The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 73

SENATE BILL 356, as amended

with certificate of correction

Introduced by

SENATOR JACOB R. CANDELARIA AND REPRESENTATIVE JASON CARL HARPER
March 26, 2015

CERTIFICATE OF CORRECTION

I certify that the following error was found in

SENATE BILL 356

and has been corrected in enrolling and engrossing:

1. Page 3, line 9, of the introduced bill, the word "positing" was changed to "position" to conform to proper language.

Respectfully submitted,

Lenore M. Naranjo, Chief Clerk
CHAPTER 73

AN ACT

RELATING TO TAX ADMINISTRATION; ENACTING THE ADMINISTRATIVE HEARINGS OFFICE ACT; PROVIDING FOR A CHIEF HEARING OFFICER; CREATING A CHIEF HEARING OFFICER SELECTION COMMITTEE; 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).

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

SECTION 1. SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Administrative Hearings Office Act".

SECTION 2. ADMINISTRATIVE HEARINGS OFFICE--CREATED.--The "administrative hearings office" is created and is administratively attached pursuant to the provisions of Section 9-1-7 NMSA 1978 to the department of finance and administration.

SECTION 3. CHIEF HEARING OFFICER--APPOINTMENT.--The head of the administrative hearings office is the "chief hearing officer", who shall be appointed for a term of six years, except that the initial term shall begin on
July 1, 2015 and shall end on December 31, 2015. The chief hearing officer may be reappointed to successive terms. An appointed chief hearing officer shall serve and have all the duties, responsibilities and authority of that office during the period of time prior to appointment of a new chief hearing officer. The initial chief hearing officer shall be the person who is the chief of the hearings bureau of the taxation and revenue department on July 1, 2015. The chief hearing officer shall be removed only for malfeasance, misfeasance or abuse of office.

SECTION 4. CHIEF HEARING OFFICER SELECTION COMMITTEE--DUTIES.--

A. The "chief hearing officer selection committee" is created and consists of nine members, including:

   (1) four members who are selected by the New Mexico legislative council, no more than two of whom are from the same political party;

   (2) four members who are selected by the governor, no more than two of whom are from the same political party; and

   (3) a committee chair, whom a majority of the other eight members select and who is:

       (a) not a candidate for the position of chief hearing officer; and

       (b) either a former chief of the
hearings bureau of the taxation and revenue department, a
former chief hearing officer or another person with extensive
knowledge of the tax law.

B. The chief hearing officer selection committee
shall meet exclusively for the purpose of nominating persons
to fill a current or impending vacancy in the position of
chief hearing officer of the administrative hearings office.
The committee shall actively solicit, accept and evaluate
applications for the position of chief hearing officer and
may require applicants to submit any information that the
committee deems relevant to the consideration of
applications. Within ninety days before the date on which
the term of a chief hearing officer ends or no later than
thirty days after the occurrence of a vacancy in the chief
hearing officer position, the chief hearing officer selection
committee shall convene and, within thirty days after
convening, submit to the governor the names of persons who:

(1) are attorneys licensed to practice law
in New Mexico or another state;

(2) have knowledge of the tax law and
substantial experience making the record in an administrative
hearing suitable for judicial review; and

(3) are recommended for appointment to the
position by a majority of the committee.

C. Immediately after receiving nominations for
chief hearing officer, the governor may make one request of
the committee for submission of additional names. The
committee shall promptly submit those additional names if a
majority of the committee finds that additional persons would
be qualified and recommends those persons for appointment as
chief hearing officer. The governor shall fill a vacancy or
appoint a successor to fill an impending vacancy in the
office of chief hearing officer within thirty days after
receiving final nominations from the committee by appointing
one of the persons nominated by the committee.

D. The chief hearing officer selection committee
is administratively attached pursuant to the provisions of
Section 9-1-7 NMSA 1978 to the department of finance and
administration.

SECTION 5. CHIEF HEARING OFFICER--POWERS AND DUTIES--
EMPLOYEES OF THE OFFICE.--

A. The chief hearing officer may:

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

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

E. The chief hearing officer shall:

(1) oversee the administrative hearings office; and

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

SECTION 6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

A. The chief hearing officer shall:

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

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

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

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

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

C. The administrative hearings office shall:

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

(2) hear property tax protests pursuant to the provisions of the Property Tax Code;

(3) hear all certificate-denial protests pursuant to the provisions of Section 13-1-22 NMSA 1978;

(4) conduct all adjudicatory hearings pursuant to the Motor Vehicle Code;

(5) conduct all driver’s license revocation hearings pursuant to the provisions of the Implied Consent Act;

(6) make and preserve a complete record of all proceedings; and

(7) maintain confidentiality regarding taxpayer information as required by the provisions of Section 7-1-8 NMSA 1978.

D. In hearings conducted pursuant to the Tax Administration Act, Section 13-1-22 NMSA 1978 and the Motor Vehicle Code:

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

(2) the Rules of Civil Procedure for the District Courts do not apply. The hearing officer shall conduct a hearing to allow the ample and fair presentation of complaints and defenses. The hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. A taxpayer or the taxation and revenue department may request a written ruling on a contested question of procedure in a matter in which the taxpayer has filed a written protest and for which that protest is pending. The administrative hearings office shall issue a copy of its written ruling to the taxation and revenue department at the time the ruling is issued to the taxpayer; and

(3) the hearing officer may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and for hearings
conducted for a license suspension pursuant to Section
66-5-30 NMSA 1978, the hearing officer may require a
reexamination of the licensee.

SECTION 7. CERTAIN ACTIONS PROHIBITED.--A hearing
officer shall not:

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

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

SECTION 8. TAX PROTESTS--PROCEDURES.--

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

B. A taxpayer may appear at the hearing on the
taxpayer's own behalf or may be represented by a bona fide
employee, an attorney, a certified public accountant or, with
respect only to tax imposed pursuant to the Income Tax Act, a
person who is an enrolled agent for federal income tax
purposes. If the taxation and revenue department and the
taxpayer agree, the hearing may be conducted via
videoconference. At the beginning of the hearing, the
hearing officer shall inform the taxpayer of the taxpayer's
right to representation. A hearing shall not be open to the
public except upon request of the taxpayer. A hearing
officer may postpone or continue a hearing at the hearing
officer's discretion.

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

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

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

SECTION 9. MOTOR VEHICLE ADMINISTRATIVE HEARINGS--
PROCEDURES.--
A. A person may dispute the denial of or failure
to either allow or deny a license, permit, placard or
registration provided for in the Motor Vehicle Code. Upon
timely receipt of a protest, the chief hearing officer shall
promptly designate a hearing officer to conduct a hearing and
shall set a date for the hearing. On that date, the hearing
officer shall hear the protest.

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

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

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

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

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

SECTION 10. Section 7-1-3 NMSA 1978 (being Laws 1965,
Chapter 248, Section 3, as amended) is amended to read:

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

A. "automated clearinghouse transaction" means an
electronic credit or debit transmitted through an automated
clearinghouse payable to the state treasurer and deposited
with the fiscal agent of New Mexico;

E. "department" means the taxation and revenue
department, the secretary or any employee of the department
exercising authority lawfully delegated to that employee by
the secretary;

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

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

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

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

(1) the chief hearing officer;

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

(3) a contractor of the administrative
hearings office;

G. "Internal Revenue Code" means the Internal Revenue Code of 1986, as that code may be amended or its sections renumbered;

H. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

I. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

J. "managed audit" means a review and analysis
conducted by a taxpayer under an agreement with the
department to determine the taxpayer's compliance with a tax
administered pursuant to the Tax Administration Act and the
presentation of the results to the department for assessment
of tax found to be due;

K. "net receipts" means the total amount of money
paid by taxpayers to the department in a month pursuant to a
tax or tax act less any refunds disbursed in that month with
respect to that tax or tax act;

L. "overpayment" means an amount paid, pursuant to
any law subject to administration and enforcement under the
provisions of the Tax Administration Act, by a person to the
department or withheld from the person in excess of tax due
from the person to the state at the time of the payment or at
the time the amount withheld is credited against tax due;

M. "paid" includes the term "paid over";

N. "pay" includes the term "pay over";

O. "payment" includes the term "payment over";

P. "person" means any individual, estate, trust,
receiver, cooperative association, club, corporation,
company, firm, partnership, limited liability company,
limited liability partnership, joint venture, syndicate,
other association or gas, water or electric utility owned or
operated by a county or municipality; "person" also means, to
the extent permitted by law, a federal, state or other

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

Q. "property" means property or rights to property;

R. "property or rights to property" means any tangible property, real or personal, or any intangible property of a taxpayer;

S. "return" means any tax or information return, declaration of estimated tax or claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and enforcement pursuant to the Tax Administration Act and filed with the secretary or the secretary's delegate by or on behalf of any person;

T. "return information" means a taxpayer's name, address, government-issued identification number and other identifying information; any information contained in or derived from a taxpayer's return; any information with respect to any actual or possible administrative or legal action by an employee of the department concerning a taxpayer's return, such as audits, managed audits, denial of
credits or refunds, assessments of tax, penalty or interest, protests of assessments or denial of refunds or credits, levies or liens; or any other information with respect to a taxpayer's return or tax liability that was not obtained from public sources or that was created by an employee of the department; but "return information" does not include statistical data or other information that cannot be associated with or directly or indirectly identify a particular taxpayer;

U. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

V. "secretary or the secretary's delegate" means the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

W. "security" means money, property or rights to property or a surety bond;

X. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States;

Y. "tax" means the total amount of each tax imposed and required to be paid, withheld and paid or
collected and paid under provision of any law made subject to
administration and enforcement according to the provisions of
the Tax Administration Act and, unless the context otherwise
requires, includes the amount of any interest or civil
penalty relating thereto; "tax" also means any amount of any
abatement of tax made or any credit, rebate or refund paid or
credited by the department under any law subject to
administration and enforcement under the provisions of the
Tax Administration Act to any person contrary to law and
includes, unless the context requires otherwise, the amount
of any interest or civil penalty relating thereto;

Z. "tax return preparer" means a person who
prepares for others for compensation or who employs one or
more persons to prepare for others for compensation any
return of income tax, a substantial portion of any return of
income tax, any claim for refund with respect to income tax
or a substantial portion of any claim for refund with respect
to income tax; provided that a person shall not be a "tax
return preparer" merely because such person:

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

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

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

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

SECTION 11. Section 7-1-4.2 NMSA 1978 (being Laws 2003,
Chapter 398, Section 2) is amended to read:

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

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

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

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

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

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

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

G. the right to seek review, through formal or
informal proceedings, of any findings or adverse decisions
relating to determinations during audit or protest procedures
in accordance with the provisions of Section 7-1-24 NMSA 1978
and the Administrative Hearings Office Act;

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

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

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

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

SECTION 12. Section 7-1-8.3 NMSA 1978 (being Laws 2009, Chapter 243, Section 5) is amended to read:

"7-1-8.3. INFORMATION THAT MAY BE REVEALED TO PUBLIC.--

An employee of the department may reveal:
A. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that revealing that information is not otherwise prohibited by law;

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

(1) return information for or relating to a period prior to July 1, 1985 with respect to the Resources Excise Tax Act and the Severance Tax Act may be revealed only to a committee of the legislature for a valid legislative purpose;

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

(3) audit workpapers and the proprietary information contained in the workpapers shall not be revealed except to:

(a) the bureau of safety and environmental enforcement of the United States department of the interior, if production occurred on federal land;
(b) a person having a legal interest in
the property that is subject to the audit;
(c) a purchaser of products severed
from a property subject to the audit; or
(d) the authorized representative of
any of the persons in Subparagraphs (a) through (c) of this
paragraph. This paragraph does not prohibit the revelation
of proprietary information contained in the workpapers that
is also available from returns or from other sources not
subject to the provisions of Section 7-1-8 NMSA 1978;
C. return information with respect to the taxes,
surtaxes, advance payments or tax acts administered pursuant
to Subsection C of Section 7-1-2 NMSA 1978;
D. a decision and order made by a hearing officer
pursuant to the provisions of the Administrative Hearings
Office Act with respect to a protest filed with the secretary
on or after July 1, 1993;
E. any written ruling on questions of evidence or
procedure made by a hearing officer pursuant to the
provisions of the Administrative Hearings Office Act;
provided that the name and identification number of the
taxpayer requesting the ruling shall not be revealed; and
F. return information included in a notice of lien
or release or extinguishment of lien."

SECTION 13. Section 7-1-8.4 NMSA 1978 (being Laws 2009, SB 356
Chapter 243, Section 6) is amended to read:

"7-1-8.4. INFORMATION THAT MAY BE REVEALED TO JUDICIAL

BODIES OR WITH RESPECT TO JUDICIAL PROCEEDINGS OR

INVESTIGATIONS AND TO ADMINISTRATIVE HEARINGS OFFICE.--An

employee of the department may reveal to:

A. a district court, an appellate court or a

federal court, a return or return information:

(1) in response to an order thereof in an

action relating to taxes or an action for tax fraud or any

other crime that may involve taxes due to the state and in

which the information sought is about a taxpayer that is

party to the action and is material to the inquiry, in which

case only that information may be required to be produced in

court and admitted in evidence subject to court order

protecting the confidentiality of the information and no

more;

(2) in an action in which the department is

attempting to enforce an act with which the department is

charged or to collect a tax; or

(3) in any matter in which the department is

a party and the taxpayer has put the taxpayer's own liability

for taxes at issue, in which case only that information

regarding the taxpayer that is party to the action may be

produced, but this shall not prevent revelation of department

policy or interpretation of law arising from circumstances of
a taxpayer that is not a party;

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

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

D. a district attorney, a state district court grand jury or federal grand jury, information for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

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

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

SECTION 14. Section 7-1-22 NMSA 1978 (being Laws 1965,
Chapter 248, Section 24, as amended) is amended to read:

"7-1-22. EXHAUSTION OF ADMINISTRATIVE REMEDIES.--No
court of this state has jurisdiction to entertain any
proceeding by a taxpayer in which the taxpayer calls into
question the taxpayer's liability for any tax or the
application to the taxpayer of any provision of the Tax
Administration Act, except as a consequence of the appeal by
the taxpayer to the court of appeals from the order of a
hearing officer, or except as a consequence of a claim for
refund as specified in Section 7-1-26 NMSA 1978."

SECTION 15. Section 7-1-24 NMSA 1978 (being Laws 1965,
Chapter 248, Section 26, as amended) is amended to read:

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

A. A taxpayer may dispute:

(1) the assessment to the taxpayer of any
amount of tax;

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

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

(a) credit or rebate; or

(b) claim for refund made in accordance

with Section 7-1-26 NMSA 1978.

E. The taxpayer may dispute a matter described in
Subsection A of this section by filing with the secretary a
written protest. Every protest shall identify the taxpayer
and the tax credit, rebate, property or provision of the Tax
Administration Act involved and state the grounds for the
taxpayer's protest and the affirmative relief requested. The
statement of grounds for protest shall specify individual
grounds upon which the protest is based and a summary
statement of the evidence, if any, expected to be produced
supporting each ground asserted; provided that the taxpayer
may supplement the statement at any time prior to ten days
before the hearing conducted on the protest pursuant to the
provisions of the Administrative Hearings Office Act or, if a
scheduling order has been issued, in accordance with the
scheduling order. The secretary may, in appropriate cases,
provide for an informal conference before a hearing of the
protest is set by the administrative hearings office or
before acting on a claim for refund. In the case of an
assessment of tax by the department, a protest may be filed
without making payment of the amount assessed.

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

D. No proceedings other than those to enforce collection of an amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest pursuant to the provisions of this section.
E. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons."

SECTION 16. Section 7-1-25 NMSA 1978 (being Laws 1965, Chapter 248, Section 27, as amended) is amended to read:

"7-1-25. APPEALS FROM HEARING OFFICER'S DECISION AND ORDER.--

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

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

C. Upon appeal, the court shall set aside a decision and order of the hearing officer only if found to be:
(1) arbitrary, capricious or an abuse of discretion;

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

(3) otherwise not in accordance with the law.

D. If the secretary appeals a decision of the hearing officer and the court's decision, from which either no appeal is taken or no appeal may be taken, upholds the decision of the hearing officer, the court shall award reasonable attorney fees to the protestant. If the decision upholds the hearing officer's decision only in part, the award shall be limited to reasonable attorney fees associated with the portion upheld."

SECTION 17. Section 7-1-26 NMSA 1978 (being Laws 1965, Chapter 248, Section 28, as amended) is amended to read:

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

A. A person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary,
within the time limited by the provisions of Subsections D and E of this section, a written claim for refund. Except as provided in Subsection I of this section, a refund claim shall include:

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

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

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

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

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

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

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

(2) If the department has neither granted
nor denied any portion of a claim for refund within one
hundred twenty days of the date the claim was mailed or
delivered to the department, the person may file it within
the time limits set forth in Subsection D of this section or
may within ninety days elect to pursue one, but only one, of
the remedies in Subsection C of this section. After the
expiration of the two hundred ten days from the date the
claim was mailed or delivered to the department, the
department may not approve or disapprove the claim unless the
person has pursued one of the remedies under Subsection C of
this section.

C. A person may elect to pursue no more than one
of the remedies in Paragraphs (1) and (2) of this subsection.
A person who timely pursues more than one remedy shall be
deemed to have elected the first remedy invoked. The person
may:

(1) direct to the secretary, pursuant to the
provisions of Section 7-1-24 NMSA 1978, a written protest
that shall set forth:

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

(b) an allegation that, because of that
overpayment or denial, the state is indebted to the taxpayer
for a specified amount, including any allowed interest, or
for the property;

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

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

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

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

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

(a) the payment was originally due or

the overpayment resulted from an assessment by the department

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

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

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

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

(2) when an amount of a claim for credit
under the provisions of the Investment Credit Act, Laboratory
Partnership with Small Business Tax Credit Act or Technology
Jobs Tax Credit Act or for the rural job tax credit pursuant
to Section 7-2E-1.1 NMSA 1978 or similar credit has been
denied, the taxpayer may claim a refund of the credit no
later than one year after the date of the denial;
(3) when a taxpayer under audit by the department has signed a waiver of the limitation on assessments on or after July 1, 1993 pursuant to Subsection F of Section 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of the same tax paid for the same period for which the waiver was given, until a date one year after the later of the date of the mailing of an assessment issued pursuant to the audit, the date of the mailing of final audit findings to the taxpayer or the date a proceeding is begun in court by the department with respect to the same tax and the same period;

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

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

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

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

G. Any refund of tax paid under any tax or tax act administered under Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.
F. For the purposes of this section, "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons, carbon dioxide, helium or nonhydrocarbon gas pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act.

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

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

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

A. In any administrative or court proceeding that is brought by or against the taxpayer on or after
July 1, 2003 in connection with the determination, collection
or refund of any tax, interest or penalty for a tax governed
by the provisions of the Tax Administration Act, the taxpayer
shall be awarded a judgment or a settlement for reasonable
administrative costs incurred in connection with an
administrative proceeding with the department or the
administrative hearings office or reasonable litigation costs
incurred in connection with a court proceeding, if the
taxpayer is the prevailing party.

B. As used in this section:

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

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

(3) "reasonable administrative costs" means:

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

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

(4) "reasonable litigation costs" means:

(a) reasonable court costs; and

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

C. For purposes of this section:

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

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

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

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

(a) the department did not follow applicable published guidance in the proceeding; or

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

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

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

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

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

(a) in the case where the final determination with respect to the tax, interest or penalty is made in an administrative proceeding, by the hearing
officer; or

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

D. An order granting or denying in whole or in
part an award for reasonable litigation costs pursuant to
Subsection A of this section in a court proceeding may be
incorporated as a part of the decision or judgment in the
court proceeding and shall be subject to appeal in the same
manner as the decision or judgment. A decision or order
granting or denying in whole or in part an award for
reasonable administrative costs pursuant to Subsection A of
this section by a hearing officer shall be reviewable in the
same manner as a decision of a hearing officer.

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

SECTION 19. Section 7-38-21 NMSA 1978 (being Laws 1973,
Chapter 258, Section 61, as amended) is amended to read:

"7-38-21. PROTESTS--ELECTION OF REMEDIES.--
A. A property owner may protest the value or classification determined for the property owner's property for property taxation purposes, the allocation of value of the property to a particular governmental unit or a denial of a claim for an exemption or for a limitation on increase in value either by:

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

(a) the administrative hearings office;

or

(b) the county assessor; or

(2) filing a claim for refund after paying the property owner's taxes as provided in the Property Tax Code.

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

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

SECTION 20. Section 7-38-22 NMSA 1978 (being Laws 1973, SB 356...
Chapter 258, Section 62, as amended) is amended to read:

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

A. A property owner may protest the value or
classification determined by the division for the property
owner's property for property taxation purposes or the
division's allocation of value of the property owner's
property to a particular governmental unit or the denial of a
claim for an exemption by filing a petition with the
administrative hearings office. Filing a petition in
accordance with this section entitles a property owner to a
hearing on the property owner's protest.

B. Petitions shall:
   (1) be filed no later than thirty days after
   the mailing by the division of the notice of valuation;
   (2) state the property owner's name and
   address and the description of the property;
   (3) state why the property owner believes
   the value, classification, allocation of value or denial of
   an exemption is incorrect and what the property owner
   believes the correct value, classification, allocation of
   value or exemption to be;
   (4) state the value, classification,
   allocation of value or exemption that is not in controversy;
and

(5) contain such other information as the administrative hearings office may by rule require.

C. The administrative hearings office shall notify the director and the property owner by certified mail of the date, time and place that the parties may appear before the administrative hearings office to present evidence related to the petition. The notice shall be mailed at least fifteen days prior to the hearing date.

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

SECTION 21. Section 7-38-23 NMSA 1978 (being Laws 1973, Chapter 258, Section 63, as amended) is amended to read:

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

A. Except for the rules relating to discovery, the technical rules of evidence and the Rules of Civil Procedure for the District Courts do not apply at a protest hearing conducted pursuant to the provisions of the Property Tax Code, but the hearing shall be conducted so that an ample opportunity is provided for the presentation of complaints and defenses. All testimony shall be taken under oath. A verbatim record of the hearings shall be made but need not be transcribed unless required for appeal purposes. A hearing officer shall be designated by the chief hearing officer of
the administrative hearings office to conduct the hearing.

E. Final action taken by the hearing officer on a petition shall be by written order. The hearing officer's order shall be made within thirty days after the date of the hearing, but this time limitation may be extended by agreement of the department and the protestant. A copy of the order shall be sent immediately by certified mail to the property owner. A copy of the order shall also be sent to the county assessor.

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

D. The hearing officer's order shall be in the name of the chief hearing officer, dated, state the changes to be made in the valuation records, if any, and direct the county assessor to take appropriate action. The department shall make any changes in its valuation records required by the order.

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

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

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

SECTION 22. Section 7-38-28 NMSA 1978 (being Laws 1973,
Chapter 258, Section 68, as amended) is amended to read:

"7-38-28. APPEALS FROM ORDERS OF THE HEARING OFFICER OR
COUNTY VALUATION PROTESTS BOARDS.--

A. A property owner may appeal an order made by a
hearing officer or a county valuation protests board by
filing an appeal pursuant to the provisions of
Section 39-3-1.1 NMSA 1978.

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

SECTION 23. Section 9-11-6.2 NMSA 1978 (being Laws
1995, Chapter 31, Section 3) is amended to read:

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

A. The secretary is empowered and directed to

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issue and file as required by law all regulations, rulings, instructions or orders necessary to implement and enforce any provision of any law the administration and enforcement of which the department, the secretary, any division of the department or any director of any division of the department is charged, including all rules and regulations necessary by reason of any alteration of any such law. In order to accomplish its purpose, this provision is to be liberally construed.

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

(1) regulations shall be written statements of the secretary of general application, interpreting and exemplifying the statutes to which they relate;

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

(3) orders shall be written statements of the secretary or delegate of the secretary to implement a decision after a hearing; and

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

C. To be effective, any ruling or regulation issued by the secretary shall be reviewed by the attorney general or other legal counsel of the department prior to being filed as required by law, and the fact of the review shall be indicated on the ruling or regulation.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the secretary. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested parties may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published at least thirty days prior to the hearing date in the New Mexico register and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. After the proposed
regulation has been on file for not less than sixty days and a public hearing on the proposed action has been held by the secretary or a hearing officer designated by the secretary, the secretary may issue it as a final regulation by signing the regulation and filing the regulation in the manner required by law. The secretary shall not delegate the authority to sign regulations.

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

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

C. Any regulation, ruling, instruction or order
issued by the secretary or delegate of the secretary is
presumed to be a proper implementation of the provisions of
the laws that are charged to the department, the secretary,
any division of the department or any director of any
division of the department.

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

SECTION 24. Section 13-1-22 NMSA 1978 (being Laws 1969,
Chapter 184, Section 1, as amended) is amended to read:

"13-1-22. RESIDENT BUSINESS, RESIDENT VETERAN BUSINESS,
RESIDENT CONTRACTOR AND RESIDENT VETERAN CONTRACTOR
CERTIFICATION.--

A. To receive a resident business or resident
veteran business preference pursuant to Section 13-1-21
NMSA 1978 or a resident contractor or resident veteran
contractor preference pursuant to Section 13-4-2 NMSA 1978, a
business or contractor shall submit with its bid or proposal
a copy of a valid resident business certificate, valid
resident veteran business certificate, valid resident
contractor certificate or valid resident veteran contractor
certificate issued by the taxation and revenue department.

E. An application for a resident business

certificate shall include an affidavit from a certified
public accountant setting forth that the business is licensed
to do business in this state and that:

(1) the business has paid property taxes or
rent on real property in the state and paid at least one
other tax administered by the state in each of the three
years immediately preceding the submission of the affidavit;

(2) if the business is a new business, the
owner or majority of owners has paid property taxes or rent
on real property in the state and has paid at least one other
tax administered by the state in each of the three years
immediately preceding the submission of the affidavit and has
not applied for a resident business or resident contractor
certificate pursuant to this section during that time period;

(3) if the business is a relocated business,
at least eighty percent of the total personnel of the
business in the year immediately preceding the submission of
the affidavit were residents of the state and that, prior to
the submission of the affidavit, the business either leased
real property for ten years or purchased real property
greater than one hundred thousand dollars ($100,000) in value
in the state; or

(4) if the business is a previously
certified business or was eligible for certification, the
business has changed its name, has reorganized into one or
more different legal entities, was purchased by another legal
entity but operates in the state as substantially the same
commercial enterprise or has merged with a different legal
entity but operates in the state as substantially the same
commercial enterprise.

C. An application for a resident veteran business
certificate shall include the affidavit required by
Subsection B of this section, an affidavit from a certified
public accountant providing the previous year's annual
revenues of the resident veteran business and:

(1) verification by the federal department
of veterans affairs as being either a veteran-owned small
business or a service-disabled veteran-owned small business;
or

(2) verification of veteran status as
indicated by the United States department of defense DD form
214 of release or discharge from active duty with an
honorable discharge or of service-disabled veteran status by
the department of veterans affairs and proof that a veteran
or veterans own a majority of the business.

D. An application for a resident contractor
certificate shall include an affidavit from a certified
public accountant setting forth that the contractor is
currently licensed as a contractor in this state and that:

(1) the contractor has:

(a) registered with the state at least one vehicle; and

(b) in each of the five years immediately preceding the submission of the affidavit: 1) paid property taxes or rent on real property in the state and paid at least one other tax administered by the state; and 2) paid unemployment insurance on at least three full-time employees who are residents of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are residents of the state is waived;

(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the contractor either
leased real property for ten years or purchased real property
greater than one hundred thousand dollars ($100,000) in value
in the state; or

(4) if the contractor is a previously
certified contractor or was eligible for certification, the
contractor has changed its name, has reorganized into one or
more different legal entities, was purchased by another legal
entity but operates in the state as substantially the same
enterprise or has merged with a different legal entity but
operates in the state as substantially the same commercial
enterprise.

E. An application for a resident veteran
contractor certificate shall include the affidavit required
by Subsection D of this section, an affidavit from a
certified public accountant providing the previous year's
annual revenues for the resident veteran contractor and:

(1) verification by the federal department
of veterans affairs as being either a veteran-owned small
business or a service-disabled veteran-owned small business;
or

(2) verification of veteran status as
indicated by the United States department of defense DD form
214 of release or discharge from active duty with an
honorable discharge or of service-disabled veteran status by
the department of veterans affairs and proof that a veteran
or veterans own a majority of the business.

F. The taxation and revenue department shall prescribe the form and content of an application for certification and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate pursuant to the provisions of this section. If the taxation and revenue department determines that an applicant is eligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a resident business, resident veteran business, resident contractor or resident veteran contractor shall reapply for a certificate.

G. A business or contractor whose application for a certificate is denied has fifteen days from the date of the taxation and revenue department's decision to file an objection with the taxation and revenue department. The person filing the objection shall submit evidence to support
the objection. The taxation and revenue department shall
review the evidence and issue a decision within fifteen days
of the filing of the objection.

H. If, following a hearing and an opportunity to
be heard, the administrative hearings office finds that a
business or contractor provided false information to the
taxation and revenue department in order to obtain a
certificate or that a business or contractor used a
certificate to obtain a resident business, resident veteran
business, resident contractor or resident veteran contractor
preference for a bid or proposal and the resident business,
resident veteran business, resident contractor or resident
veteran contractor did not perform the percentage of the
contract specified in the bid or proposal, the business or
contractor:

(1) is not eligible to receive a certificate
or a preference pursuant to Section 13-1-21 or 13-4-2
NMSA 1978 for a period of five years from the date on which
the taxation and revenue department became aware of the
submission of the false information or the failure to perform
the contract as specified in the bid or proposal; and

(2) is subject to an administrative penalty
of up to fifty thousand dollars ($50,000) for each violation.

I. In a decision issued pursuant to Subsection G
or H of this section, the taxation and revenue department or
administrative hearings office shall state the reasons for
the action taken and inform an aggrieved business or
contractor of the right to judicial review of the
determination pursuant to the provisions of Section 39-3-1.1
NMSA 1978.

J. The taxation and revenue department may assess
a reasonable fee for the issuance of a certificate not to
exceed the actual cost of administering the taxation and
revenue department's duties pursuant to this section.

K. The state auditor may audit or review the
issuance or validity of certificates.

L. For purposes of this section:
   (1) "new business" means a person that did
not exist as a business in any form and that has been in
existence for less than three years;
   (2) "new contractor" means a person that did
not exist as a business in any form and that has been in
existence for less than five years;
   (3) "legacy contractor" means a construction
business that has been licensed in this state for ten
consecutive years; and
   (4) "relocated business" means a business
that moved eighty percent of its total domestic personnel
from another state to New Mexico in the past five years."

SECTION 25. That version of Section 13-1-22 NMSA 1978
(being Laws 2012, Chapter 56, Section 4) that is to become effective July 1, 2022 is amended to read:

"13-1-22. RESIDENT BUSINESS AND RESIDENT CONTRACTOR CERTIFICATION.--

A. To receive a resident business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor preference pursuant to Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate or valid resident contractor certificate issued by the taxation and revenue department.

B. An application for a resident business certificate shall include an affidavit from a certified public accountant setting forth that the business is licensed to do business in this state and that:

(1) the business has paid property taxes or rent on real property in the state and paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit;

(2) if the business is a new business, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor
certificate pursuant to this section during that time period;
(3) if the business is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the business either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state; or
(4) if the business is a previously certified business or was eligible for certification, the business has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same commercial enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.
C. An application for a resident contractor certificate shall include an affidavit from a certified public accountant setting forth that the contractor is currently licensed as a contractor in this state and that:
(1) the contractor has:
(a) registered with the state at least one vehicle; and
(b) in each of the five years
immediately preceding the submission of the affidavit:

1) paid property taxes or rent on real property in the state and paid at least one other tax administered by the state;
and 2) paid unemployment insurance on at least three full-time employees who are residents of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are residents of the state is waived;

(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state; or

(4) if the contractor is a previously certified contractor or was eligible for certification, the
contractor has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

D. The taxation and revenue department shall prescribe the form and content of the application and required affidavit. The taxation and revenue department shall examine the application and affidavit and, if necessary, may seek additional information to ensure that the business or contractor is eligible to receive the certificate pursuant to the provisions of this section. If the taxation and revenue department determines that an applicant is eligible, the department shall issue a certificate pursuant to the provisions of this section. If the taxation and revenue department determines that the applicant is not eligible, the department shall issue notification within thirty days. If no notification is provided by the department, the certificate is deemed approved. A certificate is valid for three years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a resident business or resident contractor shall reapply for a certificate.

E. A business or contractor whose application for
a certificate is denied has fifteen days from the date of the
taxation and revenue department's decision to file an
objection with the taxation and revenue department. The
person filing the objection shall submit evidence to support
the objection. The taxation and revenue department shall
review the evidence and issue a decision within fifteen days
of the filing of the objection.

F. If, following a hearing and an opportunity to
be heard, the administrative hearings office finds that a
business or contractor provided false information to the
taxation and revenue department in order to obtain a
certificate or that a business or contractor used a
certificate to obtain a resident business or resident
contractor preference for a bid or proposal and the resident
business or contractor did not perform the percentage of the
contract specified in the bid or proposal, the business or
contractor:

(1) is not eligible to receive a
certificate or a preference pursuant to Section 13-1-21 or
13-4-2 NMSA 1978 for a period of five years from the date on
which the taxation and revenue department became aware of the
submission of the false information or the failure to perform
the contract as specified in the bid or proposal; and

(2) is subject to an administrative penalty
of up to fifty thousand dollars ($50,000) for each violation.
G. In a decision issued pursuant to Subsection E or F of this section, the taxation and revenue department or the administrative hearings office shall state the reasons for the action taken and inform an aggrieved business or contractor of the right to judicial review of the determination pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

H. The taxation and revenue department may assess a reasonable fee for the issuance of a certificate not to exceed the actual cost of administering the taxation and revenue department's duties pursuant to this section.

I. The state auditor may audit or review the issuance or validity of certificates.

J. For purposes of this section:

(1) "new business" means a person that did not exist as a business in any form and that has been in existence for less than three years;

(2) "new contractor" means a person that did not exist as a business in any form and that has been in existence for less than five years;

(3) "legacy contractor" means a construction business that has been licensed in this state for ten consecutive years; and

(4) "relocated business" means a business that moved eighty percent of its total domestic personnel.
from another state to New Mexico in the past five years."

SECTION 26. Section 40-5A-6 NMSA 1978 (being Laws 1995, Chapter 25, Section 6, as amended) is amended to read:

"40-5A-6. SUSPENSION OR REVOCATION OF LICENSE.--The failure of a licensee to be in compliance with a judgment and order for support or subpoena or warrants relating to paternity or child support proceedings is grounds for suspension or revocation of a license. The proceeding shall be conducted by a board or the administrative hearings office pursuant to the law governing suspension and revocation proceedings for the license."

SECTION 27. Section 66-2-11 NMSA 1978 (being Laws 1978, Chapter 35, Section 15, as amended) is amended to read:

"66-2-11. GIVING OF NOTICE.--Whenever the department or the administrative hearings office is authorized or required to give any notice under the Motor Vehicle Code or any other law regulating the operation of vehicles, unless a different method of giving notice is otherwise expressly prescribed, notice shall be given either by personal delivery to the person to be notified or by deposit in the United States mail of the notice in an envelope with postage prepaid, addressed to the person at the person's address as shown by the records of the department. The giving of notice by mail is complete upon the expiration of seven days after deposit of the notice. Proof of the giving of notice in either manner may
be made by the certificate of any officer or employee of the
department or affidavit of any person over eighteen years of
age, naming the person to whom the notice was given and
specifying the time, place and manner of the giving of the
notice. Notice is given when a person refuses to accept
notice."

SECTION 28. Section 66-2-17 NMSA 1978 (being Laws 1995,
Chapter 129, Section 3) is amended to read:

"66-2-17. ADMINISTRATIVE HEARING--PROCEDURE.--

A. Unless a more specific provision for review
exists, any person may dispute the denial of, or failure to
either allow or deny, any license, permit, placard or
registration provided for under the Motor Vehicle Code by
filing with the secretary a written protest against the
action or inaction by the department. Every protest shall
identify the person and the action or inaction that is in
dispute, the grounds for the protest and the affirmative
relief requested. The statement of grounds for protest shall
specify individual grounds upon which the protest is based
and a summary statement of the evidence expected to be
produced supporting each ground asserted, if any; provided
that the person may supplement the statement at any time
prior to a hearing conducted on the protest pursuant to the
provisions of the Administrative Hearings Office Act. The
secretary may, in appropriate cases, provide for an informal
conference before the administrative hearings office sets a hearing of the protest.

E. Any protest by a person shall be filed within thirty days of the date of the mailing or verbal notification of the action proposed to be taken by the department. If a protest is not filed within the time required for filing a protest, the secretary may proceed with the action proposed by the department."

SECTION 29. Section 66-4-3 NMSA 1978 (being Laws 1978, Chapter 35, Section 216, as amended) is amended to read:

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

A. The department may refuse to issue a license for just cause and may cancel or suspend a license or use of a temporary registration permit, demonstration permit or transport permit for violation of the Motor Vehicle Code. The action authorized in this section shall be taken only after a hearing before the administrative hearings office. Within ten days after completion of the hearing, the hearing officer designated to conduct the hearing shall cause to be served upon all parties, in the manner provided in Section 66-2-11 NMSA 1978, the hearing officer's findings and decision. The decision shall be:

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

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

    (3) continuing use of dealer plates and temporary registration permits, demonstration permits or transport permits, canceling dealer plates and temporary registration permits, demonstration permits or transport permits or suspending use of temporary registration permits, demonstration permits or transport permits for a time stated.

    B. A party aggrieved by the hearing officer's decision may file an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

SECTION 30. Section 66-5-19 NMSA 1978 (being Laws 1978, Chapter 35, Section 241, as amended) is amended to read:

"66-5-19. RESTRICTED LICENSES.—

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

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

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

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

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

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

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

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

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

   SECTION 31. Section 66-5-30 NMSA 1978 (being Laws 1978,
   Chapter 35, Section 252, as amended) is amended to read:

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

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

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

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

   (3) has been convicted with such frequency
   of offenses against traffic laws or rules governing motor
   vehicles as to indicate a disrespect for traffic laws and a

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disregard for the safety of other persons on the highways;

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

(5) is incompetent to drive a motor vehicle;

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

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

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

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

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

(11) has accumulated seven points, but less
than eleven points, and when the division has received a
recommendation from a municipal or magistrate judge that the
license be suspended for a period not to exceed three months.
E. Upon suspending the license of a person as authorized in this section, the division shall immediately notify the licensee in writing of the licensee's right to a hearing before the administrative hearings office and, upon the licensee's request, shall notify the administrative hearings office. The administrative hearings office shall schedule the hearing to take place as early as practicable, but within no more than twenty days, not counting Saturdays, Sundays and legal holidays after receipt of the request. The hearing shall be held in the county in which the licensee resides unless the hearing officer and the licensee agree that the hearing may be held in some other county; provided that the hearing request is received within twenty days from the date that the suspension was deposited in the United States mail. The hearing officer may, in the hearing officer's discretion, extend the twenty-day period. The hearing shall be held as provided in the Administrative Hearings Office Act. After the hearing, the hearing officer shall either rescind the order of suspension or continue, modify or extend the suspension of the license or revoke the license."

SECTION 32. Section 66-5-204 NMSA 1978 (being Laws 1983, Chapter 318, Section 5, as amended) is amended to read:

"66-5-204. ADMINISTRATIVE AND COURT REVIEW.--An owner of a motor vehicle registered in New Mexico who is aggrieved
by the decision of the secretary made under the provisions of
the Mandatory Financial Responsibility Act may appeal to the
administrative hearings office for a hearing to be held
within twenty days after the receipt by the administrative
hearings office of the appeal. A person who continues to be
agrieved after the decision made by the hearing officer may
appeal that decision in the district court pursuant to the
provisions of Section 39-3-1.1 NMSA 1978."

SECTION 33. Section 66-5-236 NMSA 1978 (being Laws
1983, Chapter 318, Section 35, as amended) is amended to
read:

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

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

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

(2) the registration for a period not to
exceed one year of a person who is operating a motor vehicle
in violation of Section 66-5-205 NMSA 1978 or falsely affirms
the existence of a motor vehicle insurance policy or some
other means of satisfying the financial responsibility
requirements of the Mandatory Financial Responsibility Act,
but only if evidence of financial responsibility is not
submitted within twenty days after the date of the mailing of
the department's demand for that evidence. The department
shall notify the person that the person may request a hearing
before the administrative hearings office within twenty days
after the date of the mailing of the department's demand.

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

SECTON 34. Section 66-8-111.1 NMSA 1978 (being Laws
1984, Chapter 72, Section 7, as amended by Laws 2003, Chapter
51, Section 14 and by Laws 2003, Chapter 90, Section 7) is
amended to read:

"66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
HEARING.--On behalf of the department, a law enforcement
officer requesting a chemical test or directing the
administration of a chemical test pursuant to Section
66-8-107 NMSA 1978 shall serve immediate written notice of
revocation and of right to a hearing before the
administrative hearings office pursuant to the Implied Consent Act on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age. Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the administrative hearings office issues the order following that hearing; provided that a temporary license shall not be issued to a driver without a valid license or permit. The law enforcement officer shall send the person's driver's license to the department along with the signed statement required pursuant to Section 66-8-111 NMSA 1978."

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

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

A. The effective date of revocation pursuant to Section 66-8-111 NMSA 1978 is twenty days after notice of revocation or, if the person whose driver's license or privilege to drive is being revoked or denied requests a hearing pursuant to the Administrative Hearings Office Act, the date that the administrative hearings office issues the order following that hearing. The date of notice of revocation is:

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

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

B. Within ten days after receipt of notice of revocation pursuant to Subsection A of this section, a person whose license or privilege to drive is revoked or denied or
the person's agent may request a hearing. The hearing
request shall be made in writing and shall be accompanied by
a payment of twenty-five dollars ($25.00) or a sworn
statement of indigency on a form provided by the department.
A standard for indigency shall be established pursuant to
rules adopted by the department. Failure to request a
hearing within ten days shall result in forfeiture of the
person's right to a hearing. Any person less than eighteen
years of age who fails to request a hearing within ten days
shall have notice of revocation sent to the person's parent,
guardian or custodian by the department. A date for the
hearing shall be set by the administrative hearings office,
if practical, within thirty days after receipt of notice of
revocation. The hearing shall be held in the county in which
the offense for which the person was arrested took place.

C. The administrative hearings office may postpone
or continue any hearing on its own motion or upon application
from the person and for good cause shown for a period not to
exceed ninety days from the date of notice of revocation and,
provided that, upon a continuance, the department shall
extend the validity of the temporary license for the period
of the postponement or continuation.

D. At the hearing, the administrative hearings
office may administer oaths and may issue subpoenas for the
attendance of witnesses and the production of relevant books
and papers.

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

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

(2) whether the person was arrested;

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

(4) whether:

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

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

(5) whether:

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

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

F. The administrative hearings office shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the hearing officer from the administrative hearings office finds that:

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

   (2) the person was arrested;

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

   (4) either:

      (a) the person refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised the person that the person's failure to submit to the test could result in the revocation of the person's privilege to drive; or

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

G. If one or more of the elements set forth in Paragraphs (1) through (4) of Subsection F of this section are not found by the hearing officer, the person's license shall not be revoked.

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

I. Any person less than eighteen years of age shall have results of the person's hearing forwarded by the administrative hearings office to the person's parent, guardian or custodian."

SECTION 36. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS, STATUTORY REFERENCES AND RULES.--

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

E. On the effective date of this act, all
contractual obligations of the hearings bureau of the office
of the secretary of taxation and revenue shall be binding on
the administrative hearings office.

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

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

SECTION 37. REPEAL.--Section 7-1-24.1 NMSA 1978 (being
Laws 2013, Chapter 27, Section 7) is repealed.

SECTION 38. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2015.
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this 7th day of April, 2015

Susana Martinez
Governor
State of New Mexico