

1 SENATE BILL 375

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO TAXATION; CREATING THE TENANCY TAX; PROVIDING FOR  
12 LOCAL CONTROL OF ELIGIBLE USES FOR THE TENANCY TAX.

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "3-38-14. DEFINITIONS.--As used in the Lodgers' Tax Act:

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

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

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

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

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

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

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

25 H. "tenancy tax" means the tax on lodging

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1 authorized by the Lodgers' Tax Act when that lodging surpasses  
2 a term of thirty days;

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

6 [I.] J. "tourist-related events" means events that  
7 are planned for, promoted to and attended by tourists;

8 [J.] K. "tourist-related facilities and  
9 attractions" means facilities and attractions that are intended  
10 to be used by or visited by tourists;

11 [K.] L. "tourist-related transportation systems"  
12 means transportation systems that provide transportation for  
13 tourists to and from tourist-related facilities and attractions  
14 and tourist-related events;

15 [L.] M. "vendee" means a natural person to whom  
16 lodgings are furnished in the exercise of the taxable service  
17 of lodging; and

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

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

23 "3-38-15. AUTHORIZATION OF OCCUPANCY TAX--LIMITATIONS ON  
24 USE OF PROCEEDS.--

25 A. A municipality may impose by ordinance an

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1 occupancy tax for revenues on lodging within the municipality,  
2 and the board of county commissioners of a county may impose by  
3 ordinance an occupancy tax for revenues on lodging within that  
4 part of the county outside of the incorporated limits of a  
5 municipality.

6 B. The occupancy tax shall not exceed five percent  
7 of the gross taxable rent.

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

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

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

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

25 (3) if the occupancy tax imposed is more than

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1 two percent and the municipality is located in a class A county  
2 or the county is a class A county, not less than one-half of  
3 the proceeds from the occupancy tax shall be used for those  
4 purposes.

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

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

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

25 H. Notwithstanding the provisions of Paragraph (2)

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

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

12 "3-38-15.1. [NEW MATERIAL] AUTHORIZATION OF TENANCY TAX--  
13 LIMITATIONS ON USE OF PROCEEDS.--

14 A. A municipality may impose by ordinance a tenancy  
15 tax for revenues on lodging within the municipality, and the  
16 board of county commissioners of a county may impose by  
17 ordinance a tenancy tax for revenues on lodging within that  
18 part of the county outside of the incorporated limits of a  
19 municipality.

20 B. The tenancy tax shall not exceed five percent of  
21 the gross taxable rent.

22 C. Every vendor who is furnishing any lodgings  
23 within a municipality or county is exercising a taxable  
24 privilege.

25 D. The proceeds from the tenancy tax shall be used

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1 only for the purposes stated in the ordinance by which the tax  
2 is imposed.

3 E. The proceeds from the tenancy tax shall be used  
4 within two years of the close of the fiscal year in which the  
5 proceeds were collected and shall not be accumulated beyond  
6 that date or used for any other purpose."

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

9 "3-38-16. OCCUPANCY TAX EXEMPTIONS.--The occupancy tax  
10 shall not apply:

11 A. if a vendee:

12 (1) has been a permanent resident of the  
13 taxable premises for a period of at least thirty consecutive  
14 days; or

15 (2) enters into or has entered into a written  
16 agreement for lodgings at the taxable premises for a period of  
17 at least thirty consecutive days;

18 B. if the rent paid by a vendee is less than two  
19 dollars (\$2.00) a day;

20 C. to lodging accommodations at institutions of the  
21 federal government, the state or any political subdivision  
22 thereof;

23 D. to lodging accommodations at religious,  
24 charitable, educational or philanthropic institutions,  
25 including accommodations at summer camps operated by such

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1 institutions;

2 E. to clinics, hospitals or other medical  
3 facilities;

4 F. to privately owned and operated convalescent  
5 homes or homes for the aged, infirm, indigent or chronically  
6 ill; or

7 G. if the vendor does not offer at least three  
8 rooms within or attached to a taxable premises for lodging or  
9 at least three other premises for lodging or a combination of  
10 these within the taxing jurisdiction."

11 SECTION 5. A new Section 3-38-16.1 NMSA 1978 is enacted  
12 to read:

13 "3-38-16.1. [NEW MATERIAL] TENANCY TAX EXEMPTIONS.--The  
14 tenancy tax shall not apply:

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

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

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

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

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

4 F. if the vendor does not offer at least three  
5 rooms within or attached to a taxable premises for lodging or  
6 at least three other premises for lodging or a combination of  
7 these within the taxing jurisdiction."

8 SECTION 6. Section 3-38-17 NMSA 1978 (being Laws 1969,  
9 Chapter 199, Section 5, as amended) is amended to read:

10 "3-38-17. COLLECTION OF TAXES.--

11 A. Every vendor providing lodgings in a  
12 municipality or county imposing an occupancy tax or a tenancy  
13 tax shall collect the proceeds thereof on behalf of the  
14 municipality or county and shall act as a trustee therefor.

15 B. The tax shall be collected from vendees in  
16 accordance with the ordinance imposing the tax and shall be  
17 charged separately from the rent fixed by the vendor for the  
18 lodgings."

19 SECTION 7. Section 3-38-17.1 NMSA 1978 (being Laws 1992,  
20 Chapter 12, Section 2, as amended) is amended to read:

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

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

10 SECTION 8. Section 3-38-17.2 NMSA 1978 (being Laws 1996,  
11 Chapter 58, Section 5) is amended to read:

12 "3-38-17.2. FINANCIAL REPORTING.--

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

21 B. The governing body of any municipality or county  
22 imposing and collecting an occupancy tax or tenancy tax shall  
23 report to the local government division of the department of  
24 finance and administration on a quarterly basis any expenditure  
25 of occupancy tax or tenancy tax funds pursuant to Sections

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1 3-38-15, 3-38-15.1 and 3-38-21 NMSA 1978 and shall furnish a  
2 copy of this report to the advisory board created pursuant to  
3 Section 3-38-22 NMSA 1978 when it is filed with the division."

4 SECTION 9. Section 3-38-17.3 NMSA 1978 (being Laws 1996,  
5 Chapter 58, Section 6) is amended to read:

6 "3-38-17.3. ENFORCEMENT.--

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

9 (1) the attorney general or the district  
10 attorney in the county of jurisdiction; or

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

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

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

19 SECTION 10. Section 3-38-18 NMSA 1978 (being Laws 1969,  
20 Chapter 199, Section 6, as amended) is amended to read:

21 "3-38-18. COLLECTION OF DELINQUENCIES.--

22 A. The governing body of [~~the~~] a municipality or  
23 county shall, by ordinance, provide that a vendor is liable for  
24 the payment of the proceeds of any occupancy tax or tenancy tax  
25 that the vendor failed to remit to the municipality or county,

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1 due to ~~[his]~~ the vendor's failure to collect the tax, or  
2 otherwise, and shall provide for a civil penalty for any such  
3 failure in an amount equal to the greater of ten percent of the  
4 amount that was not duly remitted to the municipality or county  
5 or one hundred dollars (\$100).

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

13 SECTION 11. Section 3-38-18.1 NMSA 1978 (being Laws 1992,  
14 Chapter 12, Section 1) is amended to read:

15 "3-38-18.1. LIEN FOR OCCUPANCY TAX OR TENANCY TAX--  
16 PAYMENT--CERTIFICATE OF LIENS.--

17 A. The occupancy tax and tenancy tax imposed by a  
18 municipality or county ~~[constitutes]~~ constitute a lien in favor  
19 of that municipality or county upon the personal and real  
20 property of the vendor providing lodgings in that municipality  
21 or county. The lien may be enforced as provided in Sections  
22 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be  
23 determined from the date of filing.

24 B. Under process or order of court, no person shall  
25 sell the property of any vendor without first ascertaining from

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1 the clerk or treasurer of the municipality or county in which  
2 the vendor is located the amount of any occupancy tax or  
3 tenancy tax due the municipality or county. Any occupancy tax  
4 or tenancy tax due the municipality or county shall be paid  
5 from the proceeds of the sale before payment is made to the  
6 judgment creditor or any other person with a claim on the sale  
7 proceeds.

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

13 SECTION 12. Section 3-38-19 NMSA 1978 (being Laws 1969,  
14 Chapter 199, Section 7, as amended) is amended to read:

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

25 SECTION 13. Section 3-38-20 NMSA 1978 (being Laws 1969,

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1 Chapter 199, Section 8, as amended) is amended to read:

2 "3-38-20. ORDINANCE REQUIREMENTS.--The ordinance imposing  
3 an occupancy tax or a tenancy tax or any ordinance amendatory  
4 thereof or supplemental thereto, except as limited by or  
5 otherwise provided in the Lodgers' Tax Act, shall:

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

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

23 C. provide other rights, privileges, powers,  
24 immunities and other details relating to any such vendor  
25 licenses, the collection of the occupancy tax or tenancy tax

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1 and the remittance of the proceeds thereof to the municipality  
2 or county."

3 SECTION 14. Section 3-38-21.1 NMSA 1978 (being Laws 1996,  
4 Chapter 58, Section 8) is amended to read:

5 "3-38-21.1. CONTRACTING FOR SERVICES.--

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

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

24 C. The occupancy tax or tenancy tax revenue spent  
25 for a purpose authorized by the Lodgers' Tax Act may be spent

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1 for day-to-day operations, supplies, salaries, office rental,  
2 travel expenses and other administrative costs only if those  
3 administrative costs are incurred directly for that purpose.

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

11 SECTION 15. Section 3-38-22 NMSA 1978 (being Laws 1977,  
12 Chapter 294, Section 2, as amended) is amended to read:

13 "3-38-22. ADVISORY BOARDS CREATED--DUTIES.--

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

23 B. The [~~chairman~~] chair of every board of county  
24 [~~commission~~] commissioners that imposes an occupancy tax or  
25 tenancy tax pursuant to the Lodgers' Tax Act shall appoint a

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1 five-member advisory board that consists of two members who are  
2 owners or operators of lodgings subject to the occupancy tax or  
3 tenancy tax within the unincorporated area of the county, two  
4 members who are owners or operators of industries located  
5 within the unincorporated area of the county that primarily  
6 provide services or products to tourists and one member who is  
7 a resident of the unincorporated area of the county who  
8 represents the general public.

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

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

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

25 "3-38-23. REVENUE BONDS.--

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

6           B. The revenue bonds may be payable from and such  
7 payment may be secured by a pledge of and lien on the revenues  
8 derived from:

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

20                   (2) the tourist-related facilities and  
21 attractions or tourist-related transportation systems to which  
22 the bonds pertain, after provision is made for the payment of  
23 the operation and maintenance expenses of the tourist-related  
24 facilities and attractions or tourist-related transportation  
25 systems; or

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