

1 SENATE BILL 464

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Carlos R. Cisneros

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10 AN ACT

11 RELATING TO THE LODGERS' TAX ACT; CLARIFYING THE AUTHORITY OF A
12 MUNICIPALITY OR COUNTY TO AUDIT A VENDOR THAT FURNISHES
13 LODGINGS; REPLACING THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY
14 OF A COUNTY WITH A REPRESENTATIVE OF A MUNICIPALITY OR COUNTY
15 WHO MAY BRING AN ACTION TO ENFORCE THE ACT; ALLOWING ADDITIONAL
16 MEMBERS OF AN ADVISORY BOARD; PROVIDING A PENALTY.

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

19 SECTION 1. Section 3-38-17.1 NMSA 1978 (being Laws 1992,
20 Chapter 12, Section 2, as amended) is amended to read:

21 "3-38-17.1. AUDIT OF VENDORS.--The governing body of any
22 municipality or county collecting over two hundred fifty
23 thousand dollars (\$250,000) in occupancy tax proceeds shall
24 select for annual random audits one or more vendors to verify
25 the amount of gross taxable rent subject to the occupancy tax

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1 and to ensure that the full amount of occupancy tax on that
2 rent is collected. The governing body of any municipality or
3 county collecting less than two hundred fifty thousand dollars
4 (\$250,000) in receipts, per annum, of occupancy tax proceeds
5 shall conduct random audits to verify full payment of occupancy
6 tax receipts. For good cause, a municipality or county may
7 select any vendor for audit to verify the amount of gross
8 taxable rent subject to the occupancy tax to ensure that the
9 full amount of occupancy tax on that rent is collected. Copies
10 of audits completed shall be filed annually with the local
11 government division of the department of finance and
12 administration."

13 SECTION 2. Section 3-38-17.3 NMSA 1978 (being Laws 1996,
14 Chapter 58, Section 6) is amended to read:

15 "3-38-17.3. ENFORCEMENT.--

16 A. An action to enforce the provisions of the
17 Lodgers' Tax Act or a municipal or county ordinance adopted
18 pursuant to that act may be brought by

19 [~~(1) the attorney general or the district~~
20 ~~attorney in the county of jurisdiction; or~~

21 ~~(2) a vendor who is collecting the proceeds of~~
22 ~~an occupancy tax in the county of jurisdiction] a municipality
23 or county, through its duly authorized representative.~~

24 B. A district court may issue a writ of mandamus or
25 order an injunction or other appropriate remedy to enforce the

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1 provisions of the Lodgers' Tax Act.

2 C. The court shall award costs and reasonable
3 ~~[attorneys']~~ attorney fees to the prevailing party in a court
4 action to enforce the provisions of the Lodgers' Tax Act."

5 SECTION 3. Section 3-38-19 NMSA 1978 (being Laws 1969,
6 Chapter 199, Section 7, as amended) is amended to read:

7 "3-38-19. PENALTIES.--The governing body of ~~[the]~~ a
8 municipality or county shall, by ordinance, provide for
9 penalties by creating a petty misdemeanor and imposing a fine
10 of not more than five hundred dollars (\$500) or imprisonment
11 for not more than ninety days or both for a violation by any
12 person of the provisions of the occupancy tax ordinance for a
13 failure to pay the tax, to remit the proceeds thereof to the
14 municipality or county, to participate and cooperate in an
15 audit made pursuant to Section 3-38-17.1 NMSA 1978 or to
16 account properly for any lodging and the tax proceeds
17 pertaining thereto."

18 SECTION 4. Section 3-38-22 NMSA 1978 (being Laws 1977,
19 Chapter 294, Section 2, as amended) is amended to read:

20 "3-38-22. ADVISORY BOARDS CREATED--DUTIES.--

21 A. The mayor of every municipality that imposes an
22 occupancy tax pursuant to the Lodgers' Tax Act shall appoint ~~[a~~
23 ~~five-member]~~ an advisory board that consists of ~~[two members]~~
24 at least five members, which shall include an equal number of
25 members who are owners or operators of lodgings subject to the

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1 occupancy tax within the municipality [~~two~~] and members who are
2 owners or operators of industries located within the
3 municipality that primarily provide services or products to
4 tourists, and one member who is a resident of the municipality
5 and represents the general public.

6 B. The [~~chairman~~] chair of every county commission
7 that imposes an occupancy tax pursuant to the Lodgers' Tax Act
8 shall appoint a five-member advisory board that consists of two
9 members who are owners or operators of lodgings subject to the
10 occupancy tax within the unincorporated area of the county, two
11 members who are owners or operators of industries located
12 within the unincorporated area of the county that primarily
13 provide services or products to tourists and one member who is
14 a resident of the unincorporated area of the county who
15 represents the general public.

16 C. Members of the advisory boards created under
17 Subsections A and B of this section shall serve at the pleasure
18 of the respective appointing authorities. The boards shall
19 advise the respective governing bodies on the expenditure of
20 funds authorized by Section 3-38-15 NMSA 1978 for advertising,
21 publicizing and promoting [~~tourist attractions and~~] tourist-
22 related facilities and attractions in the respective counties
23 and municipalities.

24 D. The advisory board shall submit to the mayor and
25 council or county commission recommendations for the

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1 expenditures of funds authorized pursuant to the Lodgers' Tax
2 Act for advertising, publicizing and promoting tourist-related
3 [~~attractions~~] facilities and attractions and tourist-related
4 events in the respective counties and municipalities."