

SENATE FLOOR SUBSTITUTE FOR
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 375

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO TAXATION; CREATING THE LOCAL OPTION TENANCY TAX FOR
CERTAIN CLASS B COUNTIES; PROVIDING FOR LOCAL CONTROL OF
ELIGIBLE USES FOR THE TENANCY TAX.

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

SECTION 1. Section 3-38-14 NMSA 1978 (being Laws 1969,
Chapter 199, Section 2, as amended) is amended to read:

"3-38-14. DEFINITIONS.--As used in the Lodgers' Tax Act:

A. "gross taxable rent" means the total amount of
rent paid for lodging, not including the state gross receipts
tax or local sales taxes;

B. "lodging" means the transaction of furnishing
rooms or other accommodations by a vendor to a vendee who for
rent uses, possesses or has the right to use or possess the
rooms or other units of accommodations in or at a taxable

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1 premises;

2 C. "lodgings" means the rooms or other
3 accommodations furnished by a vendor to a vendee by a taxable
4 service of [~~lodgings~~] lodging;

5 [~~D. "occupancy tax" means the tax on lodging~~
6 ~~authorized by the Lodgers' Tax Act;~~

7 ~~E.]~~ D. "person" means a corporation, firm, other
8 body corporate, partnership, association or individual.
9 "Person" includes an executor, administrator, trustee, receiver
10 or other representative appointed according to law and acting
11 in a representative capacity. "Person" does not include the
12 United States of America, the state of New Mexico, any
13 corporation, department, instrumentality or agency of the
14 federal government or the state government or any political
15 subdivision of the state;

16 [~~F.]~~ E. "rent" means the consideration received by
17 a vendor in money, credits, property or other consideration
18 valued in money for lodgings subject to an occupancy tax
19 authorized in the Lodgers' Tax Act;

20 [~~G.]~~ F. "taxable premises" means a hotel,
21 apartment, apartment hotel, apartment house, lodge, lodging
22 house, rooming house, motor hotel, guest house, guest ranch,
23 ranch resort, guest resort, mobile home, motor court, auto
24 court, auto camp, trailer court, trailer camp, trailer park,
25 tourist camp, cabin or other premises used for lodging;

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1 ~~[H.]~~ G. "tourist" means a person who travels for
2 the purpose of business, pleasure or culture to a municipality
3 or county imposing an occupancy tax;

4 ~~[I.]~~ H. "tourist-related events" means events that
5 are planned for, promoted to and attended by tourists;

6 ~~[J.]~~ I. "tourist-related facilities and
7 attractions" means facilities and attractions that are intended
8 to be used by or visited by tourists;

9 ~~[K.]~~ J. "tourist-related transportation systems"
10 means transportation systems that provide transportation for
11 tourists to and from tourist-related facilities and attractions
12 and tourist-related events;

13 ~~[L.]~~ K. "vendee" means a natural person to whom
14 lodgings are furnished in the exercise of the taxable service
15 of lodging; and

16 ~~[M.]~~ L. "vendor" means a person or ~~[his]~~ the
17 person's agent furnishing lodgings in the exercise of the
18 taxable service of lodging."

19 **SECTION 2.** Section 3-38-15 NMSA 1978 (being Laws 1969,
20 Chapter 199, Section 3, as amended) is amended to read:

21 "3-38-15. AUTHORIZATION OF OCCUPANCY TAX--LIMITATIONS ON
22 USE OF PROCEEDS.--

23 A. A municipality may impose by ordinance an
24 occupancy tax for revenues on lodging within the municipality,
25 and the board of county commissioners of a county may impose by

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1 ordinance an occupancy tax for revenues on lodging within that
2 part of the county outside of the incorporated limits of a
3 municipality.

4 B. The occupancy tax shall not exceed five percent
5 of the gross taxable rent.

6 C. Every vendor who is furnishing any lodgings
7 within a municipality or county is exercising a taxable
8 privilege.

9 D. The following portions of the proceeds from the
10 occupancy tax shall be used only for advertising, publicizing
11 and promoting tourist-related facilities and attractions
12 [~~facilities~~] and tourist-related events:

13 (1) if the municipality or county imposes an
14 occupancy tax of no more than two percent, not less than one-
15 fourth of the proceeds shall be used for those purposes;

16 (2) if the occupancy tax imposed is more than
17 two percent and the municipality is not located in a class A
18 county or the county is not a class A county, not less than
19 one-half of the proceeds from the first three percent of the
20 occupancy tax and not less than one-fourth of the proceeds from
21 the occupancy tax in excess of three percent shall be used for
22 those purposes; and

23 (3) if the occupancy tax imposed is more than
24 two percent and the municipality is located in a class A county
25 or the county is a class A county, not less than one-half of

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1 the proceeds from the occupancy tax shall be used for those
2 purposes.

3 E. The proceeds from the occupancy tax in excess of
4 the amount required to be used for advertising, publicizing and
5 promoting tourist-related facilities and attractions
6 [~~facilities~~] and tourist-related events may be used for any
7 purpose authorized in Section 3-38-21 NMSA 1978.

8 F. The proceeds from the occupancy tax that are
9 required to be used to advertise, publicize and promote
10 tourist-related facilities and attractions [~~facilities~~] and
11 tourist-related events shall be used within two years of the
12 close of the fiscal year in which they were collected and shall
13 not be accumulated beyond that date or used for any other
14 purpose.

15 G. Notwithstanding the provisions of Paragraph (2)
16 of Subsection D of this section, any use by a municipality or
17 county of occupancy tax proceeds on January 1, 1996 may
18 continue to be so used after July 1, 1996 in accordance with
19 the provisions of this section and Section 3-38-21 NMSA 1978 as
20 they were in effect prior to July 1, 1996; provided, any change
21 in the use of those occupancy tax proceeds after July 1, 1996
22 is subject to the limitations of that paragraph.

23 H. Notwithstanding the provisions of Paragraph (2)
24 of Subsection D of this section, the payment of principal and
25 interest on outstanding bonds issued prior to January 1, 1996

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1 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made
2 in accordance with the retirement schedules of the bonds
3 established at the time of issuance. The amount of
4 expenditures required under Paragraph (2) of Subsection D of
5 this section shall be reduced each year, if necessary, to make
6 the required payments of principal and interest of all
7 outstanding bonds issued prior to January 1, 1996."

8 SECTION 3. A new Section 3-38-15.1 NMSA 1978 is enacted
9 to read:

10 "3-38-15.1. [NEW MATERIAL] AUTHORIZATION OF TENANCY TAX--
11 USE OF PROCEEDS.--

12 A. A municipality in a class B county having a net
13 taxable value, as that term is defined in the Property Tax
14 Code, of more than four billion five hundred million dollars
15 (\$4,500,000,000) but less than five billion five hundred
16 million dollars (\$5,500,000,000) may impose by ordinance a
17 tenancy tax for revenues on lodging within the municipality,
18 and the board of county commissioners of a class B county
19 having a net taxable value, as that term is defined in the
20 Property Tax Code, of more than four billion five hundred
21 million dollars (\$4,500,000,000) but less than five billion
22 five hundred million dollars (\$5,500,000,000) may impose by
23 ordinance a tenancy tax for revenues on lodging within that
24 part of the county outside of the incorporated limits of a
25 municipality.

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1 B. The tenancy tax shall not exceed five percent of
2 the gross taxable rent.

3 C. Every vendor who is furnishing any lodgings
4 within a municipality or county is exercising a taxable
5 privilege.

6 D. The proceeds from the tenancy tax shall be used
7 only for the purposes stated in the ordinance by which the tax
8 is imposed."

9 SECTION 4. A new Section 3-38-16.1 NMSA 1978 is enacted
10 to read:

11 "3-38-16.1. [NEW MATERIAL] TENANCY TAX EXEMPTIONS.--The
12 tenancy tax shall not apply:

13 A. if the rent paid by a vendee is less than two
14 dollars (\$2.00) a day;

15 B. for the first thirty days the vendee rents the
16 taxable premises;

17 C. to lodging accommodations at institutions of the
18 federal government, the state or any political subdivision
19 thereof;

20 D. to lodging accommodations at religious,
21 charitable, educational or philanthropic institutions,
22 including accommodations at summer camps operated by such
23 institutions;

24 E. to clinics, hospitals or other medical
25 facilities; or

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1 F. to privately owned and operated convalescent
2 homes or homes for the aged, infirm, indigent or chronically
3 ill."

4 SECTION 5. Section 3-38-17 NMSA 1978 (being Laws 1969,
5 Chapter 199, Section 5, as amended) is amended to read:

6 "3-38-17. COLLECTION OF TAXES.--

7 A. Every vendor providing lodgings in a
8 municipality or county imposing an occupancy tax or a tenancy
9 tax shall collect the proceeds thereof on behalf of the
10 municipality or county and shall act as a trustee therefor.

11 B. The [~~tax~~] taxes shall be collected from vendees
12 in accordance with the ordinance imposing the tax and shall be
13 charged separately from the rent fixed by the vendor for the
14 lodgings."

15 SECTION 6. Section 3-38-17.1 NMSA 1978 (being Laws 1992,
16 Chapter 12, Section 2, as amended) is amended to read:

17 "3-38-17.1. AUDIT OF VENDORS.--The governing body of any
18 municipality or county collecting over two hundred fifty
19 thousand dollars (\$250,000) in occupancy tax or tenancy tax
20 proceeds shall select for annual random audits one or more
21 vendors to verify the amount of gross rent subject to the
22 occupancy tax or tenancy tax and to ensure that the full amount
23 of occupancy tax or tenancy tax on that rent is collected. The
24 governing body of any municipality or county collecting less
25 than two hundred fifty thousand dollars (\$250,000) in receipts,

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1 per annum, of occupancy tax or tenancy tax proceeds shall
 2 conduct random audits to verify full payment of occupancy tax
 3 or tenancy tax receipts. Copies of audits completed shall be
 4 filed annually with the local government division of the
 5 department of finance and administration."

6 SECTION 7. Section 3-38-17.2 NMSA 1978 (being Laws 1996,
 7 Chapter 58, Section 5) is amended to read:

8 "3-38-17.2. FINANCIAL REPORTING.--

9 A. The governing body of any municipality or county
 10 imposing and collecting an occupancy tax or tenancy tax shall
 11 furnish to the advisory board that portion of any proposed
 12 budget, report or audit filed or received by the governing body
 13 pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit
 14 Act that relates to the expenditure of occupancy tax or tenancy
 15 tax funds within ten days of the filing or receipt of such
 16 proposed budget, report or audit by the local governing body.

17 B. The governing body of any municipality or county
 18 imposing and collecting an occupancy tax or tenancy tax shall
 19 report to the local government division of the department of
 20 finance and administration on a quarterly basis any expenditure
 21 of occupancy tax or tenancy tax funds pursuant to Sections
 22 3-38-15, 3-38-15.1 and 3-38-21 NMSA 1978 and shall furnish a
 23 copy of this report to the advisory board created pursuant to
 24 Section 3-38-22 NMSA 1978 when it is filed with the division."

25 SECTION 8. Section 3-38-17.3 NMSA 1978 (being Laws 1996,

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1 Chapter 58, Section 6) is amended to read:

2 "3-38-17.3. ENFORCEMENT.--

3 A. An action to enforce the provisions of the
4 Lodgers' Tax Act may be brought by:

5 (1) the attorney general or the district
6 attorney in the county of jurisdiction; or

7 (2) a vendor who is collecting the proceeds of
8 an occupancy tax or tenancy tax in the county of jurisdiction.

9 B. A district court may issue a writ of mandamus or
10 order an injunction or other appropriate remedy to enforce the
11 provisions of the Lodgers' Tax Act.

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

15 SECTION 9. Section 3-38-18 NMSA 1978 (being Laws 1969,
16 Chapter 199, Section 6, as amended) is amended to read:

17 "3-38-18. COLLECTION OF DELINQUENCIES.--

18 A. The governing body of [~~the~~] a municipality or
19 county shall, by ordinance, provide that a vendor is liable for
20 the payment of the proceeds of any occupancy tax or tenancy tax
21 that the vendor failed to remit to the municipality or county,
22 due to [~~his~~] the vendor's failure to collect the tax, or
23 otherwise, and shall provide for a civil penalty for any such
24 failure in an amount equal to the greater of ten percent of the
25 amount that was not duly remitted to the municipality or county

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1 or one hundred dollars (\$100).

2 B. [~~The~~] A municipality or county may bring an
 3 action in law or equity in the district court for the
 4 collection of any amounts due, including without limitation
 5 penalties thereon, interest on the unpaid principal at a rate
 6 [~~of~~] not exceeding one percent a month, the costs of collection
 7 and reasonable [~~attorneys'~~] attorney fees incurred in
 8 connection therewith."

9 SECTION 10. Section 3-38-18.1 NMSA 1978 (being Laws 1992,
 10 Chapter 12, Section 1) is amended to read:

11 "3-38-18.1. LIEN FOR OCCUPANCY TAX OR TENANCY TAX--
 12 PAYMENT--CERTIFICATE OF LIENS.--

13 A. The occupancy tax and tenancy tax imposed by a
 14 municipality or county [~~constitutes~~] constitute a lien in favor
 15 of that municipality or county upon the personal and real
 16 property of the vendor providing lodgings in that municipality
 17 or county. The lien may be enforced as provided in Sections
 18 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be
 19 determined from the date of filing.

20 B. Under process or order of court, no person shall
 21 sell the property of any vendor without first ascertaining from
 22 the clerk or treasurer of the municipality or county in which
 23 the vendor is located the amount of any occupancy tax or
 24 tenancy tax due the municipality or county. Any occupancy tax
 25 or tenancy tax due the municipality or county shall be paid

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1 from the proceeds of the sale before payment is made to the
2 judgment creditor or any other person with a claim on the sale
3 proceeds.

4 C. The clerk or treasurer of [~~the~~] a municipality
5 or county shall furnish to any person applying for such a
6 certificate a certificate showing the amount of all liens in
7 the records of the municipality or county against any vendor
8 pursuant to Chapter 3, Article 38 NMSA 1978."

9 SECTION 11. Section 3-38-19 NMSA 1978 (being Laws 1969,
10 Chapter 199, Section 7, as amended) is amended to read:

11 "3-38-19. PENALTIES.--The governing body of [~~the~~] a
12 municipality or county shall, by ordinance, provide for
13 penalties by creating a misdemeanor and imposing a fine of not
14 more than five hundred dollars (\$500) or imprisonment for not
15 more than ninety days or both for a violation by any person of
16 the provisions of the occupancy tax ordinance or the tenancy
17 tax ordinance for a failure to pay the tax, to remit the
18 proceeds thereof to the municipality or county or to account
19 properly for any lodging and the tax proceeds pertaining
20 thereto."

21 SECTION 12. Section 3-38-20 NMSA 1978 (being Laws 1969,
22 Chapter 199, Section 8, as amended) is amended to read:

23 "3-38-20. ORDINANCE REQUIREMENTS.--The ordinance imposing
24 an occupancy tax or a tenancy tax or any ordinance amendatory
25 thereof or supplemental thereto, except as limited by or

1 otherwise provided in the Lodgers' Tax Act, shall:

2 A. provide a procedure for licensing each vendor
3 and for refusing a vendor a license after an opportunity has
4 been given to the vendor of a public hearing thereon by the
5 governing body of the municipality or county, as the case may
6 be;

7 B. state the rate or other amount of the occupancy
8 tax or tenancy tax; the times, place and method for the payment
9 of the occupancy tax or tenancy tax proceeds to the
10 municipality or county; the accounts and other records to be
11 maintained in connection with the occupancy tax or tenancy tax;
12 a procedure for making refunds and resolving disputes relating
13 to the occupancy tax or tenancy tax, including exemptions
14 pertaining thereto; the procedure for preservation and
15 destruction of records and their inspection and investigation;
16 vendor audit requirements; applicable civil and criminal
17 penalties; and a procedure of liens, distraint and sales to
18 satisfy such liens; and

19 C. provide other rights, privileges, powers,
20 immunities and other details relating to any such vendor
21 licenses, the collection of the occupancy tax or tenancy tax
22 and the remittance of the proceeds thereof to the municipality
23 or county."

24 SECTION 13. Section 3-38-21.1 NMSA 1978 (being Laws 1996,
25 Chapter 58, Section 8) is amended to read:

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1 "3-38-21.1. CONTRACTING FOR SERVICES.--

2 A. The governing body of a municipality or county
3 may contract for the management of programs and activities
4 funded with revenue from the occupancy tax [~~authorized in~~
5 ~~Section 3-38-15 NMSA 1978~~] or the tenancy tax. The governing
6 body shall require periodic reports to the governing body, at
7 least quarterly, listing the expenditures for those periods.
8 Within ten days of receiving the reports, the governing body
9 shall furnish copies of them to the advisory board. Funds
10 provided to the contracting person or governmental agency shall
11 be maintained in a separate account established for that
12 purpose and shall not be commingled with any other money.

13 B. A person or governmental agency with whom a
14 municipality contracts under this section to conduct an
15 activity authorized by Section 3-38-21 NMSA 1978 shall maintain
16 complete and accurate financial records of each expenditure of
17 the tax revenue made and upon request of the governing body of
18 the municipality or county shall make such records available
19 for inspection.

20 C. The occupancy tax or tenancy tax revenue spent
21 for a purpose authorized by the Lodgers' Tax Act may be spent
22 for day-to-day operations, supplies, salaries, office rental,
23 travel expenses and other administrative costs only if those
24 administrative costs are incurred directly for that purpose.

25 D. A person or governmental agency with whom a

1 local governmental body contracts under this section may
 2 subcontract with the approval of the governing body of the
 3 municipality or county. A subcontractor shall be subject to
 4 the same terms and conditions as the contractor regarding
 5 separate financial accounts, periodic reports and inspection of
 6 records."

7 SECTION 14. Section 3-38-22 NMSA 1978 (being Laws 1977,
 8 Chapter 294, Section 2, as amended) is amended to read:

9 "3-38-22. ADVISORY BOARDS CREATED--DUTIES.--

10 A. The mayor of every municipality that imposes an
 11 occupancy tax or tenancy tax pursuant to the Lodgers' Tax Act
 12 shall appoint a five-member advisory board that consists of two
 13 members who are owners or operators of lodgings subject to the
 14 occupancy tax or tenancy tax within the municipality, two
 15 members who are owners or operators of industries located
 16 within the municipality that primarily provide services or
 17 products to tourists and one member who is a resident of the
 18 municipality and represents the general public.

19 B. The [~~chairman~~] chair of every board of county
 20 [~~commission~~] commissioners that imposes an occupancy tax or
 21 tenancy tax pursuant to the Lodgers' Tax Act shall appoint a
 22 five-member advisory board that consists of two members who are
 23 owners or operators of lodgings subject to the occupancy tax or
 24 tenancy tax within the unincorporated area of the county, two
 25 members who are owners or operators of industries located

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1 within the unincorporated area of the county that primarily
2 provide services or products to tourists and one member who is
3 a resident of the unincorporated area of the county who
4 represents the general public.

5 C. Members of the advisory boards created under
6 Subsections A and B of this section shall serve at the pleasure
7 of the respective appointing authorities. The boards shall
8 advise the respective governing bodies on the expenditure of
9 funds authorized by Section 3-38-15 or 3-38-15.1 NMSA 1978 for
10 advertising, publicizing and promoting [~~tourist attractions~~
11 ~~and~~] tourist-related facilities and attractions in the
12 respective counties and municipalities.

13 D. The advisory board shall submit to the mayor and
14 council or county commission recommendations for the
15 expenditures of funds authorized pursuant to the Lodgers' Tax
16 Act for advertising, publicizing and promoting tourist-related
17 [~~attractions~~] facilities and attractions and tourist-related
18 events in the respective counties and municipalities."

19 SECTION 15. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2019.