Section 66-5-204 NMSA 1978 (being Laws 1983,  
21 Chapter 318, Section 5, as amended) is amended to read:

22 "66-5-204. ADMINISTRATIVE AND COURT REVIEW.--An owner of  
23 a motor vehicle registered in New Mexico who is aggrieved by  
24 the decision of the secretary made under the provisions of the  
25 Mandatory Financial Responsibility Act may appeal to the

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1 ~~[hearing officer of the department]~~ administrative hearings  
2 office for a hearing to be held within twenty days ~~[of]~~ after  
3 the receipt by the ~~[department]~~ administrative hearings office  
4 of the appeal. A person who continues aggrieved after the  
5 decision made by the hearing officer may appeal that decision  
6 in the district court pursuant to the provisions of Section  
7 39-3-1.1 NMSA 1978."

8 SECTION 27. Section 66-5-236 NMSA 1978 (being Laws 1983,  
9 Chapter 318, Section 35, as amended) is amended to read:

10 "66-5-236. SUSPENSION FOR NONPAYMENT OF JUDGMENT OR FOR  
11 FALSE AFFIRMATION.--

12 A. Except as otherwise provided, the secretary  
13 shall suspend:

14 (1) the motor vehicle registration for all  
15 motor vehicles and the driver's license of any person against  
16 whom a judgment has been rendered, the department being in  
17 receipt of a certified copy of the judgment on a form provided  
18 by the department; or

19 (2) the registration for a period not to  
20 exceed one year of a person who is operating a motor vehicle in  
21 violation of Section 66-5-205 NMSA 1978 or falsely affirms the  
22 existence of a motor vehicle insurance policy or some other  
23 means of satisfying the financial responsibility requirements  
24 of the Mandatory Financial Responsibility Act, but only if  
25 evidence of financial responsibility is not submitted within

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1 twenty days after the date of the mailing of the department's  
2 demand [~~therefor~~] for that evidence. The department shall  
3 notify the person that [~~he~~] the person may request a hearing  
4 before the administrative hearings office within twenty days  
5 after the date of the mailing of the department's demand [~~as~~  
6 ~~provided under this subsection~~].

7 B. The registration shall remain suspended and  
8 shall not be renewed, nor shall any registration be issued  
9 thereafter in the name of that person, unless and until every  
10 judgment is stayed, satisfied in full or to the extent provided  
11 in the Mandatory Financial Responsibility Act and evidence of  
12 financial responsibility as required in Section 66-5-218 NMSA  
13 1978 is provided to the department."

14 SECTION 28. Section 66-8-111.1 NMSA 1978 (being Laws  
15 1984, Chapter 72, Section 7, as amended by Laws 2003, Chapter  
16 51, Section 14 and by Laws 2003, Chapter 90, Section 7) is  
17 amended to read:

18 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR  
19 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO  
20 HEARING.--On behalf of the department, a law enforcement  
21 officer requesting a chemical test or directing the  
22 administration of a chemical test pursuant to Section 66-8-107  
23 NMSA 1978 shall serve immediate written notice of revocation  
24 and of right to a hearing before the administrative hearings  
25 office pursuant to the Implied Consent Act on a person who

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1 refuses to permit chemical testing or on a person who submits  
2 to a chemical test the results of which indicate an alcohol  
3 concentration in the person's blood or breath of eight one  
4 hundredths or more if the person is twenty-one years of age or  
5 older, four one hundredths or more if the person is driving a  
6 commercial motor vehicle or two one hundredths or more if the  
7 person is less than twenty-one years of age. Upon serving  
8 notice of revocation, the law enforcement officer shall take  
9 the license or permit of the driver, if any, and issue a  
10 temporary license valid for twenty days or, if the driver  
11 requests a hearing pursuant to Section 66-8-112 NMSA 1978,  
12 valid until the date the [~~department~~] administrative hearings  
13 office issues the order following that hearing; provided that a  
14 temporary license shall not be issued to a driver without a  
15 valid license or permit. The law enforcement officer shall  
16 send the person's driver's license to the department along with  
17 the signed statement required pursuant to Section 66-8-111 NMSA  
18 1978."

19 SECTION 29. Section 66-8-112 NMSA 1978 (being Laws 1978,  
20 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,  
21 Section 15 and by Laws 2003, Chapter 90, Section 8) is amended  
22 to read:

23 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO  
24 DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--  
25 REVIEW.--

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1           A. The effective date of revocation pursuant to  
2 Section 66-8-111 NMSA 1978 is twenty days after notice of  
3 revocation or, if the person whose driver's license or  
4 privilege to drive is being revoked or denied requests a  
5 hearing pursuant to ~~[this section]~~ the Administrative Hearings  
6 Office Act, the date that the ~~[department]~~ administrative  
7 hearings office issues the order following that hearing. The  
8 date of notice of revocation is:

9           (1) the date the law enforcement officer  
10 serves written notice of revocation and of right to a hearing  
11 pursuant to Section 66-8-111.1 NMSA 1978; or

12           (2) in the event the results of a chemical  
13 test cannot be obtained immediately, the date notice of  
14 revocation is served by mail by the department. This notice of  
15 revocation and of right to a hearing shall be sent by certified  
16 mail and shall be deemed to have been served on the date borne  
17 by the return receipt showing delivery, refusal of the  
18 addressee to accept delivery or attempted delivery of the  
19 notice at the address obtained by the arresting law enforcement  
20 officer or on file with the department.

21           B. Within ten days after receipt of notice of  
22 revocation pursuant to Subsection A of this section, a person  
23 whose license or privilege to drive is revoked or denied or the  
24 person's agent may request a hearing. The hearing request  
25 shall be made in writing and shall be accompanied by a payment

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1 of twenty-five dollars (\$25.00) or a sworn statement of  
2 indigency on a form provided by the [~~department~~] administrative  
3 hearings office. A standard for indigency shall be established  
4 pursuant to [~~regulations~~] rules adopted by the department.

5 Failure to request a hearing within ten days shall result in  
6 forfeiture of the person's right to a hearing. Any person less  
7 than eighteen years of age who fails to request a hearing  
8 within ten days shall have notice of revocation sent to [~~his~~]  
9 the person's parent, guardian or custodian by the department.

10 A date for the hearing shall be set by the [~~department~~]  
11 administrative hearings office, if practical, within thirty  
12 days after receipt of notice of revocation. The hearing shall  
13 be held in the county in which the offense for which the person  
14 was arrested took place.

15 C. The [~~department~~] administrative hearings office  
16 may postpone or continue any hearing on its own motion or upon  
17 application from the person and for good cause shown for a  
18 period not to exceed ninety days from the date of notice of  
19 revocation and, [~~provided that~~] if the office so orders, the  
20 department [~~extends~~] shall extend the validity of the temporary  
21 license for the period of the postponement or continuation.

22 D. At the hearing, the [~~department or its agent~~]  
23 administrative hearings office may administer oaths and may  
24 issue subpoenas for the attendance of witnesses and the  
25 production of relevant books and papers.

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1           E. The hearing shall be limited to the following  
2 issues:

3                   (1) whether the law enforcement officer had  
4 reasonable grounds to believe that the person had been driving  
5 a motor vehicle within this state while under the influence of  
6 intoxicating liquor or drugs;

7                   (2) whether the person was arrested;

8                   (3) whether this hearing is held no later than  
9 ninety days after notice of revocation; and either

10                   (4) whether:

11                           (a) the person refused to submit to a  
12 test upon request of the law enforcement officer; and

13                           (b) the law enforcement officer advised  
14 that the failure to submit to a test could result in revocation  
15 of the person's privilege to drive; or

16                   (5) whether:

17                           (a) the chemical test was administered  
18 pursuant to the provisions of the Implied Consent Act; and

19                           (b) the test results indicated an  
20 alcohol concentration in the person's blood or breath of eight  
21 one hundredths or more if the person is twenty-one years of age  
22 or older, four one hundredths or more if the person is driving  
23 a commercial motor vehicle or two one hundredths or more if the  
24 person is less than twenty-one years of age.

25           F. The [~~department~~] administrative hearings office

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1 shall enter an order sustaining the revocation or denial of the  
2 person's license or privilege to drive if the ~~[department]~~  
3 hearing officer from the office finds that:

4 (1) the law enforcement officer had reasonable  
5 grounds to believe the driver was driving a motor vehicle while  
6 under the influence of intoxicating liquor or drugs;

7 (2) the person was arrested;

8 (3) this hearing is held no later than ninety  
9 days after notice of revocation; and

10 (4) either:

11 (a) the person refused to submit to the  
12 test upon request of the law enforcement officer after the law  
13 enforcement officer advised ~~[him]~~ the person that ~~[his]~~ the  
14 person's failure to submit to the test could result in the  
15 revocation of ~~[his]~~ the person's privilege to drive; or

16 (b) that a chemical test was  
17 administered pursuant to the provisions of the Implied Consent  
18 Act and the test results indicated an alcohol concentration in  
19 the person's blood or breath of eight one hundredths or more if  
20 the person is twenty-one years of age or older, four one  
21 hundredths or more if the person is driving a commercial motor  
22 vehicle or two one hundredths or more if the person is less  
23 than twenty-one years of age.

24 G. If one or more of the elements set forth in  
25 Paragraphs (1) through (4) of Subsection F of this section are

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1 not found by the [~~department~~] hearing officer, the person's  
2 license shall not be revoked.

3 H. A person adversely affected by an order of the  
4 [~~department~~] administrative hearings office may seek review  
5 within thirty days in the district court in the county in which  
6 the offense for which the person was arrested took place. The  
7 district court, upon thirty days' written notice to the  
8 department, shall hear the case. On review, it is for the  
9 court to determine only whether reasonable grounds exist for  
10 revocation or denial of the person's license or privilege to  
11 drive based on the record of the administrative proceeding.

12 I. Any person less than eighteen years of age shall  
13 have results of [~~his~~] the person's hearing forwarded by the  
14 [~~department~~] administrative hearings office to [~~his~~] the  
15 person's parent, guardian or custodian."

16 SECTION 30. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,  
17 FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL  
18 OBLIGATIONS, STATUTORY REFERENCES AND RULES.--

19 A. On the effective date of this act, all  
20 personnel, functions, appropriations, money, records,  
21 furniture, equipment and other property of, or attributable to,  
22 the hearings bureau of the office of the secretary of taxation  
23 and revenue shall be transferred to the administrative hearings  
24 office.

25 B. On the effective date of this act, all

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1 contractual obligations of the hearings bureau of the office of  
2 the secretary of taxation and revenue shall be binding on the  
3 administrative hearings office.

4 C. On the effective date of this act, all  
5 references in statute to the hearings bureau of the office of  
6 the secretary of taxation and revenue or hearing officers of  
7 the taxation and revenue department in Chapters 7 and 66 NMSA  
8 1978 shall be deemed to be references to the administrative  
9 hearings office or a hearing officer of the office.

10 D. Rules of the taxation and revenue department  
11 pertaining to hearing officers and the conduct of hearings  
12 pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall  
13 be deemed to be the rules of the administrative hearings office  
14 until amended or repealed by the office.

15 SECTION 31. REPEAL.--Section 7-1-24.1 NMSA 1978 (being  
16 Laws 2013, Chapter 27, Section 7) is repealed.

17 SECTION 32. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2015.