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SENATE BILL 4

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

Ron Griggs

AN ACT

RELATING TO TAXATION; INCREASING THE RATE OF THE OCCUPANCY TAX THAT MAY BE IMPOSED BY A MUNICIPALITY PURSUANT TO THE LODGERS' TAX ACT; AMENDING THE LIMITATIONS ON USES OF CERTAIN OF THE PROCEEDS OF THE TAX; ADDING DEFRAYING THE COSTS FOR QUALITY-OF-LIFE-RELATED FACILITIES AS A NEW ALLOWABLE USE OF PROCEEDS OF THE TAX; ALLOWING FOR THE ISSUANCE OF BONDS TO DEFRAY CERTAIN COSTS FOR QUALITY-OF-LIFE-RELATED FACILITIES; COMBINING MULTIPLE SECTIONS REGARDING THE USE OF THE TAX PROCEEDS INTO ONE SECTION; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 3-38-15 NMSA 1978 (being Laws 1969, Chapter 199, Section 3, as amended) is amended to read:

"3-38-15. AUTHORIZATION OF TAX--~~[LIMITATIONS ON]~~ USE OF PROCEEDS.--

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1           A. A municipality may impose by ordinance an  
2 occupancy tax for revenues on lodging within the municipality  
3 [~~and~~] at a rate not to exceed seven percent of the gross  
4 taxable rent.

5           B. The board of county commissioners of a county  
6 may impose by ordinance an occupancy tax for revenues on  
7 lodging within that part of the county outside of the  
8 incorporated limits of a municipality [~~B. The occupancy tax~~  
9 ~~shall not~~] at a rate not to exceed five percent of the gross  
10 taxable rent.

11           C. Every vendor who is furnishing any lodgings  
12 within a municipality or county is exercising a taxable  
13 privilege.

14           D. The following portions of the proceeds from the  
15 occupancy tax that are collected based on the first thirty days  
16 a vendee rents lodgings in taxable premises shall be used only  
17 for advertising, publicizing and promoting tourist-related  
18 facilities [~~and~~], attractions and [~~tourist-related~~] events:

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

22                   [~~(2) if the occupancy tax imposed is more than~~  
23 ~~two percent and the municipality is not located in a class A~~  
24 ~~county or the county is not a class A county, not less than~~  
25 ~~one-half of the proceeds from the first three percent of the~~

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1 ~~occupancy tax and not less than one-fourth of the proceeds from~~  
2 ~~the occupancy tax in excess of three percent shall be used for~~  
3 ~~those purposes; and~~

4 ~~(3)]~~ (2) if the occupancy tax imposed is more  
5 than two percent, [~~and the municipality is located in a class A~~  
6 ~~county or the county is a class A county]~~ not less than [~~one-~~  
7 ~~half]~~ one-third of the proceeds from the occupancy tax shall be  
8 used for those purposes.

9 E. The proceeds from the occupancy tax that are  
10 collected based on the first thirty days a vendee rents  
11 lodgings in taxable premises in excess of the amount required  
12 to be used for advertising, publicizing and promoting tourist-  
13 related facilities [~~and~~], attractions and [~~tourist-related~~]  
14 events may be used [~~for any purpose authorized in Section~~  
15 ~~3-38-21 NMSA 1978]~~ to defray costs of:

16 (1) collecting and otherwise administering the  
17 occupancy tax, including the performance of audits required by  
18 the Lodgers' Tax Act pursuant to guidelines issued by the  
19 department of finance and administration;

20 (2) establishing, operating, purchasing,  
21 constructing, reconstructing, extending, improving,  
22 maintaining, equipping, furnishing or acquiring real property  
23 or any interest in real property for the site or grounds for  
24 quality-of-life-related facilities, tourist-related facilities  
25 and attractions or tourist-related transportation systems of

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1 the municipality or county;

2 (3) the principal of and interest on any prior  
3 redemption premiums due in connection with and any other  
4 charges pertaining to revenue bonds authorized by Section  
5 3-38-23 or 3-38-24 NMSA 1978;

6 (4) advertising, publicizing and promoting  
7 tourist-related attractions, facilities and events of the  
8 municipality or county and tourist-related facilities,  
9 attractions and events within the area;

10 (5) providing police and fire protection and  
11 sanitation service for tourist-related facilities, attractions  
12 and events located in the respective municipality or county;

13 (6) providing a required minimum revenue  
14 guarantee for air service to the municipality or county to  
15 increase the ability of tourists to easily access the  
16 municipality's or county's tourist-related facilities,  
17 attractions and events; or

18 (7) any combination of the foregoing purposes  
19 or transactions stated in this section, but for no other  
20 municipal or county purpose.

21 F. The proceeds from the occupancy tax that are  
22 required to be used to advertise, publicize and promote  
23 tourist-related facilities [~~and~~], attractions and [~~tourist-~~  
24 ~~related~~] events shall be used within two years of the close of  
25 the fiscal year in which they were collected and shall not be

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1 accumulated beyond that date or used for any other purpose.

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

10 ~~H. Notwithstanding the provisions of Paragraph (2)~~  
11 ~~of Subsection D of this section, the payment of principal and~~  
12 ~~interest on outstanding bonds issued prior to January 1, 1996~~  
13 ~~pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made~~  
14 ~~in accordance with the retirement schedules of the bonds~~  
15 ~~established at the time of issuance. The amount of~~  
16 ~~expenditures required under Paragraph (2) of Subsection D of~~  
17 ~~this section shall be reduced each year, if necessary, to make~~  
18 ~~the required payments of principal and interest of all~~  
19 ~~outstanding bonds issued prior to January 1, 1996.]~~

20 G. A municipality or county imposing an occupancy  
21 tax may use the proceeds from the occupancy tax that are  
22 collected based on the thirty-first and subsequent days a  
23 vendee rents lodgings in taxable premises for any municipality  
24 or county purpose; provided that the use is stated in the  
25 ordinance imposing the tax.

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1                   H. As used in this section:

2                   (1) "minimum revenue guarantee" is the amount  
3 of money guaranteed by a municipality or county to be earned by  
4 an airline providing air services to and from that municipality  
5 or county, which is the difference between the minimum flight  
6 charge revenue specified in the contract between the  
7 municipality or county and the airline and the amount of actual  
8 flight charge revenue received by the airline that is less than  
9 that contractual amount; and

10                   (2) "quality-of-life-related facilities" means  
11 facilities that have the primary purpose of providing  
12 facilities or other infrastructure for parks, zoos and sport or  
13 exercise programs."

14                   SECTION 2. Section 3-38-17.2 NMSA 1978 (being Laws 1996,  
15 Chapter 58, Section 5) is amended to read:

16                   "3-38-17.2. FINANCIAL REPORTING.--

17                   A. The governing body of any municipality or county  
18 imposing and collecting an occupancy tax shall furnish to the  
19 advisory board that portion of any proposed budget, report or  
20 audit filed or received by the governing body pursuant to  
21 either Chapter 6, Article 6 NMSA 1978 or the Audit Act that  
22 relates to the expenditure of occupancy tax funds within ten  
23 days of the filing or receipt of such proposed budget, report  
24 or audit by the local governing body.

25                   B. The governing body of any municipality or county

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1 imposing and collecting an occupancy tax shall report to the  
2 local government division of the department of finance and  
3 administration on a quarterly basis any expenditure of  
4 occupancy tax funds [~~pursuant to Sections 3-38-15 and 3-38-21~~  
5 ~~NMSA 1978~~] and shall furnish a copy of this report to the  
6 advisory board when it is filed with the division."

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

9 "3-38-21.1. CONTRACTING FOR SERVICES.--

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

21 B. A person or governmental agency with whom a  
22 municipality contracts under this section to conduct an  
23 activity authorized by Subsection E of Section [~~3-38-21~~  
24 3-38-15 NMSA 1978 shall maintain complete and accurate  
25 financial records of each expenditure of the occupancy tax

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1 revenue made and upon request of the governing body of the  
2 municipality or county shall make such records available for  
3 inspection.

4 C. The occupancy tax revenue spent for a purpose  
5 authorized by the Lodgers' Tax Act may be spent for day-to-day  
6 operations, supplies, salaries, office rental, travel expenses  
7 and other administrative costs only if those administrative  
8 costs are incurred directly for that purpose.

9 D. A person or governmental agency with whom a  
10 local governmental body contracts under this section may  
11 subcontract with the approval of the governing body of the  
12 municipality or county. A subcontractor shall be subject to  
13 the same terms and conditions as the contractor regarding  
14 separate financial accounts, periodic reports and inspection of  
15 records."

16 SECTION 4. Section 3-38-23 NMSA 1978 (being Laws 1969,  
17 Chapter 199, Section 10, as amended) is amended to read:

18 "3-38-23. REVENUE BONDS.--

19 A. Revenue bonds may be issued at any time or from  
20 time to time by a municipality or county to defray wholly or in  
21 part the costs of any one, all or any combination of purposes  
22 authorized in Paragraphs (2) through (5) of Subsection ~~[A of~~  
23 ~~Section 3-38-21]~~ E of Section 3-38-15 NMSA 1978.

24 B. The revenue bonds may be payable from and such  
25 payment may be secured by a pledge of and lien on the revenues

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1 derived from:

2 (1) the proceeds of the occupancy tax of the  
3 municipality or county after the deduction of those amounts  
4 required to be expended pursuant to Subsection D of Section  
5 3-38-15 NMSA 1978 and the administration costs pertaining to  
6 the occupancy tax in an amount not to exceed ten percent of the  
7 occupancy tax receipts collected by the municipality or county  
8 in any fiscal year, excluding from the computation of such  
9 costs the administration costs ultimately recovered from  
10 delinquent vendors by civil action as penalties, costs of  
11 collection and attorney fees but not as interest on unpaid  
12 principal;

13 (2) the tourist-related facilities and  
14 attractions or tourist-related transportation systems to which  
15 the bonds pertain, after provision is made for the payment of  
16 the operation and maintenance expenses of the tourist-related  
17 facilities and attractions or tourist-related transportation  
18 systems; or

19 (3) a combination of such net revenues from  
20 both sources designated in Paragraphs (1) and (2) of this  
21 subsection.

22 C. The bonds shall bear interest at a rate as  
23 authorized in the Public Securities Act, and the first interest  
24 payment may be for any period authorized in the Public  
25 Securities Act.

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